**Section 120.386 Property Transfers Occurring On or Before August 10, 1993**

a) Applicability

1) The provisions for the transfer of property (for example, assets) in this Section only apply to institutionalized persons when the transfer occurs on or before August 10, 1993. An institutionalized person is defined as a resident of a long term care facility, including a resident who was living in the community at the time of the transfer, and to individuals who but for the provision of home and community-based services under Section 4.02 of the Illinois Act on the Aging would require the level of care in a long term care facility. An institutionalized person also includes an individual receiving home and community-based services under Section 4.02 of the Illinois Act on the Aging who was not receiving these services at the time of the transfer.

2) Transfers of property disregarded as a result of payments made by a Long Term Care Partnership Insurance Policy (as described in 50 Ill. Adm. Code 2018) are not subject to the provisions of subsection (b), (c), and (d) of this Section.

3) The provisions for the transfer of property (for example, assets) in this Section apply to the transfer of property by the institutionalized person's spouse in the same manner as if the institutionalized person transferred the property.

b) A transfer of assets occurs when an institutionalized person or an institutionalized person's spouse buys, sells or gives away real or personal property or changes (for example, change from joint tenancy to tenancy in common) the way property is held. Changing ownership of property to a life estate interest is an asset transfer (the value of the life estate and remainder interest is determined as described in Section 120.380 and 89 Ill. Adm. Code 113.140). A transfer occurs when an action or actions are taken which would cause an asset or assets not to be received (for example, waiving the right to receive an inheritance).

c) A transfer is allowable if:

1) the transfer occurred more than 30 months before the date of application or more than 30 months before entry into the long term care facility or more than 30 months before receipt of services provided by the Illinois Department on Aging under the In-Home Care Program (as described in Section 140.643);

2) a fair market value was received. Fair market value is the price that an article or piece of property might be expected to bring if offered for sale in a fair market. Fair market value is determined by statements obtained from institutions, community members, etc. (for example, bankers, jewelers, reputable realtors, etc.) recognized as having knowledge of property values;

3) homestead property was transferred to:

A) a spouse;

B) the individual's child who is under age 21;

C) the individual's child who is blind or permanently and totally disabled;

D) the individual's brother or sister who has an equity interest in the homestead property and who was residing in the home for at least one year immediately prior to the date the individual became institutionalized; or

E) the individual's child who provided care for the individual and who was residing in the homestead property for two years immediately prior to the date the individual became institutionalized;

4) the transfer by the institutionalized person was to the community spouse or to another individual for the sole benefit of the community spouse and the amount transferred does not exceed the Community Spouse Asset Allowance (as described in Section 120.379);

5) the transfer was to the individual's child who is blind or permanently and totally disabled or to another person for the sole benefit of the individual's child;

6) the individual intended to transfer the assets for fair market value;

7) it is determined that denial of assistance would create an undue hardship. Examples of undue hardship include, but are not limited to, situations in which:

A) the individual is mentally unable to explain how the assets were transferred;

B) the denial of assistance would force the resident to move from the long term care facility; or

C) the individual would be prohibited from joining a spouse in a facility or would prohibit the individual from entering a facility that is within close proximity to his/her family;

8) the transfer was made exclusively for a reason other than to qualify for assistance. A transfer for less than fair market value is presumed to have been made to qualify for assistance unless a satisfactory showing is made to the Department that the client or spouse transferred the asset exclusively for a reason other than to qualify for assistance;

9) the transfer by the individual was to the community spouse and was the result of a court order; or

10) the transfer was to an annuity and the expected return on the annuity is commensurate with the estimated life expectancy of the person. In determining the estimated life expectancy of the person, the Department shall use the life expectancy table described in Section 120.Table B.

d) If a transfer or transfers do not meet the provisions of subsection (c), the client is subject to a period of ineligibility for long term care services and for services provided by the Illinois Department on Aging under the In-Home Care Program (as described in Section 140.643). The penalty period is determined in accordance with subsection (e). If otherwise eligible, clients remain entitled to other covered medical services.

e) A separate penalty period is determined for each month in which a transfer or transfers do not meet the provisions of subsection (c). Each penalty period is the lesser of the number of months the total uncompensated amount of the transferred assets would meet the monthly cost of long term care at the private rate or 30 months.

f) The penalty period begins with the month of the transfer or transfers unless the transfer or transfers occurred during a previous penalty period. If so, the penalty period begins with the month following the month the previous penalty period ends. However, the penalty period cannot exceed 30 months from the month of the transfer or transfers.

(Source: Amended at 19 Ill. Reg. 15079, effective October 17, 1995)