**Section 120.387 Property Transfers Occurring On or After August 11, 1993** **and Before January 1, 2007**

a) The provisions for the transfer of assets listed in subsection (e) only apply to institutionalized persons when the transfer occurs on or after August 11, 1993 and before January 1, 2007 or to persons who applied for or whose application for long term care assistance was filed or approved prior to January 1, 2012. 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.

b) The provisions for the transfer of property (e.g., assets) listed in subsection (e) apply to the transfer of property by the institutionalized person's spouse in the same manner as if the institutionalized person transferred the property.

c) 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 this Section.

d) 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 at Section 120.380 and 89 Ill. Adm. Code 113.140). For assets held in joint tenancy, tenancy in common or similar arrangement, a transfer occurs when an action by any person reduces or eliminates the person's ownership or control of the asset. A transfer occurs when an action or actions are taken that would cause an asset or assets not to be received (e.g., waiving the right to receive an inheritance).

e) A transfer is allowable if:

1) depending on the property transferred, the transfer occurred more than either 60 or 36 months before the date of application, or more than either 60 or 36 months before entry into a long term care facility or more than either 60 or 36 months before receipt of services provided by the Illinois Department on Aging under the In-Home Care Program (as described in 89 Ill. Adm. Code 140.643);

A) the 60 month period applies to payments from a revocable trust that are not treated as income (as described in Section 120.347) and to portions of an irrevocable trust from which no payments could be made (as described in Section 120.347);

B) the 36 month period applies to payments from an irrevocable trust that are not treated as income (as described in Section 120.347) and to any other property transfers not identified in this subsection;

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. (e.g., bankers, jewelers, reputable realtors, etc.) recognized as having knowledge of property values;

3) homestead property was transferred to:

A) a spouse;

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

C) the person's child who is blind (as described in Section 120.313) or disabled (as described in Section 120.314);

D) the person'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 person became institutionalized; or

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

4) the transfer by the institutionalized person was to the community spouse or to another person for the sole benefit of the community spouse;

5) the transfer from the community spouse was to another person for the sole benefit of the community spouse;

6) the transfer was to the person's child or to a trust established solely for the benefit of the person's child who is blind (as described in Section 120.313) or disabled (as described in Section 120.314) or to another person for the sole benefit of the person's child;

7) the transfer was to a trust established solely for the benefit of a person under age 65 who is disabled (as described in Section 120.314);

8) the person intended to transfer the assets for fair market value;

9) 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 or her family;

10) 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;

11) the transfer by the client was to the community spouse and was the result of a court order;

12) the assets transferred for less than fair market value have been returned to the person; or

13) the transfer was to an annuity, the expected return on the annuity is commensurate with the estimated life expectancy of the person, and the annuity pays benefits in approximately equal periodic payments. In determining the estimated life expectancy of the person, the Department shall use the current actuarial tables published by the Office of the Chief Actuary of the Social Security Administration http://www.ssa.gov/OACT/STATS/table4c6.html.

f) If a transfer or transfers do not meet the provisions of subsection (e), 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 (g) of this Section. If otherwise eligible, clients remain entitled to other covered medical services.

g) A separate penalty period is determined for each month in which a transfer or transfers do not meet the provisions of subsection (e) of this Section. Each penalty period is the number of months equal to the total uncompensated amount of assets transferred during a month divided by the monthly cost of long term care at the private rate.

h) 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.

i) For transfers by the community spouse that result in a penalty period as described in subsection (g) of this Section and the community spouse becomes an institutionalized person and is otherwise eligible for assistance, the Department shall divide any remaining penalty period equally between the spouses.

(Source: Amended at 35 Ill. Reg. 18645, effective January 1, 2012)