

**9050.0650 TRANSFERS OF PROPERTY.**

Subpart 1. **Generally.** A person whose application for admission is pending or a current resident of a facility operated by the commissioner of veterans affairs shall declare all transfers or sales of property within ten days of the transfer or sale. The value of property transferred or sold must be treated as an available resource for payment of the resident's maintenance charge. The value of the property transferred or sold that will be applied against the property limits in parts 9050.0560 and 9050.0600 is the market value of the property at the time of the sale or transfer less any encumbrances on the property. A transfer for purposes of preserving an estate for heirs is the same as a transfer for the purposes of establishing eligibility for admission to a facility operated by the commissioner of veterans affairs or avoiding payment of a maintenance charge, except for transfers permitted under subpart 2, item B.

Subp. 2. **Permitted transfers.** Transfer or sale of property by or on behalf of an applicant or resident is permitted if the transfer or sale:

A. takes place more than 12 months before the person's admission to a facility operated by the commissioner of veterans affairs;

B. is to the applicant's or resident's spouse or dependent child or children before the person's admission to a facility operated by the commissioner of veterans affairs; or

C. is for market value with the proceeds available for payment toward the person's cost of care.

Subp. 3. **Incorrect transfers.** A transfer or sale of property for less than market value within 12 months before admission or during the resident's stay in a facility operated by the commissioner of veterans affairs, unless permitted under subpart 2, is presumed to be for the purpose of establishing or maintaining eligibility for admission to or continued residence in a facility operated by the commissioner of veterans affairs or to avoid payment of the maintenance charge, unless the person furnishes convincing evidence to show that the transfer was for another purpose. Convincing evidence must include evidence that the person had no health or economic reasons to believe that nursing home or boarding care would be needed. Upon discovery of an incorrect transfer, a retroactive adjustment must be made in the maintenance charge assessed to the resident. If the property that was incorrectly transferred was in the resident's name, the maintenance charge must be increased to the full cost of care until the facility has been paid the value of the property that was incorrectly transferred in addition to the maintenance charge that would have otherwise been received. If the property that was incorrectly transferred was in the spouse's name only, the spousal allowance must be eliminated for the number of months which, when multiplied by the amount of the spousal allowance that would have been granted but for the incorrect transfer, equals the value of the property that was incorrectly transferred.

If a resident's maintenance charge or a spousal allowance is adjusted because of a transfer for less than fair market value, the resident, spouse, dependent, or their legal representative may request from the administrator a waiver if the adjusted maintenance charge or spousal allowance will cause undue hardship resulting in an imminent threat to the individual's health or well-being. In evaluating a request for a waiver, the administrator shall take into account whether the individual was the victim of financial exploitation, whether the individual has made reasonable efforts to recover the transferred property or resource, and other factors relevant to a determination of hardship. If the administrator does not approve a waiver, the administrator shall issue a written notice to the individual stating the reasons for the denial and the process for appealing the decision. The decision may be appealed to the commissioner of veterans affairs. An appeal to the commissioner of veterans affairs must be handled in the same manner as a hearing under part 9050.0580.

Subp. 4. **Loans of property.** An applicant or resident who lends property or on whose behalf property is loaned is considered to have transferred the property. The facility financial staff shall evaluate the transaction as a transfer of property under subparts 1 and 2. If the person receives adequate compensation for the loan or made the loan more than 12 months before the person's entrance into a facility operated by the commissioner of veterans affairs, the facility financial staff shall honor the loan. Adequate compensation must be shown by a written loan agreement and receipt of payments according to the schedule in the agreement. If the loan is payable on demand, is due, or is otherwise negotiable, the property is presumed to be available to the applicant or resident. This presumption may be overcome by convincing evidence presented by the person that the loan will not be repaid. Interest payments made by the borrower to the person are considered income in the month received and an asset if retained. Principal payments made by the borrower to the person are considered as assets.

Subp. 5. **Unacceptable compensation for transfer of property.** Services are not considered acceptable compensation for the transfer or sale of property. For purposes of this subpart, "services" means labor performed by one person for another person or entity. Goods are not considered compensation unless supported by contemporaneous receipts or other evidence of expenditure. The purchase of paid up life insurance with no cash surrender value available to the person while the person is a resident or within 12 months before admission must be considered a transfer of an asset without acceptable compensation.

**Statutory Authority:** *MS s 198.003*

**History:** *14 SR 2355; 28 SR 1251; L 2008 c 297 art 2 s 29*

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