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*To the Legislative Audit Commission, the Speaker
and Minority Leader of the House of
Representatives, the President and Minority Leader
of the Senate, the members of the General
Assembly, and the Governor:*

This is our report of the Program Audit of the Department of Public Aid's Enforcement of Property Transfer Laws.

We conducted this audit at the direction of Public Act 87-1100, which became effective September 15, 1992. The audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Section 3-14 of the Illinois State Auditing Act.

A handwritten signature in black ink, appearing to read 'W. G. Holland', with a long, sweeping line extending upwards and to the right.

WILLIAM G. HOLLAND
Auditor General

Springfield, Illinois
May 1993



OFFICE OF THE AUDITOR GENERAL
WILLIAM G. HOLLAND

REPORT DIGEST

Program Audit
THE DEPARTMENT OF PUBLIC AID'S
ENFORCEMENT OF PROPERTY TRANSFER LAWS
(as required by Public Act 87-1100)

SYNOPSIS

This audit examines State and federal laws and the Illinois Department of Public Aid's (IDPA) policies and practices to prohibit individuals from transferring property which could otherwise pay for long-term care. Given the exceptions allowed under federal law, the difficulties in identifying and determining the intent of the transfer, and the complex task of tracking and recovering assets, the changes recommended in this report will not end improper transfers. However, they would strengthen the State's enforcement of property transfer laws, lead to better control over property, and result in increased Medicaid recoveries.

In Fiscal Years 1991 and 1992, 35 of an estimated 42,000 applications for long-term care were initially denied due to improper property transfers. This audit reports that IDPA's policies and processes need to be:

- more comprehensive to identify possible prohibited transfers;
- more consistently followed by IDPA local offices; and
- more restrictive to extend penalties to those who transfer property to qualify for Medicaid.

To better track property and increase collections, the General Assembly may wish to consider granting IDPA the authority to: 1) file liens on property owned by Medicaid recipients; 2) recover the cost of medical assistance provided to a permanently institutionalized individual before age 65; and 3) recover assistance from the estate of the recipient's community spouse, upon the death of the community spouse.

INTRODUCTION

Public Act 87-1100 directed the Auditor General to conduct a program audit of the Illinois Department of Public Aid's enforcement of Section 5-2.1 of the Illinois Public Aid Code (305 ILCS 5/5-2.1; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 5-2.1). Section 5-2.1 prohibits individuals from transferring assets, with certain exceptions, which would result in the State paying for their long-term care.

The Illinois Department of Public Aid (IDPA) funds long-term care as part of its Medicaid program. The purpose of Medicaid, a program funded jointly by the State and federal governments, is to provide medical care for eligible individuals who lack the resources to pay for such care themselves. It is not intended to pay for the long-term care of individuals who have sufficient resources to care for themselves. (See report pages 3 — 6)

The recommendations and matters for consideration by the General Assembly contained in this report are intended to help ensure that those individuals who can afford to pay for their long-term care do, in fact, pay for such care. The recommendations and matters for consideration are not intended to penalize those individuals who cannot pay for their care.

REPORT CONCLUSIONS

The Department of Public Aid's expenditures for long-term care have risen from \$455 million or 29 percent of all medical assistance expenditures in Fiscal Year 1984, to \$1.026 billion, or 35 percent of all medical assistance expenditures paid from general funds in Fiscal Year 1992. In Fiscal Year 1992, IDPA spent an additional \$264 million for long-term care from assessments on long-term care providers.

Given the exceptions allowed under federal law, the difficulties in identifying and determining the intent of the transfer, and the complex task of tracking and recovering assets, the changes recommended in this report will not end improper transfers. However, the recommended changes would strengthen the State's enforcement of property transfer laws, lead to better control over property, and result in increased Medicaid recoveries.

In Fiscal Years 1991 and 1992, 35 of an estimated 42,000 applications processed for long-term care assistance were initially denied due to improper property transfers. This audit found that, while the Department has policies and processes to address property transfers, they: were not consistently followed at the four offices visited; could be made more comprehensive to identify transfers; and could be made more restrictive

to further extend penalties to those who transfer resources to qualify for Medicaid. Some of the findings contained in the report include:

- Except for the Nursing Home Services Office in Chicago, local offices generally required applicants to submit financial information (such as bank statements) for only the most recent month. Consequently, possible transfers made from financial accounts in prior months were not disclosed. Nursing Home Services required 6 months of checking statements and 30 months of savings statements.
- Information from the Internal Revenue Service could be more effectively used to identify unreported assets and possible transfers. Application and redetermination forms did not require all relevant information.
- In general, local office staff adequately documented applicants' assets; however, improvements could be made. For example, recipients' interests in real property were not documented as required by IDPA policy in 12 of 23 case files examined.
- Public Aid's local offices incorrectly calculated ineligibility periods in 8 of 14 cases reviewed. In 3 of the 8 cases, eligible applicants were incorrectly denied assistance; in 4 other cases, the applicants' periods of ineligibility should have been shorter.

While federal and State laws are generally consistent, we noted five areas where State law could be updated. There are other areas where the Department should consider pursuing waivers from federal requirements. State policies could also be strengthened to control the use of multiple transfers and to place more responsibility on the applicant to prove that transfers were made for reasons other than to qualify for Medicaid.

Finally, control over property and estate recovery collections could be increased if additional lien and estate recovery authority were granted to the Department. The General Assembly may wish to consider granting the Department the authority: 1) to file liens on property owned by Medicaid recipients; 2) to recover the cost of medical assistance provided to a permanently institutionalized individual before age 65; and 3) to recover assistance from the estate of the recipient's community spouse. (pages 1, 2)

PROPERTY TRANSFER RESTRICTIONS

Section 5-2.1 of the Illinois Public Aid Code (305 ILCS 5/5-2.1; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 5-2.1) contains property transfer provisions for IDPA's medical assistance program. Section 5-2.1 states that an institutionalized person shall not voluntarily

or involuntarily transfer property for less than fair market value within 30 months prior to applying for assistance or entering a long-term care facility, whichever occurs later. Transfers occurring after admission to the long-term care facility are also generally prohibited. The term "property" includes both real and personal property.

If an individual transfers property for less than fair market value to qualify for or increase the need for assistance, State law requires the Department to establish a period of ineligibility during which the State will not pay for the recipient's care. The period of ineligibility is obtained by dividing the uncompensated value of the property transferred by the average monthly cost to a private patient at the long-term care facility. The ineligibility period cannot exceed 30 months.

Both State and federal law allow individuals to make certain transfers for which no period of ineligibility is imposed. These include:

- transfers made more than 30 months prior to applying for assistance;
- transfers of the home to a spouse, dependent child, or caretaker child;
- transfers where denying eligibility would work an undue hardship; and
- transfers made for a purpose other than to qualify for assistance.

An institutionalized spouse is also allowed to transfer up to \$70,740 in assets and \$1,769 of income per month to a community spouse. Illinois has opted to allow the maximum amounts allowed under federal law to be transferred to a community spouse. (pages 13 — 16)

IDPA POLICIES AND PROCEDURES

In Fiscal Years 1991 and 1992, 35 of an estimated 42,000 applications processed for long-term care assistance were initially denied due to improper property transfers. In at least 8 of the 35 cases, IDPA reversed its decision to deny assistance, typically after additional information was provided by the applicant. The Department's policies and processes to address property transfers could be improved. (pages 8 — 10)

Improvements Could Be Made to Identify Transfers

Property transfers are either disclosed by the applicant or identified by the Department during the initial eligibility determination process or subsequent eligibility reviews. The Department's policies and procedures could be made more comprehensive to identify possible transfers.

- Except for the Nursing Home Services Office in Chicago, local offices generally required applicants to submit financial information (such as bank statements) for only the most recent month. Consequently, possible transfers made from financial accounts in prior months were not disclosed. Nursing Home Services required 6 months of checking account statements and 30 months of savings account statements. Nursing Home Services also required applicants to provide copies of cancelled checks for withdrawals of \$500 or more and copies of all bank accounts opened or closed within the past 30 months. None of the local offices routinely requested tax returns.
- Two application forms commonly used to apply for long-term care assistance could be improved by: asking about transfers made by the community spouse; providing examples of what constitutes a transfer; and requiring additional information on past ownership of real and personal property.
- The forms used to annually redetermine the eligibility of a recipient do not require disclosure of any transfers made in the preceding year.
- Information from the Internal Revenue Service could be more effectively used to identify unreported assets and possible transfers. (pages 29 — 42)

Compliance with Policy Could Be Improved

We noted several instances where local offices were not consistently following Department policies and procedures. For example:

- Ineligibility periods were incorrectly calculated in 8 of 14 cases reviewed. In 3 of the 8 cases, eligible applicants were incorrectly denied assistance; in 4 other cases, the applicants' periods of ineligibility should have been shorter.
- Recipients' interests in real property were not documented in 12 of 23 case files reviewed.

Staff in three of the four offices visited noted a need for training in the asset and property transfer areas. (pages 42 — 45)

Property Transfer Policies Could Be Made More Restrictive

IDPA property transfer policies could be made more restrictive to further limit the opportunities for individuals to purposefully transfer resources to qualify for Medicaid. IDPA officials said that the Department has assumed the burden of proving whether the intent of the transfer was to qualify for Medicaid. Under federal guidelines, the Department

may assume that any transfer made within 30 months for less than fair market value was made with the intent to qualify for Medicaid. The burden to prove otherwise is placed on the applicant; the Department must, however, give the individual an opportunity to rebut the State's presumption. At least six of the fourteen states we surveyed presumed the intent of transfers in a manner similar to the federal guidelines described.

Present IDPA policies do not restrict applicants from qualifying sooner for Medicaid by making multiple transfers over several months, rather than making one single transfer. By making multiple transfers, the periods of ineligibility run concurrently, which shorten the time for which an applicant is ineligible. (pages 22 — 27)

REVISIONS TO STATE LAW

Public Act 87-1100 also directed the Auditor General to examine the need for changes in the law concerning property transfers. There are several areas of State law where changes may be warranted. Some are simply technical changes to bring State law into conformity with federal law. Others have more far reaching implications.

Federal law sets the parameters for states' Medicaid programs. In several areas, State law has not been changed to reflect revisions in federal law. In these instances, however, IDPA rules, policies, and practices are consistent with federal law. Consequently, while there are some differences between State and federal law, in practice the State's property transfer enforcement has been consistent with federal law. (pages 56 — 58)

MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider making the following technical revisions to the Public Aid Code to make it consistent with federal law:

1. **Apply property transfer restrictions to spouses of institutionalized individuals (Section 5-2.1);**
 2. **Allow the transfer of property to an individual's blind or totally and permanently disabled child (Section 5-2.1);**
 3. **Restrict court-ordered transfers to only the spouse (Section 5-2.1); and**
 4. **Require applicants to provide information on all real and personal property owned within 30 months of application (Section 11-15).**
-

Public Aid Code Excludes Individuals Served in the Community

Through a federal waiver, Medicaid reimburses states for services which allow individuals to remain in the community rather than being institutionalized. These services include meal preparation, housekeeping, and adult day care.

Federal law requires that individuals participating in a Medicaid community waiver program must comply with property transfer restrictions (42 U.S.C.A. 1396p(c)). The Public Aid Code, however, applies transfer restrictions only to institutionalized individuals. However, officials from IDPA, and the Departments of Rehabilitation Services and Aging, two agencies with Medicaid waiver programs, stated that applicants for Medicaid waiver programs are asked about transfers. Changing State law to apply transfer restrictions to individuals in community waiver programs would ensure compliance with federal law. (pages 58, 59)

MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider amending Section 5-2.1 of the Public Aid Code to apply property transfer restrictions to recipients of Medicaid community waiver services in a manner consistent with federal law.

Waivers from Federal Law

We examined several areas where federal requirements may allow individuals to transfer or shelter property in order to qualify for Medicaid. These areas included the 30 month look-back period, joint tenancy, pre-paid burial policies, spousal assets, and the calculation of the ineligibility period. We recommended that the Department of Public Aid consider pursuing waivers of these restrictions, if necessary, from the federal Health Care Financing Administration. If federal waivers are pursued and obtained, some changes in State law may be necessary. (pages 17 — 22, 59)

LIENS AND ESTATE CLAIMS

State law does not give IDPA the maximum collection authority allowed under federal law. Based on the experiences of other states and the Department's own analysis, additional collections of medical assistance are possible in Illinois. The following are three areas where new authority could be considered:

- liens for medical assistance cases. While State law authorizes IDPA to file liens on property owned by individuals receiving financial assistance, similar

authority does not exist for individuals receiving medical assistance. Liens would allow the State to recover assistance if the property is sold. Liens would also allow the State to track property to ensure that assets remain available for future recovery;

- the recovery of assistance from the estate of the institutionalized individual's spouse, upon the spouse's death. If the institutionalized spouse dies and property passes to a surviving spouse, State law does not explicitly authorize IDPA to recover the cost of assistance from the estate of the surviving spouse upon his or her death; and
- the recovery of assistance provided to permanently institutionalized individuals prior to the age of 65. State law only allows the Department to recover assistance provided to an individual after the age of 65.

The purpose of these changes is twofold: 1) to better track property so that it is available for recovery by the State after it is no longer needed by the institutionalized individual, community spouse, or dependent child; and 2) to allow the recovery of additional monies from the estates of individuals to repay the State for the costs incurred in providing for their long-term care. (pages 49 — 53, 59, 60)

MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider amending the Public Aid Code, in a manner consistent with federal law, to authorize IDPA to: 1) impose liens on property owned by Medicaid recipients; 2) place a claim on the estate of the surviving spouse of a Medicaid recipient to recover medical assistance provided to the recipient upon the death of the surviving spouse; and 3) recover the cost of medical assistance paid to permanently institutionalized Medicaid recipients regardless of age.

This report contains three Matters for Consideration by the General Assembly and nine agency recommendations. The Department of Public Aid concurred with the recommendations contained in the report. The Department's responses are located in Appendix G of the report.



WILLIAM G. HOLLAND
Auditor General

JFS
May 1993

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GLOSSARY

AABD	Aid to the Aged, Blind or Disabled. Financial assistance, medical assistance, and social services provided to eligible individuals determined by the Illinois Department of Public Aid (IDPA) to be aged, blind, or disabled.
ADEQUATE CONSIDERATION	The receipt of goods, monies, or services at least in the amount of the fair market value of the property transferred.
APPLICANT	An individual or a person on whose behalf a written application form is completed requesting assistance.
CAF	Combined Assistance Form. A computerized application form generally completed by IDPA during the client's intake interview.
CLIENT/RECIPIENT	A designation used to identify Public Aid applicants or recipients.
COMMUNITY SPOUSE	The non-institutionalized spouse of an institutionalized individual.
ESTATE CLAIM	The State's claim against real and personal property of the estate of a deceased AABD or MANG recipient.
FAIR MARKET VALUE	An estimate of the prevailing price of an asset if sold at the time it was actually transferred based on criteria used in appraising the value of other resources for the purpose of determining Medicaid eligibility.

HCFA	Health Care Financing Administration. A division of the U.S. Department of Health and Human Services (HHS) responsible for administering the Medicaid program.
HOMESTEAD	A dwelling (together with adjoining and related real estate) owned and occupied by the client. Property remains homestead as long as the client intends to return to it. Property remains homestead as long as it is occupied by a surviving spouse, dependent children, or brother/sister, in certain instances, after the death of the owner.
INSTITUTIONALIZED PERSON	An individual who is an inpatient in an intermediate care or skilled nursing facility, or who is an inpatient in a medical institution receiving a level of care equivalent to that of an intermediate care or skilled nursing facility, or who is receiving services under Section 1915 (c) of the Social Security Act.
JOINT TENANCY	The holding by two or more persons under which each co-tenant's interest passes to the surviving tenant at his or her death (not to his or her estate).
LIEN	A legal claim against property for the amount of assistance paid to, or on behalf of, the client.
MAG	Medical Assistance with a Grant — the recipient receives both medical and financial assistance.
MANG	Medical Assistance with No Grant — the recipient receives only medical assistance after they have spent down to IDPA standards.

MCCA	Medicare Catastrophic Coverage Act of 1988. A federal law which extended the look-back period from 24 to 30 months. It also added spousal impoverishment provisions. Spousal impoverishment provisions provide the community spouse of a nursing home recipient increased protection from being financially devastated by the cost of the spouse's nursing home care.
MEDICAID	A federally subsidized medical program administered by the Illinois Department of Public Aid.
MEDICAID COMMUNITY WAIVER	A waiver granted under the Social Security Act that provides Medicaid funding for services which allow an individual to remain in the community rather than being placed in a long-term care facility. Community services include: case management services, homemaker/home health aide services, personal care services, adult day health services, and respite care.
MULTIPLE TRANSFERS	Also known as multiple divestment. By making multiple transfers an individual gives away assets month after month so that transfer penalties run concurrently and the overall duration of ineligibility is thereby minimized.
NURSING FACILITIES	Skilled and intermediate care facilities.
PERIOD OF INELIGIBILITY	The number of months a recipient is ineligible to receive assistance as a result of an unauthorized property transfer. The time period begins the month in which such assets are transferred and lasts until the period of time the uncompensated amount of the asset would meet the monthly cost of long-term care. The period of ineligibility cannot exceed 30 months.
PERSONAL PROPERTY	Property owned by an individual and is not land or permanently affixed to land. This includes assets such as savings and checking accounts, cash on hand, stocks, bonds, trust funds, investments, non-exempt life insurance, and non-exempt prepaid burial plans.

PROBATE

Court procedure by which a will is proved to be valid or invalid. In current usage this term has been expanded to generally include all matters and proceedings pertaining to administration of estates.

REAL PROPERTY

Real property is land and generally what is erected upon or affixed permanently to land (such as buildings).

SPEND-DOWN

The difference between an applicant's income and assets and the Department's standard for the MANG Program. The client must show the Department medical bills and/or receipts for payment of medical bills equaling the spend-down amount before IDPA will begin paying for medical assistance.

TRUST

A right of property, real and/or personal, held by one party for the benefit of another. The person holding legal title to the property and who executes the trust is called the trustee. The person for whose use and enjoyment the trust was created is called the beneficiary. The person who created the trust is called the trustor.

**UNCOMPENSATED
VALUE**

The difference between the fair market value at the time of the transfer (less any outstanding loans, mortgages, or other encumbrances on the resource) and the amount received for the resource.

CHAPTER 1

INTRODUCTION

Public Act 87-1100 directs the Auditor General to conduct a program audit of the Illinois Department of Public Aid's enforcement of Section 5-2.1 of the Illinois Public Aid Code (305 ILCS 5/5-2.1; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 5-2.1). Section 5-2.1 prohibits individuals from transferring assets, with certain exceptions, which would result in the State paying for their long-term care. Federal law contains similar property transfer restrictions for the long-term care paid by Medicaid. Public Act 87-1100 also requires the Auditor General to report any findings and recommendations concerning the need for changes in the law concerning property transfers. See Appendix A for a copy of Public Act 87-1100.

REPORT CONCLUSIONS

The Illinois Department of Public Aid (IDPA) funds long-term care as part of its Medicaid program. IDPA's expenditures for long-term care have increased from \$455 million or 29 percent of all medical expenditures in Fiscal Year 1984, to \$1.026 billion, or 35 percent of all medical expenditures paid from general funds in Fiscal Year 1992. In Fiscal Year 1992, IDPA spent an additional \$264 million for long-term care from assessments on long-term care providers.

Given the exceptions allowed under federal law, the difficulties in identifying and determining the intent of the transfer, and the complex task of tracking and recovering assets, the changes recommended in this report will not end improper transfers. However, the recommended changes would strengthen the State's enforcement of property transfer laws, lead to better control over property, and result in increased Medicaid recoveries.

This audit examines federal and State law and the Department of Public Aid's policies and practices to prohibit individuals from transferring property which could otherwise pay for long-term care. In Fiscal Years 1991 and 1992, 35 of an estimated 42,000 applications processed for long-term care assistance were initially denied due to improper property transfers. This audit found that, while the Department has policies and processes to address property transfers, they: were not consistently followed at the four offices visited; could be made more comprehensive to identify transfers; and could

be made more restrictive to further extend penalties to those who transfer resources to qualify for Medicaid. Some of the findings contained in the report include:

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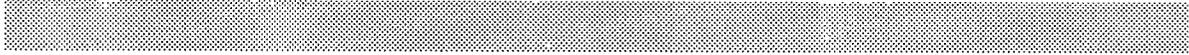
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Department of Public Aid Response:

As this report indicates, enforcement of Medicaid property transfer laws is a difficult and complex process. State laws and Department of Public Aid policies must follow federal

law. Past federal and private reports have cited weaknesses in federal laws which allow individuals, under certain transfer exemptions, to transfer or shelter property in order to qualify for Medicaid. States must also contend with a specialized area of law on estate planning which advises clients on ways to legally transfer or shelter property. A number of books and publications which describe how to legally avoid transfer restrictions are also available.

To strengthen enforcement of property transfer laws, the Department is in the process of implementing all of the report recommendations. Also, we are prepared to work with the General Assembly to pursue legislation recommended for their consideration. We have already introduced some of the suggested changes in this session.



INTRODUCTION

A transfer of assets occurs when an individual buys, sells, or gives away real or personal property or changes the way property is held. Examples of property transfers include the selling of a house, giving a cash gift to a child, or adding a name to a deed to a house or a bank account.

The purpose of State and federal property transfer restrictions is to prevent individuals from qualifying for Medicaid assistance by disposing or sheltering assets which could be used to pay for their long-term care. Long-term care encompasses services provided to recipients in nursing homes and facilities for the mentally ill or developmentally disabled. If the individual receives adequate consideration for the property transferred, such transfers are generally allowable under State and federal law. However, if the individual receives inadequate consideration for the property transferred, then the transfer may be viewed as unallowable. If unallowable, then the applicant may be ineligible for Medicaid assistance for a period of time.

In the early 1980s, the federal government adopted legislation which permitted states to restrict transfers of assets thereby limiting the ability of individuals to transfer assets for the purpose of qualifying for Medicaid. Prior to that time, states set their own property transfer restrictions. Before the federal law was enacted, Illinois law prohibited assistance to individuals who transferred property in order to qualify for assistance within five years of applying for medical assistance.

The federal regulations implementing the Medicaid property transfer laws noted that the intent of this legislation was to ". . . assure that all of the resources available to an institutionalized individual, including equity in a home, which are not needed for the support of a spouse or dependent children, will be used to defray the costs of supporting the

individual in the institution." This implementing regulation summarizes federal and State policy regarding paying for long-term care assistance: that the government will pay for the cost of long-term care of eligible individuals who lack the resources to pay for the care themselves. However, the government should not pay for the care of an individual who, by transferring property for less than fair market value, qualified for Medicaid assistance.

Federal Medicaid laws provide a two pronged approach to ensure that the individual's rather than the public's funds are used to pay for long-term care. The first are the property transfer restrictions. If a person is not allowed to transfer assets, then those assets should be available to pay for their care. The second is estate recovery authority. In estate recovery, the State recovers the cost of assistance provided from the estate of a deceased recipient. Since estate recovery is integrally linked to property transfers and offers significant dollar recovery opportunities, it is examined in this report.

The public policy to limit transfers and to pursue estate recovery oftentimes conflicts with individual preferences. Some individuals would rather preserve inheritances rather than pay for long-term care. It is this inherent conflict which can make property transfers and estate recovery difficult to address from a public policy perspective.

If the cost of providing long-term care was insignificant, then the issue of property transfers might be less important. However, providing long-term care is very expensive to both individuals and the government.



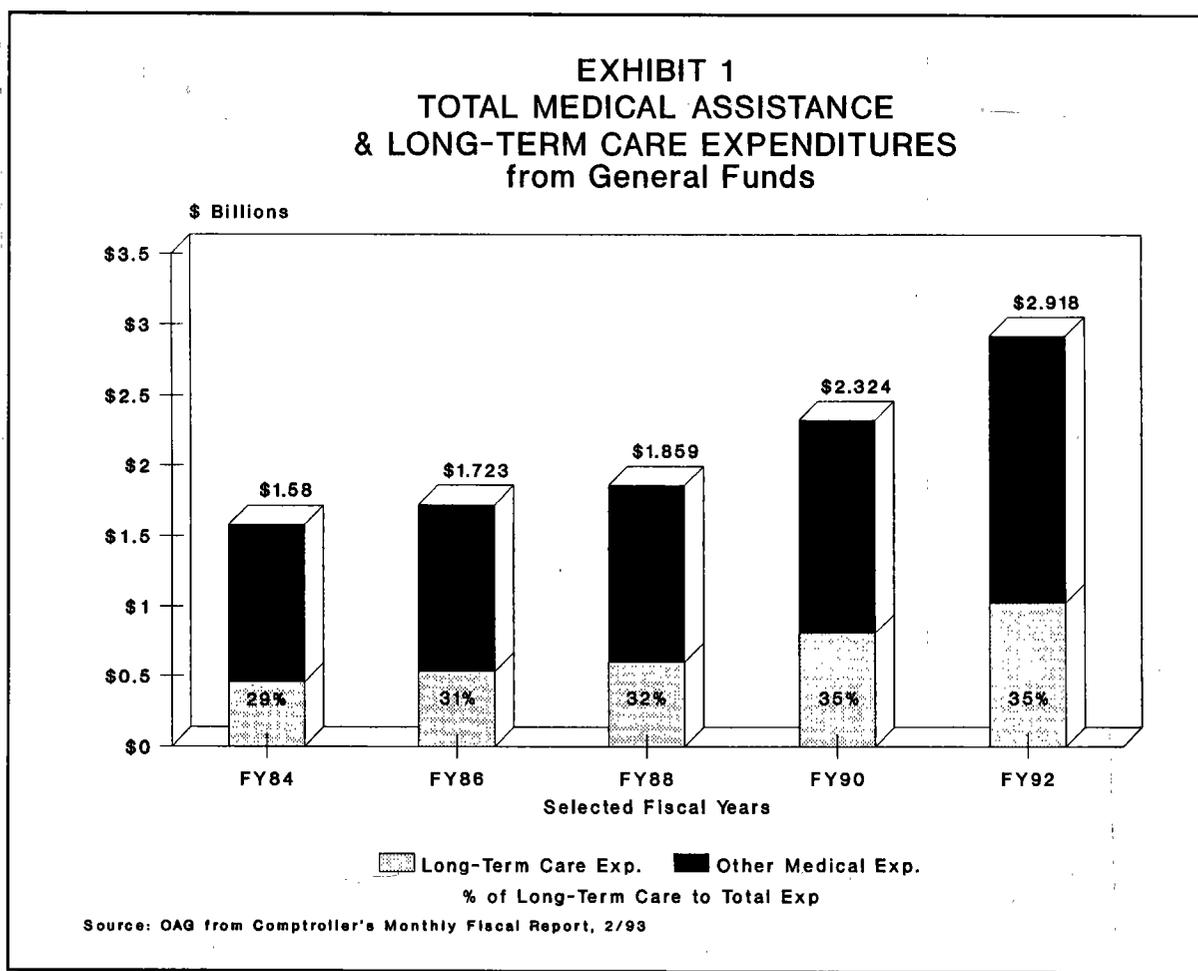
MEDICAID COSTS RAPIDLY INCREASING

The Illinois Department of Public Aid (IDPA) pays for long-term care as part of its Medicaid program. Medicaid, as authorized by Title XIX of the federal Social Security Act (42 U.S.C.A. Section 1396 *et seq.*), is a program jointly funded by the federal and state government which provides medical assistance for individuals. It is a means-tested entitlement program — any individual with income and asset levels which meet Medicaid guidelines is eligible to receive assistance. Medicaid requires that a participating state make medical assistance available to those recipients who are receiving financial assistance, such as Aid to the Aged, Blind or Disabled (AABD). States also have the option to provide Medicaid to individuals who would qualify for AABD financial assistance except that their income or assets exceed program limits. These individuals are required to spend their excess resources (referred to as spend-down) on medical care before the State will pay for their long-term care costs. Illinois offers this optional program.

As the cost of Medicaid at both the state and federal level has increased, so has the concern that a growing number of individuals may be impoverishing themselves to qualify

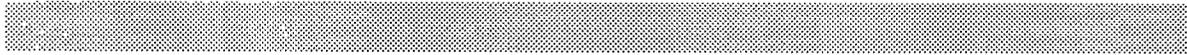
for Medicaid assistance. According to a report published by the federal Health Care Financing Administration (HCFA), federal outlays for Medicaid have grown from \$2.5 billion in federal fiscal year 1970 to \$65.9 billion in federal fiscal year 1992. In federal fiscal year 1992, HCFA reported that total state and federal outlays for Medicaid totalled \$114.5 billion.

Medical costs at the State level have also increased. Illinois's medical assistance expenditures paid from general funds, which totalled \$1.58 billion in Fiscal Year 1984, had grown to \$2.92 billion in Fiscal Year 1992, an increase of almost 85 percent. As shown in Exhibit 1, the long-term care component of the State's total medical assistance expenditures paid from general funds has been consistently increasing over the past eight years. In Fiscal Year 1984, long-term care costs of \$455 million accounted for 29 percent of total medical assistance expenditures; by Fiscal Year 1992, they had increased to \$1.026 billion or 35 percent of total medical assistance expenditures paid from general funds. Also in Fiscal Year 1992, IDPA paid an additional \$264 million for long-term care from assessments on long-term care providers. In Fiscal Year 1992, long-term care expenditures accounted for 9 percent of the State's total General Revenue Fund expenditure of \$11.3 billion.



Long-term care costs are incurred by a small portion of the total Medicaid recipients. In federal fiscal year 1992, IDPA reported that Illinois's Medicaid program served 1.3 million people; six percent of these people (79,019) were in nursing facilities. The State reported paying for 21.2 million days of nursing care in federal fiscal year 1992, which averages \$52.14 per day or \$19,031 per year. The Department reported paying 58 percent of all days of nursing home care in Illinois in Fiscal Year 1991.

The cost of Medicaid, including long-term care, is expected to continue to increase. A report by HCFA, which oversees the Medicaid program, projected a 14.5 percent annual growth rate in the Medicaid program. It reported that nationwide Medicaid costs may exceed \$260 billion in 1998 (up from \$90.5 billion in 1991), assuming no significant changes in Medicaid policies.



IDPA'S ORGANIZATIONAL STRUCTURE

Section 5-2.1 of the Illinois Public Aid Code establishes property transfer restrictions which the Illinois Department of Public Aid (IDPA) enforces. Section 5-13 of the Code also gives the Department authority to recover from the estates of deceased recipients the costs incurred by the State to provide medical assistance.

The Department's Division of Field Operations is primarily responsible for enforcing the Department's property transfer restrictions. The Division oversees the operations of the local public aid offices located in each county. Intake workers at the local offices collect information on an applicant's assets and income and determine whether they are eligible for Medicaid long-term care assistance. One of the intake workers' responsibilities is to look for unallowable transfers of property. Once eligibility is approved, the case is forwarded to a caseworker who is responsible for case monitoring. The caseworker also conducts annual redeterminations to determine whether the recipient remains eligible for continued assistance.

There are four other entities within the Department involved in property transfers and estate recovery. The Bureau of Collections is responsible for administering the Department's estate recovery program. The Bureau of Policy and Training provides support by developing and maintaining policies and procedures for the Department. The Bureau helps interpret policy for staff. The Bureau of Research and Analysis conducts crossmatches with various information bases. The crossmatches are used by the Department to verify income and assets and to determine applicant eligibility for assistance programs. Finally, the Office of General Counsel provides legal support and interpretations.

The Department of Public Aid undertook a study in 1990 to review its property transfer and estate recovery practices. The study made several recommendations, including: revising the application form to solicit more specific information; requesting federal and State tax returns and financial institution statements from applicants; using liens on property; targeting areas of the State where transfers would be more likely; and placing the burden of proof on the applicant to demonstrate that a transfer was allowable. According to an IDPA official, the Department did not address the recommendations contained in the study due to changes in administration and the priority to review the overall funding of Medicaid.

In November 1992, the Director of the Department of Public Aid created the Task Force on Long-Term Care Eligibility Asset Policy (Task Force). The Task Force was to recommend improvements in the State's laws, policies, and procedures involving asset reporting by Medicaid clients in long-term care facilities. The Task Force was comprised of long-term care providers, senior advocates, lawyers, and members of the General Assembly. In February 1993, the Task Force prepared a tentative proposal of administrative and legislative changes to improve the Department's enforcement of asset reporting and property transfer laws. These tentative proposals included:

- revising forms to require client or guardian signatures on applications and redeterminations and adding stronger language describing the penalties associated with providing false or incomplete information;
- revising procedures to require an interview with the applicant or guardian at the earliest possible time and to work with local office staff to minimize the most common long-term care errors;
- aggressively verifying data contained on the Internal Revenue Service's unearned income crossmatch to identify transfers of assets and to explore other sources of income and asset information;
- returning the burden of proof to the client;
- pursuing a waiver to extend the transfer period to 60 months; and
- pursuing legislative changes to give the Department additional lien and estate recovery authority with regard to the Medicaid program.

There was not total agreement on all recommendations at the Task Force meeting. A draft report, which includes recommendations, is being prepared for circulation to Task Force members.

EXTENT OF TRANSFERS IN ILLINOIS

The Department does not maintain summary information identifying the number of transfers investigated by local office staff. However, it does maintain statistics on the number of applications denied due to improper transfers. Of an estimated 42,000 applications for Medicaid nursing facility assistance, the Department reported denying assistance to 35 applicants in Fiscal Years 1991 and 1992 because of improper transfers. As shown in Exhibit 2, the denials were spread across 19 counties throughout the State.

The actual number of cases in which assistance was ultimately denied, however, was less than 35. We reviewed 24 of the 35 case files. Ten of the remaining 11 cases had been sent by the local offices to storage; one was not received. Exhibit 3 shows that, of the 24 cases we reviewed, the local office reversed its initial decision to deny Medicaid assistance in 8 cases. (The reversal typically came after the applicant or representative provided additional information concerning the transfer; one of the eight was overturned on appeal.) In 3 of the 24 cases, local office staff improperly computed the period of ineligibility. As will be discussed in Chapter 3, had the calculations been correctly computed, no period of ineligibility would have resulted. Finally, one case was misreported as a transfer. Consequently, only 12 of the 24 cases we reviewed were actual denials.

The number of denials reported by IDPA are only those applications denied due to improper transfers. Transfers can also occur once the person is receiving assistance. The

EXHIBIT 2

APPLICATIONS DENIED DUE TO UNALLOWABLE PROPERTY TRANSFERS

<u>County</u>	<u>Number of Denials</u>	
	<u>FY'91</u>	<u>FY'92</u>
Bond	2	
Coles	1	2
Cook	3	6
Jersey	1	
Kane		1
Kankakee		1
Knox	2	
Madison		1
McHenry		2
Monroe		1
Moultrie		1
Ogle		1
Peoria		1
Pike		1
Rock Island	1	
St. Clair		1
Stephenson		2
Will	3	
Winnebago	<u>1</u>	<u>—</u>
TOTAL	<u>14</u>	<u>21</u>

Note: IDPA was unable to provide the number of long-term care applications processed by county.

Source: OAG from IDPA reports

Department's reporting system cannot identify these cases. Also, applicants who have made improper transfers may voluntarily withdraw their application before the Department formally denies assistance due to the improper transfer.

In 16 of the 24 cases reviewed, the denial resulted in the applicant paying for the cost of his or her nursing home care. Applicants paid approximately \$270,000 in private pay nursing home rates while ineligible for State assistance. For these 16 cases, this computes to an average of \$16,875 per denial.

EXHIBIT 3	
OAG REVIEW OF DENIALS	
Fiscal Years 1991—1992	
Total Denied Cases Reviewed	24
Less Number:	
Reversed by Local Office	8
Improperly Computed	3
Incorrectly Classified	<u>1</u>
Actual Transfers Denied	<u>12</u>
Source: OAG from review of case files	

EXHIBIT 4	
TRANSFERS DENIED IN OTHER STATES AND ILLINOIS	
Illinois	21 denied in latest fiscal year
Minnesota	113 denied in latest fiscal year
Missouri	81 denied in latest fiscal year
Texas	119 active denials; a total of 904 denials since April 1990
Note:	States were generally unable to provide the number of long-term care applications received.
Source:	OAG from other states' survey responses (see Appendix C)

Most states responding to our property transfer survey did not keep statistics on the number of cases denied due to transfers. However, as shown in Exhibit 4, the three that did keep statistics reported significantly more denials than Illinois. California reported conducting a "point in time" survey in 1991 in which they identified 10 cases where assistance was being denied due to improper transfers. However, California officials were unable to identify the number of cases involving property transfers on an annual basis. None of the states contacted were able to quantify the costs saved or avoided due to denying cases involving improper transfers.

There are many factors which may explain why Illinois has fewer denials than the other three states. Three possible factors, differences in property transfer laws, policies, and asset and transfer verification procedures, will be examined later in this report.

SCOPE AND METHODOLOGY

This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

We assessed agency compliance with State laws, regulations, policies, and procedures which govern Medicaid property transfers. We also compared State legal requirements with federal requirements. We assessed the Department's management controls relative to property transfers.

We interviewed staff from the following IDPA organizational units: Field Operations, Policy and Training, Collections, Research and Analysis, General Counsel, and Internal Audits. We met with auditors from the federal Department of Health and Human Services (HHS). We also interviewed officials in the Chicago Regional Office of the federal Health Care Financing Administration (HCFA). HCFA is the entity within HHS which administers the Medicaid program.

We contacted and obtained information from the Illinois Health Care Association and the Illinois Association of Homes for the Aging. We examined audits and studies conducted at the federal and state level on property transfers and estate recovery. We also reviewed numerous other articles and publications on these issues. Appendix E contains a selected bibliography of the articles and publications reviewed.

We visited four local Public Aid offices. The offices were selected because they served varying numbers of long-term care recipients and were representative of different geographic regions in the State. Three of the four local offices, DuPage County, Peoria County, and Jefferson County, provide intake and caseworker services for all types of assistance offered by the Department, including long-term care. The fourth office visited, Nursing Home Services in Chicago, provides intake and caseworker services only for long-term care cases in Cook County. At these four offices, we interviewed intake staff and caseworkers, among others. We also reviewed a total of 102 case files at these local offices to obtain a general understanding of long-term care cases and to test compliance with the Department's policies and procedures. Appendix B describes in greater detail the methodology used for the case file review.

We also reviewed cases in Fiscal Years 1991 and 1992 where applications for nursing home care were denied due to an unallowable transfer. We examined these cases to determine the reasons they were not allowed and tested compliance with Departmental policy. We also conducted three title searches in Chicago to verify the ownership of property reported in case files.

We surveyed 14 states to obtain information on their property transfer and estate recovery programs. The states were selected due to their close geographic proximity to Illinois, their population size, or because they were referenced in articles as being active or having unique approaches to property transfers or estate recovery. The states surveyed were Wisconsin, Minnesota, Missouri, Indiana, Michigan, Florida, Arizona, Maryland, Virginia, Oregon, Massachusetts, California, New York, and Texas. Appendix C summarizes the results of the "Medicaid Property Transfer Survey". Appendix D contains the results of the "Medicaid Lien and Estate Recovery Survey".

Public Act 87-1100 specifically directed the Auditor General to review the Department's enforcement of property transfer laws. As Medicaid liens and estate claims programs are integrally related to the property transfer issue, these issues were also included within the scope of the audit. Our review of the Department's liens and estate claims program focused on identifying areas where State laws could be revised to strengthen the Department's property transfer program as well as give the Department additional collection authority. We did not examine the efficiency or effectiveness of the Department's collection efforts.



REPORT ORGANIZATION

The remainder of the report is organized as follows:

- Chapter 2 reviews property transfer legal requirements and identifies areas where federal law, State law, and IDPA policies could be revised;
- Chapter 3 examines the Department's procedures to identify transfers and recommends ways these procedures can be improved;
- Chapter 4 analyzes the Department's statutory authority for estate recovery and examines three areas where State law could be revised; and
- Chapter 5 summarizes legislative matters.

CHAPTER 2

PROPERTY TRANSFER LEGAL REQUIREMENTS

Federal law establishes the basic parameters for states' enforcement of Medicaid property transfer restrictions. Past federal and private reports have cited weaknesses in federal law which allow individuals to transfer or shelter property in order to qualify for or continue to receive Medicaid. The Department of Public Aid is considering applying for one waiver from federal property transfer requirements. There are other areas where requests for waivers could be considered or where federal law could be changed. These include joint tenancy, spousal assets, and pre-paid burial plans.

State property transfer policies could be made more restrictive. IDPA policy does not explicitly allow local office staff to presume that any transfer made without adequate consideration was for the purpose of qualifying for assistance. It could place more of the burden on the applicant to prove the intent of the transfer. This change in policy would be consistent with federal and other states' policies. Such a policy must, however, provide the applicant with an opportunity to make a satisfactory showing to rebut the presumption. IDPA also does not have a policy which restricts the use of multiple transfers to reduce the period of ineligibility.

OVERVIEW OF FEDERAL AND STATE REQUIREMENTS

The federal Social Security Act (42 U.S.C.A. 1396 *et seq.*) sets the basic parameters for what states can and cannot do relative to property transfers. Federal law requires states to enforce a period of ineligibility for Medicaid assistance for long-term care if an individual or spouse disposed of assets for less than fair market value. Such transfers made with the intent to qualify for Medicaid are prohibited within 30 months of applying for assistance or becoming institutionalized. Federal law exempts certain transfers from the imposition of an ineligibility period.

Section 5-2.1 of the Public Aid Code (305 ILCS 5/5-2.1; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 5-2.1) and the Department of Public Aid's administrative rules (89 Ill. Adm. Code 120.386) contain Illinois's provisions on property transfers for the Medicaid program. Section 5-2.1 (see Appendix A) states that an institutionalized person shall not voluntarily or involuntarily transfer property for less than fair market value within 30 months

prior to applying for assistance or entering a long-term care facility, whichever occurs later. Transfers occurring after admission to the long-term care facility are also generally prohibited. The term "property" includes both real and personal property.

If an individual transfers property for less than fair market value to qualify for, or increase the need for, assistance, State law requires the Department to establish a period of ineligibility during which the State will not pay for the recipient's care. The period of ineligibility is obtained by dividing the uncompensated value of the resource transferred by the average monthly cost to a private patient at the long-term care facility. The ineligibility period cannot exceed 30 months.

In general, State law establishing property transfer restrictions is consistent with federal law. There are, however, some areas where they differ. These differences, along with a matter for consideration by the General Assembly, are examined in Chapter 5.

Exceptions to Property Transfer Restrictions

Both State and federal law allow Medicaid recipients to make certain transfers for which no period of ineligibility is imposed. These are summarized in Exhibit 5. Transfers made 30 months prior to applying for assistance are allowable under both State and federal law. An individual can give away assets with the express intent of qualifying for Medicaid and, as long as it is done more than 30 months before applying for long-term care assistance, it is an acceptable transfer.

An institutionalized spouse is also allowed to transfer property, within certain limits, to a community spouse with no penalty. Prior to the passage of the Medicare Catastrophic Coverage Act of 1988 (MCCA), if all assets were in the name of the institutionalized spouse, then all the assets would be deemed available to pay for his or her care. Consequently, the remaining spouse in the community could quickly become impoverished if all of the couple's assets were used to pay for the care of the institutionalized spouse. With the passage of the spousal impoverishment provisions in the MCCA, federal law allows an institutionalized spouse to transfer assets and income to a community spouse.

Federal law sets a range of assets and income which can be transferred or diverted to the community spouse. In 1991, the range for assets which could be transferred was between \$13,296 and \$66,480. Illinois has opted to allow the maximum amounts allowed under federal law to go to the community spouse. In calendar year 1993, these amounts were increased to \$70,740 for assets and up to \$1,769 of income per month.

While the spousal impoverishment legislation has likely helped further the financial independence of the community spouse, it has also increased the State's cost of Medicaid assistance. In 19 of the 102 cases we reviewed, the institutionalized person had a spouse in

EXHIBIT 5

COMPARISON OF PROPERTY TRANSFER EXCEPTIONS

<u>Exception</u>	Included In:		
	<u>Federal Law</u>	<u>State Law</u>	<u>State Reg/Policy</u>
Transfers made more than 30 months before applying for assistance or becoming institutionalized	Yes	Yes	Yes
Home transferred to spouse, dependent, blind or disabled child, or child or sibling, in certain instances	Yes	Yes	Yes
Assets transferred to a spouse, dependent, blind or totally and permanently disabled child	Yes	No	Yes
Denying eligibility would work an undue hardship	Yes	Yes	Yes
The applicant intended to dispose of assets at fair market value or for other valuable consideration	Yes	Yes	Yes
The assets were transferred for a purpose other than to qualify for Medicaid	Yes	Yes	Yes
Court-ordered transfers*	Yes	Yes	Yes
Transfers in which the individual did not consent or assist in the transfer	No	No	Yes

Note:* Federal law and State regulation allows court-ordered transfers to only the spouse; State law allows court-ordered transfers generally.

Source: OAG review of federal and State laws, regulations, and policies

the community. In these 19 cases, \$232,358 in assets were transferred to the community spouses. In addition, an average of \$604 per month in income was diverted to the community spouse. In 15 of the 19 cases, the State paid for all of the recipients' long-term care costs.

Federal and State laws also specify that transfers are allowable if denying them would pose an "undue hardship" on the recipient. The states are required to develop their own

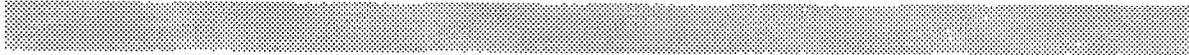
definition for undue hardship. An exception is also included for transfers which were made exclusively for a purpose other than to qualify for Medicaid.

While some of the exceptions, such as transfers made more than 30 months before applying for assistance, are fairly easy to administer in the eligibility determination process, others are not. The exceptions for undue hardship and whether the transfer was made exclusively for a purpose other than to qualify for Medicaid may not be easy to definitively prove during an eligibility determination. Consequently, the states must have clear policies to guide intake workers and other local office staff in their determinations whether these exceptions are applicable.

Comparison of Exceptions

As shown on Exhibit 5, three areas of inconsistency exist between the exceptions contained in federal law, State law, and IDPA policy. The two inconsistencies between State and federal law and a related matter for consideration by the General Assembly will be examined in Chapter Five. The third inconsistency pertains to an exception in IDPA policy which is not authorized by, and contrary to, State law.

Section 505.5 of IDPA's policies allows transfers which were made without the consent of the applicant (such as the withdrawal of monies from a joint account without the applicant's permission). This is a type of involuntary transfer. State law does not include involuntary transfers as an exception to property transfer restrictions. Rather, Section 5-2.1 specifically states that voluntary and involuntary transfers are subject to the transfer restrictions. As such, IDPA policy conflicts with State law. Furthermore, including involuntary transfers as an exception adds another option for individuals who may try to circumvent the intent of the transfer restrictions. Should denial of assistance due to an involuntary transfer threaten or compromise the safety of the recipient, then the denial would likely cause undue hardship, which is an established exception.



RECOMMENDATION NUMBER 1:

The Director of the Department of Public Aid should delete the exception contained in Section 505.5 of the Department's policy manual for transfers in which the individual did not specifically consent or assist in the transfer. If the Department wishes to keep this exception, then the Director should seek legislation which establishes this exception in State law.

Department of Public Aid Response:

We agree with the recommendation. The Department, pursuant to the Administrative Procedures Act, will initiate a change in rules to remove the exception of transfers in which the individual did not consent or assist. Upon adoption of the revised rule, Section 505.5 of the policy manual will be changed to remove the exception.

ANALYSIS OF TRANSFER LAWS AND PRACTICES

Numerous articles and studies have been written in recent years expressing concern about the use of property transfers to qualify for Medicaid and their impact on the state and federal budgets. The development of a specialized area of law on estate planning which advises clients on ways to legally transfer or shelter property has also been cited as evidence of increased property transfer activity.

There are also a number of publications and books which describe how to circumvent transfer restrictions. A frequently mentioned technique is to invest excess resources in exempt assets. Exhibit 6 lists assets which are exempt when considering eligibility for Medicaid. Suggested techniques include spending any excess cash on remodeling or painting the home, or even buying a home if the applicant does not have one. Other techniques recommended include paying family members for services rendered, making multiple transfers, buying prepaid burial plans, placing assets in joint tenancy, and establishing trusts.

Property transfer restrictions are intended to prevent individuals from transferring assets, thereby making them inaccessible to pay for their long-term care. To this end, there are several steps that the Department should consider taking to help curtail and control transfers and other resource sheltering actions taken by individuals which are intended to circumvent State and federal law. Some of these changes would require revisions to federal law or waivers to federal requirements; other changes can readily be made at the State level.

Changes in Federal Requirements

Weaknesses in federal property transfer laws have been reported in both federal and private studies. A study completed by the federal Department of Health and Human Services' (HHS) Office of Inspector General in 1988 concluded that transfer of asset provisions needed to be strengthened to prevent people from giving property away to qualify for Medicaid. It also recommended: extending the "look-back period" from two years to five or more years; having HCFA publish regulations on transfer of assets; and requiring agreement to liens as a condition of Medicaid eligibility for people with property. A 1989

EXHIBIT 6
EXEMPT AND NON-EXEMPT ASSETS
for Long-Term Care Medical Assistance

EXEMPT ASSETS

Homestead Property

Primary Vehicle (less than \$4,500)

Life Insurance (with face value not greater than \$1,500)

Prepaid Burial Expenses (no limit on burial spaces; services limited to \$1,500)

Personal Effects and Household Goods (up to \$2,000)

NON-EXEMPT ASSETS

Other Real Property

Value of other Vehicles

Life Insurance (greater than \$1,500)

Checking, Savings, Credit Union Accounts, Cash, Certificate of Deposits, Money Market Funds, Stocks, Bonds, Mutual Funds, Trust Funds, IRA's, Pension/Retirement Funds, Deferred Compensation, etc.

Source: OAG from IDPA Policies

HHS follow-up study of Washington State's asset transfer program reached conclusions similar to those in the 1988 study. Other articles and studies have reached similar conclusions.

Changes are required at the federal level in various areas to facilitate an effective system of property transfer enforcement and estate recovery programs at the state level. Absent changes in the federal law, or waivers to them, states are constrained in what they can do to apply more restrictive transfer restrictions.

30 Month Look-Back Period

The February 1993 preliminary report of the Department's Task Force reported that the Department is considering requesting a federal waiver which would double the "look-back" period from 30 months to up to five years. This, along with a similar change in State statute, would allow Illinois to deny assistance in cases where the transfer was made within five years of applying for assistance. According to federal HCFA officials, Iowa is also pursuing a waiver to extend the look-back period.

Joint Tenancy

Various studies have cited how joint tenancy can be used to transfer property and make it unavailable to pay for long-term care. IDPA policy limits the use of joint accounts to some degree. Simply adding a name to a joint bank account does not mean that both people are entitled to 50 percent of the account. Rather, IDPA policy requires that local office staff investigate and obtain verification to document the ownership interests, such as who makes deposits into the account. If, for example, the mother's and son's names are on the account, but the mother deposited all the money in the account, then the local office would consider all funds in the account as the mother's assets which could be used to pay for long-term care. In the cases we examined, the local office staff generally attempted to identify true ownership of jointly held assets and strictly interpreted IDPA policy.

CASE EXAMPLE 1 JOINT TENANCY

A couple purchased a Florida condominium jointly with their daughter and son-in-law. The daughter and son-in-law refused to sell the condominium. According to IDPA policy, because a joint owner refused to relinquish interest in the property, the property was not accessible to the Department. Therefore, the State provided medical assistance to an individual who owned a condominium in addition to an \$89,000 homestead (which is also exempt).

Source: IDPA case files

Complications may arise when the joint asset cannot be readily divided among owners, or if a joint owner refuses to relinquish his or her interest in the property. In such instances, the asset is not accessible. Case Example 1 illustrates how joint tenancy can shelter assets from being used to pay for long-term care.

Purchase of Burial Policies

Recipients commonly purchase pre-paid burial policies. While burial services are limited to \$1,500, State and federal law does not limit how much can be spent on burial space, such as caskets, mausoleums, and headstones. In 46 of the 102 case files we reviewed, recipients purchased burial policies. In 40 of the cases where the purchase date was available, 24 (60 percent) were purchased within 6 months of applying for assistance. The cost of burial policies ran as high as \$7,000, with an average cost of \$3,636. Case Example 2 highlights one of the purchases we reviewed. While some level of exemption for funeral and burial expenses is appropriate, an upper limit would help ensure that Medicaid recipients are not purchasing excessive pre-paid burial plans while the State is paying for their medical assistance.

**CASE EXAMPLE 2
BURIAL POLICIES**

Through a match with Internal Revenue Service records, the Department identified that a recipient had a certificate of deposit worth \$6,030 which was previously unreported. Rather than use the money to pay the nursing home, the recipient's son purchased a prepaid burial plan for his mother. IDPA policy does not limit how much recipients can spend for burial space. The plan purchased included \$3,875 for a casket and \$1,100 for an outer burial container.

Source: IDPA case files

Spousal Assets

If assets are held solely in the community spouse's name, they are not required to contribute to the care of the institutionalized spouse. Federal regulations require that once a couple ceases to live together, the only resources that are to be taken into consideration are those of the institutionalized spouse (42 CFR 435.845 and 435.602). IDPA requires the community spouse to contribute to the care of the institutionalized spouse only if they have income which exceeds a set standard; they are not required to contribute their assets, according to Bureau of Policy and Training officials. The effect of this policy is that the State is paying for the long-term care of individuals who have spouses in the community with substantial assets.

Case Example 3 provides an example of a case where a community spouse had sizable assets but was not required to contribute to the care of his wife because the assets were solely in his name. A casework supervisor in the Peoria Office recounted a similar case where a community spouse had \$135,000 in certificates of deposit solely in the community spouse's name and refused to pay for the care of the institutionalized spouse.

Method of Calculating Ineligibility

The federally prescribed method for calculating the period of ineligibility allows individuals to transfer fairly significant assets and yet qualify for Medicaid a few months later with no penalty. Federal law requires the period of ineligibility to begin the month in which the transfer was made.

**CASE EXAMPLE 3
SPOUSAL ASSETS**

The husband of an institutionalized spouse had assets approaching \$200,000 held solely in his name. His wife applied for Medicaid to pay for her long term care. The husband wrote to IDPA, "I am unable to contribute anything from my income or resources toward the cost of my spouse's medical care, and therefore respectfully refuse to contribute thereto." Since IDPA does not require the community spouse to contribute assets they solely hold, the State provided medical assistance for his wife.

Source: IDPA case files

It requires states to divide the uncompensated amount of the asset improperly transferred by the average private pay rate for nursing facility services. This formula yields the number of months a person is ineligible for long-term care assistance. For example, assuming a private pay rate of \$3,000, if a person improperly transferred \$18,000 to a child in January, then that person would be ineligible for assistance for six months, or through June. If the person waits until July and then applies for Medicaid assistance, he would be approved because the ineligibility period would have already expired.

**CASE EXAMPLE 4
METHOD OF INELIGIBILITY
CALCULATION**

An applicant transferred \$17,500 to grandchildren in October 1991. Because it was an unallowable transfer, he was ineligible for Medicaid for a 5 month period (\$17,500 divided by \$3,300 -- the private pay rate). The period of ineligibility ran from October 1991, the month of the transfer, through February 1992, the end of the 5 month ineligible period. The individual applied for nursing home assistance in April 1992 and was eligible for Medicaid, since the period of ineligibility, as calculated in accordance with State and federal requirements, had expired.

Source: IDPA case files

This method of calculation allows individuals to make transfers with the intent to qualify for Medicaid within the 30 month period without incurring any penalty. Case Example 4 shows the effect of the method of calculating the period of ineligibility in one case we reviewed. An alternate method, such as beginning the period of ineligibility at the time of application, may help discourage applicants from circumventing the law by transferring property several months before applying for assistance.

Other states have been active in pursuing waivers to federal requirements. As noted above, Iowa is pursuing one extending the "look-back" period. Also, Michigan has received two waivers from

federal requirements (regarding joint tenancy and trusts). If granted, waivers are one mechanism to change the State program and yet still comply with federal requirements.

RECOMMENDATION NUMBER 2:

The Director of the Department of Public Aid should identify federal property transfer restrictions and other requirements which limit the State's ability to control property transfers and attempt to obtain waivers, if necessary, from the Health Care Financing Administration in those areas. Areas worthy of consideration may include the 30 month look-back period, joint tenancy, pre-paid burial policies, spousal assets, and the calculation of the ineligibility period.

Department of Public Aid Response:

We agree with the recommendation. The Department will attempt to obtain federal waivers to control property transfers. HCFA officials have told states that successful waivers in this area would have to be demonstration waivers, i.e., they are established for a finite period to test a hypothesis and a scientific evaluation must be conducted with a control group that follows existing policy.

Legislation was introduced to amend the Public Aid Code to prohibit a person from transferring real property, for less than fair market value, within 60 months immediately before applying for Medicaid or being admitted to a nursing home. Implementation is contingent upon obtaining waivers to federal laws and regulations.



State Property Transfer Policies

There are several areas where IDPA policies on property transfers could be revised to strengthen the State's enforcement of property transfer restrictions.

Presumption of Intent to Transfer

IDPA policies do not clearly establish, and some local office staff are unsure of, the recipient's and local office staff's responsibilities regarding the burden of proof in establishing the intent of the transfer. Federal property transfer policies allow states to ". . . . presume when an institutionalized individual or his or her spouse has transferred resources for less than fair market value . . ." that the transfer penalties apply [Section 3250.3 of the Medicaid Manual] (emphasis added). Federal policies require, however, that the state must give the individual an opportunity to rebut that presumption by making a satisfactory showing that he or she: 1) intended to dispose of the resources at either fair market value or for other valuable consideration; or 2) transferred the resources exclusively for a purpose other than to qualify for Medicaid.

IDPA's property transfer policies do not contain a provision allowing intake or caseworkers to presume that the purpose of a transfer for less than fair market value was to qualify for assistance. Section 505.5 of IDPA policies requires the local office staff to ". . . determine if the transfer was made to qualify for assistance". Local office staff noted difficulties in determining intent. Staff in two of the four offices stated that proving intent was ultimately the responsibility of the local office staff. One intake worker noted that present Bureau of Policy and Training guidance is that the local office needs to prove the

intent of the transfer; unless the intake worker could absolutely prove that a transfer was unallowable, they were hesitant to deny assistance.

A case reviewed from the Nursing Home Services Office in Chicago, as shown in Case Example 5, illustrates the difficulties associated with proving intent. If IDPA policies allowed the local office to presume intent, then it would have been the applicant's, and not the local office's, responsibility to prove intent.

As part of our Medicaid Property Transfer Survey, we asked states to submit relevant portions of their property transfer policies and procedures. Several of the states, including California, Texas, Missouri, Minnesota, Michigan, and Florida had policy statements which explicitly incorporated presumptive intent in a manner similar to federal policy. These policies state that if property was transferred for less than fair market value, staff are to presume it was for the purpose of qualifying for Medicaid. The intake or caseworker must assist the applicant in obtaining evidence, but the burden of proof rests with the individual.

**CASE EXAMPLE 5
BURDEN TO PROVE INTENT**

The day before his mother entered the nursing home, her son withdrew \$17,350 from a joint bank account he had with his mother. The local office determined that this was an improper transfer. The applicant appealed. The Department ruled that because the local office ". . . never explored with the appellant those factors that might make the transfer allowable", the local office needed to redetermine the applicant's eligibility. The local office subsequently approved assistance for the applicant. When questioned why, the local office administrator stated that, "The case was approved when the local office could not verify that the assets were transferred to qualify for public assistance."

Source: IDPA case files

Federal and State laws, and other states' policies contain the requirement that the transfer must have been exclusively for a reason other than to qualify for assistance. Texas policy states that "If he had some other purpose for transferring the resource but obtaining Medicaid services seems to have also been a factor in the decision to transfer, the presumption is not successfully rebutted." IDPA policy does not address the issue of whether the transfer was exclusively for a purpose other than to qualify for Medicaid.

In the Task Force's preliminary report, the Department acknowledged that it had assumed the burden of legitimizing transfers. Department officials noted that such a position was not consistent with federal law. The document stated that by revising its policy to place the burden of proof on the applicant ". . . it is likely that for every complaint we receive now of people beating the system, we will probably receive at least as many, if not more, on people who are being abused by the system." This points out a need for a transfer policy which is both fair to the recipient, yet assures that the State is not providing assistance to those who do not need it.

Multiple Transfers

Applicants can qualify more quickly for Medicaid by transferring property over several months, rather than all in one month. Because separate ineligibility calculations are computed for each month in which transfers are made, making multiple transfers results in several periods of ineligibility which run concurrently. IDPA has no policy to restrict these multiple transfers. Exhibit 7 shows how multiple transfers work.

EXHIBIT 7 EFFECT OF MULTIPLE TRANSFERS

Scenario A: Person A transfers \$30,000 in January. Private pay nursing home rate is \$3,000 per month. \$30,000 divided by \$3,000 yields a 10 month period of ineligibility. Person A is ineligible for assistance until November, as shown below:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.
Scenario A											
\$30,000 in Jan.:	X	X	X	X	X	X	X	X	X	X	elig.

Scenario B: Person B also transfers \$30,000, but does it over four months: Transfer 1 -- \$12,000 in January; Transfer 2 -- \$9,000 in February, Transfer 3 -- \$6,000 in March; and Transfer 4 -- \$3,000 in April. Ineligibility periods are calculated for each of the transfers, yielding periods of ineligibility of 4, 3, 2, and 1 months respectively. Since periods run at the same time, Person B is ineligible for only 4 months, as shown below:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.
Scenario B											
\$12,000 in Jan.:	X	X	X	X	elig.						
\$ 9,000 in Feb.:		X	X	X	elig.						
\$ 6,000 in Mar.:			X	X	elig.						
\$ 3,000 in Apr.:				X	elig.						

Note: X denotes ineligible for assistance

Source: OAG hypothetical analysis

In a survey of other states conducted by IDPA, 32 of the 44 states responding reported a policy on multiple transfers. Eleven of the states considered the transfers

concurrently. However, seven others treated multiple transfers as a single transaction; ten others treated them consecutively. Establishing cumulative, rather than concurrent, periods of ineligibility would result in a longer penalty period. Federal HCFA officials stated that states can adopt a policy which restricts the use of multiple transfers for the purpose of qualifying more rapidly for Medicaid. Case Example 6 shows how multiple transfers allowed an applicant to qualify more quickly for Medicaid in a case we reviewed.

Additional Policy Changes May Be Helpful

IDPA policies provide guidance regarding what staff should look for when making a determination on the intent of the transfer. Along with the reason and supporting documentation given by the applicant, local office staff are required to consider other case information which provides further insight on whether the transfer was made to qualify for Medicaid. At the time of the transfer, the local office staff is to consider: the individual's physical and mental condition, financial situation, or the need for assistance. In addition, any changes in living arrangements anticipated at the time of the transfer or the amount of time between the transfer and the application for assistance is also to be considered.

An additional factor included in other states' policies was whether the applicant had means of self-support after the transfer. If, after the transfer, the applicant was left with little, if any, means of self-support, the intake or caseworker could presume the transfer was made with the intent to qualify for assistance.

Present policy requires that the local office must allow a transfer if it was made for any reason other than to qualify for Medicaid. An intake worker provided the following example: If an applicant gave \$3,000 to a grandson for graduation, and then gives \$3,000 to all his other grandchildren because they felt slighted and he felt obligated to do so, the local office would allow that transfer because it wasn't made to qualify for assistance.

CASE EXAMPLE 6 MULTIPLE TRANSFERS

An application for nursing home assistance disclosed 29 property transfers. The transfers, totalling \$125,550, were made over 10 months, beginning in April 1991. If the period of ineligibility had been computed on the total amount transferred, the applicant would have been ineligible for the maximum 30 month period, or through September 1993. However, as required by IDPA policy, multiple periods of ineligibility were computed. Consequently, the applicant's last penalty period expired in March 1992, or 1 1/2 years sooner than it would have if the ineligibility period was calculated on the total amount transferred.

Source: IDPA case files

Other states' policies addressed, to varying degrees, the types of transfers which were and were not allowable. Oregon's policies stated that transfers related to estate planning and transfers to avoid probate ". . . will be considered invalid without substantial proof that the transfer was not intended to establish eligibility." Texas's policies did not allow compensation for services normally provided by family members (such as house painting or repairs, mowing lawns, preparing meals, or transportation to medical care).

CONCLUSION

IDPA's policies and procedures provide guidance to local office staff in their review and determination of the allowability of property transfers. However, some changes or clarifications in areas previously discussed may be useful. Staff in all four local offices we visited stated that policies and procedures on assets and/or transfers could be improved.

Staff in all four offices visited also stated that technical guidance would be helpful to assist them in determining the allowability of transfers. Several years ago, the Bureau of Policy and Training provided specific case guidance for local offices regarding whether a transfer was or was not allowable. However, while the Bureau continues to interpret policies, they no longer determine the allowability of the transfer. Bureau of Policy and Training officials noted that they do not have all of the case information; thus they are not in the best position to determine eligibility. The local office ultimately has the responsibility for that decision.

Staff in one local office also raised concerns about consistency in decisions regarding the allowability of transfers. Given that determining the allowability is often a complex process, variances are not unexpected. However, some mechanism to help ensure consistency in determinations may be worth considering. Presently, trusts are sent to the Bureau of Policy and Training or Office of General Counsel for a determination as to whether they are Medicaid qualifying trusts; a similar process could be established for questionable transfers. Also, centralizing cases involving property transfers would develop an institutional knowledge of what exceptions are most frequently used, what laws or policies are being abused, and therefore, what future policy and legal changes are warranted.

RECOMMENDATION NUMBER 3:

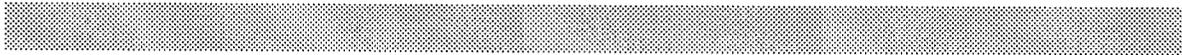
The Director of the Department of Public Aid should:

- **revise the Department's policies pertaining to determining whether the intent of the transfer was made to qualify for assistance. Policies should place the burden of proof on the applicant and provide an opportunity for the applicant to rebut the presumption;**
- **add additional guidance in policies and procedures, where appropriate, of allowable and unallowable transfers;**
- **develop and adopt a policy which restricts the use of multiple transfers to shorten the ineligibility period for Medicaid; and**
- **provide local office staff with more direction and guidance in their determination regarding the allowability of property transfers.**

Department of Public Aid Response:

We agree with the recommendation. The Department concurs with the recommendation to revise policy to place the burden of proof for establishing the reason for the transfer upon the applicant and the recommendation to adopt a policy to restrict multiple transfers. Pursuant to the Administrative Procedures Act, rule development will be initiated and policy revised upon the rule becoming final.

The Department will also provide more descriptions and guidelines of allowable and unallowable transfers. In addition to expanding policy, we will determine the feasibility of a centralized unit to provide additional direction and guidance to local offices regarding specific property transfer situations.



CHAPTER 3

IDENTIFICATION AND ENFORCEMENT OF PROPERTY TRANSFERS

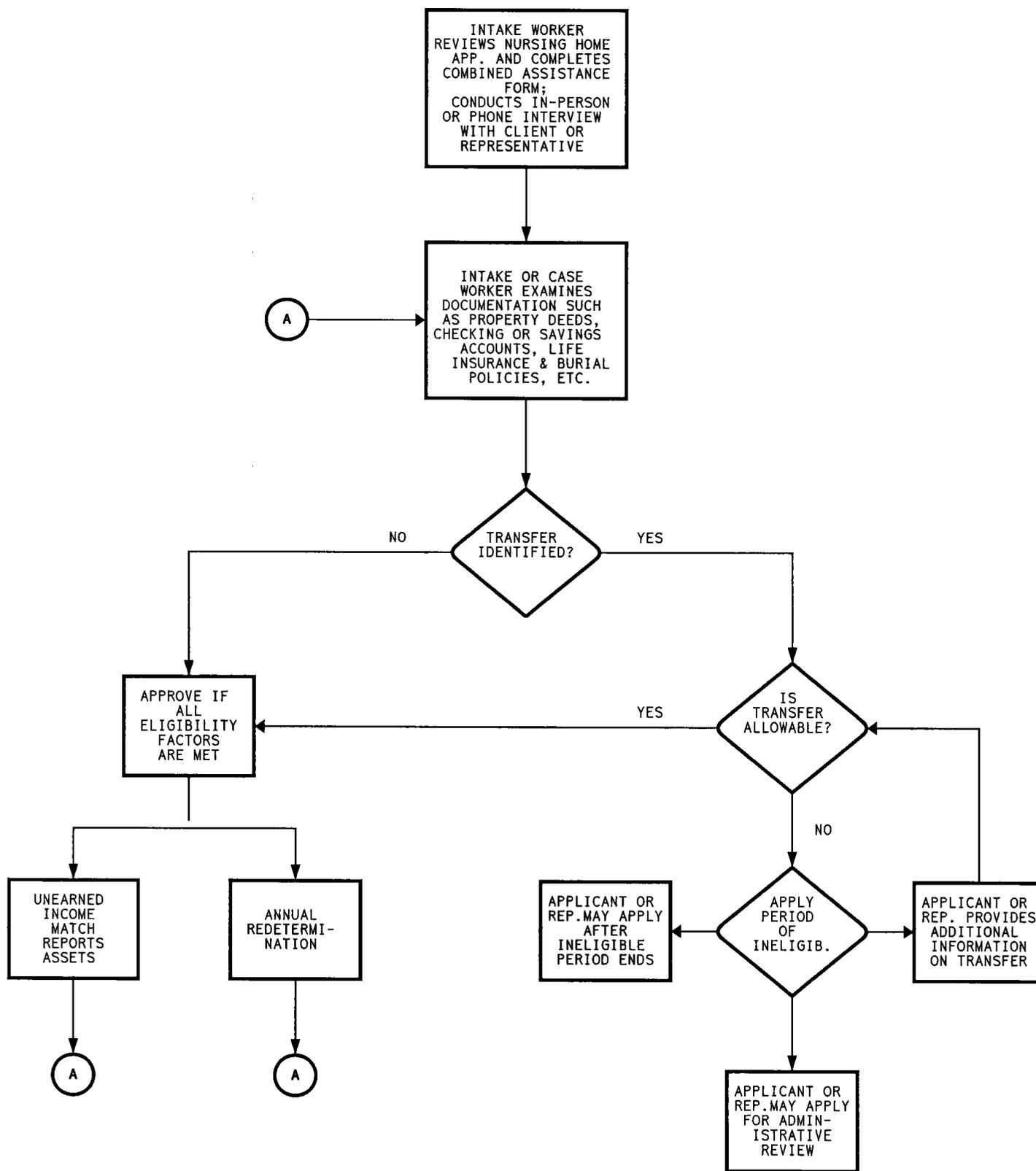
Additional documentation which could be used to identify property transfers should be required from applicants. Except for the Nursing Home Services Office in Chicago, local offices generally required the applicant's most recent statement from financial institutions; consequently, local office staff were not receiving statements which could disclose transfers made prior to the most recent period. Nursing Home Services required 6 months of checking statements and 30 months of savings statements. Changes to the application and redetermination forms would help ensure that property transfers are reported by the applicant. The unearned income information from the Internal Revenue Service could be better used to reduce caseworker time and focus more on questionable transfers. Finally, local office staff need training in asset and property transfer policies.

OVERVIEW OF PROPERTY TRANSFER CONTROL PROCESS

IDPA local office staff routinely examined assets and transfers at three primary points. These points are: 1) the initial eligibility determination; 2) the Internal Revenue Service's unearned income match; and 3) the annual eligibility redetermination. These control points are schematically depicted in Exhibit 8 on the following page.

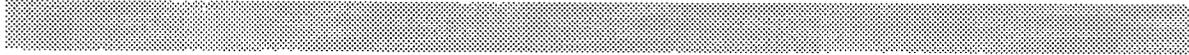
The initial eligibility determination is the most critical of the three control points. In many instances, the person going into the long-term care facility does not complete the application form or participate in the interview with the intake worker. In our review of 102 case files, we found that in almost two-thirds of the 102 cases the applications were signed by someone other than the applicant. Generally the spouse (12 cases), or another relative (43 cases), such as a son or daughter, signed the application. In eight instances, it was a nursing home employee. These representatives may not have direct knowledge of the income and assets held over the past 30 months by the applicant. Consequently, it is important to obtain as much documented information as reasonable and also have direct contact with the applicant when possible.

EXHIBIT 8 PROPERTY TRANSFER REVIEW PROCESS



Source: OAG from IDPA documents

During the eligibility determination process, the intake worker collects documentation on the applicant's income and assets, along with other eligibility information. The intake worker reviews the documentation for possible transfers. Applicants or their representatives are asked whether they have made any transfers in the past 30 months. If the applicant disclosed that a transfer was made, the intake worker requests additional documentation to determine whether the transfer was made to qualify for Medicaid assistance. According to Department officials, if no transfer was disclosed, the intake worker takes no additional steps to identify transfers unless something makes him or her suspicious.



MORE INFORMATION NEEDED DURING ELIGIBILITY PROCESS

Most of the information collected during the initial eligibility determination process focuses on the current financial status of the applicant. There are several types of information which could be collected which may help intake workers identify transfers made in prior months. Also, revisions to application forms may help recipients disclose past transfers.

Additional Documentation Needed

Additional documentation not routinely requested by IDPA staff during the eligibility determination process would be helpful in identifying unreported or transferred assets. Presently, information such as property deeds, insurance policies, current checking and savings account statements, vehicle titles, and trust funds are requested from the applicant. While this information helps to document an applicant's current assets, it sheds little light on what transfers might have occurred during the preceding 29 months.

More Than One Month of Financial Statements Needed

The most likely source of information to identify property transfers are financial institution statements. In the 24 cases involving applications denied due to improper transfers, 16 involved assets held by financial institutions. Except for the Nursing Home Services Office in Chicago, the other three local offices we visited collected only the most recent month's statements on recipients' accounts at financial institutions during the eligibility determination process. While one month's statement is sufficient to document current assets, it does not identify transfers made in the months preceding the time of application.

Only IDPA's Nursing Home Services Office in Chicago routinely required savings account statements for 30 months and checking account statements (including money market and certificates of deposit) for 6 months prior to the application date. Nursing Home Services also required applicants to provide copies of cancelled checks or receipts for withdrawals and deposits of \$500 or more and copies of all bank accounts opened or closed within the past 30 months.

Six states responding to our property transfer survey required three or more months of checking, savings, and/or other financial institutions' statements. Three of the six states required a full 30 month disclosure.

Requiring applicants to submit more than one month's financial statements would provide intake workers with a more complete picture of an applicant's financial transactions. Large disbursements may indicate transfers. Staff in two of the three local offices which require only the most recent month's statements reported that additional months' statements would provide them with more information to check for improper transfers. Local office staff noted, however, that requiring additional statements may be opposed by client advocacy groups.

Federal Tax Returns Would Provide Timely Information

Applicants are not required to submit income tax returns when applying for long-term care assistance. As will be discussed later in this Chapter, the Department receives unearned income information from the Internal Revenue Service on each applicant. However, this information is received after a decision on eligibility has been made and provides only one year of information. Local office staff interviewed stated it would be useful to get this information at the time of application. Also, the tax return may contain information not included on the 1099 match, such as real estate tax deductions. Three of the states responding to our survey required applicants to submit federal tax returns at the time of application; four others required them in certain situations.

Long-term Care Facility's Application May Be Useful

The application or contract the client completes for the long-term care facility may contain information regarding an applicant's assets. Intake staff could use the application form completed for the facility as a check on the accuracy of information provided to the Department. Inconsistencies in the assets reported could then be investigated.

Due to the experience of Nursing Home Services with more than one month's financial statements and the positive comments received from staff in the local offices we visited, the requirement for additional financial statements would likely be beneficial to implement Statewide. However, since the Department has not required or used federal tax

returns and the long-term care facility application, the usefulness of this information has not been determined. A Department official suggested that a pilot project could test the usefulness of such information. After a period of implementation, the Department could then evaluate whether these requirements should be implemented Statewide.

RECOMMENDATION NUMBER 4:

The Director of the Department of Public Aid should obtain the following additional financial information at the time of application for long-term care applicants: 1) additional financial institution statements (such as a minimum of 12 months); 2) federal tax returns where applicable; and 3) the application completed for admission into the long-term care facility. To evaluate the usefulness of this information, the Director may want to consider requiring the federal tax return and the long-term care facility's application on a pilot project basis.

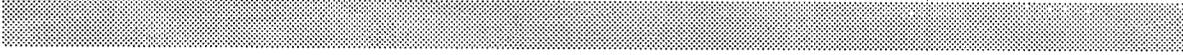
Department of Public Aid Response:

We agree with the recommendation. The Department will establish a pilot project to evaluate the usefulness of obtaining federal tax returns and obtaining the application completed for admission into the long-term care facility. Additional financial institution statements will be requested from applicants.

Policies and Procedures Could Provide Additional Guidance

The Department's policies and procedures do not contain guidance on the types of testing intake workers should perform to identify possible transfers and unreported assets. Techniques used by local office staff included reviewing financial statements for large withdrawals (which may be a possible transfer) or automatic deposits into the account (which may indicate an unreported asset such as a certificate of deposit).

As noted earlier, there is often no contact between the intake worker who decides eligibility and the long-term care recipient. Rather, the intake worker works mainly with a relative, or hospital or long-term care facility staff. While in many instances the recipient is not capable of providing information on assets or transfers, in some instances they are. Establishing personal contact with the client in these instances may provide the intake worker with information that would otherwise not be attainable.



RECOMMENDATION NUMBER 5:

The Director of the Department of Public Aid should revise Departmental policies and procedures to: 1) include a section on useful techniques to identify possible property transfers; and 2) require contact with the applicant in instances where the applicant is capable of providing information.

Department of Public Aid Response:

We agree with the recommendation. The Department is in the process of revising policies and procedures to include a section on useful techniques to identify possible property transfers and will require contact with the applicant when they are capable of providing information.



Application Forms Need Improvement

The questions on assets and transfers on the Department's Combined Assistance Form (CAF) and Nursing Home Application Form (see Appendix F) could be revised to help promote full disclosure by an applicant. Since intake workers report identifying few transfers which were unreported by the applicant, every attempt should be made to have the applicant self-report transfers which were made. To this end, both the CAF and Nursing Home Application Form could be improved.

The Nursing Home Application Form asks one question on property transfers:

If you live in a nursing home, have you sold or given away any asset such as property, land, insurance, stocks, certificates of deposit, etc. within the last 30 months? Yes ___ No ___ If yes, give person who transferred the asset, a description of the asset, the date transferred, the value of the asset and the reason for the transfer.

The CAF asks a similar question:

Has anyone in Group Care sold or given away personal property and/or Real Estate in the past 30 months?

As presently worded, these questions only pertain to applicants residing in long-term care facilities. Applicants who do not reside in a long-term care facility and who have made transfers could honestly answer the question no. According to local office staff, applications from individuals still residing in the community were not uncommon. In our review of 102 case files, 9 applicants were not in a long-term care facility when they applied for assistance. The present wording of this question does not require them to report any transfers.

The Nursing Home Application Form asks only if the applicant transferred assets within the 30 month period. Similarly, the CAF also restricts the transfer question to the applicant. Federal law and State policy clearly require that transfers made by the spouse within the 30 month period also be included in the eligibility determination process. IDPA Bureau of Policy and Training officials stated that spousal transfers will be added to the Nursing Home Application Form when it is reprinted.

The present question does not include all types of transfers. It asks only about those assets sold or given away. According to IDPA policy, a change in the way an asset is held (such as removing or adding a name on a bank account or deed) also constitutes a transfer. Specifically asking applicants about such ownership changes may lead to fuller disclosure.

The transfer question on the CAF could be made clearer if examples were included to help convey an understanding of what the term "transfers" meant, according to local office staff. Such examples could include adding a name to a house deed, giving away money to a relative, or selling property for less than its fair market value. Also, the transfer questions do not mention cash as an example of property transferred.

Local office staff suggested two other questions which could be added to the CAF and Nursing Home Application Form that might point to areas where additional follow-up may be warranted. The first would be to ask the applicant to report financial institution accounts which have been closed. If any accounts were closed over the past 30 months, the applicant would be required to document the value and use of the asset.

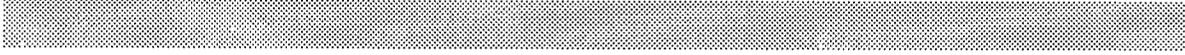
The second addition would be to require the applicant to provide additional information on past residences and whether they had any ownership interest in those residences. If they reported an ownership interest within the past 30 months which they no longer have, local office staff could follow-up to see whether due consideration was received for the property transferred. Getting more complete disclosure from the applicant regarding real property would be beneficial since: 1) real property holdings and transfers are not reported to one central location in the State; and 2) property searches are time consuming.

The Nursing Home Application Form does not require the applicant to disclose any household goods or personal effects greater than \$2,000. Federal regulations and State policy exempt household goods and personal effects up to \$2,000. Any greater amounts must be counted as a non-exempt asset and, therefore, should be disclosed on the Nursing Home Application Form.

In our review of 36 case files at Nursing Home Services in Chicago, we found 14 cases in which the applicant applied for assistance using an outdated IDPA Nursing Home Application Form. Rather than asking whether a transfer occurred within 30 months, the outdated form asked whether a transfer occurred within a 24 month period (which was the period before the 30 month requirement went into effect October 1, 1989).

Transfer Question Could Be Added to Information Request

As part of the eligibility determination process, the local office may send a DPA 267 form, "Instructions to Client", to the applicant. The DPA 267 requests documentation needed to determine eligibility. Such information includes deeds, insurance policies, and bank statements. The DPA 267 does not include an item dealing with property transfers. A request for any documentation pertaining to property transfers within the previous 30 months would be an additional step to get the recipient to self-report any previous transfers.



RECOMMENDATION NUMBER 6:

To help promote full disclosure of all relevant transfers, the Director of the Department of Public Aid should:

- 1) **revise the Combined Assistance Form so that:**
 - **the property transfer question: applies to both the applicant and spouse; applies to applicants who do not reside in a nursing home; includes changes in ownership status of property as a type of transfer; and provides examples of property transfers; and**
 - **it requires disclosure of: any bank accounts and other financial holdings closed over the past 30 months; and any ownership interest in past residences over the past 30 months.**

- 2) **revise the Nursing Home Application Form so that:**
 - **the property transfer question applies to both the applicant and spouse and to applicants who do not reside in a nursing home; and includes changes in ownership status of property as a type of transfer; and**

- it requires disclosure of: a) any bank accounts and other financial holdings closed over the past 30 months; b) any ownership interest in past residences over the past 30 months; and c) any personal effects or household goods greater than \$2,000.
- 3) direct local office staff to require current Nursing Home Application Forms be used to apply for assistance.
 - 4) revise the DPA 267 "Instructions to Client" form to routinely require disclosure of property transfers which occurred within the 30 months prior to application for long-term care cases.

Department of Public Aid Response:

We agree with the recommendation. The Department is in the process of revising the Combined Application Form, the Nursing Home Application Form and the "Instructions to Client" form to include the recommended additional disclosure information. The Metro Chicago Zone and Nursing Home Services Offices have been directed to ensure that only the current version of the Hospital/Nursing Home Application Form (DPA 2378H) is being used.

REDETERMINATIONS NEED TO INCLUDE TRANSFERS

The annual redetermination process, as a tool to verify assets and identify transfers, could be improved. In conducting a redetermination, the caseworker reviews the recipient's assets and income looking for any changes which may affect the recipient's eligibility. In the local offices we visited, the caseworkers used various methods to complete the redeterminations. Methods used included reviewing the case file, visiting the long-term care facility to review the facility's files, and mailing an "Instructions to Recipient" form (DPA 1721) to the recipient's relative or guardian requesting information on assets and income. In addition, they required the relative or guardian to submit a copy of the recipient's most recent bank or other financial statements for all accounts held by the recipient.

While present redetermination practices may be adequate to ascertain current income and asset levels, several improvements could be made to better identify property transfers and promote full disclosure on changes in income and assets. First, the two main forms used in the redetermination process do not ask about transfers. The DPA 1721 sent to relatives or guardians does not require disclosure of any transfers which occurred in the preceding year. A form used in DuPage County in 1987 had a question on property transfers, but the present

form used does not. Also, the redetermination form (DPA 1229) caseworkers are required to complete does not contain a question on property transfers. Including a property transfer question on both DPA 1721 and the DPA 1229 would provide an additional control to help ensure that any transfers made after the recipient is approved for Medicaid are reported. A Bureau of Policy and Training official noted that a revision to the DPA 1229 is being considered by the Department.

Second, the DPA 1721's sent to the relatives or guardians varied by county. For example, the Peoria DPA 1721 requested information on all real property, while the DuPage County form requested information on only non-homestead property. As real property ownership interests are important for estate recovery purposes, such information should be required on all forms.

Third, IDPA's redetermination forms could be improved by incorporating items contained in other states' redetermination forms. Other states' forms reminded the recipient or representative of their obligation to report to the state receipt of any income or asset which may affect their eligibility. While the DuPage and Peoria Offices' forms contained such a reminder, the DPA 1721 forms used by the other local offices did not. Other states' forms also pointed out the penalties for false statements and required the person providing the information to sign the form. Reminding recipients or their representatives of such penalties and requiring them to sign the form may help promote fuller disclosure.



RECOMMENDATION NUMBER 7:

The Director of the Department of Public Aid should take the following action regarding redeterminations for long-term care cases:

- **revise the DPA 1721 so it: contains a question requiring disclosure of any property transfers which occurred during the preceding year; asks about interests in all real property; informs the preparer of the responsibility to report changes in income and assets and of the penalties for providing inaccurate information; and requires the preparer to sign the form; and**
- **revise the DPA 1229 so it contains a question requiring disclosure of any property transfers which occurred during the preceding year.**

Department of Public Aid Response:

We agree with the recommendation. The Department is in the process of revising the "Instructions to Recipient" form (DPA 1721) and the "Redetermination — Group Care/Sheltered Care" form (DPA 1229) to include the suggested disclosure information.

USEFULNESS OF THE UNEARNED INCOME MATCH COULD BE IMPROVED

The usefulness and efficiency of the match between IDPA files and Internal Revenue Service (IRS) unearned income data could be improved. The Department conducts numerous crossmatches of applicants and recipients with information from other agencies. For example, these include the Illinois Departments of Lottery, Rehabilitation Services, and Revenue, Office of the Secretary of State, and the federal Social Security Administration.

The match between the Internal Revenue Service and IDPA is important because it identifies the sources of unearned income, such as interest and dividends. These sources include savings and checking accounts, stocks and bonds, and certificates of deposit. Consequently, if an applicant failed to report such an asset, this match should identify it. When a match is made, the assigned caseworker is required to determine whether the individual still has the asset.

Two types of matches are conducted. The first is an applicant match which occurs at the time of application. Due to the time required to conduct the match, the results of the match are typically not known until two or three months after the applicant has been approved for assistance. The second match occurs annually for all clients.

According to local office staff, while most matches identify information disclosed during the application process, some previously unreported assets are identified. In at least 4 of the 102 files we reviewed, the IRS unearned income match identified previously unreported assets. The unreported assets in these four cases totalled \$38,878. These assets identified were used to pay for nursing home care and purchase prepaid burial plans.

Giving Caseworkers Detailed Information Would Reduce Follow-up

The caseworker, who is required to follow-up on the match information, does not receive the detailed match information, such as the name of the financial institution, account number, and dollar amount of interest paid. Due to federal confidentiality restrictions, IDPA sends a letter identifying the detailed information to recipients requesting that they meet with

the caseworker to discuss the reported unearned income. One designated individual in each local office receives the detailed information but cannot disclose that information to the caseworker. Only when the recipient or his or her representative brings the letter(s) into the local office does the caseworker find out what assets were identified. Local office staff said that if the caseworker knew of the match specifics, it would make the process less time consuming.

Ten of the fourteen states responding to our Medicaid Property Transfer Survey reported that their caseworkers received the detailed match information. Several states have implemented controls to safeguard the confidentiality of the information (such as locking up the information or making it accessible through a read-only computer monitor, i.e., the screen cannot be printed). If IDPA caseworkers were given access to the detailed information, they could immediately clear the assets of which they were aware and focus on following up on those which were not reported during the eligibility process.

Caseworkers Need to Use Unearned Income Data to Identify Transfers

Better use of the unearned income match could be made to identify transfers. Caseworkers primarily used the unearned income match to identify assets and to determine if they were still owned by the recipient. If the recipient no longer possessed the asset, in some instances the caseworker documented the disposition of the asset, in other instances they did not. Consequently, those assets for which the disposition was not verified could have been improperly transferred.

In 3 of the 15 case files we reviewed in Jefferson County, and 2 of the 22 cases reviewed in Peoria County, the caseworkers documented that the assets identified by the unearned income match no longer existed, but did not document the purpose for which those assets were used. In another case reviewed as part of our review of cases denied due to improper transfers, after documenting that the bank account in question had been closed, a Knox County caseworker wrote in notes documenting the unearned income match investigation: "Since [recipient] was private pay at [the nursing facility] since 1988 until application for [Public Aid]. It can be assumed that those resources were exhausted paying for her NH costs and medical expenses." Requiring recipients to provide documentation on the use of assets identified by the unearned income match would further enhance the Department's efforts to identify improper transfers. IDPA's Task Force also concluded that the Department needed to make better use of the unearned income match to identify property transfers.

Send Letters Directly to Nursing Home Services' Recipients

In all areas of the State, except Cook County, letters detailing the match information are sent directly to the recipients. The letter requests that the recipient contact his or her

local Public Aid Office to arrange a meeting to resolve the match. This places the burden to provide information to clear the match on the recipient. However, such letters are not sent to recipients served by Nursing Home Services in Cook County. Rather, the Nursing Home Services' Financial Resources Consultant attempts to obtain information from the financial institution to clear the match. If that proves unsuccessful, the caseworker tries to obtain the recipient's signature on a consent to release information form which is then sent to the financial institution.

This requires additional time and effort on the part of Nursing Home Services staff. The Nursing Home Services Financial Resources Consultant had a four to seven month backlog of matches to process. Placing the burden to clear the matches on the Office also has resulted in a large percentage of matches not being cleared. As shown in Exhibit 9, 42 percent of all unearned income matches sent to Nursing Home Services from September 1991 through January 1992 remained open as of October 1992. For all other IDPA offices, the uncleared rate was 11 percent. With such a large number of unchecked cases, the effectiveness of the IRS unearned income information is diminished in Cook County. According to a Bureau of Research official, the Department is considering sending letters to the Nursing Home Services' recipients, as is done in the rest of the State.

**EXHIBIT 9
NURSING HOME SERVICES' VERSUS
STATEWIDE CLEARANCE RATES**

Chicago Nursing Home Services			All Other Offices		
Total Matches	# Still Open	% Open	Total Matches	# Still Open	% Open
1280	535	42%	11,441	1,232	11%

Source: OAG from IDPA Bureau of Research Sept. 1991 — Jan. 1992 reports

RECOMMENDATION NUMBER 8:

The Director of the Department of Public Aid should take the following steps to improve the usefulness of the unearned income match:

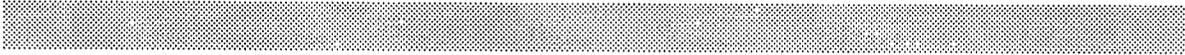
- **establish a system which allows the caseworkers to receive the detailed match information yet which complies with the confidentiality requirements established by the Internal Revenue Service;**
- **require caseworkers to document how assets identified by the unearned income match were used, in addition to documenting that they no longer exist; and**
- **revise the procedure to require that Cook County nursing home recipients be notified of the unearned income match in a manner similar to that used in the rest of the State.**

Department of Public Aid Response:

We agree with the recommendation. The Department will be establishing a system that allows the caseworkers to receive the detailed match information and complies with the confidentiality requirements established by the Internal Revenue Service. We are currently contacting other States to determine how they both provide the information to caseworkers and comply with IRS confidentiality requirements.

Instructions issued with the match materials will be revised to remind local office staff of the asset transfer policy for long-term care cases and the need to document the disposition of the asset as well as the current status of the asset and is expected to be completed by June 30, 1993.

All nursing home applicants will be notified of unearned income matches in the same manner effective with the next match.



COMPLIANCE WITH POLICY NEEDS IMPROVEMENT

Determining eligibility for long-term care Medicaid assistance can be difficult. Identifying and documenting assets, and determining how much is countable, can be time consuming. The way in which assets are held, such as in joint tenancy and trusts, complicates this process. If transfers are identified, determining whether they are or are not

allowable can be subjective. Finally, the intake worker is not typically dealing with the applicant, who could readily provide needed information, but another party who may not be as knowledgeable.

During our review of case files and interviews with local office staff, we noted several areas where compliance with asset and transfer policies needs to be improved.

Documentation and Control of Real Property Could Be Improved

Local office staff were not routinely documenting an applicant's interest in real property. IDPA procedures require that a Real Property Record (DPA 8) be completed when a person has an interest in either exempt or non-exempt property. In 23 of the 102 cases we reviewed in the local offices, applicants had an interest in real property. However, the required DPA 8 was found in only 11, or less than half, of the files.

A Nursing Home Services Office staff person who specializes in property matters stated that she receives few DPA 8's from intake or caseworker staff. She also said that DPA 8's are not completed on homestead property. IDPA Procedure 505.1 requires a DPA 8 be completed on homestead property.

Clearly documenting the real property owned by an applicant is important for two reasons. First, it establishes a record which the caseworker can use to follow-up on the status of any property holdings during the redetermination process. Second, and perhaps even more importantly, it collects valuable information which the Department's Technical Recovery Section can use to recover medical assistance after the recipient's death. As will be discussed in Chapter 4, if the Department is given the authority to place a lien on a Medicaid recipient's property and to collect from the estate of a surviving spouse, the need to clearly document interests in real property will become even more critical.

Improper Ineligibility Periods Calculated

Of the 14 cases we reviewed where local office staff calculated periods of ineligibility due to improper transfers, 8 of the periods were calculated incorrectly.

- In four cases, the intake worker did not begin the period of ineligibility in the month the transfer was made, as required by IDPA policy. As a result of this improper calculation, in three of the four cases the applicants were denied assistance when, in fact, they were eligible. If the periods had been computed correctly, the ineligibility period would have expired by the time of the application. The fourth case was overturned on appeal and no period of ineligibility was applied.

- In one case, the caseworker added together two transfers made in different months and then computed the ineligible period. The calculation was overturned on appeal. The local office was directed to recalculate the period of ineligibility.
- In one case, the intake worker took the monthly private pay rate at the nursing home, added the recipient's monthly medical bills, and subtracted the recipient's income to arrive at an adjusted private pay rate. This adjusted rate, rather than the required private pay rate, was used to compute the period of ineligibility. As a result, the recipient was made ineligible for assistance for 15 months; if calculated in accordance with policy, the ineligible period would have been only 11 months. In another case, the caseworker used a "MANG" standard to compute part of the ineligibility period. The resulting ineligibility period was 12 months; if calculated correctly, the period would have been 9 months. In both instances, IDPA's policy requires that the private pay rate be used when calculating periods of ineligibility.
- In one case the intake worker "rounded up" the period of ineligibility from 3.8 to 4 months. IDPA policy requires that periods of ineligibility be rounded down to the whole month.

Finally, in some instances Chicago Nursing Home Services staff were not establishing a period of ineligibility for improper transfers. Rather, they required the recipient to spend-down the amount transferred. Nursing Home Services Office officials stated they were not sure whether this practice had been stopped. One of the cases we reviewed at Nursing Home Services was a transfer case which had been improperly spent-down.

Verification of Assets and Transfers

In general, the intake workers adequately documented an applicant's assets and income. There were, however, instances where local office staff may not have adequately gathered all relevant information regarding a transfer. The following describes three cases:

- A local office originally denied assistance to an applicant in May 1992 because \$61,743 was transferred from her community spouse's credit union account. After the initial denial, the applicant's spouse brought in additional documentation. He stated that the \$61,743 was a repayment for a series of loans his son made to his parents in the late 1980's. Statements from the son's credit union account showed several certificates of deposit totalling \$60,000 which were closed during that time period. With this information, the local office approved the case for assistance. In our review of the file, we found no evidence documenting that the withdrawals from the son's account were actually deposited into the father's account. They could have been used for

any purpose. Furthermore, the statements showed that in four instances new certificates were purchased by the son on the same date for the same dollar amount as the certificate which was closed. The local office is seeking additional documentation from the family regarding the alleged loan.

- A local office relied on the statement of a bank official that \$25,000 in certificates of deposit were his wife's (who was the daughter of the applicant) rather than the applicant's. Other evidence in the case file contradicted this statement, including deposit slips showing that interest from the certificates was deposited into the mother's bank account and a prior statement from another bank employee which stated that the certificates were the mother's. Other documentation, such as canceled checks to show whose money originally purchased the certificates, was not found in the case file.
- An application form disclosed transfers of \$8,000 and a \$5,000 automobile. We found no evidence in the case file which showed that these transfers were investigated by local office staff.

Staff at three offices visited noted a need for training in the asset and transfer areas; staff at the fourth office stated they do not receive training in these areas. The treatment of assets and transfers can be very complex areas, both in terms of legal requirements and eligibility interpretations and decisions which local office staff are required to make. Rather than provide training for all staff, one local office suggested training only selected staff who could then serve as a resource for other office staff. The instances of non-compliance with agency policies also indicate a need for training in these areas.



RECOMMENDATION NUMBER 9:

The Director of the Department of Public Aid should offer training on assets and property transfers for local office staff, including documenting and verifying interests in real property and property transfers, and calculating the period of ineligibility.

Department of Public Aid Response:

We agree with the recommendation. A training package will be developed by June 1993 and added to the catalog of available classes. Identification of potential property transfers will be added to the regular training package for intake workers.



CHAPTER 4

LIENS AND ESTATE RECOVERIES

The Department has been active in using its estate claim authority to recover assistance from the estates of Medicaid recipients. Of the \$4.26 million recovered in Fiscal Year 1992 by estate claims, \$3.76 million was for medical assistance payments. The Department could not identify how much of the \$3.76 million was related to long-term care.

The potential exists, however, for significantly greater collections in at least three areas. Illinois law does not currently give IDPA the authority to collect for Medicaid assistance provided to a permanently institutionalized individual before age 65. The Department also does not now have the authority to file liens on property owned by Medicaid recipients. Finally, the Department does not currently recover assistance from the estate of the recipient's community spouse.

ILLINOIS'S MEDICAID RECOVERY EFFORTS

To recover medical assistance paid for recipients' care, State law grants IDPA statutory authority to file estate claims (305 ILCS 5/5-13, formerly Ill. Rev. Stat. 1991, ch. 23, par. 5-13). IDPA files a claim against the estate of a deceased recipient for the amount of medical assistance the Department provided for the recipient. For estates less than \$25,000 that are not probated, the Department files small estate affidavits to attempt to recover assistance paid by the State.

IDPA's Technical Recovery Section, located in the Bureau of Collections, is responsible for the recovery of medical assistance from recipients' estates. The Section has 15 staff working full or part-time on estate claims. Five are located in the Springfield Office, three in the Chicago Office, and seven throughout the State. In addition, some local offices have property consultants who also assist in the Department's estate recovery efforts. Monies recovered are deposited into the State's Public Assistance Recoveries Trust Fund. In addition to estate claims, the Section is responsible for lien activities for financial assistance cases, and collections for personal injury cases and worker compensation claims.

The placement of staff in local Public Aid offices to work solely on collection matters is an outgrowth of a pilot project initiated in the fall of 1991. The Department initiated the pilot project in part due to the success of a similar effort in the state of Oregon. Department officials concluded that the primary difference between Oregon and Illinois was that the former had staff which were exclusively trained and dedicated to liens and estate recoveries. In Illinois, liens and estate recoveries were just one of many responsibilities of the local office staff. In the pilot project, staff trained in estate recovery are assigned geographic regions of the State. Their responsibility is to concentrate on lien and estate claim activities. As of November 1992, the number of pilot project staff totalled seven.

In three counties where the pilot project was first undertaken — Winnebago, Boone, and Peoria — estate claim recoveries increased 240 percent from \$40,599 in Fiscal Year 1991 to \$138,106 in Fiscal Year 1992. Staff in the Peoria Office stated that prior to the pilot project person, local office staff did very little in the area of estate recovery.

In Fiscal Year 1992, the Department recovered \$4.26 million through its estate recovery activities. Most of the collections, \$3.76 million, were medical assistance recoveries. The Department was unable to provide the portion of the medical assistance recoveries associated with long-term care cases.

The Technical Recovery Section currently collects \$11.21 for every \$1 spent on collections, according to Bureau of Collections's figures. Collections of \$9.76 million and expenses of \$871,000 for the period from July 1992 through January 1993 were reported by a Section official. These figures include all collections done by the Section (non-Medicaid property liens, personal injury and worker's compensation claims), and are not limited to Medicaid estate recovery.

Local office staff also recover monies by offsetting amounts due the State by deducting that amount from bills which the State has to pay (for example, if an estate owes the State \$200 and the State has a \$900 funeral bill to pay, IDPA will only pay \$700). Bureau of Collections staff stated that this occurs frequently. However, they do not collect summary information on the amounts recovered through this offset procedure. In DuPage County, the property consultant reported offsetting \$43,349 over an eight month period.

States responding to our Medicaid Lien and Estate Recovery Survey reported collecting a significant amount of monies through estate recovery programs. As shown in Exhibit 10, California reported recovering the most monies through Medicaid estate recoveries, \$22.2 million. Several other states reported recovering larger amounts of monies through their estate programs than did Illinois. In a listing provided by IDPA of 24 states which reported Medicaid estate recoveries in Fiscal Year 1991, Illinois ranked sixth in dollar amount of recoveries. Since we did not audit IDPA's collection operations, we present this data for comparative purposes only.

There are many factors which could explain the differences in the amounts recovered by the states through the use of estate claims, including statutory, programmatic, and demographic differences. However, in our review of Medicaid laws, we identified several areas where additional collection authority could result in increased collections for the Department.

ADDITIONAL RECOVERIES POSSIBLE

State law does not give IDPA the maximum collection authority allowed under federal law. State collection activities are limited by the parameters established by Title XIX of the federal Social Security Act, (42 U.S.C.A. 1396 *et seq.*). However, the Public Aid Code could be amended to enhance the State's ability to recover funds and enforce property transfer provisions.

These include additional authority to impose liens for medical assistance cases, recover assistance provided to permanently institutionalized individuals prior to the age of 65, and recover assistance from the estate of the institutionalized individual's spouse. If State law were revised to give IDPA the maximum collection authority allowed under federal law in these three areas, IDPA could better control property transfers and recover additional monies to further offset the costs incurred in providing medical assistance. This Chapter generally reviews these three areas; Chapter 5 summarizes legislative concerns and contains the matters for consideration by the General Assembly related to increased collection authority.

Imposition of Medicaid Liens

IDPA collections and control over property transfers could be enhanced by statutory authorization to impose liens on property owned by Medicaid recipients. Federal law permits the imposition of liens on property owned by Medicaid recipients: 1) if it is pursuant to a court judgment to recover improperly paid benefits; or 2) if the recipient is in a nursing facility and cannot reasonably expect to return to the property (42 U.S.C.A. 1396p(a)). Federal regulations specify that states which choose to impose liens must have procedures to:

**EXHIBIT 10
MEDICAID ESTATE RECOVERIES
in Latest 12 Month Period**

California	\$22.2 million
Minnesota	\$ 8.9 million
Massachusetts	\$ 8.3 million
Oregon	\$ 7.3 million
Illinois	\$ 3.8 million
Maryland	\$ 1.5 million
Missouri	\$ 1.1 million
Wisconsin	\$.5 million

Source: OAG from 1993 Medicaid Lien and Estate Recovery Survey

describe the method to determine whether the recipient may reasonably expect to return to the property; notify the recipient of the intent to impose a lien; describe to the recipient the nature and effect of a lien; and give the recipient an opportunity for a hearing to dispute the imposition of a lien. In no event can a lien be imposed if any of the following occupy the residence: the recipient's spouse, child under 21, blind or disabled child, or sibling in certain instances (42 CFR 433.36).

State law does not give IDPA the authority to impose liens for Medicaid assistance. However, statutory lien authority does exist for financial assistance recoveries under the Aid to the Aged, Blind or Disabled program (AABD) administered by IDPA. IDPA imposes liens for AABD cash assistance on homestead property in excess of \$25,000 and other real property regardless of dollar value.

A recent survey of other states conducted by IDPA found that 11 out of the 44 states responding had a policy to place liens on the real property of Medicaid clients in a nursing home or other medical facility who could not reasonably be expected to return home. We surveyed four of the same states which responded affirmatively to IDPA's survey. These states were California, Maryland, New York, and Wisconsin (see Appendix D).

The authority to impose liens would benefit IDPA from both a control and a financial perspective. Liens could prevent recipients from transferring property without the State's knowledge. As such, the State could exercise its recovery rights before the property was transferred; it would also allow IDPA to track the ownership of the property.

Staff in the local IDPA offices we visited had identified instances where property was sold or otherwise transferred without the State being informed. For example, a homestead was transferred by a quitclaim deed and was no longer in the client's name. Consequently, the State lost any opportunity to recover Medicaid assistance from the sale of this property.

Lien authority could also prove useful in preserving the State's interests in jointly held property. Unlike property held individually, when a joint tenant dies, the property passes to the surviving joint tenants without going into the estate of the deceased. Consequently, because it does not go through probate, the property is not recoverable through IDPA's estate claim actions.

The statutory mechanism for liens under the AABD program has a provision which stipulates that a lien imposed upon property held in joint tenancy constitutes a severance of the joint tenancy for purposes of enforcing the lien. The lien is enforceable to the extent of the interest of the recipient, which is determined by dividing the total value of the property by the number of joint tenants (305 ILCS 5/3-10.8; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 3-10.8). This provision, absent under State medical assistance law, ensures that property held in joint tenancy will not pass to surviving joint tenants until the State's lien is satisfied.

In Fiscal Year 1992, Department officials reported collecting \$194,418 through the imposition of liens on the property of recipients who receive AABD cash assistance. The preliminary report of the Department's Task Force noted that the extension of lien authority to the Medicaid program would lead to increased collections for the State. Maryland and Wisconsin reported recovering \$1,052,518 and \$1,526,428 respectively in their latest fiscal year from liens imposed on Medicaid recipients. New York and California were unable to provide any recovery figures from Medicaid liens.

The authorization of liens has both practical and policy concerns. The lien program would require the IDPA to develop a process which would determine that the individual cannot reasonably be expected to return home. Other administrative procedures discussed above would have to be adopted and implemented. In addition, the State of Oregon noted in its response to our survey that liens do not create a good public image. A Maryland official, however, reported that its lien program has been relatively non-controversial.

The preliminary report issued by the IDPA Task Force reported that a lien program for Medicaid should have minimal implementation costs. As noted earlier, IDPA uses liens in the AABD program. The use of Medicaid liens would be an expansion of that process.

There is a range of options the State could pursue in the imposition of liens. The most comprehensive would be to impose liens on property owned by a Medicaid recipient at the time of application. In effect, it would make the filing of liens on property owned by a Medicaid recipient a condition of eligibility. The lien would not be exercised until the death of the surviving spouse and other parties exempted under federal law. In no event could a surviving spouse be forced to sell or otherwise abandon his or her homestead. A lien would help the State track the property for future recovery. Pursuit of this option would require a change in State law. In addition, either federal law would need to be revised or a waiver from HCFA obtained since federal law does not allow a lien to be imposed while a spouse or other exempted party occupies the homestead.

For some other options, only changes in State law would be needed for IDPA to file liens in Medicaid cases. These options include imposing a lien: 1) while the institutionalized individual is alive and is not reasonably expected to be discharged and return home; or 2) after the death of the recipient. In both instances, a lien would not be imposed if there was a spouse or other exempted party residing in the property. These latter options are less comprehensive and, therefore, lessen the State's ability to track the property for future recovery.

Recovery from Medicaid Recipients Under 65 Years Old

State law does not allow IDPA to recover the maximum amount of Medicaid assistance permissible under federal law. Only benefits paid to recipients after they attain the age of 65 are calculated as recoverable through collection. Section 5-13 of the Illinois Public

Aid Code allows the recovery of medical assistance paid to a recipient aged 65 or older (305 ILCS 5/5-13; formerly, Ill. Rev. Stat. 1991, ch. 23, par. 5-13). Furthermore, IDPA policy 1620.2 for AABD Financial Recovery specifically limits estate claims to medical assistance which was paid out while the recipient was over age 65.

The Social Security Act, however, makes a distinction between assistance provided to permanently institutionalized individuals (those recipients in long-term care facilities) and those recipients of other types of Medicaid assistance. The Social Security Act (42 U.S.C.A. 1396p(b)(1)) provides that states may recover medical assistance paid to permanently institutionalized individuals from their estate or upon the sale of property subject to a lien. It does not restrict this recovery to any age. It also authorizes recovery from the estate of any other individuals 65 years of age or older when they received medical assistance.

The interpretation that states can recover Medicaid assistance provided to permanently institutionalized recipients under the age of 65 was corroborated by Health Care Financing Administration (HCFA) officials in the Chicago Regional Office. The same interpretation was reached by the U. S. General Accounting Office in a 1989 report on estate recovery. In addition, six of the states we surveyed, including three midwestern states — Wisconsin, Missouri, and Minnesota — reported that they recover assistance provided to permanently institutionalized individuals under age 65.

Collection of all medical assistance provided to permanently institutionalized individuals (rather than only that provided after they reach 65) could increase the monies collected under the State's estate recovery program. In its federal fiscal year 1992 report to the Department of Health and Human Services, IDPA reported that \$252 million of the total nursing facility expenditures of \$1.1 billion (23 percent) was spent on recipients under age 65 (which may include both institutionalized and permanently institutionalized individuals). In its preliminary report, IDPA's Task Force concluded that collection of medical assistance provided to individuals under age 65 offers a significant potential for recoveries.

Collection from the Estate of a Surviving Spouse

The State may recover significant revenue by pursuing estate claims against the surviving spouse of a recipient upon the death of the surviving spouse. If a Medicaid recipient dies and is survived by a spouse, federal law does not specifically allow or prohibit estate claims against the estate of the surviving spouse, once that spouse dies (42 U.S.C.A. 1396p(b)(2)). Instead, it simply states that recovery cannot be made until the death of the recipient's spouse (if there is no surviving child who is under age 21 or blind or permanently and totally disabled).

Several states surveyed collect for the assistance provided to Medicaid recipients upon the death of their surviving spouse. These states were Minnesota, Missouri, New York, Oregon, and Wisconsin. HCFA officials confirmed that a state may collect from estates of

spouses. A New York State Court upheld that state's law permitting recovery from the estate of a surviving spouse.

Illinois law is ambiguous with regard to recovery from a spouse's estate upon the death of the surviving spouse. Section 5-13 of the Illinois Public Aid Code, like the federal law, allows recovery from a recipient's estate only if there is no surviving spouse; recovery from the spouse's estate is not explicitly covered. IDPA's Task Force concluded that legislative authority to collect from the estate of the surviving spouse would significantly increase collections. The Department was unable to provide an estimate as to how much additional money could be collected.

The importance of recovering the cost of medical assistance from a spouse's estate has grown significantly with the passage of the federal spousal impoverishment provisions in the Medicare Catastrophic Coverage Act of 1988. As discussed in Chapter Two, spousal impoverishment legislation allows a recipient to transfer up to \$70,740 in assets to a spouse in the community. In addition, the institutionalized spouse can divert up to \$1,769 in monthly income to support a spouse in the community. If the institutionalized spouse dies before the community spouse does, the State cannot recover these transferred assets since it does not presently collect from the estate of the community spouse.

CHAPTER 5

SUMMARY AND LEGISLATIVE CONSIDERATIONS

The recommendations contained throughout this report, and the matters for consideration by the General Assembly contained in this Chapter, are intended to help ensure that those individuals who can afford to pay for long-term care do, in fact, pay for their care. The report identifies areas where the Department of Public Aid's enforcement of property transfer laws can be strengthened to further limit the opportunities for individuals to purposefully transfer resources in order to qualify for Medicaid. The Department's program to recover Medicaid assistance and areas where collection authority could be expanded have also been reviewed.

This Chapter examines several areas of State law where changes may be warranted. Some are simply technical changes to bring State law into compliance with federal law. Others have more far reaching implications. Some changes would strengthen the State's enforcement of property transfer laws; others would allow the State to better track property and increase estate recoveries. Given the exceptions allowed under federal law, the difficulty in identifying transferred assets not reported by an applicant, and the complex task of tracking and recovering assets, these changes will not end improper transfers. However, the recommended changes would strengthen the State's enforcement of property transfer laws, lead to better control over property, and result in increased Medicaid recoveries.

OVERVIEW

The purpose of Medicaid is to provide medical care for eligible individuals who lack the resources to pay for such care themselves. It is not intended to pay for the long-term care of individuals who have sufficient resources to care for themselves. Federal and State laws contain specific restrictions to help ensure that assistance is not granted to individuals who have transferred or otherwise disposed of their assets with the intent to have Medicaid pay for their long-term care.

Medicaid also allows states to recover the cost of medical assistance provided to an individual. States can file liens on property owned by permanently institutionalized

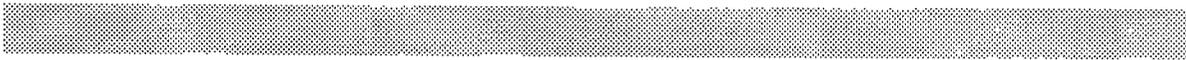
individuals. The cost of medical assistance provided can also be recovered through the filing of claims on the estate of a deceased recipient.

Property transfer restrictions, liens, and estate claims are integrally related in the overall concept of Medicaid funding of long-term care. Property transfer restrictions help ensure that individuals with sufficient resources pay for their own care, thereby helping control government's expenditures for long-term care. Lien authority helps states track the recipient's property so that it is not improperly transferred and, therefore, is available for the State to recover when it is no longer needed by the recipient or his or her family. Estate claim authority allows the State to recover, upon the death of a recipient, the cost of care it provided.

State law establishes Illinois's property transfers restrictions and estate claims requirements. These requirements are carried out by the Department of Public Aid through its policies and practices. The previous chapters in this report have focused on the Department of Public Aid's implementation of State requirements; changes have been recommended which should improve its enforcement of property transfer laws.

There are several areas of State law where changes may be warranted. Some are simply technical changes to bring State law into compliance with federal law. Others have more far reaching implications. Some changes would strengthen the State's enforcement of property transfer laws; others would allow the State to better track property and increase estate recoveries. Given the exceptions allowed under federal law, the difficulty in identifying transferred assets not reported by an applicant, and the complex task of tracking and recovering assets, these changes will not put an end to improper transfers. Nor will they result in the State recovering all monies due the State. However, these changes would strengthen the State's enforcement of property transfer laws, lead to better control over property, and result in increased Medicaid recoveries.

Finally, the recommendations contained throughout this report, and the matters for consideration by the General Assembly contained in this Chapter, are intended to help ensure that those individuals who can afford to pay for their long-term care, do in fact, pay for such care. The recommendations and matters for consideration are not intended to penalize those individuals who cannot pay for their care.

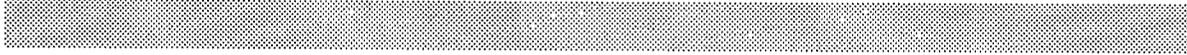


PROPERTY TRANSFER LAWS

Federal law sets the parameters for what states are required to do in administering their Medicaid programs. In several areas, State law has not been changed to reflect revisions in federal law. In these instances, however, IDPA rules, policies, and practices are

consistent with federal law. Consequently, while there are some differences between State and federal law, in practice the State's property transfer enforcement has been consistent with federal law. The technical revisions necessary to bring State law into compliance with federal law are as follows:

- Federal law applies property transfer restrictions to both the institutionalized individual and his or her spouse. Section 5-2.1 of the Public Aid Code makes transfer restrictions applicable to only the institutionalized spouse.
- Federal law allows transfers to the individual's blind or totally and permanently disabled child. While State law allows for the transfer of a homestead to the individual's blind, or totally and permanently disabled child, it does not allow for transfers of other property to that party.
- State law generally allows "transfers made under court order" as an exception to property transfer restrictions. Federal law limits this restriction to transfers ordered by the court to the spouse (42 U.S.C.A. Section 1396r-5(f)(3)).
- Section 11-15 of the Public Aid Code requires that the applicant provide information as to the amount of the property, both real and personal, owned within the five years preceding the application (305 ILCS 5/11-15, formerly Ill. Rev. Stat. 1991, ch. 23, par. 11-15). The five year requirement is a holdover from earlier years when State law prohibited transfers within five years of application. The application presently used by IDPA requires only 30 months information.



MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider making the following technical revisions to the Public Aid Code to make it consistent with federal law:

- 1. Apply property transfer restrictions to spouses of institutionalized individuals (Section 5-2.1);**
- 2. Allow the transfer of property to an individual's blind or totally and permanently disabled child (Section 5-2.1);**
- 3. Restrict court-ordered transfers to only the spouse (Section 5-2.1); and**
- 4. Require applicants to provide information on all real and personal property owned within 30 months of application (Section 11-15).**

Department of Public Aid Response:

The Department will work with the General Assembly to pursue legislation recommended for their consideration.

Transfer Restrictions Exclude Medicaid Community Waiver Recipients

There is another inconsistency between State and federal law pertaining to applicability of transfer restrictions. Through a federal waiver, Medicaid reimburses states for services provided to individuals which allow them to remain in the community rather than being institutionalized. These services include meal preparation, housekeeping, and adult day care. The services must cost the same or less than the cost of care in a long-term care facility.

Federal law requires that individuals participating in a Medicaid community waiver program must comply with property transfer restrictions (42 U.S.C.A. 1396p(c)). The Public Aid Code, however, applies transfer restrictions only to institutionalized individuals. Transfer restrictions do not apply to individuals participating in a Medicaid community waiver program. However, officials from IDPA, and the Departments on Aging and Rehabilitation Services, two agencies with Medicaid waiver programs, reported that applicants are asked about transfers when they apply for community-based Medicaid waiver services.

Clarification of the Public Aid Code to transfer restrictions to individuals served in Medicaid community waiver programs would help ensure that all Medicaid recipients receiving long-term care are treated consistently; it would also ensure compliance with federal law.

MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider amending Section 5-2.1 of the Public Aid Code to apply property transfer restrictions to recipients of Medicaid community waiver services in a manner consistent with federal law.

Department of Public Aid Response:

The Department will work with the General Assembly to pursue legislation recommended for their consideration.

Waivers from Federal Law

In Chapter 2, we examined several areas where federal and State requirements may allow individuals to transfer or shelter property in order to qualify for Medicaid. These areas included the 30 month look-back period, joint tenancy, pre-paid burial policies, spousal assets, and the calculation of the ineligibility period. We recommended that the Department of Public Aid consider pursuing waivers, if necessary, from the federal Health Care Financing Administration. If federal waivers are pursued and obtained, some changes in State law may be necessary. Such changes need to allow the State to limit the transferring or sheltering of assets, yet not unfairly penalize those individuals who truly need Medicaid or their families who may have minimal resources for self-support.

LIENS AND ESTATE CLAIMS

State law does not give IDPA the maximum collection authority allowed under federal law. Based on the experiences of other states and the Department's own analysis, additional collections of medical assistance are possible in Illinois. If the General Assembly wishes to increase the State's recovery of medical assistance payments, then three additional and interrelated areas of new authority need to be considered. As discussed in Chapter 4, these three areas are: liens for medical assistance cases; the recovery of assistance from the estate of the institutionalized individual's spouse, upon the spouse's death; and the recovery of assistance provided to permanently institutionalized individuals prior to the age of 65.

Liens serve two purposes. First, they allow the State to recover assistance provided if the property is sold. Second, they allow the State to track property to ensure that assets remain available for collection upon the death of the institutionalized individual and any surviving spouse or other exempted party.

It is the lien's function as a tracking mechanism which would be especially useful in conjunction with the second possible statutory change — that of recovering medical assistance

from the estate of the surviving spouse, upon the death of the surviving spouse. Without a lien, or some other form of legal device to preserve the State's interest in the property, a surviving spouse could dispose of all assets thereby rendering them uncollectible by the State. Also, a lien would allow the Department to more effectively and efficiently track the assets of the surviving spouse.

The third possible statutory revision is to grant IDPA the authority to recover assistance provided to permanently institutionalized recipients regardless of age. Presently, State law limits recovery to assistance provided once the recipient reaches age 65. This type of recovery would benefit from the tracking function of liens and the collection from the estate of the surviving spouse.

The purpose of these three changes is twofold: 1) to better track property so that it is available for recovery by the State after it is no longer needed by the institutionalized individual, community spouse, or dependent child; and 2) to allow the State to recover additional monies from the estates of individuals who have assets which can be used to repay the State for the costs incurred in providing for their long-term care while they were alive.



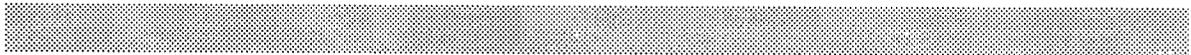
MATTER FOR CONSIDERATION BY THE GENERAL ASSEMBLY

The General Assembly may wish to consider amending the Public Aid Code, in a manner consistent with federal law, to authorize IDPA to:

- **impose liens on property owned by Medicaid recipients;**
- **place a claim on the estate of the surviving spouse of a Medicaid recipient to recover the cost of medical assistance provided to the recipient upon the death of the surviving spouse; and**
- **recover the cost of medical assistance paid to permanently institutionalized Medicaid recipients regardless of age.**

Department of Public Aid Response:

The Department has introduced legislation in this session to accomplish these changes.



APPENDIX A
PUBLIC ACT 87-1100

1 AN ACT to amend the Illinois Public Aid Code by changing 51
 2 Section 5-2.1. 52

3 Be it enacted by the People of the State of Illinois, 55
 4 represented in the General Assembly: 56

5 Section 1. The Illinois Public Aid Code is amended by 59
 6 changing Section 5-2.1 as follows:

7 (Ch. 23, par. 5-2.1) 62

8 Sec. 5-2.1. Property transfers. 64

9 (a) To the extent allowed under federal law, an 67
 10 institutionalized person shall not have made, at any time 68
 11 within 30 months immediately prior to the filing of his 69
 12 application or his institutionalization, whichever occurs 70
 13 later, or at any time thereafter, a voluntary or involuntary
 14 assignment or transfer of any legal or equitable interests in 71
 15 real property, other than a homestead, or in personal 72
 16 property, other than property excluded from the definition of 73
 17 "resources" in Section 1613 of the Social Security Act, as 74
 18 now or hereafter amended, whether vested, contingent or 75
 19 inchoate, for less than fair market value except as provided 76
 20 in this Section. This Section shall only apply to a person 77
 21 who is an inpatient in a medical institution or nursing 78
 22 facility, as defined by federal law.

23 (b) Any institutionalized person found to have made a 80
 24 transfer or assignment of property for less than fair market 81
 25 value to qualify for or increase his need for aid under this 83
 26 Article shall be ineligible for Aid for the lesser of (1) 30 84
 27 months or (2) the total uncompensated value of the resources 85
 28 so transferred divided by the average monthly cost, to a 86
 29 private patient at the time of the application, of nursing 88
 30 facility services in Illinois, provided that a different
 31 period is not required under federal law or regulation.

32 (c) If aid has been granted as a result of a failure to 90

Clerk of the House

John Quinn

Originated in the House of Representatives

PUBLIC ACT 87-1100

1 disclose any transfer or assignment of property or to report 91
 2 any change in status with respect to property, as required by 92
 3 Sections 11-18 and 11-19 of Article IX, the aid may at any 93
 4 time be cancelled or suspended for the lesser of (1) 30 94
 5 months or (2) the total uncompensated value of the resources
 6 so transferred divided by the average monthly cost, to a 95
 7 private patient at the time of the application, of nursing 96
 8 facility services in Illinois, provided that a different 97
 9 period is not required under federal law or regulation.

10 (d) The following transfers shall be exempt from the 99
 11 provisions of this Section:

12 (1) transfers made under court order; 101
 13 (2) transfers of a homestead to or solely for the 103
 14 benefit of a community spouse, dependent child, caretaker 104
 15 child, or sibling with an equity interest, in accordance 105
 16 with Section 1917(c)(2) of the Social Security Act, as 106
 17 now or hereafter amended;

18 (3) transfers that were intended to be for fair 108
 19 market value or were exclusively for a purpose other than 109
 20 to qualify for medical assistance; or

21 (4) transfers not otherwise exempt where the denial 111
 22 of eligibility would work an undue hardship. 112

23 (e) The Auditor General shall conduct a program audit of 114
 24 the Illinois Department's enforcement of this Section. The 115
 25 Auditor General's report of the audit shall be filed with the 116
 26 Legislative Audit Commission, the Governor, and the General 117
 27 Assembly. The need for any subsequent reaudit shall be 118
 28 determined by the Legislative Audit Commission. Each audit 119
 29 report shall include the Auditor General's findings and 120
 30 recommendations concerning the need for changes in the law
 31 concerning property transfers. 121
 32 (Source: P.A. 86-431; 86-1457.) 123

APPROVED

15th day of September, 1992 A.D.

Jim Edgar
GOVERNOR 64

Michael A. Madigan
Speaker, House of Representatives
Philip D. Cook
President of the Senate

APPENDIX B
CASE FILE REVIEW METHODOLOGY

APPENDIX B CASE FILE REVIEW METHODOLOGY

To obtain background information on long-term care cases and to test compliance with Departmental policies, we reviewed case files at four IDPA local offices. To ensure that the local offices visited were representative of IDPA local offices, we grouped the 102 counties into four categories:

- o under 350 long-term care recipients, 71 counties with a total number of recipients of 11,022
- o 351 to 750 long-term care recipients, 22 counties with a total number of recipients of 11,600
- o 751 to 2,500 long-term care recipients, 8 counties with a total number of recipients of 11,527
- o over 2,500, 1 county with a total number of recipients of 19,945.

From each of these four categories, we selected one office to visit. These offices were Jefferson County (275 recipients), Peoria County (685 recipients), DuPage County (2,422 recipients) and Nursing Home Services in Chicago (18,863 recipients). The specific offices were selected for various reasons, including their geographic location and the existence of an estate recovery pilot program.

We reviewed a total of 102 cases at the four offices. The number of cases reviewed at the local offices was proportional, based on the four groupings of counties. The minimum number of cases reviewed at a local office was 15. To weight the sample so that more cases from larger county offices were reviewed, we increased the number of cases reviewed in each larger county grouping by 7 cases. The following number of cases were reviewed at the each local office:

- o under 350 recipients — Jefferson County — 15 cases
- o 351 to 750 recipients — Peoria County — 22 cases
- o 751 to 2,500 recipients — DuPage County — 29 cases
- o over 2,500 recipients — Chicago Nursing Home Services — 36 cases.

We reviewed 49 cases randomly selected from an IDPA printout which identified cases which were initially denied, but subsequently approved. The cases included on this print-out were those initially denied due to: lack of cooperation in verifying assets, or voluntary withdrawal upon notification of IDPA's spend-down, estate claim, or lien policies. These cases may be indicative of instances where applicants had sizeable assets, withdrew from the application process, disposed of the assets, and then reapplied. Of the 102 cases to be reviewed, we had planned to review 52 cases from this printout; however, in three instances the cases selected were closed and had been sent to storage by the local office. The remaining 53 cases were selected either randomly from local office group care files (30 cases) or by local office staff as cases involving large assets or unique asset and/or transfer issues (23 cases).

In another sample, we reviewed 24 of the 35 cases where applications were denied due to an improper transfer in Fiscal Years 1991 and 1992. These cases were identified from an IDPA computer generated listing of cases so classified. The case files were sent to Springfield by the local offices for our review. Of the 11 files not reviewed, 10 had been sent to storage by the local office.

APPENDIX C

**OFFICE OF THE AUDITOR GENERAL
MEDICAID PROPERTY TRANSFER
SURVEY OF OTHER STATES**

APPENDIX C

MEDICAID PROPERTY TRANSFER SURVEY

State	DOCUMENTATION OF ASSETS											
	Ckg. Acct. Stmnts.	No. of Months	Savs. Acct. Stmnts.	No. of Months	Other Fin. Stmnts.	No. of Months	Federal Tax Return	Period Cov'd	State Tax Return	Period Cov'd	Insurance Policies	Deeds, Titles, Etc.
Arizona	yes	case by case	yes	case by case	yes	case by case	no	n/a	no	n/a	yes	exempt & non-exempt
California	yes	current and prior	yes	current and prior	yes	current and prior	perhaps to verify bus. prop.		perhaps to verify bus. prop.		yes	non-exempt
Florida	yes	month of app.	yes	month of app.	yes	month of app.	no	n/a	no	n/a	yes	non-exempt
Indiana	yes	12 - 60	yes	12 - 60	yes	12 - 60	yes	last filing year	yes	last filing year	yes	exempt & non-exempt
Maryland	yes	up to 30	yes	up to 30	yes	up to 30	as appropriate		as appropriate		yes	exempt & non-exempt
Massachusetts	yes	current	yes	30	yes	30	yes	last 2 years	yes		yes	exempt & non-exempt
Michigan	yes	current	yes	current	yes	current	yes	verify emp.asset income	yes	verify emp.asset income	yes	exempt & non-exempt
Minnesota	yes	30	yes	30	yes	30	if self employed		if self employed		yes	exempt & non-exempt
Missouri	yes	covered months/current	yes	covered months/current	yes	covered months/current	no	n/a	no	n/a	yes	non-exempt
New York	yes	30	yes	30	yes	30	Depends on case		Depends on case		yes	exempt & non-exempt
Oregon	yes	30	yes	30	yes	30	no	n/a	no	n/a	yes	exempt & non-exempt
Texas	yes	3	yes	3	yes		no	n/a	no	n/a	yes	exempt & non-exempt
Virginia	yes	current	yes	current			no	n/a	no	n/a	yes	exempt & non-exempt
Wisconsin	yes	up to 30	yes	up to 30	yes	up to 30	no	n/a	no	n/a	yes	non-exempt

Source: OAG from survey of other states

MEDICAID PROPERTY TRANSFER SURVEY (Continued)

States	Effective Techniques to Identify Transfers	Type of Consent Form Used	Real Prop. Search	Info. Case Workers Get on 1099 Match	Transfer Nursing Homes	Restrictions Inpatient Nursing Facilities	Apply To: Waivered Programs	Penalties for Non-Reporter	Auth. To Recover Improper Transfers	Method for Redetermination	No. of Transfers Denied Per Year	Laws Limit. Use of Trusts
Arizona	No systematic techniques	specific	not done	handled by Special Unit	yes	no	yes	no	no	on-site visit	n/a	no
California	Income Eligibility Verif. System (IEVS)	specific	at death or IEVS unit request	specifics	yes	yes	no	no	no	on-site visit & mailed form	10 at one point in time in 1991	yes
Florida	IRS Match	blanket	not done	specifics	yes	no	no	no	n/a	interview	n/a	no
Indiana	Soc. Sec. interfaces/ financial statements/ BMV data	blanket and specific	on all cases	specifics	yes	yes	yes	no	no	case file review	n/a	yes
Maryland	IEVS/ application review & interview	blanket/ verifications as requested		no specifics	yes	yes	yes	yes	no	case file review & mailed form	n/a	
Massachusetts	none	blanket and specific	not done	specifics	yes	no	no	no	no	mailed	n/a	no
Michigan	ques. on closed accounts	specific	not done	specifics	yes	yes	yes	yes	no	mailed form	n/a	no
Minnesota	bank statements/ copy of deeds	limited blanket/ specific	only if prop. reptd.	specifics	yes	no	yes	yes	yes	case file review & mailed form	113	yes
Missouri	county records/ collateral contact/ bank letters	specific	only if prop. reptd. or if suspect	specifics	yes	yes	yes	no	no	mailed form	81	no
New York	1099 match	blanket	varies by district	specifics	yes	yes	yes	no	yes	phone interview	n/a	yes
Oregon	IEVS	specific	only if reptd.	no specifics	yes	yes	yes	yes	yes	various methods	n/a	no
Texas	IRS tape match/ property records	blanket	on all cases, time & staff permtnng	specifics	yes	no	yes	no	no	mailed form	119 currently, 904 since April '90	no
Virginia	IEVS	blanket and specific	only if reptd.	specifics	yes	no	yes	no	yes	mailed form	n/a	yes
Wisconsin	ask client & verify docs.	blanket	not done	n/a	yes	no	yes	no	no	mailed form	n/a	no

APPENDIX D

**OFFICE OF THE AUDITOR GENERAL
MEDICAID LIEN AND ESTATE RECOVERY SURVEY
OF OTHER STATES**

APPENDIX D

MEDICAID LIEN AND ESTATE RECOVERY SURVEY

State	LIENS				
	Do You File Liens On Non-Exempt Property?	Do You File Liens On Client's Home?	How Do You Determine Intent To Return Home?	What Is Minimum Value of Property To File?	How Much Money Recovered From Liens In Latest FY?
Arizona*	n/a	n/a	n/a	n/a	n/a
California	no	yes	made by beneficiary	none	not available
Florida*	n/a	n/a	n/a	n/a	n/a
Indiana*	n/a	n/a	physician's report	n/a	n/a
Maryland	yes	yes	client completes statement of intent form/medical review done	\$2,500 for non-exempt property; none on home property	\$1,052,518
Massachusetts*	n/a	n/a	n/a	n/a	n/a
Michigan*	n/a	n/a	n/a	n/a	n/a
Minnesota*	n/a	n/a	n/a	n/a	n/a
Missouri*	n/a	n/a	n/a	n/a	n/a
New York	yes	if medically proven client cannot return home	if adequate medical evidence provided	none	unknown
Oregon*	n/a	n/a	n/a	n/a	n/a
Texas*	n/a	n/a	n/a	n/a	n/a
Virginia**					
Wisconsin	no	yes	based on physician's recommendations/facility input	none	\$1,526,428
Notes: * Does not use Medicaid liens. ** Did not respond to survey.					
Source: OAG from responses to state survey					

MEDICAID LIEN AND ESTATE RECOVERY SURVEY (Continued)

State	ESTATE RECOVERY								
	Do You Recover Medicaid Assistance After Age 65?	Do You Recover Medicaid Assistance To Perm. Inst. Recipients Before 65?	Do you Collect From Surviving Spouse's Estate?	How Do You Become Aware of Probated Estates?	How Do You Become Aware of Non-Probated Estates?	How Much Medicaid Estate Recovery Collections in Latest FY?	Do you Have Any Special Authority on Joint Tenancy?	Any Laws Limiting Use of Trust To Shelter Assets?	Have there Been Recent Court Challenges on Estate Recovery?
Arizona*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
California	yes	yes	no	from heir, executor or administrator,	from heir, executor, administrator, or Public Administrator	\$22.2 million	no	no	yes
Florida	yes	no	no	notified by public assistance worker	notified by public assistance worker	not available, but minimal	no	no	no
Indiana	yes	no	no				no	no	no
Maryland	yes	no	no	County Reg. of Wills	loc. offices notify	\$1,496,371	no	no	yes
Massachusetts	yes	yes	no	notified by executor or administrator	notified by caseworker	\$8,300,000	no	yes	
Michigan*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Minnesota	yes	yes	yes	newspapers, death match, prob. notices	newspapers, death match	\$8,879,679	no	no	no
Missouri	yes	yes	yes	death match with vital statistics	no recovery from these estates	\$1,135,186	no	no	no
New York	yes	yes	yes	review of probate/nursing home notification	nursing home notification	unknown	no	yes	no
Oregon	yes	no	yes	probate/deceased client and spouse match; reports from branch office	reports from branch office/initiates probate if no heirs	\$7,300,000	no	no	no
Texas*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Virginia**									
Wisconsin	yes	yes	yes	attorney or representative files form/ Register in Probate	contacted directly by party holding cash assets	\$513,840	yes	no	no

Notes: * Does not perform estate recovery.
 ** Did not respond to survey.

Source: OAG from responses to state survey

APPENDIX E
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SELECTED BIBLIOGRAPHY

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APPENDIX F

IDPA HOSPITAL/NURSING HOME APPLICATION FORM



Illinois Department of Public Aid

REQUEST FOR MEDICAL ASSISTANCE — HOSPITAL/NURSING HOME APPLICATION

SUBMITTING HOSPITAL/NURSING HOME _____ DATE OF ADMISSION _____ DISCHARGE _____ ADMITTING DIAGNOSIS _____			DATE STAMP			
CASE NUMBER	CASE NAME	SCREENER I.D.	WORKER I.D.			
1. LAST NAME (APPLICANT)	FIRST NAME	M.I.	MAIDEN NAME			
2. LAST NAME (PATIENT)	FIRST NAME	M.I.	MAIDEN NAME			
3. PRESENT ADDRESS	STREET	APT. NO.	CITY	STATE	ZIP	COUNTY
4. MAILING ADDRESS (IF DIFFERENT)						
5. PREVIOUS ADDRESS						
6. DO YOU LIVE IN A NURSING HOME, DRUG/ALCOHOL TREATMENT CENTER OR A SHELTER FOR BATTERED WOMEN? YES _____ NO _____			7. TELEPHONE NUMBERS: HOME _____ WORK _____			
NAME: _____			8. NUMBER OF PERSONS IN YOUR HOUSEHOLD _____			
9. DO YOU OR DOES ANYONE LIVING WITH YOU HAVE A LEGAL GUARDIAN? YES _____ NO _____ IF YES, WHO? _____ NAME OF GUARDIAN: _____						
10. DID YOUR ONLY INCOME AND/OR THAT OF PEOPLE LIVING WITH YOU RECENTLY STOP? YES _____ NO _____ IF YES, GIVE DATE _____						

11. GIVE THE FULL NAME, SEX, BIRTHDATE, BIRTH PLACE, SOCIAL SECURITY NUMBER AND RELATIONSHIP OF ALL PERSONS LIVING WITH YOU (PATIENT).

FULL NAME			SEX	BIRTHDATE			BIRTH PLACE	SOCIAL SECURITY NUMBER	RELATIONSHIP TO APPLICANT (wife, child, parent, aunt, nephew, grand-child, etc.)
FIRST	MIDDLE	LAST		MO	DAY	YR			
(APPL)									

12. WHY DO YOU NEED ASSISTANCE?

13. HOW HAVE YOU MANAGED IN THE PAST?

14. HAS ANYONE RECEIVED OR DOES ANYONE EXPECT TO RECEIVE INCOME IN THE PAST 30 DAYS?
 YES _____ NAME _____ NO _____
 IN THE NEXT 30 DAYS? YES _____ NAME _____ NO _____

15. IF APPLICATION IS FOR A DECEASED PERSON, GIVE NAME _____ DATE OF DEATH _____

16. FOR EACH ABSENT PARENT OF A DEPENDENT CHILD, GIVE THE REASON FOR THE ABSENCE.

DEPENDENT _____ ABSENT PARENT DUE TO _____

17. IS ANYONE IN YOUR HOUSEHOLD BLIND, INCAPACITATED, DISABLED OR PREGNANT? YES _____
 NAME _____ / NO _____ IF YES, ENTER DATE EXPECTED TO END _____

18. IS ANYONE IN YOUR HOUSEHOLD CURRENTLY EMPLOYED OR EMPLOYED WITHIN THE LAST THREE MONTHS?
 YES _____ NO _____
 IF YES, COMPLETE THE FOLLOWING FOR EACH PERSON OVER AGE 14 WHO IS CURRENTLY EMPLOYED OR WORKED IN THE LAST THREE MONTHS.

NAME _____ POSITION/TITLE _____
 EMPLOYER NAME (IF SELF EMPLOYED, ENTER SELF) _____
 ADDRESS _____ CITY _____ STATE _____ ZIP _____
 # HOURS WORKED WEEKLY _____ HOW OFTEN PAID _____ HOW MUCH \$ _____

NAME _____ POSITION/TITLE _____
 EMPLOYER NAME (IF SELF EMPLOYED, ENTER SELF) _____
 ADDRESS _____ CITY _____ STATE _____ ZIP _____
 # HOURS WORKED WEEKLY _____ HOW OFTEN PAID _____ HOW MUCH \$ _____

19. DOES ANYONE IN YOUR HOUSEHOLD RECEIVE OR HAS ANYONE APPLIED FOR SUPPLEMENTARY SECURITY INCOME?
 YES _____ NAME _____ . NO _____ . PAYMENTS FOR DISABILITY OR BLINDNESS
 FROM SOCIAL SECURITY? YES _____ . NAME _____ . NO _____ .

20. DOES ANYONE IN YOUR HOUSEHOLD GO TO SCHOOL? YES _____ NO _____ IF YES, COMPLETE THE FOLLOWING FOR EACH
 PERSON IN SCHOOL.

NAME	TYPE OF SCHOOL	NAME OF SCHOOL	GRADE

21. DOES ANYONE IN YOUR HOUSEHOLD RECEIVE, OR HAS ANYONE APPLIED FOR OR PREVIOUSLY RECEIVED, PUBLIC ASSISTANCE
 (CASH, MEDICAL OR FOOD STAMPS) IN ILLINOIS?
 YES _____ NAME _____ TYPE OF ASSISTANCE _____ / NO _____

22. HAS ANYONE RECEIVED OR APPLIED FOR ASSISTANCE USING ANOTHER NAME?
 YES _____ NAME _____ OTHER NAME USED _____ / NO _____

23. IS EVERYONE IN YOUR HOUSEHOLD A U.S. CITIZEN? YES _____ NO _____
 IF NO, GIVE NAMES AND BIRTHPLACES OF PERSONS WHO ARE NOT U.S. CITIZENS.

24. LANGUAGE PREFERENCE: ENGLISH _____ SPANISH _____

25. DO YOU OR DOES ANYONE HAVE ANY OF THE FOLLOWING?

1. STOCKS	9. PENSION OR RETIREMENT FUND	16. FARM EQUIPMENT
2. BONDS	10. CERTIFICATE OF DEPOSIT	17. INSURANCE DISABILITY PAYMENTS
3. BURIAL PLAN	11. MONEY MARKET FUNDS	18. NURSING HOME PERSONAL ACCOUNTS
4. BURIAL LOTS	12. MUTUAL FUNDS	19. OIL, COAL, GAS OR MINERAL RIGHTS
5. ESTATE BEQUESTS	13. IRA OR KEOUGH ACCOUNT	20. ALIEN SPONSOR'S ACCOUNT
6. TRUST FUND	14. DEFERRED COMPENSATION	21. SAFE DEPOSIT BOX
7. TAX REFUND	15. BUSINESS EQUIPMENT	22. OTHER
8. NON-RECURRING INCOME		

YES _____ NO _____ IF YES, WHO IS THE OWNER OF THE ASSET AND WHAT IS IT? GIVE A COMPLETE
 DESCRIPTION OF EACH ASSET (FOR EXAMPLE, CERTIFICATE OF DEPOSIT, LINCOLN
 NATIONAL BANK, CHICAGO) AND DATE OR DATES HELD. ENTER THE DOLLAR VALUE OF
 EACH ASSET.

25. Continued

OWNER _____ DESCRIPTION AND LOCATION OF ASSET _____

VALUE _____ DATES OWNED _____

OWNER _____ DESCRIPTION AND LOCATION OF ASSET _____

VALUE _____ DATES OWNED _____

OWNER _____ DESCRIPTION AND LOCATION OF ASSET _____

VALUE _____ DATES OWNED _____

26. DOES ANYONE HAVE CASH ON HAND? YES _____ \$ _____ / NO _____

27. DOES ANYONE HAVE A CHECKING, CREDIT UNION OR SAVINGS ACCOUNT? YES _____ NO _____
IF YES, GIVE OWNER, DESCRIPTION OF ASSET, VALUE AND LOCATION.

OWNER _____ DESCRIPTION _____

LOCATION _____ VALUE \$ _____

OWNER _____ DESCRIPTION _____

LOCATION _____ VALUE \$ _____

OWNER _____ DESCRIPTION _____

LOCATION _____ VALUE \$ _____

28. DOES ANYONE OWN LIFE INSURANCE? YES _____ NO _____
IF YES, GIVE OWNER, INSURANCE CO., POLICY NUMBER, FACE VALUE AND CASH VALUE.

OWNER _____ INSURANCE COMPANY _____

POLICY # _____ FACE VALUE \$ _____ CASH VALUE \$ _____

OWNER _____ INSURANCE COMPANY _____

POLICY # _____ FACE VALUE \$ _____ CASH VALUE \$ _____

OWNER _____ INSURANCE COMPANY _____

POLICY # _____ FACE VALUE \$ _____ CASH VALUE \$ _____

29. DOES ANYONE OWN OR PAY ON CARS, TRUCKS, MOTORCYCLES, BOATS, CAMPERS, ETC?
YES _____ NO _____. IF YES, GIVE OWNER, DESCRIPTION OF VEHICLE(S), VALUE OF VEHICLE, AMOUNT, IF ANY, OWED ON VEHICLE AND WHAT IT IS USED FOR.

OWNER _____ MAKE _____ MODEL _____ YEAR _____

VALUE \$ _____ AMOUNT OWED \$ _____ USE _____

OWNER _____ MAKE _____ MODEL _____ YEAR _____

VALUE \$ _____ AMOUNT OWED \$ _____ USE _____

OWNER _____ MAKE _____ MODEL _____ YEAR _____

VALUE \$ _____ AMOUNT OWED \$ _____ USE _____

30. DOES ANYONE OWN OR PAY ON PROPERTY SUCH AS LAND, BUILDINGS, HOUSES OR DOES ANYONE OWN ANY BURIAL SPACE NOT INTENDED FOR USE BY THE PERSON OR AN IMMEDIATE FAMILY MEMBER?
YES _____ NO _____. IF YES, GIVE OWNER, TYPE OF PROPERTY, LOCATION AND AMOUNT OWED.

OWNER _____ TYPE _____

LOCATION _____ AMOUNT OWED \$ _____

IS THIS HOMESTEAD PROPERTY? YES _____ NO _____

OWNER _____ TYPE _____

LOCATION _____ AMOUNT OWED \$ _____

IS THIS HOMESTEAD PROPERTY? YES _____ NO _____

31. IF YOU LIVE IN A NURSING HOME, HAVE YOU SOLD OR GIVEN AWAY ANY ASSET SUCH AS PROPERTY, LAND, INSURANCE, STOCKS, CERTIFICATES OF DEPOSIT, ETC. WITHIN THE LAST 30 MONTHS? YES _____ NO _____.
IF YES, GIVE PERSON WHO TRANSFERRED THE ASSET, A DESCRIPTION OF THE ASSET, THE DATE TRANSFERRED, THE VALUE OF THE ASSET AND THE REASON FOR THE TRANSFER.

PERSON WHO TRANSFERRED ASSET _____

DESCRIPTION OF ASSET _____

DATE TRANSFERRED _____ VALUE _____

REASON _____

PERSON WHO TRANSFERRED ASSET _____

DESCRIPTION OF ASSET _____

DATE TRANSFERRED _____ VALUE _____

REASON _____

32. DOES ANYONE RECEIVE MONEY FROM ANY SOURCE LISTED BELOW? IF YES, ENTER TYPE, AMOUNT OF INCOME AND ACCOUNT NUMBER, IF APPLICABLE.

- | | |
|--|--------------------------------------|
| 1. ROOMERS AND BOARDERS | 13. WORKMEN'S COMPENSATION |
| 2. DEPT. OF CHILDREN AND FAMILY SERVICES | 14. SICK PAY |
| 3. JTPA | 15. SERVICEMEN'S DEPENDENT ALLOWANCE |
| 4. UNEMPLOYMENT BENEFITS | 16. PUBLIC AID |
| 5. SCHOLARSHIP, FELLOWSHIP, GRANT, STUDENT LOAN | 17. HOSPITAL MEDICAL INSURANCE |
| 6. CHILD SUPPORT | 18. UNION BENEFITS |
| 7. VETERANS BENEFITS | 19. CONTRIBUTIONS FROM RELATIVES |
| 8. VISTA-TITLE I OR II | 20. SUPPORT FROM RELATIVES |
| 9. BLACK LUNG BENEFIT | 21. LUMP SUM PAYMENTS |
| 10. RAILROAD RETIREMENT | 22. INCOME FROM PROPERTY |
| 11. GOVERNMENT PENSION
(STATE, FEDERAL, MUNICIPAL, OTHER LOCAL) | 23. DIVIDENDS OR INTEREST |
| 12. NON-GOVERNMENT PENSION | 24. OTHER (SPECIFY BELOW) |

YES _____ NO _____

NAME _____ TYPE _____ AMOUNT \$ _____ ACCOUNT # _____

NAME _____ TYPE _____ AMOUNT \$ _____ ACCOUNT # _____

NAME _____ TYPE _____ AMOUNT \$ _____ ACCOUNT # _____

NAME _____ TYPE _____ AMOUNT \$ _____ ACCOUNT # _____

NAME _____ TYPE _____ AMOUNT \$ _____ ACCOUNT # _____

33. IS ANYONE ON STRIKE? YES _____ NAME _____ / NO _____

DATE STRIKE STARTED _____ GROSS PAY PRIOR TO STRIKE \$ _____

34. HAS ANYONE RECEIVED ASSISTANCE FROM A STATE OTHER THAN ILLINOIS?

YES _____ NAME _____ / NO _____

TYPE OF ASSISTANCE _____ STATE _____

35. DID YOU (PATIENT) RECEIVE ANY MEDICAL SERVICES DURING THE 3 MONTHS PRIOR TO THE MONTH OF THIS

APPLICATION? YES _____ MONTHS _____ / NO _____

IF YES, DO YOU WANT DPA TO EVALUATE ELIGIBILITY FOR THESE BILLS?

YES _____ MONTHS _____ / NO _____

36. ARE YOU (PATIENT) COVERED BY HEALTH OR HOSPITAL INSURANCE NOW AND/OR IN THE LAST FOUR MONTHS?

YES _____ NO _____

IF YES, GIVE TYPE OF INSURANCE _____

INSURANCE COMPANY _____ PREMIUM \$ _____

ACCOUNT NUMBER _____

(IF MORE THAN ONE INSURANCE, ATTACH AN EXTRA PAGE)

37. DO YOU (PATIENT) HAVE MEDICARE? YES _____ NO _____ CLAIM NUMBER _____
38. WHAT KIND OF WORK DO YOU USUALLY DO? _____
39. DOES ANYONE PAY FOR SOMEONE TO BABYSIT/CARE FOR A CHILD SO THEY CAN WORK? YES _____ NO _____ OR GO TO SCHOOL? YES _____ NO _____ HOW MUCH \$ _____ HOW OFTEN _____ WHO PROVIDES CARE? _____ RELATIONSHIP _____ ADDRESS _____ PHONE _____ WHO PAYS FOR CHILD CARE _____
40. DOES ANYONE PAY COURT ORDERED CHILD SUPPORT OR ALIMONY? YES _____ NO _____ AMOUNT \$ _____ HOW OFTEN _____ COURT ORDERED? YES _____ NO _____ PERSON WHO PAYS _____ FOR WHOM _____ AMOUNT \$ _____ HOW OFTEN _____ COURT ORDERED? YES _____ NO _____ PERSON WHO PAYS _____ FOR WHOM _____
41. WHAT IS THE HIGHEST GRADE YOU COMPLETED? _____
42. WHAT IS YOUR MARITAL STATUS? _____
43. WHAT IS YOUR VETERAN STATUS? NONE _____ VETERAN _____ SPOUSE OF VETERAN _____ CHILD OF VETERAN _____ PARENT OF VETERAN _____ WIDOW(ER) OF VETERAN _____
44. GIVE THE DATE THE CURRENT ILLINOIS RESIDENCE BEGAN FOR ALL PERSONS WHO HAVE NOT ALWAYS LIVED IN ILLINOIS. NAME _____ DATE _____ NAME _____ DATE _____ NAME _____ DATE _____ NAME _____ DATE _____
45. WHO IS TO BE NOTIFIED IN CASE OF EMERGENCY/DEATH? NAME _____ ADDRESS _____ TELEPHONE NUMBER _____
46. WHAT IS THE ETHNIC GROUP? (THIS INFORMATION IS BEING COLLECTED ONLY TO BE SURE THAT EVERYONE RECEIVES ASSISTANCE ON A FAIR BASIS. THIS INFORMATION WILL NOT AFFECT CASE ELIGIBILITY) WHITE _____ BLACK _____ AMERICAN INDIAN OR ALASKA NATIVE _____ HISPANIC (INCLUDE MEXICAN, PUERTO RICAN, CUBAN OR OTHER SOUTH AMERICAN CULTURE) _____ ASIAN, OR PACIFIC ISLANDER (INCLUDES INDOCHINESE ANCESTRY) _____

READ AND SIGN THIS PAGE IF YOU WANT MEDICAL ASSISTANCE

I UNDERSTAND THAT BY SIGNING THIS APPLICATION FORM, I CONSENT TO ANY INVESTIGATION MADE BY THE DEPARTMENT OF PUBLIC AID TO VERIFY OR CONFIRM THE INFORMATION I HAVE GIVEN OR ANY OTHER INVESTIGATION MADE BY THEM IN CONNECTION WITH MY REQUEST FOR PUBLIC ASSISTANCE.

WHEN YOU FILE AN APPLICATION FOR MEDICAL ASSISTANCE, A DETERMINATION OF YOUR ELIGIBILITY UNDER ANY OF THE OTHER PROGRAMS ADMINISTERED BY THE DEPARTMENT WILL NOT BE MADE. IF YOU WANT TO BE CONSIDERED FOR ANOTHER PROGRAM(S), YOU MUST FILE AN APPLICATION AT THE DEPARTMENT OF PUBLIC AID FOR THAT PROGRAM.

I AGREE TO INFORM THE AGENCY WITHIN 5 DAYS OF ANY CHANGE IN MY HOUSEHOLD NEEDS, INCOME, PROPERTY, LIVING ARRANGEMENTS, SCHOOL ATTENDANCE OR ADDRESS.

I UNDERSTAND GIVING FALSE INFORMATION OR FAILURE TO PROVIDE THE ABOVE INFORMATION CAN RESULT IN REFERRAL FOR PROSECUTION FOR FRAUD.

I UNDERSTAND THAT IF I AM NOT SATISFIED WITH THE ACTION TAKEN ON MY APPLICATION I HAVE THE RIGHT TO A FAIR HEARING. I UNDERSTAND I CAN ASK FOR A FAIR HEARING BY GETTING IN TOUCH WITH THE OFFICE WHERE I APPLIED OR BY WRITING TO THE DEPARTMENT OF PUBLIC AID, 100 SOUTH GRAND AVENUE, SPRINGFIELD, ILLINOIS 62762-0001.

I UNDERSTAND AND AGREE THAT BY SIGNING THIS FORM, I GIVE THE DEPARTMENT OF PUBLIC AID THE RIGHT, WITHOUT THE NECESSITY OF OTHER ASSIGNMENT OF CLAIM OR AUTHORIZATION, TO RECOVER, UNDER THE TERMS OF ANY PRIVATE OR PUBLIC HEALTH CARE COVERAGE, ANY AMOUNT FOR WHICH I OR A MEMBER OF MY HOUSEHOLD MAY BE ELIGIBLE.

BY SIGNING, I SWEAR THAT THE INFORMATION GIVEN ON THE ELIGIBILITY FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGN YOUR NAME OR
MAKE YOUR MARK _____ DATE

APPLICANT _____

SPOUSE _____ DATE

IF SOMEBODY HELPED YOU FILL OUT THIS FORM AND WROTE ON IT, HE/SHE MUST SIGN HERE, OR IF YOU HAVE MADE YOUR MARK (X) INSTEAD OF SIGNING YOUR NAME, ONE WITNESS MUST SIGN HERE:

SIGNATURE OF WITNESS

APPLICATION BASED ON BLINDNESS MUST BE ATTESTED BY TWO WITNESSES:

SIGNATURE OF WITNESS

SIGNATURE OF WITNESS

IF APPLICATION IS INITIATED BY SOMEONE ELSE IN BEHALF OF THE APPLICANT, HE MUST SIGN BELOW:

SIGNATURE DATE RELATIONSHIP

HOME ADDRESS APT. NO. TELEPHONE NUMBER

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST BECAUSE OF RACE, COLOR, SEX, RELIGION, NATIONAL ORIGIN, HANDICAP, OR POLITICAL BELIEF, YOU HAVE THE RIGHT TO FILE A COMPLAINT WITH: THE DEPARTMENT OF PUBLIC AID, EEO COORDINATOR, 100 S. GRAND AVE. SPRINGFIELD, ILLINOIS 62762-0001 OR WITH: THE SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, D.C. 20201.

APPENDIX G
AGENCY RESPONSES



Phil Bradley
Director

Illinois Department of Public Aid

Jesse B. Harris Building
100 South Grand Avenue East
Springfield, Illinois 62762-0001

April 28, 1993

Mr. Jim Schlouch, Audit Manager
Office of the Auditor General
Marriott Commerce Building, Room 151
509 South Sixth Street
Springfield, Illinois 62701-1878

Dear Mr. Schlouch:

Thank you for the opportunity to respond to the audit of The Department of Public Aid's Enforcement of Property Transfer Laws.

Response to Report Conclusions:

As this report indicates, enforcement of Medicaid property transfer laws is a difficult and complex process. State laws and Department of Public Aid policies must follow federal law. Past federal and private reports have cited weaknesses in federal laws which allow individuals, under certain transfer exemptions, to transfer or shelter property in order to qualify for Medicaid. States must also contend with a specialized area of law on estate planning which advises clients on ways to legally transfer or shelter property. A number of books and publications which describe how to legally avoid transfer restrictions are also available.

To strengthen enforcement of property transfer laws, the Department is in the process of implementing all the report recommendations. Also, we are prepared to work with the General Assembly to pursue legislation recommended for their consideration. We have already introduced some of the suggested changes in this session.

Response to Recommendation #1:

We agree with the recommendation. The Department, pursuant to the Administrative Procedures Act, will initiate a change in rules to remove the exception of transfers in which the individual did not consent or assist. Upon adoption of the revised rule, Section 505.5 of the policy manual will be changed to remove the exception.

Response to Recommendation #2:

We agree with the recommendation. The Department will attempt to obtain federal waivers to control property transfers. HCFA officials have told states that successful waivers in this area would have to be demonstration waivers, i.e., they are established for a finite period to test a hypothesis and a scientific evaluation must be conducted with a control group that follows existing policy.

Legislation was introduced to amend the Public Aid Code to prohibit a person from transferring real property, for less than fair market value, within 60 months immediately before applying for Medicaid or being admitted to a nursing home. Implementation is contingent upon obtaining waivers to federal laws and regulations.

Response to Recommendation #3:

We agree with the recommendation. The Department concurs with the recommendation to revise policy to place the burden of proof for establishing the reason for the transfer upon the applicant and the recommendation to adopt a policy to restrict multiple transfers. Pursuant to the Administrative Procedures Act, rule development will be initiated and policy revised upon the rule becoming final.

The Department will also provide more descriptions and guidelines of allowable and unallowable transfers. In addition to expanding policy, we will determine the feasibility of a centralized unit to provide additional direction and guidance to local offices regarding specific property transfer situations.

Response to Recommendation #4:

We agree with the recommendation. The Department will establish a pilot project to evaluate the usefulness of obtaining federal tax returns and obtaining the application completed for admission into the long-term care facility. Additional financial institution statements will be requested from applicants.

Response to Recommendation #5:

We agree with the recommendation. The Department is in the process of revising policies and procedures to include a section on useful techniques to identify possible property transfers and will require contact with the applicant when they are capable of providing information.

Response to Recommendation #6:

We agree with the recommendation. The Department is in the process of revising the Combined Application Form, the Nursing Home Application Form and the "Instructions to Client" form to include the recommended additional disclosure information. The Metro Chicago Zone and Nursing Home Services Offices have been directed to ensure that only the current version of the Hospital/Nursing Home Application Form (DPA 2378H) is being used.

Response to Recommendation #7:

We agree with the recommendation. The Department is in the process of revising the "Instructions to Recipient" form (DPA 1721) and the Redetermination - Group Care/Sheltered Care" form (DPA 1229) to include the suggested disclosure information.

Response to Recommendation #8:

We agree with the recommendation. The Department will be establishing a system that allows the caseworkers to receive the detailed match information and complies with the confidentiality requirements established by the Internal Revenue Service. We are currently contacting other States to determine how they both provide the information to caseworkers and comply with IRS confidentiality requirements.

Instructions issued with the match materials will be revised to remind local office staff of the asset transfer policy for long term care cases and the need to document the disposition of the asset as well as the current status of the asset and is expected to be completed by June 30, 1993.

All nursing home applicants will be notified of unearned income matches in the same manner effective with the next match.

Response to Recommendation #9:

We agree with the recommendation. A training package will be developed by June 1993 and added to the catalog of available classes. Identification of potential property transfers will be added to the regular training package for intake workers.

Matters For Consideration By The General Assembly:

The General Assembly may wish to consider making the following technical revisions to the Public Aid Code to make it consistent with federal law:

1. Apply property transfer restrictions to spouses of institutionalized individuals (Section 5-2.1);
2. Allow the transfer of property to an individual's spouse, and blind or totally and permanently disabled child (Section 5-2.1);
3. Restrict court-ordered transfers to only the spouse (Section 5-2.1); and
4. Require applicants to provide information on all real and personal property owned within 30 months of application (Section 11-15).

Response:

The Department will work with the General Assembly to pursue legislation recommended for their consideration.

April 28, 1993

Matters For Consideration By The General Assembly:

The General Assembly may wish to consider amending Section 5-2.1 of the Public Aid Code to apply property transfer restrictions to recipients of Medicaid community waiver services in a manner consistent with federal law.

Response:

The Department will work with the General Assembly to pursue legislation recommended for their consideration.

Matters For Consideration By The General Assembly:

The General Assembly may wish to consider amending the Public Aid Code, in a manner consistent with federal law, to authorize IDPA to:

- . impose liens on property owned by Medicaid recipients;
- . place a claim on the estate of the surviving spouse of a Medicaid recipient to recover medical assistance provided to the recipient upon the death of the surviving spouse; and
- . permit recovery of medical assistance paid to permanently institutionalized Medicaid recipients regardless of age.

Response:

The Department has introduced legislation in this session to accomplish these changes.

If you have any questions, please contact me.

Sincerely,



James R. Donkin, CIA
Chief Internal Auditor

JRD:jec