United States Government Accountability Office

GAO

Report to Congressional Requesters

September 2005

# MEDICAID

# Transfers of Assets by Elderly Individuals to Obtain Long-Term Care Coverage


GAO-05-968

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GAO Accountability · Integrity · Reliability

Highlights

Highlights of GAO-05-968, a report to congressional requesters

## Why GAO Did This Study

In fiscal year 2004, the Medicaid program financed about $93 billion for long-term care services. To qualify for Medicaid, individuals' assets (income and resources) must be below certain limits. Because long-term care services can be costly, those who pay privately may quickly deplete their assets and become eligible for Medicaid. In some cases, individuals might transfer assets to spouses or other family members to become financially eligible for Medicaid. Those who transfer assets for less than fair market value may be subject to a penalty period that can delay their eligibility for Medicaid.

GAO was asked to provide data on transfers of assets. GAO reviewed (1) the level of assets held and transferred by the elderly, (2) methods used to transfer assets that may result in penalties, (3) how states determined financial eligibility for Medicaid long-term care, and (4) guidance the Centers for Medicare & Medicaid Services (CMS) has provided states regarding the treatment of asset transfers. GAO analyzed data on levels of assets and cash transfers made by the elderly from the 2002 Health and Retirement Study (HRS), a national panel survey; analyzed states' Medicaid applications; and interviewed officials from nine states about their eligibility determination processes.

www.gao.gov/cgi-bin/getrpt?GAO-05-968.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Kathryn G. Allen at (202) 512-7118 or allenk@gao.gov.

## What GAO Found

In 2002, over 80 percent of the approximately 28 million elderly households (those where at least one person was aged 65 or over) had annual incomes of $50,000 or less, and about one-half had nonhousing resources, which excluded the primary residence, of $50,000 or less. About 6 million elderly households (22 percent) reported transferring cash, with amounts that varied depending on the households' income and resource levels. In general, the higher the household's asset level, the more likely it was to have transferred cash during the 2 years prior to the HRS study. Overall, disabled elderly households—who are at higher risk of needing long-term care—were less likely to transfer cash than nondisabled elderly households.

**Cash Transferred in the Previous 2 Years as Reported by Elderly Households with Varying Levels of Income and Nonhousing Resources, 2002**

| Median elderly household | | Percentage of all elderly households | Percentage of group that transferred cash | Dollar amount of cash transferred | |
|---|---|---|---|---|---|
| Income | Nonhousing resources | | | Median (midpoint) | Mean (average) |
| ≤$24,200 | ≤$51,500 | 36.7 | 10.4 | $2,000 | $4,000 |
| ≤$24,200 | >$51,500 | 13.3 | 19.0 | 4,000 | 8,320 |
| >$24,200 | ≤$51,500 | 13.3 | 27.5 | 2,000 | 3,910 |
| >$24,200 | >$51,500 | 36.7 | 31.7 | 4,000 | 12,010 |

Source: GAO analysis of data from the 2002 Health and Retirement Study.

Certain methods to reduce assets, such as spending money to pay off debt or make home modifications, do not result in penalty periods. Other methods, such as giving gifts, transferring property ownership, and using certain financial instruments, could result in penalty periods, depending on state policy and the specific arrangements made. None of the nine states GAO contacted tracked or analyzed data on asset transfers or penalties applied. These states required applicants to provide documentation of assets but varied in the amount of documentation required and the extent to which they verified the assets reported. These states generally relied on applicants' self-reporting of transfers of assets, and officials from these states informed GAO that transfers not reported were difficult to identify.

To help states comply with requirements related to asset transfers, CMS has issued guidance primarily through the State Medicaid Manual. CMS released a special study in 2005 to help states address the issue of using annuities as a means of sheltering assets. Additionally, CMS officials provide ongoing technical assistance in response to state questions, but noted the challenge of issuing guidance applicable to all situations given the constantly changing methods used to transfer assets in an attempt to avoid a penalty period.

In commenting on a draft of this report, CMS noted the complexity of the current law and commented that data on the precise extent and cost of asset transfers to the Medicaid program have been difficult to gather.

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## Abbreviations

| | |
|---|---|
| ADL | activities of daily living |
| CMS | Centers for Medicare & Medicaid Services |
| HRS | Health and Retirement Study |
| IADL | instrumental activities of daily living |
| IEVS | Income and Eligibility Verification System |
| SSI | Supplemental Security Income |

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**United States Government Accountability Office**
**Washington, DC 20548**

September 2, 2005

The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Sherrod Brown
Ranking Minority Member
Subcommittee on Health
Committee on Energy and Commerce
House of Representatives

The Honorable Henry A. Waxman
House of Representatives

As people age, their ability to carry out certain basic physical functions declines, increasing the likelihood that they will need long-term care. In 2003, nearly half of the nation's total expenditures of about $183 billion for long-term care, including nursing home payments, were paid for by the Medicaid program, the joint federal-state health care financing program that covers certain categories of low-income individuals.[1] Medicaid expenditures for long-term care in 2004 were about $93 billion out of total Medicaid expenditures of $295 billion. With the aging of the population and the likely increase in demand for long-term care, federal Medicaid spending is expected to more than double in size over the next 10 years.[2]

To qualify for Medicaid coverage for long-term care services, individuals must meet certain financial and functional eligibility criteria.[3] To meet the

[1]In addition to nursing home services, other health care services for long-term care include home health, personal care services, assisted living, and noninstitutional group living arrangements.

[2]Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2006 to 2015* (Washington, D.C.: January 2005).

[3]The functional eligibility criteria are established by each state and generally involve a degree of impairment measured by the level of assistance an individual needs to perform activities of daily living (ADL) such as eating, bathing, dressing, using the toilet, getting in and out of bed, and getting around the house, as well as instrumental activities of daily living (IADL) such as preparing meals, shopping for groceries, and getting around outside.

financial eligibility criteria, individuals must have assets that fall below established standards, which vary by state but are within standards set by the federal government. Assets include income, which is anything received during a calendar month that is used or could be used to meet food, clothing, or shelter needs; and resources, which are anything owned, such as savings accounts, stocks, or property, that can be converted to cash.[4] Not all assets are counted in determining financial eligibility for Medicaid—for example, states generally exclude the value of an individual's primary residence. Because certain types of long-term care—particularly nursing home care—are costly (estimated by some to average over $70,000 a year for a private-pay patient),[5] individuals who pay for an extended stay in a nursing home can quickly deplete their assets and subsequently qualify for Medicaid. In some cases, individuals might divest themselves of their assets—for example, by transferring them to their spouses or other family members—in order to establish financial eligibility for Medicaid long-term care coverage. However, those who transfer assets for less than fair market value during a specified "look-back" period—the period of time before application for Medicaid in which asset transfers are reviewed—may incur a penalty—a period during which they are ineligible for Medicaid coverage for long-term care services. The look-back period is either 36 months or 60 months, depending on the type of asset. The penalty period begins at approximately the time assets were transferred.

Opinions differ over the extent to which individuals transfer assets to qualify for Medicaid coverage for long-term care. Some contend that asset transfers are prevalent and that individuals, on the advice of elder law attorneys, transfer assets that are sometimes significant in order to qualify for Medicaid long-term care coverage, thus substantially increasing Medicaid costs. Others contend that, while such transfers may occur, they are not a large-scale problem that unduly increases Medicaid program costs and that individuals expecting to need nursing home care tend to save more assets than others in order to pay for their care. Evidence on the extent to which individuals transfer assets to become eligible for Medicaid long-term care is generally limited and often based on anecdotes.

[4]This terminology is based on definitions provided in the State Medicaid Manual issued by CMS, which specifies that assets include both income and resources.

[5]Congressional Budget Office, *The Cost and Financing of Long-Term Care Services*, April 19, 2005, Statement before the Subcommittee on Health, Committee on Ways and Means, U.S. House of Representatives; and Metropolitan Life Insurance Company, *The MetLife Market Survey of Nursing Home & Home Care Costs* (Westport, Conn.: September 2004).

The President's fiscal year 2006 budget proposed to save an estimated $1.5 billion over 5 years by tightening existing rules related to asset transfers. According to the Centers for Medicare & Medicaid Services (CMS), the agency within the Department of Health and Human Services that oversees states' Medicaid programs, the proposal changes the start of the penalty period from the date of the asset transfer to the later of (1) the date of the asset transfer, or (2) the point at which an individual is eligible for Medicaid and is receiving long-term care services. In light of the current budget proposal, you asked us to provide data on transfers of assets by elderly individuals in order to obtain Medicaid-covered long-term care.

For this report, we reviewed (1) the level of assets held by the elderly, including those who transferred cash and the amounts they transferred; (2) methods that the elderly use to reduce available assets that may result in a penalty period; (3) states' experiences in identifying the extent of asset transfers to establish Medicaid eligibility for long-term care coverage; and (4) guidance and technical assistance that CMS provided to states regarding individuals' transfers of assets in order to qualify for Medicaid long-term care coverage.

To examine these issues, we analyzed data from the 2002 Health and Retirement Study (HRS), a longitudinal national panel survey, sponsored by the National Institute on Aging and conducted every 2 years by the University of Michigan. (See app. I for more information about the HRS.) We used data from this survey to estimate the (1) level of assets (both income and resources) held by elderly households (defined as those in which at least one member is aged 65 or over), (2) extent to which they transferred cash, and (3) amount transferred.[6] Our analysis includes data from all elderly households; we did not assess whether the respondents had or were seeking Medicaid coverage. Because the HRS only addressed cash transfers—cash provided to relatives or other individuals—our analysis understates the extent and amount of all transfers by excluding transfers of property and other types of assets. Since the HRS did not inquire about the reason for the cash transfers, no conclusions can be drawn regarding the extent to which the survey respondents transferred cash for purposes of establishing Medicaid eligibility for long-term care. In

[6]HRS asked respondents whether they had transferred cash to another individual during the 2 years prior to the interview. The data we report here, therefore, refer only to these transfers.

addition to analyzing the survey data, we collected and analyzed Medicaid applications in use during June and July 2005 for long-term care, from all 50 states and the District of Columbia.[7] We reviewed the federal laws related to Medicaid and asset transfers, as well as related CMS guidance. We also interviewed officials from 9 states regarding Medicaid eligibility determination practices, including the process for identifying whether applicants had transferred assets. To select states, we assessed the prevalence of five factors in each state;[8] on the basis of this assessment, we grouped the states into three clusters (low, medium, and high) based on the prevalence of the five factors. We then selected 3 states from each cluster based on randomly generated numbers, for a total sample of 9. The 9 states in the sample were Arkansas, District of Columbia, Florida, Hawaii, Montana, Ohio, Oregon, South Carolina, and Wisconsin. (See app. II for more information about our methodology for selecting the sample states.) We also interviewed several elder law attorneys, researchers, and officials from CMS and its 10 regional offices. We conducted our work from April through August 2005 in accordance with generally accepted government auditing standards.

## Results in Brief

Overall, in 2002, elderly households' asset levels varied depending on demographic factors such as the level of disability, marital status, and gender; additionally, transfers of cash also depended on these demographics as well as the overall level of a household's assets. Of the approximately 28 million elderly households, about 80 percent of households had annual incomes of $50,000 or less, and about one-half of elderly households had nonhousing resources, which exclude the primary residence, of $50,000 or less, according to data from the 2002 HRS.[9] The median annual income for all elderly households was $24,200, and their median nonhousing resources were $51,500. Households with a disabled elderly individual (reporting at least one limitation in activities of daily

[7]Throughout this report, the term state refers to the 50 states and the District of Columbia.

[8]The five factors were (1) percentage of the population aged 65 and over, (2) cost of a nursing home for a private-pay patient, (3) proportion of elderly with income at or above 250 percent of the federal poverty level ($23,925 for a single-person household in 2005), (4) reported Medicaid nursing home expenditures, and (5) availability of legal services through elder law attorneys specifically to meet the needs of individuals who are elderly or disabled.

[9]We excluded the primary residence from this analysis because states' Medicaid programs generally do not include a residence as a countable resource. The median total resources for all elderly households, including the primary residence, were $150,000.

living (ADL)) tended to have lower asset levels than nondisabled elderly households, and as the level of disability increased, the level of household assets decreased. Elderly individuals reporting three or more limitations in ADLs—who are at higher risk of needing long-term care—had a median income of $13,200 and median nonhousing resources of $3,200. With regard to transfers of cash during the 2 years prior to the HRS study, approximately 6 million elderly households (about 22 percent) reported transferring cash, with a median transfer amount of $3,000. In general, households with higher asset levels were more likely to have transferred cash; hence, nondisabled elderly households and couples were most likely to have transferred cash.

Methods individuals use to reduce their assets for purposes of establishing Medicaid eligibility do not always result in a penalty period and thus may not lead to a delay in Medicaid coverage for long-term care services. For example, reducing debt or making home modifications does not result in a penalty period. Other methods, however, could result in a penalty period and thus a delay in Medicaid coverage for long-term care services. Methods used that may result in a penalty period include giving away assets as gifts, making use of certain financial instruments such as annuities and trusts, and transferring property ownership. Whether or not an asset reduction method results in a penalty period depends on the specific arrangements made and the policies of the individual state. For example, giving away assets generally results in a penalty period, but exceptions exist, including assets given to a spouse or disabled child without penalty.

Although most of the officials in the nine states we reviewed reported that some individuals transferred assets for purposes of qualifying for Medicaid coverage for long-term care, none of these systematically tracked or analyzed data that would provide information on the incidence of asset transfers and the extent to which penalties were applied in their states. Nationwide, all states requested information about applicants' assets, including transfers of assets, through Medicaid application forms, interviews to determine Medicaid eligibility, or both. The nine states we reviewed generally relied on this applicant-reported information to identify transfers of assets. These states required applicants to provide documentation of their assets as part of the application process but varied in the amount of documentation they required. For example, all nine states required bank statements but differed in the length of time the statements were to cover. Although these states also differed in the extent to which they verified reported assets, they were more likely to verify information on income and less likely to verify information on resources. According to

officials in these nine states, transfers that were not reported by applicants were difficult to identify. Some of these states, however, reported using certain indicators from applicants' asset documentation, the states' asset verification data, case worker interviews, or a combination of these factors to try to identify unreported transfers.

To help states comply with federal requirements related to asset transfers and Medicaid eligibility for long-term care coverage, CMS issued guidance primarily through the State Medicaid Manual. The agency also released a special study in 2005 to help states address the issue of using annuities as a means of sheltering assets. Although CMS officials provide ongoing technical assistance to individual states in response to their questions, some said that the agency faces challenges in issuing guidance that would be applicable to all situations. In particular, CMS officials said that states' efforts to identify and address asset transfer issues are constantly changing, as certain methods to convert countable assets are identified, increase in use, and then diminish. For example, CMS officials cited the use of personal care agreements, in which the individual applying for Medicaid long-term care coverage hires a family member to perform services, as a practice that at one time was frequently used to transfer assets, and then diminished in use. The officials added that they provided technical assistance to states to help them limit the use of certain personal care agreements.

We provided CMS and the nine states in our sample an opportunity to comment on a draft of this report. In written comments, CMS noted that the complexity of current law provides opportunities for attorneys and individuals to devise asset transfer schemes that have the effect of shielding substantial financial assets for certain individuals who consequently qualify for Medicaid coverage for long-term care. CMS also commented that data on the precise extent and cost of asset transfers to the Medicaid program have been difficult to gather.

## Background

To be eligible for Medicaid, individuals must be within certain eligibility categories, such as children or those who are aged or disabled. In addition, individuals must meet financial eligibility criteria, which are based on individuals' assets—income and resources together. Once eligible for Medicaid, individuals can receive basic health and long-term care services,

as outlined by each state and subject to minimum federal requirements.[10] Long-term care includes many types of services needed when a person has a physical disability, a mental disability, or both. Individuals needing long-term care have varying degrees of difficulty in performing some ADLs and instrumental activities of daily living (IADL).

## Medicaid Coverage for Long-Term Care

Medicaid coverage for long-term care services is most often provided to individuals who are aged or disabled.[11] Within broad federal standards, states determine the need for long-term care services by assessing limitations in an applicant's ability to carry out ADLs and IADLs. Most individuals requiring Medicaid long-term care services have become eligible for Medicaid in one of three ways: (1) through participation in the Supplemental Security Income (SSI) program, (2) by incurring medical costs that reduce their income and qualify them for Medicaid, or (3) by having long-term care needs that require nursing home or other institutional care.

- The SSI program provides cash assistance to aged, blind, or disabled individuals with limited income and resources. Those who are enrolled in SSI generally are eligible for Medicaid.[12]
- Individuals who incur high medical costs may "spend down" into Medicaid eligibility because these expenses are deducted from their countable income. Spending down may bring their income below the state-determined income eligibility limit. Such individuals are referred to as "medically needy." As of 2000, 36 states had a medically needy option,

[10]States are required to provide certain mandatory services and may, at their option, offer additional services. Mandatory services include inpatient and outpatient hospital care; physician services; nursing home care; laboratory and x-ray services; immunizations and other early and periodic screening, diagnostic, and treatment services for children; family planning services; health center and rural health clinic services; and nurse midwife and nurse practitioner services. Services that are optional include outpatient prescription drugs, institutional care for persons with mental retardation, personal care, and dental and vision care for adults.

[11]A chronic physical or mental disability may occur at any age, but as a person ages the likelihood increases that a disability will develop or worsen.

[12]Not all SSI recipients automatically qualify for Medicaid. Under Section 1902(f) of the Social Security Act, states may use Medicaid eligibility standards that they had in place in 1972 rather than rules that would otherwise apply under the SSI program. As of June 2003, 11 states had opted to use these standards. These states are often referred to as 209(b) states because the origin of this provision was §209(b) of the Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329, 1381.

although not all of these states extended this option to the aged and disabled or to those needing nursing home care.

- Individuals can qualify for Medicaid if they reside in nursing facilities or other institutions in states that have elected to establish a special income level under which individuals with incomes up to 300 percent of the SSI benefit ($1,737 per month in 2005) are Medicaid-eligible. Individuals eligible under this option must apply all of their income, except for a small personal needs allowance, toward the cost of nursing home care.[13] The National Association of State Medicaid Directors reported that, as of 2003, at least 38 states had elected this option.[14]

SSI policy serves as the basis for Medicaid policy on the characterization of assets—income and resources. Income is something, paid either in cash or in-kind, received during a calendar month that is used or could be used to meet food, clothing, or shelter needs; resources are cash or things that are owned that can be converted to cash. (Table 1 provides examples of different types of assets.) States can decide, within federal standards, which assets are countable or not. For example, states may disregard certain types or amounts of income and may elect not to count certain resources.[15]

[13]A personal needs allowance is an amount, subject to a federal minimum ($30), excluded from an institutionalized individual's countable income to pay for the individual's clothing and other personal needs.

[14]See National Association of State Medicaid Directors, *Aged, Blind and Disabled Eligibility Survey* (Washington, D.C.: American Public Human Services Association, 2002). Downloaded from http://www.nasmd.org/eligibility/default.asp on July 31, 2005.

[15]Although noncountable resources vary by state, for purposes of determining Medicaid eligibility for long-term care, they generally include an individual's primary residence (typically if the individual expresses the intent to return home), an automobile, household goods and personal effects, burial spaces, and life insurance and burial arrangements up to a certain value, among other things.

**Table 1: Types of Assets and Examples**

| Type of asset | Examples |
|---|---|
| Income | • Money earned from work<br>• Money generated from resources, such as interest, dividends, and annuity payments[a]<br>• Money received from other sources, such as Social Security, worker's compensation, and unemployment benefits |
| Resources | • Cash<br>• Bank accounts<br>• Stocks<br>• Bonds<br>• Trusts[b]<br>• Annuities<br>• Real estate<br>• Vehicles (such as automobiles and boats)<br>• Life insurance |

Source: GAO analysis of SSI requirements.

[a]Some resources produce income. For example, an annuity is a financial instrument that provides a fixed income over a defined period of time in return for an initial payment of principal. The principal of an annuity is considered a resource, while the payments it generates are considered income.

[b]A trust is any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated individuals.

In most states, to be financially eligible for Medicaid long-term care services, an individual must have $2,000 or less in countable resources ($3,000 for a couple). However, specific income and resource standards vary by eligibility category (see table 2).

**Table 2: Income and Resource Standards for Certain Medicaid Eligibility Categories, as of 2005**

| Medicaid eligibility category | Income standard | Resource standard |
|---|---|---|
| **Mandatory coverage** | | |
| SSI[a] | Less than $579 per month for an individual and less than $869 per month for a couple | Countable resources of less than $2,000 for an individual, and less than $3,000 for a couple |
| **State-elected coverage (optional)** | | |
| Medically needy | State-set income standard; individuals may "spend down" to eligibility by deducting incurred medical expenses from income | State-set resource standard no more restrictive than the SSI resource standard |
| Special income level for residents of a nursing facility or institution | State-set income standard no higher than 300 percent of the SSI standard ($1,737 per month) | Same as SSI |

Source: GAO analysis of Medicaid eligibility requirements and Schneider, et al., *The Medicaid Resource Book* (Washington, D.C.: The Kaiser Commission on Medicaid and the Uninsured, July 2002), p. 30.

[a]Not all SSI recipients automatically qualify for Medicaid. Under Section 1902(f) of the Social Security Act, states may use Medicaid eligibility standards that they had in place in 1972 rather than federal SSI rules. As of June 2003, 11 states had opted to use these standards. These states are often referred to as 209(b) states because the origin of this provision was §209(b) of the Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329, 1381.

## Spousal Impoverishment Protections

The Medicaid statute requires states to use specific income and resource standards in determining eligibility when one spouse is in an institution, such as a nursing home, and the other remains in the community (referred to as the "community spouse"). This enables the institutionalized spouse to become Medicaid-eligible while leaving the community spouse with sufficient assets to avoid hardship.

- **Resources**. The community spouse may retain an amount equal to one-half of the couple's combined countable resources, up to a state-specified maximum resource level.[16] If one-half of the couple's combined countable resources is less than a state-specified minimum resource level, then the

[16]States' maximum resource levels must be within federal standards. As of January 1, 2005, the federal maximum was $95,100.

community spouse may retain resources up to the minimum level.[17] The amount that the community spouse is allowed to retain is generally referred to as the community spouse resource allowance.[18]

- **Income**. The community spouse is allowed to retain all of his or her own income. States establish a minimum amount of income—the minimum monthly maintenance needs allowance (for this report we will refer to it as the minimum needs allowance)—that a community spouse is entitled to retain. The amount must be within a federal minimum and maximum standard.[19] If the community spouse's income is less than the minimum needs allowance, then the shortfall can be made up in one of two ways: by transferring income from the institutionalized spouse (called the "income-first" approach) or by allowing the community spouse to keep resources above the community spouse resource allowance, so that the additional funds can be invested to generate more income (the "resource-first" approach).[20]

## Transfers of Assets under Medicaid

Federal law limits Medicaid payments for long-term care services for persons who dispose of assets for less than fair market value within a specified time period to satisfy financial eligibility requirements. As a result, when an individual applies for Medicaid coverage for long-term care, states conduct a review, or "look-back," to determine whether the applicant (or his or her spouse, if married) transferred assets to another person or party and, if so, whether the transfer was for less than fair

[17]States' minimum resource levels must be within federal standards. As of January 1, 2005, the federal minimum was $19,020.

[18]Technically, the community spouse resource allowance is the amount of additional resources that the community spouse keeps above the spousal share of resources. Generally, however, the community spouse resource allowance is used to refer to the total resources that the community spouse is permitted to retain. *See* 42 U.S.C. § 1396r-5(f)(2); *see also Wisconsin Department of Health and Family Services v. Blumer,* 534 U.S. 473, 482-3 (2001). According to CMS, the community spouse resource allowance means "the amount of a couple's combined jointly and separately-owned resources . . . allocated to the community spouse and considered unavailable to the institutionalized spouse when determining his or her eligibility for Medicaid." 66 *Fed. Reg.* 46763, 46768 (2001).

[19]As of July 1, 2005, federal standards specified that the minimum needs allowance can be no lower than $1,603.75 and no higher than $2,377.50 per month.

[20]If the shortfall in income cannot be made up completely using one of the approaches, then a combination of both approaches may be used.

market value.[21] Generally, the look-back period is 36 months.[22] If an asset transfer for less than fair market value is detected, the individual is ineligible for Medicaid long-term care coverage for a period of time, called the penalty period. The penalty period is calculated by dividing the dollar amount of the assets transferred by the average monthly private-pay rate for nursing home care in the state (or the community, at the option of the state). For example, if an individual transferred $100,000 in assets, and private facility costs averaged $5,000 per month in the state, the penalty period would be 20 months. The penalty period begins at approximately the date of the asset transfer.[23] As a result, some individuals' penalty periods have already expired by the time they apply for Medicaid long-term care coverage, and therefore they are eligible when they apply.

Federal law exempts certain transfers from the penalty provisions. Exemptions include transfers of assets to the individual's spouse, another individual for the spouse's sole benefit, or a disabled child. Additional exemptions from the penalty provisions include the transfer of a home to an individual's spouse, or minor or disabled child; a sibling residing in the home who meets certain conditions; or an adult child residing in the home who has been caring for the individual for a specified time period.[24] Transfers do not result in a penalty if the individual can show that the transfer was made exclusively for purposes other than qualifying for Medicaid. Additionally, a penalty would not be applied if the state determined that it would result in an undue hardship, that is, it would deprive the individual of (1) medical care such that the individual's health

[21]Federal law requires states to apply the transfer of asset provisions to institutionalized individuals, who are defined in the State Medicaid Manual as individuals who are inpatients in a nursing facility or a similar institution or recipients of home and community-based services. States have the option to apply such provisions to noninstitutionalized individuals.

[22]For individuals in institutions, the look-back period is 36 months from the date the individual is institutionalized and applies for Medicaid. For those who are not institutionalized, the look-back period is 36 months before the later of (1) the date the individual applies for Medicaid or (2) the date the person disposed of his or her assets for less than fair market value. For certain types of trusts, the look-back period is 60 months.

[23]States have the option to begin the penalty period on either the first day of the month in which the asset was transferred for less than fair market value or the first day of the month following the month of transfer.

[24]For the transfer of a home to a sibling to be exempt from transfer penalty provisions, the sibling must have an equity interest in the home and must have resided in the individual's home for at least 1 year immediately prior to the date the individual became institutionalized.

or life would be endangered or (2) food, clothing, shelter, or other necessities of life.

## Asset Levels and Extent of Cash Transfers Varied Depending on Demographic Factors

Elderly households' asset levels varied on the basis of level of disability, marital status, and gender; additionally, the extent to which elderly households transferred cash varied with the level of household assets and these same demographic factors.[25] In general, disabled elderly households had lower asset levels than nondisabled elderly households, and the asset levels decreased as the level of disability increased.[26] Elderly couples made up 46 percent of elderly households and had higher levels of assets than single elderly; single elderly females, who made up 41 percent of elderly households, generally had lower assets than single elderly males, who made up 13 percent of elderly households.[27] For all elderly households, the higher their asset levels, the more likely they were to have reported transferring cash to another individual. Elderly households with both incomes and nonhousing resources above the elderly household median were responsible for over one-half of all transfers made. Overall, severely disabled elderly households—those reporting three or more limitations in ADLs—were less likely to transfer cash than nondisabled elderly households.[28] Single individuals were less likely to transfer cash than couples, and single males had a higher likelihood of transferring cash than single females.

### Greatest Proportion of Elderly Had Incomes of $50,000 or Less and Nonhousing Resources below $100,000

According to data from the 2002 HRS, total income for the nation's approximately 28 million elderly households was $1.1 trillion and total nonhousing resources were $6.6 trillion. Approximately 80 percent of elderly households had annual incomes of $50,000 or less. (See fig. 1.) The median annual income for all elderly households was $24,200 and ranged from $0 to $1,461,800.

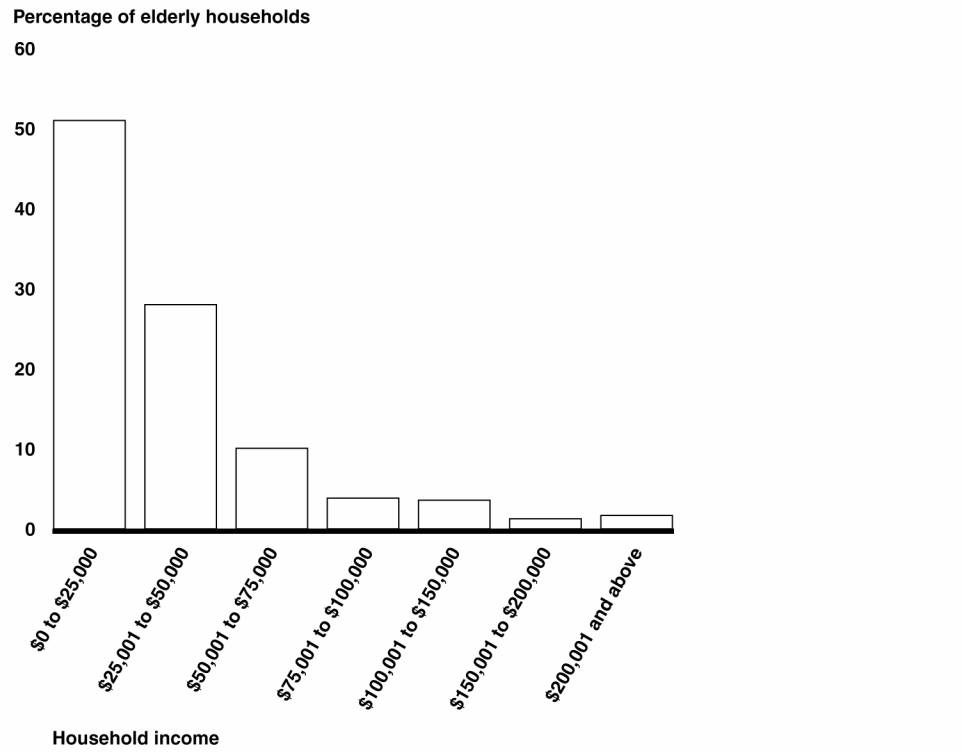
[25]We analyzed HRS data at the "household" level. Household refers to either a single individual living alone or more than one individual living together. Elderly households are those in which at least one member is aged 65 or over.

[26]For the purpose of our analysis, we defined disabled elderly households as those in which the HRS respondent was both elderly and had at least one limitation in ADLs.

[27]For the purpose of our analysis, we defined couples as both married couples and a small percentage of nonmarried individuals living together.

[28]For the purpose of our analysis, we defined severely disabled elderly households as those in which the survey respondent was both elderly and had at least three limitations in ADLs.

**Figure 1: Distribution of Annual Income as Reported by Elderly Households, 2002**

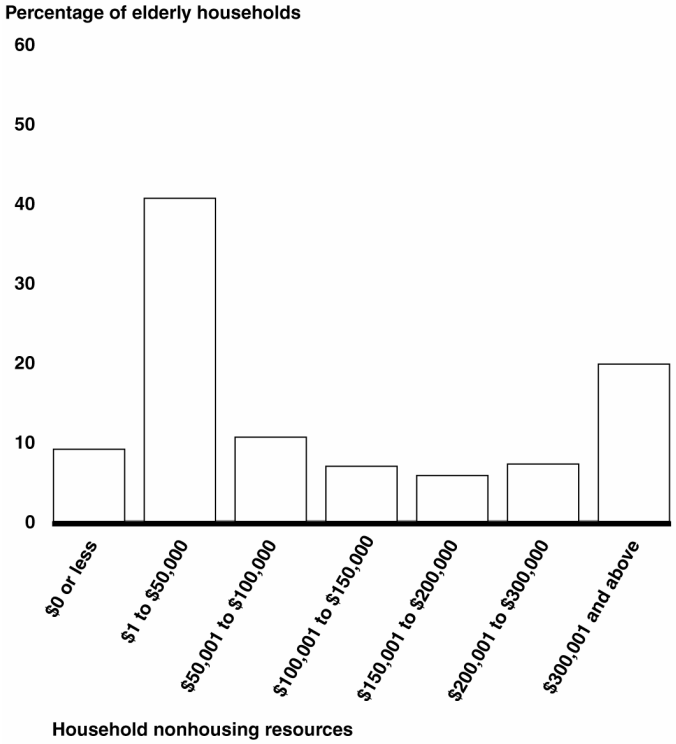



Source: GAO analysis of data from the 2002 Health and Retirement Study.

About half of all elderly households had nonhousing resources of $50,000 or less, while almost 20 percent had nonhousing resources greater than $300,000. (See fig. 2.) For all elderly households, median nonhousing resources were $51,500 and ranged from less than zero to $41,170,000.[29] In terms of total resources, elderly households had median total resources of $150,000, ranging from less than zero to $41,640,000, and a primary residence with a median net value of $70,000, ranging from less than zero to $20,000,000.

[29]A household can have resources valued at less than zero if its debt is greater than the value of its resources.

**Figure 2: Distribution of Nonhousing Resources as Reported by Elderly Households, 2002**



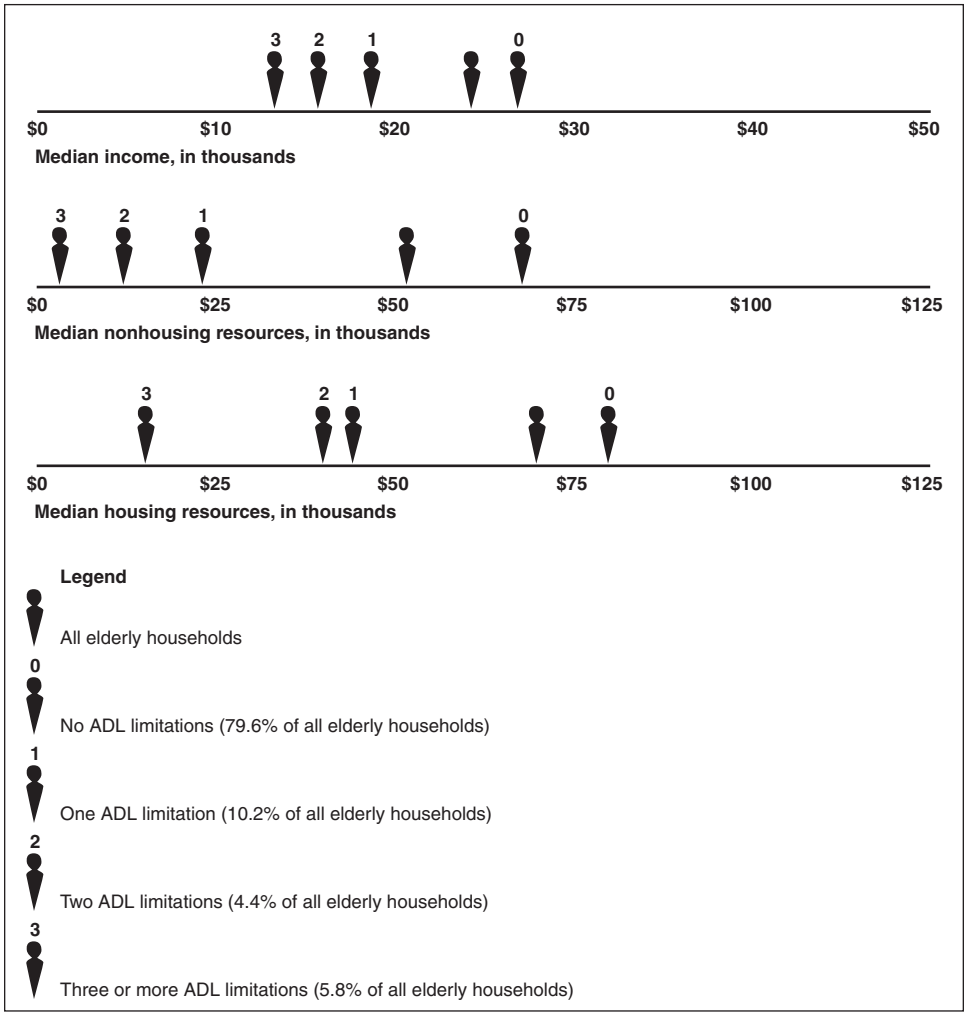

Source: GAO analysis of data from the 2002 Health and Retirement Study.

## Elderly Households' Level of Assets Varied Depending on Level of Disability, Marital Status, and Gender

Disabled elderly households—which are at higher risk of needing long-term care—had lower levels of assets than nondisabled elderly households. Generally, as the level of disability increased, the level of assets decreased.[30] Severely disabled elderly households, which made up about 6 percent of total elderly households, had significantly lower median income ($13,200) and median nonhousing resources ($3,200) compared with all elderly households ($24,200 and $51,500, respectively). (See fig. 3.)

[30]A similar relationship existed between limitations in IADLs and household assets. As the number of limitations in IADLs increased, the household's income and resources decreased.

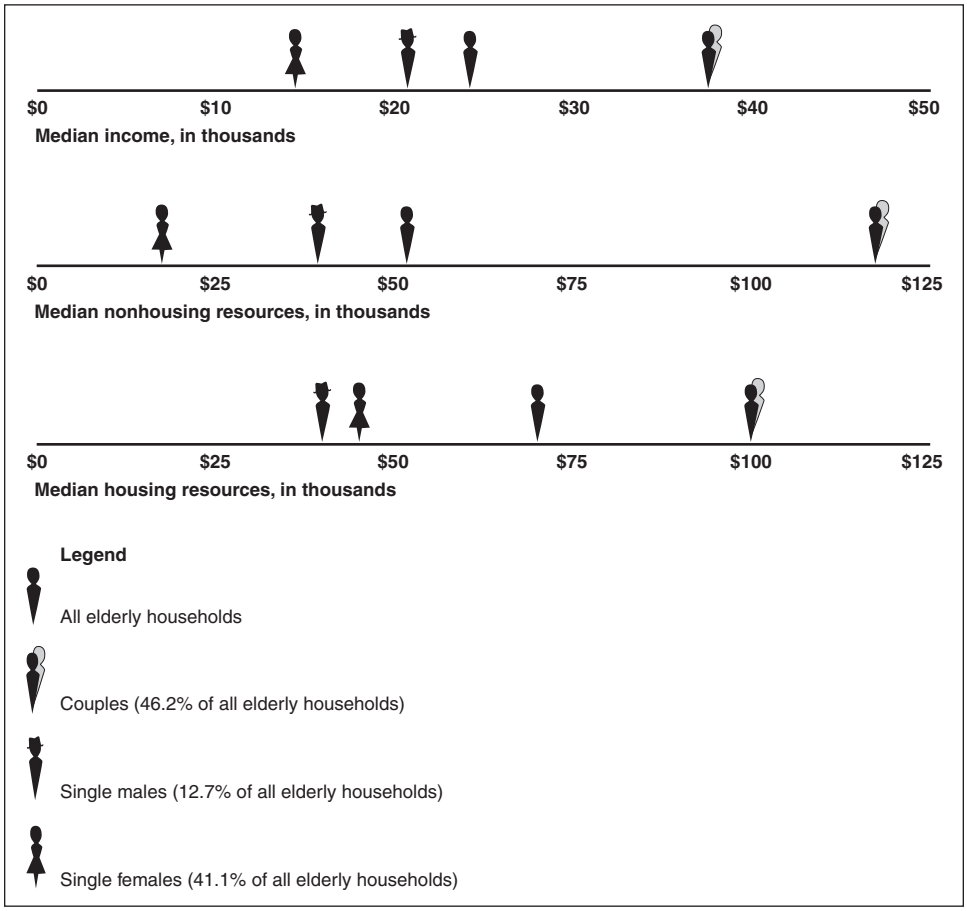
**Figure 3: Median Assets—Income and Resources—for Elderly Households, by Level of Disability, 2002**




Source: GAO analysis of data from the 2002 Health and Retirement Study.

Elderly couples, which made up approximately 46 percent of elderly households, had higher levels of assets than single elderly individuals. Of the single elderly, males, who made up approximately 13 percent of elderly households, were generally likely to be better off financially than females, who made up approximately 41 percent of elderly households. (See fig. 4.)

**Figure 4: Median Assets—Income and Resources—for Elderly Households, by Marital Status and Gender, 2002**



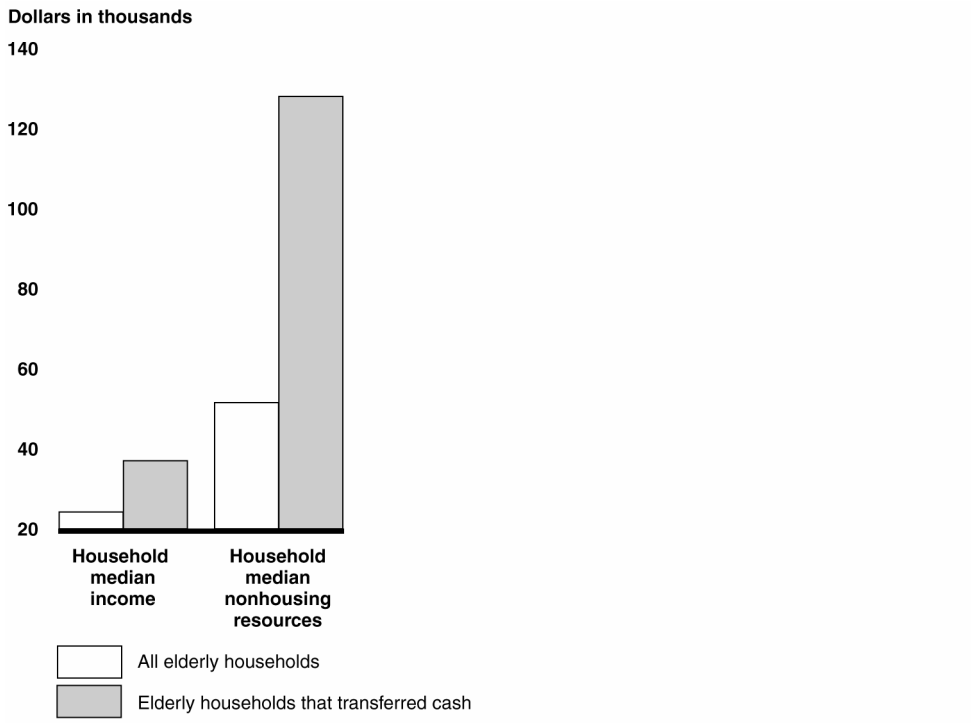

Source: GAO analysis of data from the 2002 Health and Retirement Study.

## Likelihood of Cash Transfers and Amount Transferred Varied by Level of Assets

The likelihood that elderly households transferred cash and the amounts they transferred varied with the level of assets held and demographic characteristics, such as the level of disability, marital status, and gender. Approximately 6 million, or about 22 percent, of all elderly households reported transferring cash during the 2 years prior to the HRS survey. Almost all of these cash transfers were made to children or stepchildren. Of the elderly households that transferred cash, the median income was $37,000 and ranged from $0 to $725,600; median nonhousing resources were $128,000 and ranged from less than zero to $12,535,000. Generally,

elderly households with higher asset levels were more likely to have transferred cash than households with lower asset levels (see fig. 5).

**Figure 5: Median Income and Nonhousing Resources for Elderly Households That Reported Transferring Cash Compared with All Elderly Households, 2002**




Source: GAO analysis of data from the 2002 Health and Retirement Study.

Of the 22 percent of elderly households that reported having transferred cash in the 2 years prior to the survey, nondisabled elderly households and couples were most likely to do so. Among disabled elderly households, severely disabled households were the least likely to transfer cash.[31] With regard to the amounts transferred, among single elderly individuals, males were more likely to transfer larger amounts of cash than females, with

[31]Furthermore, as limitations in IADLs increased, the likelihood that a household transferred cash decreased.

median cash transfer amounts of $4,500 and $3,000, respectively.[32] (See table 3.)

**Table 3: Cash Transferred in the Previous 2 Years as Reported by Elderly Households, by ADL Limitation, Marital Status, and Gender, 2002**

| Demographic characteristic of household | Elderly household (percentage of all elderly households) | Percentage of group that transferred cash | Amount of cash transferred (in dollars) | | | |
|---|---|---|---|---|---|---|
| | | | Minimum | Median (midpoint) | Mean[a] (average) | Maximum |
| **All elderly 65+** | All elderly 65+ (100) | 21.6 | $50 | $3,000 | $8,800 | $1,005,000 |
| **ADL limitation** | None (79.6) | 22.7 | 50 | 3,000 | 8,970 | 1,005,000 |
| | One (10.2) | 18.4 | 500 | 3,500 | 6,370 | 55,500 |
| | Two (4.4) | 22.2 | 300 | 2,000 | 6,820 | 60,000 |
| | Three or more (5.8) | 12.7 | 500 | 3,000 | 13,610 | 160,000 |
| **Marital status and gender** | Couples (46.2) | 27.8 | 50 | 3,000 | 9,070 | 1,005,000 |
| | Single male (12.7) | 20.8 | 50 | 4,500 | 11,760 | 420,000 |
| | Single female (41.1) | 15.0 | 300 | 3,000 | 6,970 | 343,000 |

Source: GAO analysis of data from the 2002 Health and Retirement Study.

[a]Mean amounts of cash transferred have been rounded to the nearest $10.

Transfers of cash were also more likely to occur in households with higher income and resource levels. Elderly households with both income and resources above the median—approximately 37 percent of all elderly households—were the most likely to transfer cash. In contrast, elderly households with both income and resources at or below the median were the least likely to transfer cash. With regard to amounts of cash transferred, the median amounts transferred for elderly households with both income and resources above the median were twice as high ($4,000) as those for elderly households with both income and resources at or below the median ($2,000). (Table 4 shows the cash transferred by elderly households in relation to the median income and resource levels.)

[32]Elderly households that transferred cash had median total resources of $255,000, ranging from less than zero to $21,101,000, and a primary residence with a median net value of $100,000, ranging from less than zero to $20,000,000.

**Table 4: Cash Transferred in the Previous 2 Years as Reported by Elderly Households with Varying Levels of Income and Nonhousing Resources, 2002**

| Household income[a] | Household nonhousing resources[b] | Percentage of all elderly households | Percentage of group that transferred cash | Amount of cash transferred (in dollars) | | | |
|---|---|---|---|---|---|---|---|
| | | | | Minimum | Median (midpoint) | Mean[c] (average) | Maximum |
| At or below median | At or below median | 36.7 | 10.4 | $300 | $2,000 | $4,000 | $130,000[d] |
| At or below median | Above median | 13.3 | 19.0 | 500 | 4,000 | 8,320 | 343,000[e] |
| Above median | At or below median | 13.3 | 27.5 | 100 | 2,000 | 3,910 | 60,000[f] |
| Above median | Above median | 36.7 | 31.7 | 50 | 4,000 | 12,010 | 1,005,000[g] |

Source: GAO analysis of data from the 2002 Health and Retirement Study.

[a]The annual median income for all elderly households was $24,200.

[b]The median nonhousing resources for all elderly households were $51,500.

[c]Mean amounts of cash transferred have been rounded to the nearest $10.

[d]Ninety-nine percent of households in this group reported transfers of cash of $30,000 or below.

[e]Ninety-nine percent of households in this group reported transfers of cash of $120,000 or below.

[f]Ninety-nine percent of households in this group reported transfers of cash of $25,000 or below.

[g]Ninety-nine percent of households in this group reported transfers of cash of $141,000 or below.

## Methods of Reducing Assets May Not Result in a Penalty Period

Methods elderly individuals use to reduce their countable assets do not always result in a penalty period. Reducing debt and making purchases, such as for home modifications, for example, do not result in a penalty period and thus would not lead to delays in Medicaid eligibility for long-term care coverage. Other methods, however, could result in a penalty period, depending on the specific arrangements made and the policies of the individual state. For example, giving away assets as a gift generally results in the imposition of a penalty period, but giving away assets valued at less than the average monthly private-pay rate for nursing home care may not, depending, in part, on whether the state imposes partial-month penalties.

### Some Asset Reduction Methods Do Not Delay Medicaid Eligibility

Some methods individuals use to reduce their countable assets do not result in a penalty period and thus would not lead to delays in eligibility for Medicaid long-term care coverage. According to several elder law attorneys and some state officials we contacted, one of the first methods Medicaid applicants use to reduce assets is to spend their money, often by paying off existing debt, such as a mortgage or credit card bills, or by making purchases. When such purchases and payments convert a

countable resource, such as money in the bank, to noncountable resources, such as household goods, they effectively reduce the assets that are counted when determining Medicaid eligibility. Common purchases mentioned included renovating a home to make it more accessible for persons with disabilities, repairing or replacing items such as a roof or carpeting, prepaying burial arrangements, buying a home, or having dental work done. Elder law attorneys explained that once individuals are Medicaid-eligible, they and their families will have limited means. Therefore, they advise these individuals to update, renovate, repair, or replace old or deteriorating items such as homes and cars to reduce the need for maintenance and repairs in the future. No penalty is associated with paying a debt or making a purchase as long as the individual receives something of roughly the same value in return.

Another method married individuals use that does not result in a penalty period is seeking to raise the community spouse's resource allowance above a state's maximum level, which reduces the amount of income or resources considered available to the spouse applying for Medicaid coverage.[33] States establish, under federal guidelines, a maximum amount of resources that a community spouse is allowed to retain. In general, the remaining resources are deemed available to be used to pay for the institutionalized spouse's long-term care needs. In addition, if the community spouse's income is less than the state's minimum needs allowance, the state can choose to make up the shortfall by (1) transferring income from the institutionalized spouse or (2) allowing the community spouse to keep resources above the resource allowance so that the additional funds can be invested to generate more income.[34] Under the latter approach, the community spouse may be able to retain a significant amount of resources in order to yield the allowable amount of income. For example, a community spouse might ask to retain a savings account with $300,000 and an annual interest rate of 2 percent that would yield an additional $500 in income per month.

[33]Couples also may seek to increase the minimum needs allowance, the state-established minimum amount of income that the community spouse is permitted to retain. Generally, this would only be allowed if the couple could prove that the state-established needs allowance is too low to cover the community spouse's living expenses. As with increases in the resource allowance, increasing the minimum needs allowance would require approval from a court or fair hearings process but would not result in a penalty period.

[34]A combination of these approaches may be used if the shortfall in income cannot be made up completely using only one of the approaches.

## Other Methods to Reduce Assets Could Delay Medicaid Coverage for Long-Term Care Services

Some of the other methods elderly individuals use to reduce their countable assets could result in a penalty period and thus could delay Medicaid coverage for long-term care services, according to the elder law attorneys and state and federal officials we contacted. Whether or not an asset reduction method results in a penalty period depends on the specific arrangements made and the policies of the state. Therefore, the extent to which each of the following methods is used is likely to vary by state.

- **Gifts**. Under this method, an individual gives some or all assets to another individual as a gift, for example, by giving his or her children a cash gift. Although this is probably the simplest method to reduce assets, some elder law attorneys told us that this method would be one of the last things a person would want to do. Not only would the individual lose control of his or her assets, but giving a gift would likely be a transfer for less than fair market value and therefore result in a penalty period. As with other asset transfers, if individuals can prove that they gave away their assets exclusively for a purpose other than qualifying for Medicaid long-term care coverage, or if the transfer is to a spouse or a disabled child, then there would be no penalty.[35] Additionally, if a state treats each transfer as a separate event and does not impose penalty periods for time periods shorter than 1 month, then transfers for amounts less than the average monthly private-pay rate for nursing home care in that state do not result in a penalty period.[36] Because the penalty period begins at approximately the date of asset transfer, individuals that meet Medicaid income eligibility requirements can give away about half of their resources and use their remaining resources to pay privately for long-term care during which time

[35]CMS guidance included in the State Medicaid Manual indicates that states must determine what constitutes sufficient proof that an asset was transferred exclusively for a purpose other than to qualify for Medicaid. However, the manual states that verbal assurances are not sufficient and that there must be convincing evidence about the purpose for the asset transfer. According to officials from some of the nine states we contacted, individuals who gave gifts before they could know of a need for long-term care must prove that the transfer was for a purpose other than qualifying for Medicaid. For example, if an individual gave his or her child a down payment on a house or grandchild money for school and later had a stroke that led to the individual's need for long-term care, the individual may be able to prove that the gift was not made in order to qualify for Medicaid long-term care coverage.

[36]Under the Medicaid statute, the penalty period is calculated by dividing the dollar amount of the assets transferred by the average monthly private-pay rate for nursing home care in the state (or the community, at the option of the state). Thus, a transfer for less than the average monthly nursing home private-pay rate would result in a penalty period of less than 1 month. None of our nine sample states imposed penalties for less than 1 month.

any penalty period would expire.[37] This is often referred to as the "half a loaf" strategy because it preserves at least half of the individual's resources.

- **Financial Instruments**. Some financial instruments, namely annuities and trusts, have been used to reduce countable assets to enable individuals to qualify for Medicaid. Annuities, which pay a regular income stream over a defined period of time in return for an initial payment of principal, may be purchased to provide a source of income for retirement. According to a survey of state Medicaid offices,[38] annuities have become a common method for individuals to reduce countable resources for the purpose of becoming eligible for Medicaid because they are used to convert countable resources, such as money in the bank, to a resource that is not counted, and a stream of income.[39] If converting the resource to an annuity results in individuals' having countable resources below the state's financial eligibility requirements, then these individuals can become eligible for Medicaid if their income, including the income stream from the annuity, is within the Medicaid income requirements for the state in which they live.[40] Married individuals can use their joint resources to purchase an annuity for the sole benefit of the community spouse. Since a community spouse's income is not counted in a Medicaid eligibility determination, an annuity effectively reduces the countable assets of the applicant. Annuities must be actuarially sound—that is, the expected return on the annuity must be commensurate with the reasonable life expectancy of the beneficiary—or they are considered a transfer of assets for less than fair market value and result in a penalty.[41] Trusts are arrangements in which a

[37]For example, a single elderly male with $50,000 in resources gives one-half of his resources away, leaving him with $25,000. He uses the remaining $25,000 in resources to pay privately for his long-term care costs. Assuming that the average private payment for a nursing home is $5,000 per month, his $25,000 in resources would cover 5 months of care—which is equal to the same amount of time as any penalty period that would be calculated and imposed by the state. He would then become eligible for Medicaid long-term care coverage, assuming his need for nursing home care continued.

[38]See National Association of State Medicaid Directors, *The Role of Annuities in Medicaid Financial Planning: A Survey of State Medicaid Agencies* (Washington, D.C.: American Public Human Services Association, October 2003).

[39]Although CMS acknowledged that annuities are used in this manner in some states, CMS officials told us that an annuity should be considered a countable resource if it can be converted to cash, for example, by being sold for a lump sum.

[40]Individuals living in states with a medically needy program may be eligible for Medicaid if their income is less than their monthly long-term care costs.

[41]To determine whether an annuity is actuarially sound, states are to use the life expectancy tables included in the State Medicaid Manual, which are based on information published by the Office of the Actuary of the Social Security Administration.

grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated individuals. The use of trusts as a method of gaining Medicaid eligibility for long-term care services was addressed in 1993 legislation.[42] The law and associated CMS guidance indicate how assets held in a trust, as well as the income generated by a trust, are to be counted in the Medicaid eligibility process.[43] According to CMS, since this legislation was enacted, the use of trusts as a Medicaid asset reduction method has declined.

- **Transfer of Property Ownership**. Medicaid allows individuals to transfer ownership of their home, without penalty, to certain relatives, including a spouse or a minor child (under age 21).[44] Other transfers of a home or other property within the look-back period may result in a penalty period if they were for less than fair market value. For example, individuals might transfer ownership of their home while retaining a "life estate," which would give them the right to possess and use the property for the duration of their lives. According to the CMS State Medicaid Manual, this would be a transfer for less than fair market value and thus would result in a penalty period.[45]
- **Personal Services Contract or Care Agreement**. Personal services contracts or care agreements are arrangements in which an individual pays another person, often an adult child, to provide certain services. Based on CMS guidance, relatives can be legitimately paid for care they provide, but there is a presumption that services provided without charge

[42]Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13611, 107 Stat. 312, 622-27.

[43]The treatment of trusts is detailed in the Medicaid statute and the State Medicaid Manual issued by CMS. Generally, to the extent that assets in a trust are available to an individual, they are counted in determining Medicaid eligibility. Assets in a trust that are not available to the individual generally are considered to be transferred for less than fair market value and thus could be subject to the transfer of asset penalties. Certain types of trusts, such as certain trusts established for the benefit of a disabled child or individual or certain trusts in which the state is the remainder beneficiary, are exempt from transfer of asset penalties.

[44]Individuals also are allowed to transfer ownership of their home without penalty to (1) a child of any age who is disabled, (2) a sibling with an equity interest in the home who resided in the home for at least 1 year before the individual's institutionalization, and (3) an adult child who resided in the home for at least 2 years immediately prior to the individual's institutionalization and provided care to the individual that allowed him or her to reside in the home.

[45]An example provided in CMS guidance assumes that the individual transferring the home does not receive any compensation for the difference between the life estate and the value of the home. The value of the life estate is determined using a table indexed for age provided by CMS.

at the time they were rendered were intended to be provided without compensation. Under this presumption, payments provided for services in the past would result in a penalty period.

- **"Just Say No" Method**. Under this method, the institutionalized spouse transfers all assets to the community spouse, which is permitted under the law. The community spouse then refuses to make any assets available to support the institutionalized spouse and retains all of the couple's assets. In turn, the institutionalized spouse may seek Medicaid coverage for long-term care.[46] Whether this method results in a delay in Medicaid coverage for long-term care services depends on the policies of the individual state.
- **Promissory Notes**. A promissory note is a written, unconditional agreement, usually given in return for goods, money loaned, or services rendered, whereby one party promises to pay a certain sum of money at a specified time (or on demand) to another party. According to CMS and state officials, some individuals have given assets to their children in return for a promissory note as a means to reduce their countable assets.[47] For example, we were told of a case in which a mother gave her daughter money in return for a promissory note with a schedule for repayments. Although the note was scheduled to be repaid during the mother's expected lifetime, the payment arrangements called for the child to repay only the interest until the final payment, when the entire principal was due. Additionally, each month the mother forgave a portion of the note that equaled slightly less than the average monthly nursing home cost.[48] Whether promissory notes result in a delay in Medicaid coverage for long-term care would depend on the specific details of the note and the policies of the state.

[46]In such cases, eligibility of the institutionalized spouse will not be denied provided the state has a legal right to obtain support from the community spouse for the care provided to the institutionalized spouse.

[47]According to CMS officials, under SSI policy, which serves as the basis for Medicaid policy on the treatment of assets, promissory notes are a countable resource. These officials said, however, that some states are treating promissory notes in a way similar to how they treat annuities, that is, they are not treating the value of the note as a countable resource. As issues arise, CMS is telling states that they can count a promissory note as a countable resource.

[48]As with the small monthly transfers, forgiving a loan for an amount less than the average monthly nursing home private-pay rate would result in a penalty period of less than 1 month, which some states do not impose.

## States Could Not Identify the Extent to Which Individuals Transferred Assets

None of the nine states we reviewed systematically tracked or analyzed data that would provide information on the incidence of asset transfers and the extent to which penalties were applied in their states. Nationwide, all states requested information about applicants' assets, including transfers of assets, through Medicaid application forms, interviews to determine Medicaid eligibility, or both. The nine states we reviewed generally relied on applicants' self-reporting of financial information and varied in the amount of documentation they required and in the extent to which they verified the assets reported. According to officials in these states, transfers that were not reported by applicants were difficult to identify.

### States Reviewed Did Not Systematically Track and Analyze Applicants' Transfers of Assets

Although officials from the nine states reviewed reported that some individuals transferred assets for purposes of qualifying for Medicaid, these states did not systematically track and analyze data on the incidence of asset transfers or associated penalties. As a result, the states could not quantify the number of people who transferred assets, the assets transferred, or the penalties applied as a result of transfers for less than fair market value. Officials in four of the nine states informed us that they had computer-based systems for recording applicant information, including data on penalties that resulted in a delay in Medicaid eligibility but they did not regularly analyze these data and thus did not have information available on the number of applicants who transferred assets. One of these states—Hawaii—was able to determine that there were no individuals serving a penalty at the time of our interview. However, because the state's system only kept data on applicants currently serving a penalty, the state could not provide us with data on the number of people who had served penalties in the past. One state—Montana—that did not report having a computer-based application system, did report collecting several months of data on asset transfers from its counties in the fall of 2004, but a state official told us that as of mid-July 2005, the data had not been analyzed.

Although states could not systematically track and analyze asset transfers, state officials were familiar with and had observed different methods that elderly individuals used to transfer assets in their states. For example, state officials frequently identified cash gifts as the most common method used to reduce the amount of countable assets. Some states had taken steps to try to deter the use of financial instruments, such as annuities. For example, two states reporting changing their laws to expand the circumstances under which annuities are counted as available resources for purposes of determining Medicaid eligibility for long-term care.

Similarly, some states have tried to deter the use of the "Just Say No" method by pursuing financial support from the community spouse or by requiring the institutionalized spouse to take the community spouse to court to recover his or her share of the assets.

Some officials commented that as states took actions to identify and prevent methods used to make transfers in order to become eligible for Medicaid long-term care coverage, new ways emerged to make transfers for this purpose that are permitted under the law. For example, one state took action to try to deter multiple small transfers by adding the amount of the transfers together, under certain circumstances, for purposes of calculating the penalty period.[49] According to this state's officials, however, some attorneys had advised their clients to transfer very small amounts of money in consecutive months and make one final transfer of a significant amount before applying for Medicaid. Under the state's policy, these transfers are added together and the penalty period begins at the month of the first transfer, as opposed to the month of the final transfer. As a result, some or all of the penalty period may have expired by the time the applicant applies for Medicaid long-term care coverage.

## Nationwide, States Request Information on Assets and Transfers of Assets as Part of the Medicaid Application Process

Nationwide, states used the application process—application forms, interviews, or both—to determine the level of assets held by Medicaid applicants and whether applicants transferred assets.[50] Applications in 38 states requested comprehensive information about assets—for example, by requiring applicants to respond to questions regarding whether they had certain types of assets, such as checking accounts or real estate. Another 7 states' applications requested general information about applicants' assets, and the remaining 6 states reported relying on the interview process to collect information on assets.[51] Thirty states required in-person or telephone interviews with either the applicant or an

[49]The amount of assets transferred are added together if (1) transfers occurred in the same month, (2) transfers occurred in consecutive months, (3) the penalty periods for the transfers would overlap, or (4) a penalty period ended in the month immediately prior to the transfer.

[50]In June and July 2005, we asked state officials to provide their current applications for Medicaid long-term care coverage. Where states asked for clarification or had multiple applications for Medicaid long-term care coverage, we asked for applications appropriate for nursing home coverage.

[51]These six states either had applicants complete their application during the interview process with eligibility case workers or had brief applications that did not ask about assets.

applicant's appointed representative.[52] Table 5 summarizes states' application processes. (See app. III for more details on the application processes in each state.)

**Table 5: Information Required during States' Application Processes for Medicaid Eligibility**

| Method of gathering information | Information required | Number of states |
|---|---|---|
| **Application** | Comprehensive information on assets | 38 |
| | General information on assets | 7 |
| | No information on assets | 6[a] |
| **Interview** | Required as part of the application process | 30 |

Source: GAO analysis of state and county information, June and July 2005.

Note: In June and July 2005, we asked state officials to provide their current applications for Medicaid long-term care coverage. Where states asked for clarification or had multiple applications for Medicaid long-term care coverage, we asked for applications appropriate for nursing home coverage. Some states referred us to a county eligibility office for information about the Medicaid application process. As such, the information on the interview requirement in these states is based on the response of the official from the county eligibility office.

[a]Of the six states that did not ask about assets, two states had applicants complete their application during the interview process with eligibility case workers and four states had brief applications. All six states required interviews in which officials collected information on applicants' assets.

Medicaid application forms in 44 states asked applicants to report whether they had transferred assets. Eleven of the 44 states' applications asked whether applicants had transferred assets in the past 36 months, the required look-back period for most assets; 13 asked applicants whether they had transferred assets in the past 60 months, the required look-back period for trusts; and 17 did both.[53] Of the applications in the remaining 3 states, 1 asked about assets ever transferred; 1 asked applicants to report any transfers, including the date of the transfer, on a separate form; and 1 asked about transfers in the prior 30 months.[54] (See app. IV for details on the characteristics of Medicaid application questions related to transfers

[52]Some states referred us to a county eligibility office for information about the Medicaid application process. As such, the information about the interview requirement in these states is based on the response of the official from the county eligibility office.

[53]Several states that did not ask about transfers in the past 60 months had a specific question on their application form about trusts that could be used as an indication for whether further review is necessary.

[54]Prior to the Omnibus Budget Reconciliation Act of 1993, the federally mandated look-back period for transfers of assets was 30 months.

of assets in each state.) Although the 7 remaining states did not have a question about transfers on their applications, they all required interviews as part of the application process.

## Nine States' Identification of Asset Transfers Predominately Relied on Applicant Reporting

The nine states we reviewed generally relied on the information applicants reported during the application process—the application, supporting documentation, and interviews—to identify transfers of assets. The states generally required applicants to submit documentation of their assets as part of the application process (see table 6). The type of documentation required varied by type of asset. For example, for trusts, annuities, and life insurance, states generally required a copy of the agreement or policy; for real estate, states generally required a copy of the deed or documentation of the value from a tax assessment or broker. For more liquid assets, such as checking and savings accounts, four of the nine states contacted reported requiring a copy of 1 month's statements. However, the remaining five states reported requiring or collecting documentation for longer periods of time ranging from 3 months to 3 years. For example, Florida generally collected at least 3 months of bank statements from individuals seeking nursing home coverage, South Carolina required applicants to submit a total of 14 months of statements covering points in time over a 3-year period, and Montana generally collected bank statements dating back 3 years.

**Table 6: Nine States' Requirements for Documentation of Assets**

| Documentation requirement | Number of states |
|---|---|
| Checking and savings accounts<br>Certificates of deposit<br>Stocks and bonds<br>Annuities<br>Trusts<br>Retirement accounts<br>Life insurance policies<br>Real estate<br>Vehicles | 9 |
| Income<br>Business equity for self-employed | 8 |
| Prepaid burial arrangements | 6 |
| Federal tax returns<br>State tax returns | 1 |

Source: GAO analysis of state information, July 2005.

To verify applicants' assets, the nine states used other information sources, to varying degrees, in addition to the documentation provided by applicants. Generally, states were more likely to verify information related to possible income sources for applicants, such as the Social Security Administration and unemployment offices, than for data sources on possible resources, such as motor vehicle departments and county assessor offices. For example, seven of the nine states reported using information from an Income and Eligibility Verification System (IEVS), a system that matches applicant-reported income information with data from the Internal Revenue Service, the Social Security Administration, and state wage reports and unemployment benefits, for all or almost all of their applicants. In contrast, five of the nine states used information from county assessor offices that provide information on property taxes and thus property ownership, and four of these states used this source to verify resources for half of their Medicaid applicants or less. (See table 7 for the proportion of applicants for which the nine states used specific sources to verify applicants' assets.)

**Table 7: Proportion of Applicants for Which Nine Sample States Used Specific Asset Verification Sources**

| | Number of states using method for | | | | |
|---|---|---|---|---|---|
| **Source** | **All or almost all applicants** | **More than half of applicants** | **About half of applicants** | **Less than half of applicants** | **Method not used** |
| Social Security Administration | 9 | 0 | 0 | 0 | 0 |
| Income and Eligibility Verification System (IEVS)[a] | 7 | 0 | 0 | 0 | 2 |
| Unemployment office | 7 | 1 | 0 | 1 | 0 |
| Worker's compensation office | 4 | 1 | 0 | 2 | 2 |
| Department of motor vehicles | 2 | 0 | 1 | 3 | 3 |
| State/local tax authorities | 2 | 0 | 0 | 2 | 5 |
| County assessor offices | 1 | 0 | 2 | 2 | 4[b] |
| Financial institutions | 0 | 1 | 2 | 5 | 1 |

Source: GAO analysis of state information, July 2005.

[a]IEVS matches applicant-reported income information with data from the Internal Revenue Service, the Social Security Administration, and state wage reports and unemployment benefits.

[b]One state did not obtain data from county assessor offices because the state can access a statewide assessor system.

Regarding transfers of assets, the nine states asked on their Medicaid application forms, in interviews, or both, whether applicants had transferred assets. Officials from the nine states indicated that transfers that are not reported by applicants or a third party are generally difficult to

identify. Three of the nine states did not have a process to identify unreported transfers. The remaining six states generally relied on certain indicators from applicants' asset documentation, the states' asset verification data, case worker interviews, or a combination of these factors to try to identify unreported transfers. Following are two examples of how states used these indicators:

- South Carolina asked for the previous 12 months of bank statements and also asked for statements from the 24th and 36th month preceding the application. South Carolina officials reviewed these bank statements to ascertain whether there had been large reductions in the amount of money in the account over the past 3 years. If a large reduction was detected, the state would ask the applicant for information regarding the use of the money.
- Ohio officials told us that the state generally relied on case workers' experience to decide whether additional review was necessary, noting that there are certain indications that a transfer might have occurred, which would prompt additional review of the application. Examples include the opening of a new bank account, an applicant who is living beyond his or her means, and an applicant who recently sold his or her house but reports having no resources.

## CMS Provides Guidance on Transfers of Assets through the State Medicaid Manual and in Response to Specific Questions from States

To help states comply with requirements related to asset transfers and Medicaid, CMS has issued guidance primarily through the State Medicaid Manual. The agency has also provided technical assistance, through its regional offices, to individual states in response to their questions; communicated to states through conferences; and funded a special study on the use of annuities to shelter assets. Officials from the majority of CMS regional offices and the nine states we contacted indicated that some additional guidance, such as on the use of financial instruments, would be helpful. CMS officials, however, noted that it would be difficult to issue guidance that would be applicable in all situations given the constantly changing methods used to transfer assets.

In response to provisions in the Omnibus Budget Reconciliation Act of 1993, CMS updated the State Medicaid Manual in 1994 to include provisions relating to transfers of assets, including the treatment of trusts. The portion of the manual relating to asset transfers and trusts generally includes definitions of relevant terms, such as assets, income, and resources; information on look-back periods; penalty periods and penalties for transfers of less than fair market value; exceptions to the application of such penalties; and spousal impoverishment provisions. The

portion of the manual regarding trusts includes other definitions relating specifically to trusts, provisions on the treatment of the different types of trusts (such as revocable and irrevocable),[55] and exceptions to the specified treatment of trusts. CMS is in the process of revising certain policies in the manual related to funeral and burial arrangements.[56] CMS officials were not able to provide a date for when revisions to the manual would be completed and stated that they did not anticipate any major revisions to the asset transfer provisions in the Medicaid manual.

CMS has provided additional guidance to states about asset transfers through conferences and one special study:

- **Conferences**. CMS officials reported providing states with information on asset transfer issues at its annual Medicaid eligibility conference. At this conference, issues regarding transfers of assets have been discussed as a formal agenda item, in panels on state experiences, or in question and answer sessions.
- **Special study**. In 2005, the agency released a report that examined the use of annuities as a means for individuals to shelter assets to become Medicaid-eligible.[57] While this study did not identify a universal recommendation for the policy on annuity use or determine the extent to which the use of annuities is growing or declining, it suggested that annuities established for the purpose of becoming Medicaid-eligible do lead to additional costs for federal and state governments in that individuals may shift assets from countable resources into a resource that is not counted, and into a stream of income. In some cases, the use of annuities results in individuals qualifying for Medicaid more quickly. Using the estimated cost of annuities to Medicaid from a sample of five states and an examination of policies regarding annuities in all states, the study

[55]Revocable trusts are trusts that, under state law, can be revoked by the individual creating the trust. In contrast, an irrevocable trust cannot be revoked after its creation.

[56]The policy relating to funeral and burial arrangements had been previously communicated to state Medicaid directors in a letter in 1996.

[57]See Robert A. Levy et al., The CNA Corporation, under contract with CMS, *Analysis of the Use of Annuities to Shelter Assets in State Medicaid Programs* (Alexandria, Va.: January 2005). The study presents information from analyses of (1) interviews conducted with Medicaid policy officials, county eligibility workers, and consumer and industry representatives; (2) focus groups with potential nursing home beneficiaries; and (3) the modeling and simulation of actual Medicaid case files from 11 counties within a total of five states.

estimated that annuities cost the Medicaid program almost $200 million annually.[58]

Officials from CMS's regional offices informed us that they provided technical assistance on asset transfer issues to 29 states over the past year. The types of technical assistance provided to these states ranged from confirming existing Medicaid policy to advising them on ways to address specific asset transfer methods. When asked for examples of the specific issues for which states sought technical assistance, officials in seven regional offices said they had responded to states' questions about annuities. Other issues for which states requested technical assistance included the treatment of trusts, the policy on spousal impoverishment, and promissory notes.

Officials from the majority of CMS regional offices noted that the states in their regions could benefit from additional guidance. Additionally, the majority of states we contacted concurred that guidance related to transfers of assets would be helpful. These states and regional office officials indicated a need for more guidance on topics such as annuities, trusts, and the relationship between asset divestment and spousal impoverishment. CMS central office officials said that the agency faces challenges in issuing guidance that would be applicable to all situations given the constantly changing methods individuals use to transfer assets in a manner that avoids the imposition of a penalty period. CMS officials said that states' efforts to identify and address asset transfer issues are constantly changing, as methods for reducing countable assets are identified, increase in use, and then diminish. For example, CMS officials cited the use of personal care agreements, where the individual applying for Medicaid long-term care coverage hires a family member to perform services, as a practice that at one time was frequently used to transfer assets. In some cases, these agreements paid exorbitant fees for the services provided, and CMS officials provided technical assistance to

[58]To estimate the proportion of the nonpoor (i.e., those above the federal poverty level) Medicaid beneficiaries in nursing homes who had annuities and the cost of annuities to the Medicaid program, Levy, et al. collected Medicaid case files from a sample of five states. Using information from these case files and various other factors, such as nursing home costs and income and resource constraints on Medicaid eligibility, the researchers developed a model to estimate the costs of annuities in the five states. Using these estimates and an analysis of how restrictive states' policies were regarding the use of annuities, the researchers estimated a national cost of annuities to the Medicaid program. The study acknowledges that its estimates of these costs are likely to be less than the costs perceived by most Medicaid officials.

states to help them limit the use of such agreements, at which point the practice diminished in use. CMS officials maintain that blanket guidance from the agency cannot necessarily address all of the issues that states face.

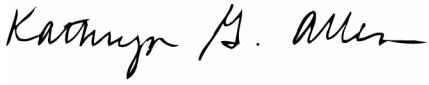
## Agency and State Comments

We provided CMS and the nine states in our sample an opportunity to comment on a draft of this report. We received written comments from CMS (see app. V). We also received technical comments from CMS and eight of the nine states, which we incorporated as appropriate.

CMS noted that the Medicaid program will only be sustainable if its resources are not drained to provide health care assistance to those with substantial ability to contribute to the costs of their own care. CMS acknowledged, however, the difficulty of gathering data on the extent and cost of asset transfers to the Medicaid program. In particular, CMS commented that the law is complex and that the techniques individuals and attorneys devise to divest assets are ever-changing. CMS reiterated the President's budget proposal to tighten existing rules related to asset transfers, and associated estimated savings, which we had noted in the draft report. CMS further noted one limitation to our analysis that we had disclosed in the draft report—that the HRS only addressed cash transfers provided to relatives or other individuals. CMS commented that it believes that substantial amounts of assets are sheltered by individuals who transfer homes, stocks and bonds, and other noncash property. We agree with CMS's view that information on such noncash transfers would be valuable, but as we noted in the draft report the HRS does not include such data.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Administrator of the Centers for Medicare & Medicaid Services. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staffs have any questions about this report, please contact me at (202) 512-7118 or allenk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.



Kathryn G. Allen
Director, Health Care

# Appendix I: Information about the Health and Retirement Study

The Health and Retirement Study (HRS) is a longitudinal national panel survey of individuals over age 50 sponsored by the National Institute on Aging and conducted by the University of Michigan. HRS includes individuals who were not institutionalized at the time of the initial interview and tracks these individuals over time, regardless of whether they enter an institution. Researchers conducted the initial interviews in 1992 in respondents' homes and conducted follow-up interviews over the telephone every second year thereafter. HRS questions pertain to physical and mental health status, insurance coverage, financial status, family support systems, employment status, and retirement planning.

For this report, we used the most recent available HRS data (2002), for which the data collection period was February 2002 through March 2003. These data include information for over 18,000 Americans over the age of 50. We limited our analysis to data for households with at least one elderly individual, which we defined as an individual aged 65 or older. Thus, the data we used were from a sample of 10,942 individuals (8,379 households) that represented a population of 28.1 million households.

From these data we estimated the nationwide level of assets held by households with at least one elderly individual, the extent to which these households transferred cash, and the amounts transferred. Our analysis underestimates the extent to which elderly households transferred assets and the amounts of assets transferred because the study data included only cash transfers, not other types of transfers. HRS also did not assess whether the transfers were related to individuals' attempts to qualify for Medicaid coverage for long-term care services.

To assess the reliability of the HRS data, we reviewed related documentation regarding the survey and its method of administration, and we conducted electronic data tests to determine whether there were missing data or obvious errors. On this basis, we determined that the data were sufficiently reliable for our purposes.

# Appendix II: Methodology for Selecting Sample States

To select a sample of states to review in more detail regarding their Medicaid eligibility determination practices, including the process for identifying whether applicants had transferred assets, we assessed the prevalence of five factors in each of the 51 states.

1. The percentage of the population aged 65 and over, which we determined using 2000 census data from the Census Bureau.

2. The cost of a nursing home stay for a private room for a private-pay patient based on data from a 2004 survey conducted for the MetLife Company.

3. The proportion of elderly (aged 65 and over) with incomes at or above 250 percent of the U.S. poverty level, which was based on information from the Census Bureau using the 2000 and 2002 Current Population Surveys.

4. Medicaid nursing home expenditures as reported by states to CMS.[1]

5. The availability of legal services specifically to meet the needs of the elderly and disabled, based on membership data from the National Academy of Elder Law Attorneys.

For each factor, we ranked the states from low to high (1 to 51) and then summed the five rankings for each state. On the basis of these sums, we grouped the states into three clusters (low, medium, and high) using natural breaks in the data as parameters (see table 8). We then selected three states from each cluster using randomly generated numbers, for a total sample of nine states.

[1]Each quarter, states submit Medicaid program expenditures to CMS using the CMS-64 form. Our analysis used the fiscal year 2000 nursing home expenditures as reported on the CMS-64.

**Table 8: Clusters Used for State Sample Selection**

| Cluster | States |
|---|---|
| Low | **Arkansas**, Georgia, Idaho, Louisiana, Mississippi, **Montana**, New Mexico, **South Carolina**, South Dakota, Utah, Vermont, Wyoming |
| Medium | Alabama, Alaska, Arizona, Colorado, Delaware, **District of Columbia**, **Hawaii**, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, **Oregon**, Rhode Island, Tennessee, Texas, Virginia, Washington, West Virginia |
| High | California, Connecticut, **Florida**, Massachusetts, New Jersey, New York, **Ohio**, Pennsylvania, **Wisconsin** |

Source: GAO analysis of data from the Census Bureau, CMS, The MetLife Market Survey of Nursing Home & Home Care Costs, and the National Association of Elder Law Attorneys.

Note: States in bold are the states in our sample.

# Appendix III: Characteristics of Medicaid Long-Term Care Application Processes, by State

| State | Application asks for | | Interview is required as part of application process[b] |
|---|---|---|---|
| | Comprehensive information about assets[a] | General information on assets | |
| Alabama | ✓ | | ✓ |
| Alaska | ✓ | | ✓[c] |
| Arizona | | [d] | ✓[c] |
| Arkansas | ✓ | | ✓ |
| California | ✓ | | [c] |
| Colorado | ✓ | | ✓ |
| Connecticut | ✓ | | [c] |
| Delaware | ✓ | | ✓[c] |
| District of Columbia | [e] | ✓ | |
| Florida | | ✓ | [f] |
| Georgia | | [d] | ✓[c] |
| Hawaii | ✓ | | ✓ |
| Idaho | [e] | ✓ | ✓[c] |
| Illinois | ✓ | | |
| Indiana | | [d] | ✓ |
| Iowa | | ✓ | [c] |
| Kansas | ✓ | | |
| Kentucky | [g] | [g] | ✓[c] |
| Louisiana | ✓ | | ✓ |
| Maine | ✓ | | ✓ |
| Maryland | ✓ | | ✓[c] |
| Massachusetts | ✓ | | |
| Michigan | ✓ | | |
| Minnesota | ✓ | | |
| Mississippi | ✓ | | ✓ |
| Missouri | ✓ | | |
| Montana | ✓ | | |
| Nebraska | ✓ | | ✓[c] |
| Nevada | ✓ | | |
| New Hampshire | [e] | ✓ | ✓ |
| New Jersey | ✓ | | [c] |
| New Mexico | ✓ | | ✓[c] |
| New York | ✓ | | ✓[c] |

| State | Application asks for | | Interview is required as part of application process[b] |
|---|---|---|---|
| | Comprehensive information about assets[a] | General information on assets | |
| North Carolina | [g] | [g] | ✓ |
| North Dakota | ✓ | | |
| Ohio | | ✓ | ✓ |
| Oklahoma | ✓ | | ✓[c] |
| Oregon | ✓ | | ✓ |
| Pennsylvania | ✓ | | |
| Rhode Island | ✓ | | |
| South Carolina | ✓ | | [c] |
| South Dakota | ✓ | | |
| Tennessee | | [d] | ✓[c] |
| Texas | ✓ | | ✓ |
| Utah | | ✓ | ✓ |
| Vermont | ✓ | | ✓ |
| Virginia | ✓ | | [c] |
| Washington | ✓ | | ✓[c] |
| West Virginia | ✓ | | ✓[c] |
| Wisconsin | ✓ | | |
| Wyoming | ✓ | | ✓ |
| **Total** | **38** | **7** | **30** |

Source: GAO analysis of state and county information, June and July 2005.

Note: In June and July 2005, we asked state officials to provide their current applications for Medicaid long-term care coverage. Where states asked for clarification or had multiple applications for Medicaid long-term care coverage, we asked for applications appropriate for nursing home coverage.

[a]Applications were considered to have asked for comprehensive information on assets if they required applicants to respond to questions regarding whether they had certain types of assets. For example, applications required applicants to indicate whether they had checking and savings accounts, stocks and bonds, retirement accounts, burial insurance, real estate, and vehicles, along with other assets.

[b]States were asked whether they required an interview as part of the application process. In our analysis, we considered an interview as either a face-to-face meeting or a telephone conversation with either the applicant or an appointed representative. States that do not require an interview may allow interviews at the discretion of the applicant or the Medicaid eligibility case worker.

[c]In this state, we were referred to a county eligibility office for information about the interview; therefore, interview requirements in this state are based on the response of the official from the county eligibility office.

[d]The state had a brief application that did not ask about assets.

[e]While the state asked applicants to respond to whether they had certain types of assets, the application was limited with respect to the types of assets applicants were required to address. For example, the application may have only asked about cash, bank accounts, life insurance, real property, and "other."

[f]The state required interviews for applicants who the state deemed to have complex assets, including those who reported transferring assets.

[g]The state had applicants complete their application during the interview process with eligibility case workers.

# Appendix IV: Characteristics of Medicaid Long-Term Care Applications Related to Transfers of Assets, by State

| State | Application asks about transfers within previous 36 months[a] | Application asks about transfers within previous 60 months[a] |
|---|---|---|
| Alabama | ✓ | ✓ |
| Alaska | | ✓ |
| Arizona | ✓ | [b] |
| Arkansas | [c] | [c] |
| California | [d] | |
| Colorado | | ✓ |
| Connecticut | ✓ | ✓ |
| Delaware | ✓ | [b] |
| District of Columbia | ✓ | |
| Florida | | ✓ |
| Georgia | [e] | [e] |
| Hawaii | | ✓ |
| Idaho | | [b] |
| Illinois | ✓ | ✓ |
| Indiana | [e] | [e] |
| Iowa | | ✓ |
| Kansas | | ✓ |
| Kentucky | [f] | [f] |
| Louisiana | [g] | [g] |
| Maine | ✓ | [b] |
| Maryland | ✓ | ✓ |
| Massachusetts | ✓ | ✓ |
| Michigan | ✓ | [b] |
| Minnesota | ✓ | ✓ |
| Mississippi | ✓ | |
| Missouri | | ✓ |
| Montana | ✓ | ✓ |
| Nebraska | | ✓ |
| Nevada | ✓ | [b] |
| New Hampshire | | ✓ |
| New Jersey | ✓ | [b] |
| New Mexico | ✓ | [b] |
| New York | ✓ | ✓ |
| North Carolina | [f] | [f] |

| State | Application asks about transfers within previous 36 months[a] | Application asks about transfers within previous 60 months[a] |
|---|---|---|
| North Dakota | | ✓ |
| Ohio | [e] | [e] |
| Oklahoma | ✓ | ✓ |
| Oregon | ✓ | ✓ |
| Pennsylvania | ✓ | ✓ |
| Rhode Island | ✓ | ✓ |
| South Carolina | ✓ | ✓ |
| South Dakota | ✓ | ✓ |
| Tennessee | [e] | [e] |
| Texas | ✓ | [b] |
| Utah | ✓ | ✓ |
| Vermont | ✓ | ✓ |
| Virginia | | ✓ |
| Washington | | ✓ |
| West Virginia | | ✓ |
| Wisconsin | ✓ | ✓ |
| Wyoming | ✓ | [b] |
| **Total** | **28** | **30** |

Source: GAO analysis of state and county information.

Note: In June and July 2005, we asked state officials to provide their current applications for Medicaid long-term care coverage. Where states asked for clarification or had multiple applications for Medicaid long-term care coverage, we asked for applications appropriate for nursing home coverage.

[a]Under federal law, states generally must withhold payments for long-term care services for persons who dispose of assets for less than fair market value within a specified time period to satisfy financial eligibility requirements. As a result, states generally conduct a review, or "look-back," to determine whether the applicant (or his or her spouse, if married) transferred assets and, if so, whether the transfer was made for less than fair market value. Generally, the look-back period is 36 months, but for certain trusts the look-back period is 60 months.

[b]The state's application had a specific question about trusts that could be used to indicate whether further review for a transfer of assets was necessary.

[c]While the state's application did not include specific questions regarding transfer of assets, it included a separate form for the applicant to report any transfers of assets, including the date of such transfers.

[d]The state's application asked about transfers within 30 months. Prior to the Omnibus Budget Reconciliation Act of 1993, the federally mandated look-back period for transfers of assets was 30 months.

[e]The state's application did not ask about transfers of assets.

[f]The state had applicants complete their application during the interview process with eligibility case workers.

[g]The state's application asked if an applicant had ever transferred assets.

# Appendix V: Comments from the Centers for Medicare & Medicaid Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*
Washington, DC 20201

**DATE:** AUG 29 2005

**TO:** Kathryn G. Allen
Director, Health Care
Government Accountability Office

**FROM:** Mark B. McClellan, M.D., Ph.D.
Administrator

**SUBJECT:** Government Accountability Office's (GAO) Draft Report: *MEDICAID: Transfer of Assets by Elderly Individuals to Obtain Long-Term Care Coverage* (GAO-05-968)

Thank you for the opportunity to review and comment on the above referenced GAO draft report. While the report was prepared on a fast track and the data set addressed only some aspects of asset transfers, we are pleased with the opportunity for timely analysis and comment on the report.

The Medicaid program will only be sustainable if its resources are not drained to provide health care assistance to those with substantial ability to contribute to the costs of their own care. Unfortunately, there are many examples of complex asset transfer schemes which have the effect of shielding substantial financial assets for certain individuals who consequently qualify for Medicaid coverage for long-term care. Assuring that Medicaid resources are available to those who truly need them by preventing such asset transfer schemes is a difficult challenge. Current law is complex, and the complexity provides opportunities for creative attorneys and individuals to devise approaches that comply with the letter of the law but not the overall intent of Medicaid policy. These schemes are ever-changing, and data that quantifies the precise extent and cost of asset transfers to the Medicaid program has been difficult to gather, as the GAO report notes. Despite these challenges, CMS actuaries and the independent analysts at CBO have concluded that specific legislative steps that address some aspects of these asset transfer schemes would save billions of dollars of state and Federal Medicaid spending by helping to ensure that those with resources can contribute them to the cost of their long-term care. This would improve the sustainability of the Medicaid program and reduce the burden on states of providing access to long-term care for individuals who truly need help.

The President's Budget proposal on this issue takes an important step to prevent individuals from using creative estate planning to shelter assets. The proposal would change the start of the period of ineligibility for Medicaid long-term care services for those who transfer assets for less than fair market value. Under the proposal, the period of ineligibility would begin upon the later of (1) the asset transfer, or (2) the point at which an individual is eligible for Medicaid and is receiving long-term care services either in an institution or, in certain circumstances, in the community. This proposal

would encourage more individual long-term care planning and help focus Medicaid's resources on those who need it most. It is estimated that the proposal would save $99 million in FY 2006 and $1.48 billion over five years.

An important limitation to GAO's analysis, noted in the report, was the absence of available data related to transfer of non-cash assets. GAO analyzed data from the 2002 Health and Retirement Study, a longitudinal study that measures only cash transfers. CMS underscores GAO's caveat that its analysis understates the extent and amount of all transfer of assets.

Substantial amounts of assets are sheltered by individuals transferring homes, stocks and bonds, and other non-cash property. Some of these non-cash assets, such as homes, are generally not counted for the purposes of determining Medicaid eligibility. However, in most circumstances, the transfer of financial and other non-cash assets do affect eligibility for Medicaid for the applicant or recipient of long-term care coverage. Consequently, inclusion of data on non-cash transfers would have significantly added to the value of the report for addressing the topic of the occurrence of transfers of assets to obtain Medicaid long-term care coverage. Additionally, the report could have been more robust if GAO had additional time to investigate asset transfers and penalties applied at the beneficiary level.

Thank you again for the opportunity to respond to the report.

# Appendix VI: GAO Contact and Staff Acknowledgments

## GAO Contact

Kathryn G. Allen (202) 512-7118 or allenk@gao.gov

## Acknowledgments

In addition to the contact named above Carolyn Yocom, Assistant Director; JoAnn Martinez-Shriver; Kaycee Misiewicz; Elizabeth T. Morrison; Michelle Rosenberg; Sara Sills; LaShonda Wilson; and Suzanne M. Worth made key contributions to this report.

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