

Version History Table			
Date:	Document	Changes Made:	Impacted Pages:
12/2024	Charitable Giving Process Guide	New Document	All Pages
6/2025	Charitable Giving Process Guide	Added Deprivation of Resources Process Guide link	Pg. 4

Charitable Giving Process Guide

The Department has begun to make allowances for bona fide charitable giving for those who are requesting long-term care services and supports. Previously, no allowance for giving was permitted, which resulted in deprivation of resource penalties. New regulations are being drafted to give more structure to the deprivation review process. This interim guide will provide a general framework for reviewing cases with charitable giving until the regulations can be published.

What is a charitable gift?

A charitable gift is a donation of cash or property to an organization, typically a non-profit organization. The organization may be religious, cultural, political, or social, but generally operates for the good of a community and not with the intent of making a profit. For our purposes, we will also include gifting to family members or friends to mark a holiday, birthday, or special occasion. The gift giver usually does not expect anything tangible in return for the gift. For Medicaid, we must review transactions carefully due to the prohibition on transferring assets for less than fair market value.

What factors should be considered?

When reviewing transactions for charitable giving, it is best to look at the totality of the circumstances. It may be necessary to gather additional information to gain a better view of the nature of the giving. We are trying to determine the person's intent behind the gifting, and it may be necessary to look at a pattern of giving rather than just a single transaction. A deprivation penalty may not be imposed, after review of the factors below, if it appears that a person has given consistent amounts for a charitable purpose over a long period of time and did not intend to reduce their assets for Medicaid eligibility.

Below are some factors to consider in reviewing instances of charitable giving:

- Has the person given to the same, or similar, organizations over a period of time?
 - This may be an indication that gifting was driven by sincerely held beliefs and was not done to transfer assets.
- Is the pattern of giving approximately the same over the period of time?
 - What is the approximate frequency? Weekly? Monthly? Annually? At specific times of the year?
- Is the amount given consistent over the period of giving?
 - Consistent amounts indicate that this was done for the same purpose over time.
 - If gifting has increased significantly just prior to requesting Medicaid, this may be an indication that the person is trying to reduce assets to establish eligibility and should be considered a deprivation.
- Do the amounts given represent a large portion of the person's overall assets?
 - Even if giving has been consistent over a recent period, if the aggregate amount is large or represents a large portion of the person's overall assets, this is an

indication that the person may have been trying to reduce assets in order to become eligible.

- Was anything of value received in exchange for the gift?
 - In some cases, a person may receive something of value in exchange for a “gift.” This may be an indication that there is really a commercial transaction, and not giving, that is occurring.
 - **Example:** some organizations may provide a burial space in a specific location in exchange for a gift of a certain amount. This is more like a commercial transaction of purchasing a burial space than it is someone gifting money to the organization.
 - Not all items received in exchange for a gift represent a commercial transaction. Some organizations give gifts of nominal value to donors as show of appreciation.
 - **Example:** donors to an organization may receive a tote bag when they make a donation, but the tote bag is rarely a determining factor in making the gift.
- Is there any indication that the giving was done under duress or as part of financial exploitation?
 - People requesting assistance with long-term care are a vulnerable population. You should always be aware of situations in which another person is attempting to take advantage of a client so that this can be reported for investigation.
 - Look for transactions going to anyone who has been appointed a guardian or who has Power of Attorney. These roles generally have a duty to not use the protected person’s assets to their own advantage. A POA agreement must specifically allow the POA to give to charities or to give or transfer assets to the POA. Guardianship orders will generally prohibit the guardian from using the ward’s assets.
 - Look for transactions to friends or relatives which do not fit an established pattern or are unusually large. Relatives can sometimes feel entitled to someone’s assets or think that they were promised certain items. Charitable promises to family members are generally unenforceable. Elderly members of the community are targets for scammers, and these transactions are not considered charitable giving. If you suspect someone is being taken advantage of by a scam, you should report it to someone with financial authority to stop the transactions, such as a POA. If there is no one with authority, or if you suspect that someone with authority is aiding in the scam, then you should make a report to APS.

What should be documented?

It is important to document your review of charitable giving for audit purposes.

- If you find that the giving was bona fide, then you need to document what was given, the results of your review, and your determination that the giving was not a transfer of resources.

- If you determine that the giving is a transfer of resources, then you will need to document which transactions are being used as a basis for the deprivation penalty.
- In some cases, you may find some charitable giving and some outright transfers. In those cases, you will need to document which transactions fit into each category in order to impose the deprivation penalty.

For additional information on deprivation see the [Deprivation of Resources Process Guide](#).