

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

Operations Memorandum
Medicaid

SUBJECT: Undue Hardship Waiver Provisions

TO: Executive Directors

FROM: Joanne Glover
Director
Bureau of Operations

PURPOSE

The purpose of this Operations Memorandum is to provide policy and procedure that must be used when an applicant, recipient or spouse of an applicant or recipient applying for or receiving Medicaid/Long Term Care (LTC) Services has transferred assets for less than Fair Market Value (FMV).

The purpose is also to provide policy and procedure when an individual who is applying for or receiving LTC Services has equity interest in the home greater than \$500,000. This policy is effective March 5, 2007.

The information provided in this Operations Memorandum takes precedence over any previous Policy Clarifications that have been issued or the policies and procedures that may be currently listed in the LTC Handbook. To ensure that all County Assistance Offices (CAOs) receive and apply the same policy and procedures on these topics, this information is issued by an Operations Memorandum versus a Policy Clarification.

BACKGROUND

Section 6011(d) of the Deficit Reduction Act (DRA) that became law on February 8, 2006, requires that each state must provide an Undue Hardship Waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act. An Undue Hardship Waiver process must be made available to an applicant or recipient who is denied eligibility for payment of LTC Services under the Medicaid Program due to a transfer of assets for less than FMV.

Section 6014 of the DRA directs the Secretary of Health and Human Services (HHS) to establish a process to waive the home equity limit in the case of a demonstrated hardship. Pending publication of a process specific to the home equity limit, the Department of Public Welfare (DPW) will apply the undue hardship process for

individuals whose equity interest in a home exceeds \$500,000. Until this process is established, the policy and procedure outlined in this memo for undue hardship waiver requests will apply to individuals denied payment of LTC Services due to home equity in excess of \$500,000.

DISCUSSION

This Operations Memorandum provides guidance that includes the following:

- A. When an undue hardship exists sufficient to allow the DPW to authorize payment of LTC Services even though the applicant or recipient has transferred assets for less than FMV or has equity in the home that exceeds \$500,000;
- B. Factors to consider when evaluating an undue hardship waiver request;
- C. The procedures for processing an undue hardship waiver request; and
- E. The appeal process when an undue hardship waiver is denied.

New Policy Guidelines

1. An undue or hardship exists when denial of payment of LTC Services due to a transfer of assets for less than FMV or having equity interest in the home greater than \$500,000 would:
 - Deprive the applicant or recipient of medical care such that the applicant's or recipient's health or life would be endangered; or
 - Deprive the applicant or recipient of food, clothing, shelter, or other necessities of life.
2. When determining whether an undue hardship exists for an applicant or recipient, the CAO must consider all circumstances involving the transfer of the asset that was made for less than FMV that resulted in the denial of payment of LTC Services.
3. The applicant or recipient must be notified in writing that he/she has the right to request an undue hardship waiver when there is a denial or termination of payment of LTC Services that resulted from the transfer of an asset for less than FMV or if the applicant/recipient has equity in the home that exceeds \$500,000. The Notice to Applicant will include an *Explanation of the Effect of Transfer of Assets on Eligibility for Medicaid/Long-Term Care Services* (Attachment A), an *Application for Undue Hardship Waiver* form (Attachment B), an *Application for Undue Hardship Waiver – Excess Home Equity* form (Attachment C) and a LTC Facility Authorization Form (Attachment D).

Note: Until CIS has the capability to automatically send the Application for Undue Hardship form, the Application for Undue Hardship – Excess Home Equity form and the LTC Facility Authorization Form, the CAO must manually mail these forms to all applicants or recipients being denied payment of LTC Services due to a transfer of assets for less than FMV or having equity interest in the home greater than \$500,000.

4. The request for an undue hardship waiver because of transfers of assets for less than FMV may be made by having the applicant, the recipient, or the applicant or recipient's responsible party (legal representative, relative, or friend) complete and submit Attachment B. The LTC facility where the applicant or recipient is residing can also request an undue hardship waiver by completing and submitting Attachment B provided that the LTC facility has been authorized, in writing, to pursue the waiver by the applicant or recipient. Attachment D is the form that a LTC facility must use when requesting an undue hardship waiver on behalf of a resident.
5. The request for an undue hardship waiver for excess home equity may be made by having the applicant, the recipient, or the applicant or recipient's responsible party (legal representative, relative, or friend) complete and submit Attachment C.
6. The request for an undue hardship waiver must be made in writing and contain the following:
 - A completed and signed *Application for Hardship Waiver* (Attachment B and/or Attachment C);
 - The basis for requesting the undue hardship waiver; and
 - All documentation necessary to support the undue hardship waiver request.
7. The request for an undue hardship waiver (Attachment B and/or Attachment C) and all documentation supporting the request must be received by the CAO within 30 calendar days of the issue date of the Notice to Applicant that denied or terminated payment of LTC Services.
8. The CAO will review the undue hardship waiver request and all supporting documentation. Factors such as the age, health, and financial situation of the applicant or recipient at the time of the transfer of assets must be evaluated. The Income Maintenance Caseworker (IMCW) must consider other relevant information including, but not limited to:
 - The value of the asset transferred;

- The amount of compensation received;
- The date the asset was transferred in relation to the application for Medicaid/LTC Services;
- Any pattern of gifting;
- The relationship of the transferee to the transferor; and
- Reasons why the assets cannot be returned to the transferor
- For excess home equity, the reason why the equity cannot be accessed

NOTE: The CAO may waive all or a portion of the penalty period under an undue hardship waiver.

Special consideration should be given as to whether there was sudden unexpected onset of a serious illness or disability after the date the transfer occurred.

9. The CAO can request any type of documentation to assist in the evaluation of the undue hardship waiver request including, but not limited to:
 - Medical records;
 - Financial records; and
 - Personal records.

10. The determination of whether to grant or deny an undue hardship waiver request by the IMCW must be reviewed by the IMCW's immediate supervisor. The IMCW Supervisor's determination will then be forwarded to headquarters for a final review. All documentation that has been provided with the request for the undue hardship must also be forwarded to headquarters within 30 calendar days of receipt of this documentation by the CAO. The IMCW Supervisor can fax or mail the information to the Bureau of Policy (BOP). Fax submissions of undue hardship waiver requests and all supporting documentation will be faxed to BOP, Division of Health Services at 717-772-6451. Undue hardship waiver requests and all supporting documentation can also be sent to:

Department of Public Welfare
Bureau of Policy, Room 230
DGS Annex Complex
Willow Oak Building #42
106 Hemlock Drive
Harrisburg, PA 17110-3595

NOTE: All requests for an undue hardship waiver must be forwarded to BOP regardless of the CAO's decision to deny or approve the undue

hardship waiver request. A completed and signed *Undue Hardship Decision Form* (Attachment E) will be faxed or sent to BOP along with the request and supporting documentation.

11. Upon receipt of the undue hardship waiver request and all documentation, BOP will notify, via fax, the IMCW Supervisor within 30 calendar days of the decision to approve or deny the undue hardship waiver request using the *Undue Hardship Decision Form* (Attachment E). The CAO will not take any action regarding the request until the review by BOP is complete.
12. Provide the individual with a change notice (PA 162) within five calendar days of the decision provided by BOP when the undue hardship waiver request is approved. Approval of undue hardship waiver requests will have an automated notice generated by CIS. See Appendix A for notice language that will appear on the CIS generated change notice.
13. Provide the individual with a manual PA 162 notice within five calendar days of the decision provided by BOP when the undue hardship waiver request is denied or partially approved. Notices of denial or partial approval of undue hardship waiver requests must be sent manually. See Appendix B for denial and partial approval notice language.

NEXT STEPS

1. Review this Operations Memorandum with appropriate staff.
2. Contact your Area Manager if you have questions.
3. This Operations Memorandum will become obsolete upon release of the revised Handbook pages.

Attachments

APPENDIX A

Approval of undue hardship waiver request notice (Transfers)

- The following language will appear on the automated PA 162 Change notice informing an individual residing in a Long Term Care (LTC) facility about the approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to a transfer of assets for less than Fair Market Value (FMV). You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is approved. You will not have a period of ineligibility due to a transfer of assets for less than FMV; however, you will be required to make a monthly payment towards your cost of care. A separate notice showing you the details of this computation is enclosed. Contact the County Assistance Office (CAO) if you have questions or changes to report. When contacting the CAO, please provide your record number, which is located at the top and bottom of this notice.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)

- The following language will appear on the automated PA 162 Change notice informing an individual requesting payment of the Home and Community-Based Services (HCBS) about the approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to a transfer of assets for less than Fair Market Value (FMV). You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is approved. You are eligible for Home and Community Based Services (HCBS) in the _____ Waiver. You will not have a period of ineligibility due to a transfer of assets for less than FMV. The enrolling agency will notify you when the HCBS will begin. Contact the County Assistance Office (CAO) if you have questions or changes to report. When contacting the CAO, please provide your record number, which is located at the top and bottom of this notice.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)

Approval of undue hardship waiver request notice (Home Equity)

- The following language will appear on the PA 162 Change notice informing an individual residing in a LTC facility about the approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to excess home equity. You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is approved. You will not have a period of ineligibility due excess home equity; however, you will be required to make a monthly payment towards your cost of care. A separate notice showing you the details of this computation is enclosed. Contact the CAO if you have questions or changes to report. When contacting the CAO, please provide your record number, which is located at the top and bottom of this notice.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

- The following language will appear on the PA 162 Change notice informing an individual requesting HCBS of the approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to excess home equity. You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is approved. You are eligible for Home and Community Based Services (HCBS) in the _____ Waiver. You will not have a period of ineligibility due to excess home equity. The enrolling agency will notify you when the HCBS will begin. Contact the County Assistance Office (CAO) if you have questions or changes to report. When contacting the CAO, please provide your record number, which is located at the top and bottom of this notice.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

APPENDIX B

Denial of undue hardship waiver notice (Transfers)

- The following language is to be used on manual notices to inform an individual in an Long Term Care (LTC) facility or an individual requesting payment of Home and Community Based Services (HCBS) about the denial of their request for an undue hardship waiver:

You previously received a notice informing you of a period of ineligibility due to a transfer of assets for less than Fair Market Value (FMV). You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is denied. You will remain eligible for all other Medicaid benefits.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)

Denial of undue hardship waiver notice (Home Equity)

- The following language is to be used on manual notices to inform an individual in an LTC facility or an individual request payment of HCBS about the denial of their request for an undue hardship waiver:

You previously received a notice informing you of a period of ineligibility due to excess home equity. You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship waiver is denied. You will remain eligible for all other Medicaid benefits.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)

Partial approval of undue hardship waiver request language (Transfers)

- The following language is to be used on to inform an individual residing in an LTC facility about a partial approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to a transfer of assets for less than Fair Market Value (FMV). You requested an undue hardship waiver for this

period of ineligibility. Your request for an undue hardship is authorized for a portion of the period of ineligibility for payment of Long Term Care (LTC) facility services. You disposed of a total of \$_____ in assets without receiving FMV. This transfer results in a period of ineligibility for payment of LTC facility services. You are not eligible for payment towards the cost of LTC facility services, beginning on _____ and ending on _____. During this period, you will be responsible to pay the LTC facility for the LTC services you receive. You are eligible for all other Medicaid benefits.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)

- The following language is to be used to inform an individual requesting payment of HCBS about a partial approval of an undue hardship waiver request:

You previously received a notice informing you of a period of ineligibility due to a transfer of assets for less than Fair Market Value (FMV). You requested an undue hardship waiver for this period of ineligibility. Your request for an undue hardship is authorized for a portion of the period of ineligibility for payment Home and Community Based Services (HCBS). You disposed of a total of \$_____ in assets without receiving fair market value. This transfer results in a period of ineligibility for payment of HCBS. You are not eligible for payment towards the cost of HCBS, beginning on _____ and ending on _____. During this period, you will be responsible to pay the HCBS provider for the services that you receive. You are eligible for all other Medicaid benefits.

Citations: Pub. L. 109-171, §§ 6011 and 6014
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code §178.104(d)