

Chapter 109. Transfers of Assets

§10905. Transfers

A. The Deficit Reduction Act of 2005 established new provisions governing the treatment of transfers of assets for individuals and their spouses who apply for or receive long-term care services.

B. The look-back period is lengthened to five years for potential transfers of assets.

C. For transfers for less than fair market value, the period of ineligibility for long-term care vendor payment is the latter of the first day of the month after which the asset was transferred or the date on which the individual is eligible for long term care Medicaid assistance (but for the penalty being applied).

1. Periods of ineligibility cannot occur during any other period of ineligibility; they must be consecutive and not concurrent.

D. For transfers for less than fair market value, the penalty period for home and community-based services (HCBS) waiver recipients begins with the later of the month during which assets have been transferred or the date the individual is ineligible for Medicaid long-term care assistance and is receiving long-term care services (nursing facility and ICF/MR or HCBS services) that would be covered by Medicaid, except for imposition of the penalty.

E. Partial Month Transfers. The department shall impose penalties for transfers in a month that are less than the state's average monthly cost to a private patient of nursing facility services in the state.

F. Combining Multiple Transfers Made in More Than One Month. These provisions refer to more than one transfer during the look-back period where each transfer results in less than a full month of eligibility.

1. The department shall combine multiple transfers for less than fair market value in more than one month and impose a single period of ineligibility or apply multiple penalty periods.

a. If the department imposes a single period of ineligibility, all transfers will be added together and a single continuous period of eligibility will be imposed. Otherwise, a separate period of ineligibility shall be calculated for each month and the resulting periods of eligibility shall be imposed separately.

G. Undue Hardship. The department shall provide for an undue hardship waiver when application of the transfer of assets provision would deprive the individual of medical care such that the individual's health, life or other necessities of life would be endangered.

1. Undue hardship provisions shall permit the facility in which the individual is residing to file an undue hardship waiver application on his behalf with the consent of the individual or the personal representative of the individual.

2. Bed hold payments shall not be made while an application for an undue hardship waiver is pending.

3. Terms. The penalty is a period of ineligibility for receiving long term care vendor payments as a result of a transfer of income or assets or both.

a. An undue hardship exception is when a penalty will not be imposed against the applicant/enrollee, either in whole or in part, after findings that an undue hardship exists.

b. The community spouse is not protected by the hardship exception. The exception is for the applicant/enrollee not to be deprived.

4. Undue hardship does not exist:

a. when the application of the transfer of assets provisions merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him/her at risk of serious deprivation; and

b. when property is transferred to one or more of the following:

i. blood relatives to a third degree cousin;

ii. mother-in-law;

iii. father-in-law;

iv. brother-in-law; or

v. sister-in-law;

c. if the individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has not exhausted all lawful means to recover the assets or income or the value of the transferred assets or income; or

d. if the applicant/enrollee's health or age indicated a need for long term care services was predictable at the time of the transfer.

5. The applicant/recipient shall be advised in writing that an undue hardship exception.

6. If an undue hardship exception is denied the applicant has the right to appeal the denial decision.

7. Determining Undue Hardship. Once a period of ineligibility has been established because of a transfer of assets or income for less than fair market value, or the equity value in the home, an applicant/enrollee may apply for an undue hardship exception.

a. An undue hardship exception request must be made within seven days from the date of notification of the penalty. Documentation supporting the request for the exception of undue hardship must be provided. The department may extend the request periods if it determines that extenuating circumstances require additional time.

b. When undue hardship requests are made for the first time, individuals challenging the penalty must raise all claims and submit all evidence permitting consideration of undue hardship. The individual has to have taken action in law and equity to get the asset back before the department can consider undue hardship.

c. Once the department determines that it has received complete documentation, it shall inform the individual within 10 business days of the undue hardship decision.

d. If no request for undue hardship is received within seven days after notification of a transfer penalty, or if the request is denied, the department shall issue an

eligibility determination specifying the applicable penalty period. If the individual is a recipient, the notice shall include the date of the Medicaid long-term care termination. The notice shall also include the right to request a fair hearing and continuing benefits.

8. An undue hardship exception may be requested at any time during the penalty period if new circumstances leading to undue hardship arise during the duration of the penalty period. If granted, the undue hardship request shall be prospective from the date of the request.

9. The department shall have no obligation to pay for long-term care services during the penalty period unless it grants an undue hardship exception or the applicant/enrollee prevails in a fair hearing.

10. The individual must provide to the department sufficient documentation to support, by a preponderance of the evidence, the claim that application of the penalty will result in an undue hardship to the applicant/enrollee (not the community spouse).

11. If undue hardship is determined to exist, the transferred assets or equity value in the home shall not be considered in the eligibility process.

12. If a request for an undue hardship exception is denied, the applicant/enrollee may request a fair hearing.

13. Terminating the Undue Hardship Exception. The department shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted.

a. The department shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based or a disqualification based on the transfer, which required termination of the undue hardship exception.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1411 (July 2008).

non-institutionalized living arrangement for the community spouse's own use and maintenance.

1. Exception. The spousal impoverishment provisions do not apply to individuals residing in a group home.

C. The income first rule shall apply to spousal impoverishment. Under these provisions, all of the income of the institutionalized spouse that can be made available to the community spouse will be made available to bring the spouse up to the minimum monthly needs allowance.

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