

2345 – UNDUE HARDSHIP PROVISION FOR ABD MEDICAID

POLICY STATEMENT	Every case should be evaluated for the potential of the undue hardship exclusion prior to denial or computing a transfer penalty.
BASIC CONSIDERATIONS	<p>Undue hardship is defined as a situation wherein an individual would be deprived of medical care such that his/her health or life would be endangered; or would be deprived of food, clothing, shelter, or other necessities of life.</p> <p>For purposes of this policy, the following definitions apply:</p> <ul style="list-style-type: none"> • “Health or life would be endangered” means: A medical doctor with knowledge of the A/R’s medical condition at the time of the application of the penalty period, certifies in writing that in his or her professional opinion, the A/R will be in substantial danger of death or the A/R’s health will suffer substantial and irreparable harm. • “Other necessities of life” means: Basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual’s health or life would be endangered. <p>With the Deficit Reduction Act (DRA) of ’05, enacted 2/8/06 to be effective 2/1/07 on all transfers of assets computed on or after that date, the community spouse is not protected by the undue hardship waiver on assets transferred by the community spouse unless the spouse is also applying for LA-D Medicaid. Undue hardship only applies to the Applicant or Recipients, not community spouses.</p> <p>Undue hardship does NOT exist when:</p> <ul style="list-style-type: none"> • the application of a transfer of assets penalty merely inconveniences or restricts the lifestyle of the A/R • the institutionalized spouse has transferred his/her assets to the community spouse and the community spouse refuses to cooperate in making the assets available to the institutionalized spouse • the A/R’s total available income and assets (or if a couple, the total combined available income and assets of the A/R and the A/R’s spouse, or if under age 18, the combined available assets and income of the A/R and the A/R’s parents), including all countable and excluded income and assets, are sufficient to provide the A/R medical care and food.

**BASIC
CONSIDERATIONS
(cont.)**

- Clothing, shelter, and other necessities of life such that the A/R's health or life would **NOT** be endangered

There are three conditions for use of the undue hardship provision, only one of which needs to be met:

- An institutionalized spouse who has excess resources will not be found ineligible for Medicaid where it is determined that denial of eligibility on the basis of having excess assets would create undue hardship.
- An individual for whom receipt of distribution from a Medicaid qualifying trust would cause ineligibility will not be found ineligible for Medicaid where it is determined that such denial would create undue hardship to the A/R.
- An individual having transferred assets for less than the fair market value, or having transferred assets into a trust, will not be found ineligible for Medicaid nursing facility services or home and community based services where it is determined that such denial would create undue hardship to the A/R.

PROCEDURES

Determine the value of countable assets. Make a decision based on the facts present in the case.

Undue hardship must be considered in each of the above situations. However, with applications and reviews processed on or after February 1, 2007, for transfers made on or after 2/8/06, the applicant or representative must have taken legal action and equitable remedies to recover the asset before undue hardship can be considered. Documentation of such action must be attached to the undue hardship request. The A/R, his/her representative or the facility (with consent of the A/R or representative) has to request undue hardship, using the "[Undue Hardship Waiver Application](#)." Refer to Appendix F, Forms, for a copy of the form.

The A/R has the burden of proof that his/her health and age did not indicate a need for long-term care services at the time the asset was transferred.

PROCEDURES
(cont.)

If the application/ongoing case is subsequently penalized or denied/closed due to a transfer of assets made on or after 2/8/06, the MES must take the following actions:

- **Generate a system notice** (timely if review) and a separate Undue Hardship Waiver letter, found in Appendix F,
 - that an undue hardship waiver exists
 - that the undue hardship waiver must be requested within 12 days of the date on the notice
 - to contact the county MES to obtain the necessary form within that 12 days
 - if the undue hardship waiver is denied, that decision may be appealed to the Administrative Law Judge. However, if benefits are continued, the state will recoup Medicaid funds expended on the A/R's behalf during the appeal period.
- within that initial 12 days, DFCS provides, in writing, the "[Undue Hardship Waiver Application](#)" form and information to apply for undue hardship
- if an additional 12 days is needed to obtain information, the A/R, representative or facility must request prior to the end of the initial 12 days
- once the undue hardship waiver is decided, the MES has 12 days in which to notify the A/R, representative and facility of the outcome.
- If the undue hardship waiver is approved, reopen the case if it was denied/closed, waiving the penalty, beginning with the **month of the application for the waiver or the month in which all information and documentation is provided to make the waiver determination**, whichever is later. Do **not** waive notice.
- If the undue hardship waiver is denied **or** if at the end of the allotted time periods, the undue hardship waiver has not been submitted by the A/R, representative or facility, another denial/closure notice must be sent. Close or activate transfer if case has been left open. If the case was already closed/denied, **notify the AR** in writing of the denial. The notice of the penalty to the A/R must include a statement that undue hardship was considered and determined not to be applicable. The A/R may still request a hearing under the normal hearing process (either via system or manual letter). These hearings will be handled by the Department of Human Resources Legal Services Office. Refer to [Appendix B](#), Hearings.

PROCEDURES

(cont.)

**Undue Hardship
to Co-Owner**

The regional Medicaid Program Specialist will make the determination of whether or not to approve the Undue Hardship Waiver request. For ongoing cases, leave the case open pending the outcome of the hardship waiver request.

Thoroughly and completely document the case record to support applying the undue hardship provision.

- document which of the three conditions is met.
- document how the condition is met including why the individual will suffer irrevocable harm if denied Medicaid.
- Document date request received, date when MES responded and whether the request was written or oral.

Exclude jointly owned real property if the sale would cause undue hardship to the co-owner.

Consider that sale of the property would cause undue hardship to a co-owner if one of the following situation exists:

- The co-owner uses the property as his/her principal place of residence.
- The co-owner would have to move if the property were sold.
- The co-owner has no other readily available housing.

If the A/R alleges that the sale of certain real property would force a co-owner living on it to move, obtain the following documentation and verification:

- The individual's signed statement to that effect
- Evidence of joint ownership

Obtain a statement from the co-owner regarding whether he or she:

- Uses the property as his or her principal place of residence
- Would have to move if the property were sold
- Would have other living quarters readily available.

Accept any reasonable allegation from the co-owner that there is no readily available housing, no other affordable housing available or no other housing with necessary physical modifications for a handicapped individual.

If undue hardship to the co-owner does not apply, follow the same procedures found on pages 1 through 3.