

STATEMENTS OF POLICY

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 178]

Undue Hardship Waiver Guidelines

[37 Pa.B. 1046]

[Saturday, March 3, 2007]

Scope

This statement of policy applies to applicants and recipients in need of payment for the following long-term care (LTC) services:

- (1) Nursing facility services.
- (2) A level of care in an institution equivalent to that of nursing facility services.
- (3) Home and community-based services furnished under a waiver granted by the Centers for Medicare and Medicaid Services.

Purpose

The purpose of this statement of policy is to provide policy guidelines about the Department of Public Welfare's (Department) regulations regarding undue hardship waiver requests when determining eligibility for payment of LTC services. The Deficit Reduction Act of 2005 (DRA of 2005), the act of February 8, 2006 (Pub. L. No. 109-171, 120 Stat. 4) requires that states provide an undue hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)). The Department's regulations can be accessed online at the *Pennsylvania Code* website at www.pacode.com.

Background

The DRA of 2005 became law on February 8, 2006. The DRA of 2005 made a variety of changes in the rules regarding eligibility for services and benefits in the Medicaid Program including the availability of undue hardship waiver requests for individuals who would be denied eligibility for payment of LTC services.

Discussion

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The DRA of 2005 mandates that the Department shall provide for the availability of an undue hardship waiver process when the application of the transfer of assets penalty would deprive the individual of one of the following:

- (1) Medical care so that the individual's health or life would be endangered.
- (2) Food, clothing, shelter or other necessities of life.

The DRA of 2005 mandates that an individual will not be eligible for payment of LTC services if the individual's equity interest in the individual's home exceeds \$500,000. The DRA of 2005 states that the Secretary of Health and Human Services (HHS) shall establish a process to waive the application of the home equity limit in the case of a demonstrated hardship. Until the Secretary of HHS establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in an individual's home exceeds \$500,000.

Effective Date

This statement of policy is effective March 3, 2007.

Contact Person

Questions and comments to this statement of policy should be directed to Edward J. Zogby, Director, Bureau of Policy, Office of Income Maintenance, (717) 787-4081.

(Editor's Note: Title 55 of the Pennsylvania Code is amended by adding statements of policy in §§ 178.104b and 178.174b to read as set forth in Annex A.)

(Editor's Note: For a document relating to this statement of policy, see 37 Pa.B. 1043 (March 3, 2007).)

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-BUL-069. (1) General Fund; (2) Implementing Year 2006-07 is \$1,656,000; (3) 1st Succeeding Year 2007-08 is \$4,999,000; 2nd Succeeding Year 2008-09 is \$5,004,000; 3rd Succeeding Year 2009-10 is \$5,004,000; 4th Succeeding Year 2010-11 is \$5,004,000; 5th Succeeding Year 2011-12 is \$5,004,000; (4) 2005-06 Program--\$817,890,000; 2004-05 Program--\$476,000,000; 2003-04 Program--\$588,528,000; (7) Medical Assistance--Long- Term Care; (8) recommends adoption. Funds are included in the 2006-07 budget for this purpose.

Annex A

TITLE 55. PUBLIC WELFARE

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PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

Subchapter B. AGED, BLIND AND DISABLED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.104b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006--statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

- (1) Medical care so that the individual's health or life would be endangered.
- (2) Food, clothing, shelter or other necessities of life.

(b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:

- (1) A notice to the individual that an undue hardship waiver exception exists.
- (2) A timely process for determining whether an undue hardship waiver will be granted.
- (3) A process under which an adverse determination can be appealed.

(c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines will permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

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(d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000.

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE TANF AND GA CATEGORIES OF MA

§ 178.174b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006--statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

- (1) Medical care so that the individual's health or life would be endangered.
- (2) Food, clothing, shelter or other necessities of life.

(b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:

- (1) A notice to the individual that an undue hardship waiver exception exists.
- (2) A timely process for determining whether an undue hardship waiver will be granted.
- (3) A process under which an adverse determination can be appealed.

(c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

(d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000.

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