

MinnesotaCare:

No provisions.

MA:

Upon the request of the client or the client's representative, waive a penalty for the transfer of assets for less than fair market value if the denial of MA payment for long term care services would cause undue hardship for the person based on imminent threat to the person's health and well-being. DO NOT assume that all clients would automatically choose an undue hardship waiver. A written request MUST be made by the client or the client's representative.

Imminent threat to health and well-being means that the person's continued receipt of necessary long term care services is dependent upon a waiver of the transfer penalty because:

< There are no alternatives for payment for long term care services.

AND

< The person's health and well being would be in immediate danger if the person loses MA payment for long term care services.

Grant a waiver if:

< The person was the victim of financial exploitation or has made reasonable efforts to recover the transferred income or resource.

AND

< There is the likelihood of imminent, serious harm occurring.

Whenever a client is denied MA payment of long term care services because of a transfer for less than fair market value, send the client notice of the right to request a waiver of the penalty due to undue hardship. The notice must also inform the client that a cause of action could be brought against the person who received the transfer if the undue hardship waiver is granted.

Upon written request for a waiver of undue hardship from the client or the client's representative, review all facts and determine if a waiver should be granted. You CANNOT grant a waiver without a WRITTEN request.

If a waiver is granted, send the client a notice stating that the waiver is granted as of a specified date. The notice should also state that the person who received the transfer may be sued by the county. If a waiver for undue hardship is denied, send the client a notice containing the client's right to appeal the decision.

If the person who received the transferred assets does not return them, refer the case to the county attorney.

To recover the value of the assets transferred, the county attorney must file a cause of action against the person who received the assets.

Waive the value of assets controlled by the community spouse of an LTC resident if s/he refuses to make assets available to meet cost of care. See §0909.25.07 (Community Spouse Contribution).

For trusts established on or after 8-11-93, waive the value of a trust, or part of a trust, that is considered a countable asset due to undue hardship to the client. See §0909.21 (Trusts). Undue hardship means that a client may be forced to go without life-sustaining services because the trust funds could not be made available to pay for the needed services. It also exists when applying the trust provisions would deprive a client of medical care and endanger his/her health or life. Send the client a notice of the client's rights to request an undue hardship waiver.

If a waiver is granted, send the client a notice stating that the waiver is granted as of a specified date. If a waiver for undue hardship is denied, send the client a notice containing the client's right to appeal the decision.

GAMC:

No provisions.