



Ohio Administrative Code

Rule 5160:1-6-06.6 Medicaid: undue hardship exemption.

Effective: September 1, 2017

(A) This rule describes an undue hardship exemption for institutionalized individuals who are subject to a restricted medicaid coverage period (RMCP) described in rule 5160:1-6-06.5 of the Administrative Code.

(B) The institutionalized individual will not be subject to a RMCP if the imposition of the RMCP would cause an undue hardship.

(C) An undue hardship exists if the imposition of the RMCP would deprive the institutionalized individual of:

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

(D) An undue hardship exemption may be requested by:

- (1) The institutionalized individual; or
- (2) The institutionalized individual's spouse; or
- (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the institutionalized individual or his or her spouse; or
- (4) A person, including any court or administrative body, acting at the direction or upon the request of the institutionalized individual or his or her spouse.

(E) Any request for an undue hardship exemption must be made in writing and include the information and documentation necessary to demonstrate to the administrative agency that:



(1) An undue hardship exists;

(2) The institutionalized individual currently has no alternative income or resources available to provide the medical care or food, clothing, shelter, or other necessities of life that the institutionalized individual would be deprived of due to the imposition of the RMCP; and

(3) A good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset was made, unless documentation provided shows that the cost of any such action would exceed the gross value of the assets subject to recovery. These actions may include:

(a) Seeking the advice of an attorney and pursuing legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance, or nullification of a court order, financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement; and

(b) Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.

(4) If the institutionalized individual resides in a LTCF, in addition to the requirements in paragraphs (E)(1) to (E)(3) of this rule, the institutionalized individual must also show that:

(a) The LTCF has planned to discharge the institutionalized individual as a result of the imposition of the RMCP; and

(b) The institutionalized individual has exhausted all administrative remedies to challenge the planned discharge.

(F) An undue hardship exemption shall not be granted if the institutionalized individual, or his or her spouse, or anyone acting on their behalf, made the improper transfer after a previous request for a hardship exemption.:



(G) Administrative agency responsibilities.

(1) The administrative agency shall provide notice to the institutionalized individual of the:

(a) Availability of an undue hardship exemption; and.

(b) Any approval or denial of any request for an undue hardship exemption.

(2) The administrative agency, on its own initiative, may consult with the county prosecutor to determine whether a civil or criminal action may be brought to recover the transferred assets or to compel restitution.