Medicaid Hardship Waiver Requests

Attorneys

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Related Services

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Overview

A Medicaid transfer penalty does not always mean a family must endure the full penalty period without coverage. Federal and state law include an undue hardship Medicaid waiver provision designed to prevent the transfer penalty rules from producing unconscionable results, such as leaving a seriously ill individual without access to nursing home care. The problem is that many families never learn that this option exists. Caseworkers do not always mention it, denial notices rarely explain it, and the criteria for obtaining a waiver are rarely discussed in plain terms. The hardship waiver provision exists precisely because legislators recognized that rigid application of penalty rules can produce results no reasonable system should tolerate. A Medicaid hardship waiver attorney in Massachusetts can help families determine whether this exception applies to their situation, assemble the required documentation, and present the strongest possible case to MassHealth or the equivalent state Medicaid agency.

How We Help: Medicaid Transfer Penalties and Hardship Waiver Requests

Understanding why a penalty was imposed is the first step. When an individual applies for Medicaid long-term care benefits, the state reviews five years of financial transactions. Transfers made for less than fair market value during that look-back period trigger a penalty: a calculated period of Medicaid ineligibility. The penalty is not a fine. It is a period during which Medicaid will not pay for nursing home care, even if the applicant is otherwise eligible.

The undue hardship waiver exists as a safety valve. To obtain one, a family must demonstrate that enforcing the penalty would deprive the applicant of necessary medical care or of food, clothing, shelter, or other necessities of life. The applicant must also show that reasonable efforts were made to recover the transferred assets. This is a high bar, and MassHealth treats these requests with significant scrutiny.

Our role begins with an honest assessment. Not every penalty situation qualifies for a Medicaid transfer penalty waiver, and we tell our clients that directly. When the facts support a request, we build a documented case addressing every element the agency requires: medical records establishing the need for institutional care, financial records demonstrating the absence of resources to pay privately, evidence that reasonable efforts were made to retrieve the transferred assets and that recovery was unsuccessful, and a clear narrative connecting the penalty period to a concrete risk of harm. We also evaluate alternative strategies when a MassHealth penalty exception is unlikely to be granted, including partial return of transferred assets to reduce the penalty period.

Why Choose Cohen Cleary

At Cohen Cleary, our practice teams combine deep subject-matter experience with disciplined

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execution and responsive client service. We do not take a one-size-fits-all approach. Every matter is handled with careful preparation, clear communication, and a strategy tailored to the client's goals and the realities of the forum.

Clients choose Cohen Cleary because we deliver:

Practice-Focused Legal Experience

Our attorneys work in defined practice areas, allowing us to develop practical insight into the legal, procedural, and regulatory nuances that matter most in each case. This focus allows us to anticipate issues, avoid unnecessary delays, and position matters for efficient resolution.

Clear Guidance and Proactive Communication

We prioritize clarity at every stage. Clients receive straightforward explanations of their options, timely updates on developments, and practical advice grounded in real-world outcomes.

Strategic Advocacy with Trial Readiness

Whether a matter calls for negotiation, mediation, or litigation, our attorneys prepare every case with discipline and foresight. We pursue efficient resolution when possible and are fully prepared to advocate aggressively when necessary to protect our clients' interests.

Regional Knowledge and Local Presence

With offices throughout Massachusetts and experience across New England courts and agencies, we bring local insight and regional reach to every matter.

Client-Centered Service

We treat every matter with urgency and respect. Our clients rely on us for responsive service, sound judgment, and steady counsel through complex legal challenges.

In our Medicaid and Medicare work, this approach helps clients navigate benefit disputes and hardship waiver requests with clarity, efficiency, and confidence.

Our Approach to MassHealth Penalty Waiver Documentation

A physician's general statement that the applicant "needs nursing home care" is rarely sufficient to support a MassHealth penalty waiver. We coordinate with treating providers to produce clinical documentation that speaks directly to the regulatory standard, detailing why the applicant requires institutional-level care and why the penalty period creates an immediate risk to health or safety. Every hardship waiver request follows the same agency review framework, but the evidence gaps that cause most requests to fail are specific to each case. We work backward from the decision criteria, identifying those gaps before submission rather than after a denial.

Representing Individuals and Families Across New England

Cohen Cleary represents individuals and families in Massachusetts Medicaid hardship waiver proceedings and across New England, with particular concentration in Rhode Island,

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Connecticut, and Maine. Because Medicaid is administered at the state level, each state applies its own procedures for evaluating undue hardship claims. Our attorneys maintain working familiarity with the eligibility and waiver frameworks in the states where we practice, including the MassHealth long-term care eligibility process and the agency's approach to hardship documentation. This regional perspective allows us to advise clients whose family members may reside in different New England states.

Contact a Trusted Massachusetts Medicaid Hardship Waiver Attorney

If a Medicaid transfer penalty is threatening your family's access to necessary care, a Medicaid penalty waiver lawyer can help evaluate your options. Contact our MassHealth waiver attorneys through our offices in Taunton or Plymouth.

Frequently Asked Questions About Medicaid Hardship Waivers

What is a Medicaid hardship waiver?

A hardship waiver is a request to have a Medicaid transfer penalty reduced or eliminated because enforcing the full penalty would cause undue hardship. In Massachusetts, MassHealth evaluates whether the penalty would deprive the applicant of medical care that endangers their health or life, or deprive them of food, shelter, or other necessities. The waiver is discretionary, meaning the agency is not required to grant it even when the criteria appear to be met.

How is a Medicaid transfer penalty calculated?

When MassHealth identifies a transfer made for less than fair market value during the five-year look-back period, it calculates a penalty period by dividing the total uncompensated transfer value by the average daily cost of nursing home care. The result is the number of days the applicant is ineligible for Medicaid payment of long-term care services.

What evidence does MassHealth require for a hardship waiver request?

A successful request typically requires medical documentation establishing the need for institutional-level care, financial records showing the applicant cannot pay privately during the penalty period, evidence that the applicant made reasonable attempts to recover the transferred assets, and a written explanation connecting the penalty to a specific risk of harm. Incomplete or generic submissions are the most common reason requests are denied.

Can a hardship waiver be requested if the transfer happened years ago?

Yes. The timing of the original transfer does not determine whether a hardship waiver can be requested. What matters is whether a penalty has been imposed and whether enforcing that penalty would cause undue hardship when the applicant needs care. Even transfers near the beginning of the five-year look-back period can generate penalties that create hardship if the applicant's circumstances have changed significantly.

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