

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: OHIO

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The state uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

A. Ohio has adopted a rebuttable presumption that the individual cannot reasonably be expected to be discharged from an institution and return home, if either of the following is the case:

- i. The individual declares that he or she does not intend to return home.
- ii. The individual has been an inpatient in an institution for at least six months.

B. General notice of estate recovery provided to applicants and at redetermination of eligibility

This notice will include an explanation of the estate recovery program's inclusion of permanently institutionalized individuals. The state's rebuttable presumptions for determining that an individual is permanently institutionalized will be included in materials released to Medicaid applicants during the application and redetermination processes.

C. Advance Notices explaining the Agency's Intention to Impart the "Permanently Institutionalized" Status to an Individual

The agency will provide advance written notice to the individual or the individual's guardian/representative of the agency's intention to determine that this individual is permanently institutionalized, because the individual cannot reasonably be expected to be discharged from an institution and return home.

These notices will state:

- i. The criteria used by the state to determine whether the individual is "permanently institutionalized":

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- a. **Declaration of intent:** if the individual declares that the individual does not intend to return home, or
 - b. **Rebuttable presumption:** if the individual has been an inpatient in a medical institution for at least six months,
 - ii. How the status of "permanent institutionalization" subjects the individual to the Medicaid estate recovery program.
 - iii. How the opportunity for a hearing is available regarding the determination of permanent institutionalization, and how it may be requested.
- D. Notices may be generated at either points of time:
- i. **Declaration of intent:** After the individual or the individual's guardian/representative declares that the individual does not intend to return home, or
 - ii. **Five month continuous length of stay:** After the individual's length of stay in a medical institution has exceeded five months. The advance notice indicates that as of the six month stay projected date, the individual will have been in a medical institution for six months. The advance notice includes a statement explaining that individuals who have a six-month or longer length of stay in a medical institution and must, as a condition of receiving services in the institution, apply their income to the cost of care, are considered by the state to be "permanently institutionalized", and how the state's estate recovery program applies to persons who are determined to be permanently institutionalized".

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2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulation at 42 CFR 433.36(f):

Ohio is not placing pre-death liens on the real property of a permanently institutionalized individual.

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3. The State defines the terms below as follows:

A. Estate

Estate, for purposes of Medicaid estate recovery, is defined as:

- i. All real and personal property and other assets included within the individual's estate or the individual's spouse who survived's estate, as defined for purposes of and to be administered under the Ohio Probate Code and property that would be administered under the Ohio Probate Code if not for court-ordered or summary release from administration, and
- ii. Any other real and personal property and other assets in which an individual or the individual's spouse who survived had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. "Time of death" shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.
- iii. For an individual covered under a **qualified long-term care insurance partnership policy** issued on or after the effective date of this state plan amendment--or issued by another state after the effective date of their state plan amendment for the long term care insurance partnership program--recovery against the estate will be reduced in the amount of the disregard given at the point of eligibility determination or redetermination. To the extent that resources or assets were transferred that would otherwise have been subject to a restricted coverage period, those resources or assets are considered to have already been disregarded for the purposes of estate recovery. *Unless recovery is waived or exempted in accordance with the state's process for undue hardships and qualified exemptions,*

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the recovery against the estate shall not be reduced by an amount greater than the amount of long term care insurance benefits received by the individual.

The personal representative of the participant's estate [including the non-probate assets] has the burden of proving that assets in the estate of the participant or participant's surviving spouse were assets, portions of assets or proceeds from assets disregarded for Medicaid eligibility during the participant's lifetime.

B. Individual's home

"Home" means any property in which an individual has an ownership interest in and which serves as the individual's principal place of residence. Home includes the structures and land appertaining to the home property. Appertaining land must be contiguous to adjoin the land on which the home property is located and must not be separated by intervening land property owned by others.

"Principal place of residence" means the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return and was the residence the recipient occupied as a primary dwelling immediately prior to admission to a medical institution. Principal place of residence can be real or personal property, fixed or mobile, and located on land or water.

C. Equity interest in the home

"Equity interest in the home" means the fair market value of the home minus any encumbrance on it.

"Fair market value" of a resource means the going price, for which real or personal property can reasonably be expected to sell on the open market, in the particular geographic area involved.

An **"encumbrance"** means a claim, lien, charge, or liability attached to and binding on an identified piece of real or personal property.

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- D. Residing in the home for at least one or two years on a continuous basis

“Residing in the home for at least one or two years on a continuous basis” means *uninterrupted* residence by an individual in the recipient's home, provided, however, that such residence may be interrupted by brief absences from the home, if, while absent, the recipient has the intent to return home to continue to occupy such home for the *indefinite future*.

- E. Lawfully residing

“Lawfully residing” means residing in a manner not contrary to or forbidden by law, and with the recipient's knowledge and consent.”

- F. Discharge from the medical institution and return home

“Discharge from a medical institution and return home” means the actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to a home per plan of treatment.

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4. The State defines undue hardship as follows:

A. Definition and Purpose

An undue hardship is defined as a condition that justifies either waiver or exemption of all or a part of the agency's claim against an estate. The purpose of the undue hardship **waiver** is to avoid the impoverishment of an individual's designated heirs as a result of the state exercising its estate recovery right or to provide relief as described in (E)(4).

B. Determination

The State may, *at the sole discretion of the agency director or the director's designee*, waive the act of seeking recovery of medicaid funds correctly paid if it is determined that an undue hardship waiver condition exists when there are compelling circumstances. The process for determining that a grantable undue hardship condition exists is described separately below. The decision is based on the guidelines listed below in paragraphs C, D, and E.

C. Duration

The agency director, or designee, may grant an undue hardship waiver in whole, in part, or on a time-limited basis. If an undue hardship situation is of a time-limited nature, the state will limit the duration of the undue hardship waiver to the period during which the undue hardship exists. Therefore, an undue hardship waiver may be a permanent waiver of recovery efforts or it may be a temporary deferral or postponement of recovery, including negotiation of a modified recovery agreement or the imposition of a lien on property.

D. Presumption of No Undue Hardship

i. The following situations do not, without additional showing of undue hardship, show undue hardship:

a. When recovery will prevent designated heirs from receiving an anticipated inheritance.

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- b. When recovery results in loss of a pre-existing standard of living, or prevents the establishment of a source of maintenance that did not exist prior to the individual's death.
- ii. Regardless of actual hardship, an undue hardship waiver will not be granted in the following situations:
 - a. When the decedent created the hardship by using estate planning methods under which the decedent divested, transferred, or otherwise encumbered assets in whole or in part to avoid estate recovery.
 - b. When application of an undue hardship waiver will result in the payment of claims to other creditors with lower priority standing under Ohio's probate law.

E. Discretionary Undue Hardships

The State does not otherwise define undue hardship in finite terms, but guides the determination process. These circumstances are not exclusive as there may be other situations that cause undue hardship. An undue hardship may exist when the circumstances described in one or more of the following paragraphs are present, subject to limitations mentioned above:

- i. Income Producing Asset

The estate subject to recovery is the sole income-producing asset of the designated heirs such as a family farm or other family business which produces a limited amount of income or when the farm or business is the sole asset of the designated heirs.
- ii. Eligibility for Public Assistance or Discontinuance of Eligibility for Public Assistance

TN No. 07-007
Supersedes
TN No. 01-002

Approval Date DEC 21 2007 Effective Date: 09/01/07

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Without receipt of the estate proceeds, the designated heir would become eligible for public assistance, or allowing the designated heir to receive the estate proceeds would enable the designated heir to discontinue eligibility for public and/or medical assistance.

iii. Deprivation of Necessities of Life

Recovery would deprive the designated heir of necessary food, shelter or clothing. Deprivation does not include situations in which the designated heir is merely inconvenienced by the recovery and such recovery would not put the individual at risk of serious harm.

iv. Designated Heir Contributions to Medicaid Enrollee's Care/ Property

The designated heir provides clear and convincing evidence that he or she made substantial personal or financial contributions that relate to the property of the deceased and if not for estate recovery would otherwise inherit the property to be recovered.

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5. The State defines **exemptions** from estate recovery as follows:

A. Definition and Purpose

An exemption is defined as a condition that justifies exempting all or a part of the agency's claim against an estate. The purpose of the **exemption** is to avoid collecting monies previously granted to an individual as the result of a specified previous hardship or entitlement.

B. Determination

The State shall exempt the amounts determined in paragraph E from the act of seeking recovery of medicaid funds correctly paid

- if it is determined that an exemption condition exists, and
- when application of an exemption to assets subject to Ohio's probate law will not result in the payment of claims to other creditors with lower priority standing under Ohio's probate law.

C. Duration

A qualified exemption shall not be subject to any time limits.

D. Presumption of No Exemption

An exemption will not be granted when application of an exemption to assets subject to Ohio's probate law would result in the payment of claims to other creditors with lower priority standing under Ohio's probate law.

E. Exemptions from Recovery

Only the following properly-documented special and limited circumstances indicating a prior hardship are eligible for recovery exemption consideration:

i. Reparation Payments to Individuals

Government reparation payments provided to special populations.

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ii. *American Indian and Alaska Natives*

Exemption of certain income, resource and property interests of American Indian and Alaska Natives as specified in section 3810(A)(7) of the State Medicaid Manual.

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6. The following standards and procedures are used by the State for waiving estate recoveries or when property is exempt from recovery:

A. Policy

The agency may, at the sole discretion of the agency's director or the director's designee, waive recovery in full, in part, or on a time-limited basis. Waivers will be granted on a case-by-case basis when there are compelling circumstances. The agency will exempt qualified assets from recovery in full.

B. Procedure

- i. Notification of availability of undue hardship waivers or exemptions:

The claim for the recovery must include the:

- a. Definition of undue hardship and the process for requesting an undue hardship waiver;
- b. Definition of exemption and the process for requesting an exemption;
- c. Name of the form that must be completed to request an undue hardship or exemption, and where that form can be obtained; and
- d. Date by which that form must be submitted in order to request an undue hardship waiver or exemption.

The person responsible for the estate [including the non-probate assets] must notify all individuals who would be affected by the proposed recovery.

- ii. Request for undue hardship waiver or exemption.

Within thirty (30) calendar days after notice of the estate recovery claim was mailed by the Medicaid Estate Recovery Administrator, an undue hardship

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waiver or exemption may be requested through submission of the appropriate form from:

- a. An heir or potential heir who would suffer an undue hardship if a waiver is not granted,
- b. A person with an interest in assets of the estate, or
- c. A representative of such persons.

An undue hardship waiver or exemption may not be requested by a creditor of the estate, unless such creditor is also a potential heir of the estate.

iii. Agency Review and Determination on Each Application for Undue Hardship Waiver or Exemption

Within sixty (60) calendar days of receipt of the request for an undue hardship waiver or exemption, the agency must notify the applicant in writing whether the request has been approved (in full, in part, permanently, or for a limited time) or denied. Failure to meet this sixty day deadline does not result in an automatic decision on the request, but becomes a reason that the applicant may request a review.

iv. Request for Review of an Adverse or Untimely Decision

- a. The applicant may, within thirty (30) calendar days, request (on such form as the director designates) that the agency director, or designee, review the undue hardship waiver decision if:
 - (i) the waiver request was not approved in full, or
 - (ii) if the approval was time-limited, or
 - (iii) if, within 60 days of the request, the applicant was not notified in writing whether the request had been approved (in full, in part, permanently, or for a limited time) or denied

The director, or designee, will review only those portions of the undue hardship waiver request that

TN No. 07-007
Supersedes
TN No. 01-002

Approval Date DEC 21 2007 Effective Date: 09/01/07

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were denied or time-limited. The director will not deny or limit any portion of the undue hardship waiver request that has already been granted.

v. Agency Review and Determination of an Undue Hardship Waiver or Exemption Appeal

The agency director, or designee, must review the undue hardship waiver or exemption request and notify the applicant within sixty (60) calendar days whether (at the director's sole discretion) the director, or designee, has approved (in full, in part, or for a limited time) or denied the request for an undue hardship waiver.

The director of the agency will not deny or limit any portion of the undue hardship waiver or exemption request that has already been granted. There will be no automatic decisions granted on such requests.

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7. The State defines cost-effective as follows (including methodology and thresholds used to determine cost-effectiveness) and uses the following standards and procedures for waiving estate recoveries when recovery is not cost-effective:

The state does not perform a cost-effectiveness test or place any predetermined dollar thresholds or real property value thresholds below which recovery is not attempted.

TN No. 07-007
Supersedes
TN No. 01-002

Approval Date DEC 21 2007 Effective Date: 09/01/07

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8. The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The State follows these steps:

- A. Education and notification about Ohio's Medicaid Estate Recovery program to applicants at the time of application, and recipients upon reapplication/ redetermination of eligibility.

In order to inform all applicants for and recipients of Medicaid of the provisions of the estate recovery program, an information sheet explaining the program is given out with all applications and reapplications. A statement about estate recovery is included in the Medicaid application's "rights and responsibilities" section. Additionally, as part of the application interview for individuals who appear to have potential eligibility for Medicaid, the caseworker must include a discussion of the estate recovery program.

A "frequently asked questions" fact sheet is available at county offices and on the agency website.

The agency has developed avenues of consultation between the estate recovery administrative unit, eligibility unit, and technical assistance staff concerning training caseworkers, providing educational materials, and responding to client questions.

Additional educational materials have been made available at different Ohio long term care ombudsman websites and through the Ohio Senior Health Insurance Information Program at the state agency for insurance.

- B. Notice of Death of the Medicaid Recipient and Notice of Death of the Surviving Spouse of a Medicaid Recipient

As required by state law, within thirty days after:

- (i) The granting of letters testamentary, or
- (ii) The administration of the estate, or

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- (iii) The filing an application for release from administration or summary release from administration,

the person responsible for the estate (of an individual age 55 or over, a permanently institutionalized individual, or an individual's surviving spouse) is required to notify the Medicaid Estate Recovery Administrator via a specified form, to relay the list of all the decedent's real and personal property and other assets that are part of the decedent's estate (as defined herein.) The notice for the death of a surviving spouse of a Medicaid individual must relay the list of all the decedent's real and personal property and other assets that are part of the decedent's estate and were also part of the estate of the decedent subject to Medicaid estate recovery.

- C. Notice of Claim and an Application for a Waiver of Claim.
- i. Not later than ninety days after the date on which the Notice of Death is received or one year after the decedent's death, whichever is later, the Medicaid Estate Recovery Administrator shall present a claim for recovery to the person responsible for the estate or the person's legal representative.
 - ii. The notice of claim shall include the following information:
 - a. A statement of the claim that includes the action the state intends to take, the reason for the action, the amount to be recovered, and the limitation of the claim to the value of the estate.
 - b. Responsibility of person responsible for the estate to notify all individuals affected by the proposed recovery.
 - c. Situations that require deferral of recovery efforts:
 - 1) When there is a surviving spouse.

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- 2) When there is a surviving child who is under age 21, blind or disabled.
- 3) When a qualifying sibling or caretaker adult child lives in the individual's home.
- d. Explanation of the undue hardship provision and notice of right to apply for an undue hardship.
- e. Criteria for undue hardship waivers or exemptions.
- f. The individuals who are eligible to apply for a hardship waiver or exemption.
- g. Procedures and instruction for filing an application for an undue hardship waiver or exemption.
- h. The time period of thirty calendar days to file an application for an undue hardship waiver or exemption, from mailing of notice of claim.
- i. Explanation of appeal rights and procedures.

D. Deferrals, Hardship Waivers and Exemptions

Information is exchanged between the Medicaid Estate Recovery Administrator and the persons responsible for the estate (including the non-probate assets) to determine if any part of the claim will be deferred, waived or exempted.

E. Identification of "Lag" Claims Paid after Death

Six months after the initial notice of claim is issued, any additional correctly paid claims identified by the agency are subsequently added to the total amount to be claimed.

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F. Arrangements for Collection of Assets

Steps needed to collect the immediately available assets and to arrange for the collection of postponed or deferred assets are agreed upon by the Medicaid Estate Recovery Administrator and person responsible for the estate. Assets collected include the remaining amounts of LTCF resident's personal needs allowance accounts and small bank accounts that are not otherwise included as part of the probate process. Arrangements for collection of deferred assets may involve the placement of liens on real property.

G. Recovery of Immediately Available Assets

Assets are collected, in whole, or in portions, as available in accordance with Ohio probate law and as agreed by the parties.

H. Recovery of Deferred Assets

After the conditions creating the deferral have ended, recovery efforts resume. Examples include recovery from the estate of the spouse who survived or from real property subject to a post-death lien.