

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL	1. TRANSMITTAL NUMBER: 10-06	2. STATE New Mexico
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
FOR: HEALTH CARE FINANCING ADMINISTRATION	4. PROPOSED EFFECTIVE DATE April 1, 2010	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		

5. TYPE OF PLAN MATERIAL (Check One):

- NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 1917 (b)(1)(B) of the Act	7. FEDERAL BUDGET IMPACT: a. FFY 2010 \$0 b. FFY 2011 \$0
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: 53 53a 53a-1 53 b, c, d, Section 4.17 A and e	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): 53 53a

10. SUBJECT OF AMENDMENT: Exemption of Medicare cost-sharing benefits (i.e., Part A and Part B premiums, deductibles, coinsurance and co-payments) paid under the MSPs from estate recovery under section 1917(b)(1) of the Act. Exemption extends only to benefits with dates of service on or after January 1, 2010, for qualified dual eligibles age 55 and over. Addition of estate recovery documentation (4.17 & Attachment 4.17A) to the Medicaid State Plan (pen + ink change per state authorization on 8/4/10)

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED: STATE MEDICAID DIRECTOR

COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

13. TYPED NAME: Carolyn Ingram	16. RETURN TO: Carolyn Ingram, Director Medical Assistance Division P.O. Box 2348-ARK Santa Fe, NM 87504-2348
14. TITLE: Director	
15. DATE SUBMITTED: 05/17/10	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 17 May, 2010	18. DATE APPROVED: 11 August, 2010
PLAN APPROVED - ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 April, 2010	20. SIGNATURE OF REGIONAL OFFICIAL:
21. TYPED NAME: Bill Brooks	22. TITLE: Associate Regional Administrator Div of Medicaid & Children's Health

23. REMARKS:
" Pen + Ink Change made per State's E-Mail Dated 4 August, 2010 "

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: New Mexico

Citation (s)

42 CFR 433.36 (c)
1902(a) (18) and
1917(a) and (b) of
The Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

_____ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917 (a) of the Act and regulations at 42 CFR 433.36 (c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

_____ The State imposes liens on real property on account of benefits incorrectly paid.

_____ The State imposes TEFRA liens 1917 (a) (1) (B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State Plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

_____ The State imposes liens on both real and personal property of an individual after the individual's death.

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TN No.: 83-04

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SUPERSEDES: TN- 83-04

Revision: HCFA-PM-95-3 (MB)
May 1995

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(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36 (h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

_____ Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917 (a) (1) (B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

_____ In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State Plan as listed below:

No other recovery

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4.17 (b) Adjustments or Recoveries

(3) (Continued)

Limitations on Estate Recovery - Medicare Cost Sharing:

(i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.

(ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

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- _____ The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.
- _____ The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset and resource disregard must select this entry. These five States may either check this entry or one of the following entries.)
- _____ The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.
- _____ The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:
- _____ If an individual covered under a long-care insurance policy received benefits for which assets or resources were disregarded as provided for in Attachment 2.6-A, Supplement 8c (State Long-Term Care Insurance Partnership), the State does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.

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Citation (s)

(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b) (2) of the Act and regulations at 42 CFR §433.36(h)-(i).

- (1) Adjustments or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustments or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36 (d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - estate (at a minimum, estate as defined under State probate law). Except for the grandfathered States listed in section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or other arrangements).
 - individual's home,
 - equity interest in the home.
 - Residing in the home for at least 1 or 2 years,
 - on a continuous basis,
 - discharge from the medical institution and return home, and
 - lawfully residing.

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- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
 - (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost effectiveness.
 - (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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LIENS AND ADJUSTMENT 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:

At this time we take the client/client representative's statement that; either they intend to return home or do not. A utilization review contractor reviews the long term care abstract submitted to them by the nursing home which indicates if a client requires long term care in a nursing facility.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR 433.36(f): We take the client/clients representative's statement as to whether the son or daughter provided care in the two years prior to the institutionalization. This care provided the applicant the opportunity to reside at home rather than in a medical facility or nursing home. The caseworker may obtain collateral statements to verify the living and care situation from neighbors, doctors or clergy etc.

3. The State defines the terms below as follows:

- o Estate-includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code [45-1-101 NMSA 1978] as originally constituted and as it exists from time to time during administration
- o Individual's home- A home is any shelter used by an applicant/recipient or his/her spouse as the principal place of residence.
- o Equity interest in the home- (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances
- o Residing in the home for at least one or two years on a continuous basis-we take client/clients representative's statement as to whether or not the client lived in their primary residence prior to entering a facility.
- o Lawfully residing- an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state.

4. The State defines undue hardship as follows:

Hardship provision: The Human Services Department or its designee may waive recovery because recovery would work an undue hardship on the heirs. The following are deemed to be causes for hardship.

(a) deceased recipient's heir(s) would become eligible for a needs-based assistance program (such as medicaid or temporary assistance to needy families (tanf) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(b) deceased recipient's heir(s) would be able to discontinue reliance on a needs-based program (such as medicaid or tanf) if he/she received the inheritance from the estate;

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- (c) assets subject to recovery are the sole income source for the heir(s);
- (d) the homestead is worth 50 percent or less than the average price of a home in the county where the home is located based on census data compared to the property tax value of the home; and
- (e) other compelling circumstances as determined by HSD or its designee.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective: If the representative requests a waiver due to an undue hardship the provisions below are used:

At application and recertification a client/client's representative is given an informational brochure on Estate Recovery which explains the Estate Recovery Process and the information relating to Hardship Waivers. A representative may request a waiver by completing the *Application for Hardship Waiver for Estate Recovery* form and attaching supporting documentation, of the potential hardship. The form and supporting documentation is reviewed by the department or its designee.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness): *Medicaid may also waive recovery if it is not cost effective to recover from the estate. To be cost effective, the administrative cost of recovering from the estate shall be less than the total date-of death value of the estate subject to recovery.*

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

Information explaining estate recovery will be furnished to the applicant/recipient, personal representative, or designee during the application or recertification process. Upon the death of the Medicaid recipient, a notice of intent to collect (recovery) letter will be mailed to the recipient's personal representative with the total amount of claims paid by Medicaid on behalf of the recipient. The personal representative must acknowledge receipt of this letter in the manner prescribed in the letter within 30 days of receipt. Medical Assistance Division (MAD) or its designee will send notice of recovery to the probate court, when applicable, and to the recipient's personal representative or successor in interest. The notice will contain a statement describing the action MAD or its designee intends to take, reasons for the intended action, statutory authority for the action, amount to be recovered, an opportunity to apply for the undue hardship waiver and procedures involved in this process, and an explanation of Fair Hearing rights and timeframes. The request for an undue hardship waiver must be made within ninety (90) days of receipt of the notice of intent to collect (recovery). The representative of the estate has the right to request an administrative hearing on behalf of the estate within thirty (30) days from the date of MAD or its designee's notice of intended action against the estate.

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