

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

Citation

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.

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

(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 actual costs of 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) X 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:

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

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.

TN No. 10-006
Supersedes
TN No. NEW

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

(4) 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 8c.

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 or 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:

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MAY 1995

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

(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) Adjustment 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 adjustment 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.

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

(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:
 - o 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 arrangement),
 - o individual's home,
 - o equity interest in the home,
 - o residing in the home for at least 1 or 2 years,
 - o on a continuous basis,
 - o discharge from the medical institution and return home, and
 - o lawfully residing.

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

- (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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

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 determination that an individual cannot reasonably be expected to be discharged to return home shall be made in accordance with the following process.

First, the PreAdmission Evaluation (PAE) for level of care which is certified by the physician shall specify whether discharge is expected and the anticipated length of stay in the institution. The following shall be deemed sufficient evidence that a person cannot reasonably be expected to return home and is thus permanently institutionalized:

- (1) An approved PAE, certified by the physician indicating that discharge is not expected, or
- (2) The continued stay of a resident of a medical institution at the end of a temporary stay predicted by his physician at the time of admission to be no longer than six months in duration.

Written notice of the determination that the individual residing in a medical institution cannot reasonably be expected to be discharged to return home shall be issued to the individual or his designated correspondent. The notice shall explain the right to request a reconsideration review. Such request must be submitted in writing to the Bureau of TennCare, Long Term Care Division, within 30 days of receipt of the written notice. The reconsideration review shall be a Commissioner's Administrative Hearing.

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):

Not applicable. Tennessee does not apply TEFRA liens.

3. The State defines the terms below as follows:

o estate

The term "Estate" includes all property and other assets, including real property, owned by the individual at the moment immediately preceding death and as limited or expanded by T.C.A. Titles 30, 31, and 32 and by the Courts of the State of Tennessee.

o individual's home

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as the place where one dwells; a settled abode where a person lives and to which, whenever he is absent, he has the intention of returning.

o equity interest in the home

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

LIENS AND ADJUSTMENTS OR RECOVERIES

o residing in the home for at least one or two years on a continuous basis,
and

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as dwelling permanently or continuously in a home (as that term is defined above) for the applicable period. Unexplained absence or absence from the home for a continuous period of thirty (30) days or more creates a rebuttable presumption of abandonment.

o lawfully residing.

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as dwelling permanently or continuously with the consent of the person(s) who has beneficial ownership and the right to present use and enjoyment of the premises and not subject to an order to vacate the premises by a court of competent jurisdiction.

4. The State defines undue hardship as follows:

“Undue hardship” is constituted to be any of the following three circumstances:

- (1) The property of the estate subject to recovery is the sole income-producing asset of survivors, such as a family farm or other family business. There is no value limitation on the sole income-producing asset.
- (2) A sibling of the individual meets all of the following criteria:
 - (a) He was lawfully residing in the individual’s home for a period of one year immediately before the individual’s admission to the medical institution;
 - (b) He provided care to such individual for that one year, which permitted the individual to reside at home rather than in an institution; and
 - (c) He has lawfully resided in such home on a continuous basis since the date of the individual’s admission to the medical institution.

The undue hardship shall be considered to no longer exist when such person no longer resides in such home.

- (3) A child of the individual meets all of the following criteria:
 - (a) He was lawfully residing in the individual’s home for a period of two years immediately before the individual’s admission to the medical institution;
 - (b) He provided care to such individual for those two years, which permitted the individual to reside at home rather than in an institution; and
 - (c) He has lawfully resided in such home on a continuous basis since the date of the individual’s admission to the medical institution.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

LIENS AND ADJUSTMENTS OR RECOVERIES

The undue hardship shall be considered to no longer exist when such person no longer resides in such home.

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:

Pursuant to T.C.A. § 20-13-103, the State Agency submits a request for approval of a compromise or settlement such as a waiver of an estate recovery claim (complete or partial). This request is submitted to the Attorney General, Comptroller, and Governor for their approval. If the request is denied, the requesting party may move the Probate Court for an order to waive (either completely or partially) or defer recovery. T.C.A. § 71-5-116.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Collection of any estate recovery claim is presumed to be cost-effective. Estate recovery claims are pursued through the Probate Court and are classified as third priority claims. After payment of the first priority claims (administrative costs) and second priority claims (funeral expenses), TennCare receives the balance of the value of the estate recovery claim. Any remaining value of the estate after payment of the estate recovery claim is then disbursed in accordance with Tennessee probate law.

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):

The State uses the following collection procedures:

- (1) Pursuant to T.C.A. § 71-5-116(c)(2), personal representatives of decedents who were TennCare enrollees must obtain a release of TennCare's claim against the estate before they can disburse funds or assets from the estate, other than funds for administrative costs or funeral expenses.
- (2) Personal representatives must file a "Request for Release" (RFR) with TennCare.
- (3) Upon receipt of the RFR, the State provides to the personal representative in writing an affidavit setting out the amount to which it is entitled under law for estate recovery. Upon receipt of notice of the opening of a Probate estate, the State files with the Probate Court a claim as required by Tennessee probate law. The clerk of court is under a duty to send a copy of the claim to the personal representative. Recovery of such amount goes forward in accordance with the Tennessee Probate Code, to which reference is made in the response to Item #3 above; T.C.A. § 71-5-101, *et seq.*; and all other applicable Tennessee Code sections and judicial decisions related to probate matters. An estate recovery claim has third priority status, following only administrative costs and funeral expenses. General creditor claims have a lower priority status than estate recovery claims. [See, T.C.A. § 30-2-317.] The State receives payments on claims by lump sum and in the normal course of probate proceedings. Accordingly, there are no administrative procedures for payment schedules or payment delays.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

LIENS AND ADJUSTMENTS OR RECOVERIES

- (4) Statutory bases for a waiver of estate recovery are described in the RFR, and appropriate documentation for the waiver is identified in and is required to be submitted with the RFR.
- (5) Application for waiver on the basis of undue hardship is fully described in the response to Item #5 above.