
Table of Contents

State/Territory Name: Utah

State Plan Amendment (SPA) #: 19-0009

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) 179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
1961 Stout Street, Room 08-148
Denver, CO 80294



Denver Regional Operations Group

August 16, 2019

Nathan Checketts, Medicaid Director
Utah Department of Health
P.O. Box 141000
Salt Lake City, UT 84114-1000

Dear Mr. Checketts:

We have reviewed the proposed State Plan Amendment (SPA) submitted under transmittal number (TN) 19-0009. This SPA imposes TEFRA liens on real property of individuals who reside in a care facility for a period of 180 consecutive days or more.

Please be informed that this State Plan Amendment was approved today with an effective date of July 1, 2019. We are enclosing the CMS-179 and the amended plan page(s).

If you have any questions concerning this amendment, please contact Mandy Strom at (303) 844-7068.

Sincerely,



Trinia J. Hunt
Acting Deputy Division Director
Western Regional Operations Group
Denver Regional Office
Centers for Medicaid and CHIP Services

cc: John Curless, Utah
Craig Devashrayee, Utah

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: HEALTH CARE FINANCING ADMINISTRATION**1. TRANSMITTAL NUMBER:
19-0009-UT2. STATE:
Utah3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)4. PROPOSED EFFECTIVE DATE
July 1, 2019TO: REGIONAL ADMINISTRATOR
HEALTHCARE 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:

42 CFR 433.36

7. FEDERAL BUDGET IMPACT:

a. FFY 2019 \$0

b. FFY 2020 \$0

c.

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Pages 53, 53a, and 53c of Section 4;
Pages 1 through 5 of ATTACHMENT 4.17-A.9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable)Pages 53, 53a, and 53c of Section 4;
Pages 1 through 4 of ATTACHMENT 4.17-A.

10. SUBJECT OF AMENDMENT: Liens and Adjustments

11. GOVERNOR'S REVIEW (Check One):

- ☒
- GOVERNOR'S OFFICE REPORTED NO COMMENT
-
- ☐
- COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
-
- ☐
- NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME: Joseph K. Miner, M.D.

14. TITLE: Executive Director, Utah Department of Health

15. DATE SUBMITTED: June 28, 2019

16.

17. DATE RECEIVED:

June 28, 2019

16. RETURN TO:

Craig Devashrayee, Manager
Technical Writing Unit
Utah Department of Health
PO Box 143102
Salt Lake City, UT 84114-3102

18. DATE APPROVED:

August 16, 2019

FOR REGIONAL USE ONLY

19. EFFECTIVE DATE OF APPROVED MATERIAL:

July 1, 2019

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

Trinia J. Hunt

22. TITLE:

Acting Division Director, DROG

PLAN APPROVED - ONE COPY ATTACHED

23. REMARKS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

Citation 4.17 Liens and Adjustments or Recoveries

42 CFR 433.36(c) (a) Liens

1902(a)(18) and
1917(a) and (b) of
the Act

— 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 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.

X 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 required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements).

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

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 10-009

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation

4.17 Liens and Adjustments or Recoveries (Continued)

(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) The 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.
X 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.
X 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:

All services received and health premiums paid under the State plan.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation 4.17 Liens and Adjustments or Recoveries (Continued)

(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).

- (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.
- (4) The State will recover from personal effects only if there are no surviving heirs.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: UTAH

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:

An individual residing in a care facility for a period of 180 or more consecutive days.

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

A son or daughter of an institutionalized person must provide proof that he/she:

- a. Lived in the home, and
- b. Provided care to the recipient which permitted the individual to remain at home rather than be institutionalized, and
- c. Did so for at least 2 years prior to the individual's entry into the medical institution.

3. The State defines the terms below as follows:

"Estate" means the same as "recovery estate" as defined in Utah Code Ann. § 26-19-102(12): "Recovery estate" means, regarding a deceased recipient:

- a. all real and personal property or other assets included within a decedent's estate as defined in Section 75-1-201;
- b. the decedent's augmented estate as defined in Section 75-2-203; and
- c. that part of other real or personal property in which the decedent had a legal interest at the time of death including assets conveyed to a survivor, heir, or assign of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: UTAH

LIENS AND ADJUSTMENTS OR RECOVERIES (Continued)

"Individual's home" means the home in which the individual lives or lived just prior to the institutionalization, the individual's address of records, his/her permanent address or a property in which the individual has or had an equity interest.

"Equity interest in the home" means the money value of any property to which an individual has legal title or right beyond any mortgage or liabilities existing upon it.

"Residing in the home for at least one or two years on a continuous basis" means maintaining and living in the domicile as the place of primary residence without interruption for the designated period of time, evidenced such as by the receipt of mail at the address, the payment of utility bills, property tax and/or property insurance.

"Lawfully residing" means maintaining the domicile legitimately or without violating the law, as evidenced by the receipt of mail at the residence, and/or the payment of property taxes, property insurance and utility expenses for the residence.

4. The State defines "undue hardship" as the presence of any of the following conditions:
- The survivor is a minor child of the deceased recipient;
 - The survivor is a blind or disabled child of the deceased recipient;
 - Income is limited, and the property is the sole income-producing asset and source of support for the survivors (such as a family farm or other family business, which produces a limited amount of income).

Any exemption described in 4 above applies only to the proportionate share of the decedent's estate or property that passes to those individuals.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: UTAH

LIENS AND ADJUSTMENTS OR RECOVERIES (Continued)

5. The following standards are bases for a deferral of estate recovery:
 - a. The spouse of the deceased recipient survives the recipient;
 - b. There is an individual who has an equity interest in the decedent's home and who resides in the home as his or her primary residence;
 - c. a son or daughter of the individual exists who was residing in the recipient's home for a period of at least two years immediately before the date of the recipient's admission to the medical institution and who establishes to the satisfaction of the State that he/she provided care to the recipient which permitted the recipient to reside at home rather than in the institution; and
 - d. concerning TEFRA liens, a sibling of the recipient exists who was residing in the recipient's home for at least one year immediately before the date of the recipient's admission to the medical institution.
6. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, for deferring estate recoveries when applicable and for when recovery is not cost effective:
 - a. The State employs the following procedures to waive and defer estate recovery:
 - i. The State notifies the person handling the decedent's estate or trust or a person with a recorded equity interest in the decedent's property by letter of the right to request a waiver or deferral of the estate recovery. The applicant must request a waiver or deferral in writing within 30 days of the date recorded on the State's notice;
 - ii. The applicant shall submit the written request and all supporting documentation to the Bureau Director of Medical Collections;
 - iii. The Bureau Director reviews all of the evidence and documentation. The Bureau Director renders a written decision within 30 days of the submission of the request. A copy of the decision is mailed by certified mail to the applicant.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: UTAH

LIENS AND ADJUSTMENTS OR RECOVERIES (Continued)

-
7. a. i. The applicant may request a review by a higher authority if the applicant does not agree with the decision of the Bureau Director. The request must be in writing and must be received within 30 days of the date stated in the written decision.
- ii. If the applicant requests an appeal, the Office Director serves as the authority for appeal. The same procedures apply as listed in 6 (a)(ii) through (v).
- iii. The State courts provide the ultimate avenue for appeal.
- b. The State may compromise its lien only with the approval of the Bureau Director or the Office Director as follows:
- i. When the assets in the estate or trust are less than the Medicaid lien amount;
- ii. When claims having priority to the State's lien reduce the estate to less than the lien amount; or
- iii. When the cost of recovery would exceed the reimbursement or compromised amount.

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

The State employs the following procedures to waive estate recovery when recovery is not cost-effective: Expenses and claims having priority to the State's claim are subtracted from the assets in the estate to determine if enough recoverable assets remain in the estate to make recovery cost-effective. Where expenses having priority leaves less than \$500.00 in recoverable assets, the investigator waives estate recovery.

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

The State uses the following collection procedures for estate recoveries:

- a. The State has a pamphlet, outlining estate recovery procedures, for distribution at the time of application to all applicants for long-term care.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # 95-017

Effective Date 7-1-19

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: UTAH

LIENS AND ADJUSTMENTS OR RECOVERIES (Continued)

- b. The State provides notice at the time of recovery in the form of:
- i. A letter to the person handling the decedent's estate or trust, containing the following:
 - (1) Explanation of estate recovery, including citations of the federal and state authority.
 - (2) Amount of the debt.
 - (A) The State claims against the estate of the decedent or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:
 - (I) The payments for health services, institutional care, and health care premiums; or
 - (II) The value of the decedent's estate, as defined in Utah Code Annotated, Section 26-19-13.
 - (B) The State recovers payments as follows:
 - (I) All claims from age 55 through case closure for expenses paid on or after October 1, 1993;
 - (II) All claims from age 65 through case closure for expenses paid before October 1, 1993.
 - (3) Explanation of the right to request an undue hardship waiver.
 - (4) Deadline for contacting the office to request a waiver.
 - (A) A Notice of Claim filed in court in a probate action for the estate, if such an action has been filed by the heirs, creditors, or the State; and
 - (B) A statutory lien on the property.
- c. The person handling the estate of the decedent shall notify all heirs, dependents, or survivors, of their right to an estate hearing.

T.N. # 19-0009

Approval Date 8/16/19

Supersedes T.N. # New

Effective Date 7-1-19