



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region 10
2201 Sixth Avenue, MS/RX 43
Seattle, Washington 98121

DEC 22 2011

Douglas Porter, Director
Health Care Authority
Post Office Box 45502
Olympia, Washington 98504-5502

RE: Washington State Plan Amendment (SPA) Transmittal Number 11-030

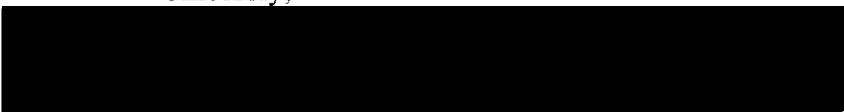
Dear Mr. Porter:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Washington State Plan Amendment (SPA) Transmittal Number 11-030. This amendment implements the Long Term Care Partnership for the protection of disregarded assets and resources from estate recovery for Partnerships issued on or after December 1, 2011.

This SPA is approved effective December 1, 2011.

If you have any additional questions or require any further assistance regarding this amendment, please contact me, or have your staff contact Maria Garza at (206) 615-2542 or via email at maria.garza@cms.hhs.gov.

Sincerely,


Carol J.C. Peverly
Associate Regional Administrator
Division of Medicaid and Children's Health
Operations

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
11-30

2. STATE
Washington

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
Dec. 1, 2011

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:

SSA 1917(b)(1)(C)(ii); 1902(a)(10)(A)(ii)(V), (VI) and (VIII); 1917(b)(1)(C)
(P&I)

7. FEDERAL BUDGET IMPACT:

a. FFY 2012 \$0
b. FFY 2013 \$0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Numbered Pages pp 53, 53b, 53d, 53e
Att. 2.6-A pg 6a
Supplement 8c to Att. 2.6-A
Att. 4.17-A pg 1a

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

Numbered Pages pp 53, 53b, 53d, 53e
Att. 2.6-A pg 6a
Att. 4.17-A pg 1a
Supplement 8b to Att. 2.6-A, page 5 (remove) (P&I)

10. SUBJECT OF AMENDMENT:

Long Term Care Partnership, Protection of Disregarded Assets and Resources from Estate Recovery, for Partnerships Issued on or After 12/1/11.
(P&I)

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: Exempt

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Doug Porter

14. TITLE:

Director, Health Care Authority

15. DATE SUBMITTED:

9-26-11

16. RETURN TO:

Ann Myers
Health Care Authority
626 8th Ave SE MS: 45504
POB 5504
Olympia, WA 98504-5504

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: September 26, 2011

18. DATE APPROVED: **DEC 22 2011**

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

DEC 01 2011

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

Carol J.C. Peverly

22. TITLE:

Associate Regional Administrator
Division of Medicaid &
Children's Health

23. REMARKS:

12/12/11 - Pen & Ink changes authorized by the State.

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

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

State/Territory: WASHINGTON

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 CFS 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.

/X/ 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, except on property interests disregarded under the long-term care insurance partnership.

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.)

/X/ 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
MEDICAL ASSISTANCE PROGRAM

State/Territory: WASHINGTON

4.17 Liens and Adjustments or Recoveries (cont.)

(4) / / The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy for in Attachment 2.6-A Supplement 8b.

/X/ 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:

1917 (b)(1)(C)

/X/ If an individual covered under a long-term 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.

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

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

State/Territory: WASHINGTON

4.17 Liens and Adjustments or Recoveries (cont.)

(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 has 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),
 - 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.

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

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

State/Territory: WASHINGTON

4.17.1 Liens and Adjustments or Recoveries (cont.)

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

Citation	Condition or Requirement
<u>X</u>	Supplement 2 to ATTACHMENT 2.6-A specifies the resource levels for mandatory and optional categorically needy poverty level related groups, and for medically needy groups.
—	Supplement 7 to ATTACHMENT 2.6-A specifies the income levels for categorically needy aged, blind and disabled persons who are covered under requirements more restrictive than SSI.
—	Supplement 4 to ATTACHMENT 2.6-A specifies the methods for determining income eligibility used by States that have more restrictive methods than SSI, permitted under section 1902 (f) of the Act.
—	Supplement 5 to ATTACHMENT 2.6-A specifies the methods for determining resource eligibility used by States that have more restrictive methods than SSI, permitted under section 1902 (f) of the Act.
<u>X</u>	Supplement 8a to ATTACHMENT 2.6-A specifies the methods for determining income eligibility used by States that are more liberal than the methods of the cash assistance programs, permitted under section 1902(r)(2) of the Act.
<u>X</u>	Supplement 8b to ATTACHMENT 2.6-A specifies the methods for determining resource eligibility used by States that are more liberal than the methods of the cash assistance programs, permitted under section 1902 (r) (2) of the Act.
<u>X</u>	Supplement 8c to ATTACHMENT 2.6A specifies the method of determining resource eligibility for a person qualifying for the State's long-term care partnership permitted under sections 1902(r)(2) and 1917 of the Act.
—	Supplement 14 to ATTACHMENT 2.6-A specifies income levels used by States for determining eligibility of Tuberculosis-infected individuals whose eligibility is determined under §1902 (z) (1) of the Act.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

STATE LONG-TERM CARE INSURANCE PARTNERSHIP

1902(r)(2) The following more liberal methodology applies to individuals who are 1917(b)(1)(C) eligible for medical assistance under one of the following eligibility groups:

- Optional categorically needy groups under 1902(a)(10)(A)(ii)(V), (VI) and (VII).

An individual who is a beneficiary under a long-term care insurance policy that meets the requirements of a "qualified State long-term care insurance partnership" policy (partnership policy) as set forth below, is given a resource disregard as described in this amendment. The amount of the disregard is equal to the amount of the insurance benefit payments made to or on behalf of the individual. The term "long-term care insurance policy" includes a certificate issued under a group insurance contract.

- Disregard during the person's lifetime the value of assets the person designates for protection from recovery in an amount not to exceed the dollar amount of long term care benefits utilized under a partnership policy;
- Disregard appreciation of or the protected asset's increase in value (including an increase in value due to income, dividends, or profits) for a partnership participant to the extent the increase does not cause the amount of the person's total disregard to exceed the dollar value of benefits utilized under a partnership policy;
- Disregard additional assets that become available to a partnership participant with an unused amount of asset protection at the time of qualifying for the partnership, up to the dollar amount of long-term care benefits utilized under a partnership policy; and
- Trusts excluded under 1917(d)(4)(A) and (C) or annuities and similar legal instruments under 1917(e) are excluded from the provision.

X The State Medicaid Agency (Agency) stipulates that the following requirements will be satisfied in order for a long-term care policy to qualify for a disregard. Where appropriate, the Agency relies on attestations by the State Office of the Insurance Commissioner (Commissioner) or other State official charged with regulation and oversight of insurance policies sold in the state, regarding information within the expertise of the Office of the Insurance Commissioner.

- The policy is a qualified long-term care insurance policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.
- The policy meets the requirements of the long-term care insurance model regulation and long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) as those requirements are set forth in section 1917(b)(5)(A) of the Social Security Act.
- The policy was issued no earlier than the effective date of this State plan amendment.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

STATE LONG-TERM CARE INSURANCE PARTNERSHIP (cont)

- The insured individual was a resident of a Partnership State when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a Partnership State when coverage under the earliest policy became effective.
- The policy meets the inflation protection requirements set forth in section 1917(b)(1)(C)(iii)(IV) of the Social Security Act.
- The Commissioner requires the issuer of the policy to make regular reports to the Secretary that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.
- The State does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on non-partnership policies.
- The State Office of the Insurance Commissioner assures that any individual who sells a partnership policy receives training, and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.
- The Agency provides information and technical assistance to the State Office of the Insurance Commissioner regarding the training described above.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON**LIENS AND ADJUSTMENTS OR RECOVERIES (cont)**

- For an individual covered under a long-term care insurance partnership policy issued on or after December 1, 2011, estate does not include assets or resources disregarded for Medicaid eligibility under Attachment 2.6-A, Supplement 8c, or, at the death of the individual, any unused amount of assets that may be disregarded based on the total dollar amount of benefits utilized by the individual under the partnership policy.
- The individual's personal representative has the burden of proving that assets in the estate of the individual or individual's surviving spouse were assets, portions of assets or proceeds from assets that were disregarded for Medicaid eligibility during the individual's lifetime.
- The personal representative may designate any unused amount of partnership asset protection to disregard additional assets in the estate up to the amount of benefits utilized by the decedent under the qualifying policy before death.
- The personal representative has the burden of proving the unused value of partnership asset protection. To determine an individual's unused amount of partnership asset protection remaining at the time of estate recovery, the State uses the following methodology:
 - Determines the total dollar amount paid out by the long-term care partnership policy during the individual's lifetime;
 - Subtracts from that amount the value of assets, portions of assets or proceeds of assets retained or possessed by, accessible to or under the control of the individual or the individual's surviving spouse on the date of the individual's death and designated as protected for the purposes of Medicaid eligibility;
 - Subtracts from that amount the value on the date of transfer of assets, portions of assets or proceeds of assets transferred to a third party during the individual's lifetime by either the individual or the individual's spouse;
 - The amount remaining may be designated by the personal representative to disregard additional assets in the estate.

Individual's home means:

- A person's principal place of residence prior to the person's institutionalization.

Equity interest in the home means:

- Fair market value minus encumbrances.

Residing in the home for at least one or two years on a continuous basis means:

- The person has lived in the client's home as the principal place of residence for a period of at least one or two years immediately before the date of the client's admission to the institution and has resided there on a continuous basis since that time.

Lawfully residing means:

- The person lives in the state and intends to remain indefinitely.

Discharge from the medical institution and return home means:

- The person leaves the medical institution, returns home, and intends to remain in the home indefinitely.