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State/Territory Name: **Idaho**

State Plan Amendment (SPA) #: **21-0009**

This file contains the following documents in the order listed:

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

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

May 25, 2021

Mr. Matt Wimmer, Administrator
Idaho Department of Health and Welfare
Division of Medicaid
P.O. Box 83720
Boise, ID 83720-0009

Dear Mr. Wimmer:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Idaho's State Plan Amendment (SPA) #21-0009, which the state submitted on March 31, 2021. The purpose of this SPA is to change the methodology and thresholds for determining cost-effectiveness for Medicaid Estate Recovery. This SPA also provides clarification on the definition of "recoverable medical assistance."

SPA #21-0009 was approved on May 14, 2021, with an effective date of January 1, 2021, as requested by the state. Enclosed is a copy of the CMS-179 summary form, as well as the approved pages for incorporation into the Idaho State Plan.

If you have any questions regarding this amendment, please contact Laura D'Angelo at (816) 426-5925, or Laura.DAngelo1@cms.hhs.gov.

Sincerely,

Digitally signed by James
G. Scott -S
Date: 2021.05.25 11:56:05
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James G. Scott, Director
Division of Program Operations

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL	1. TRANSMITTAL NUMBER: ID-21-0009	2. STATE IDAHO
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	

FOR: HEALTH CARE FINANCING ADMINISTRATION	4. PROPOSED EFFECTIVE DATE 01-01-2021
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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: 1905(t) of the Social Security Act 1917 of the Social Security Act	7. FEDERAL BUDGET IMPACT: FFY2020 \$0 FFY2021 \$0
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8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Addendum to Attachment 4.17-A	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Addendum to Attachment 4.17-A
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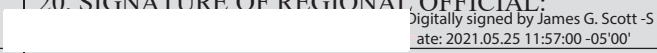
10. SUBJECT OF AMENDMENT:
Amendment to the State Plan to change the methodology and thresholds for determining cost-effectiveness for Medicaid Estate Recovery and provide clarification on recoverable medical assistance.

11. GOVERNOR'S REVIEW (*Check One*):

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED:
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:	16. RETURN TO:
13. TYPED NAME: MATT WIMMER	Matt Wimmer, Administrator Idaho Department of Health and Welfare Division of Medicaid PO Box 83720 Boise ID 83720-0009
14. TITLE: Administrator	
15. DATE SUBMITTED: 03-31-2021	

FOR REGIONAL OFFICE USE ONLY	
17. DATE RECEIVED: March 31, 2021	18. DATE APPROVED: May 14, 2021

PLAN APPROVED – ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: 01/01/2021	20. SIGNATURE OF REGIONAL OFFICIAL: 
21. TYPED NAME: James G. Scott	22. TITLE: Director, Division of Program Operations

23. REMARKS:

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 expectation or plan that the recipient will return home with the support of Home and Community Based Services shall not, in and of itself, justify a decision that he is reasonably expected to be discharged to return home. The following factors shall be considered when making the determination of permanent institutionalization:

- The recipient must meet the criteria for Nursing Facility (NF) or Intermediate Care Facility for the Intellectually Disabled (ICF/ID) level of care and services; and
- The recipient's medical records from the facility shall be reviewed to determine if the recipient's condition is expected to improve to the extent that he will not require NF or ICF/ID level of care; and
- Where the prognosis indicated in the medical records is uncertain or inconclusive, the Department may request additional medical information, or may delay the determination until the next utilization control review or annual Inspection of Care review, as appropriate.

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):

The son or daughter must establish, by a preponderance of the evidence presented to the Department, that he provided necessary care to the recipient, and the care he provided allowed the recipient to remain at home rather than in a medical institution.

3. The State defines the terms below as follows:

- **Estate:** All real and personal property, annuities, and other assets including those in which the recipient had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

- **Individual's Home:** The dwelling in which the recipient has an ownership interest, and which the recipient occupied as his primary dwelling prior to, or subsequent to, his admission to a medical institution.
- **Equity Interest in the Home:** Any equity interest in real property recognized under Idaho law.
- **Residing in the home for at least one or two years on a continuous basis:** Occupying the home as the primary dwelling and continuing to occupy such dwelling as the primary residence.
- **Lawfully Residing:** Residing in a manner not contrary to or forbidden by law, and with the recipient's knowledge and consent.

4. The State defines undue hardship as follows:

Undue hardship is a condition(s) that justifies waiver of all or a part of the Department's claim against an estate. The purpose of the undue hardship waiver is to avoid the impoverishment of the deceased recipient's family due to the Department exercising its estate recovery right.

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:

An applicant for an undue hardship waiver must have a beneficial interest in the estate and must apply for the waiver within ninety (90) days of the death of the recipient or within thirty (30) days of receiving notice of the Department's claim whichever is later. The filing of a claim by the Department in a probate proceeding shall constitute notice to all heirs.

Undue hardship waivers shall be considered in the following circumstances:

- The estate subject to recovery is the sole income-producing asset of the survivors where such income is limited; or
- Payment of the Department's claim would cause heirs of the deceased recipient to be eligible for public assistance; or
- The Department's claim is less than five hundred dollars (\$500) or the total assets of the entire estate are less than five hundred dollars (\$500), excluding trust accounts or other bank accounts; or

- The recipient received medical assistance (MA) as a result of a crime committed against the recipient

Any beneficiary of the estate of a deceased recipient may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully, because of undue hardship. An undue hardship does not exist if action taken by the recipient prior to his death, or by his legal representative, divested or diverted assets from the estate. The Department shall grant undue hardship waivers on a case by case basis upon review of all facts and circumstances, including any action taken to diminish assets available for estate recovery or to circumvent estate recovery.

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

The Department has determined that recovery shall be considered cost-effective when the Department's claim is five thousand dollars (\$5,000) or more, or when the total assets subject to recovery are five thousand dollars (\$5,000) or more, excluding trust accounts or other bank accounts. However, when the administrative costs to process a case and continue recovery are low, the Department may file and pursue continued collection or litigation for any amount. Additionally, in certain circumstances when the debtor has excessive allowable expenses or obligations or when the heir(s) lives out of state and is not responsive to collection efforts, etc., the Department may determine that it is not cost-effective to litigate or otherwise pursue recoveries, even though the net assets are over the normal \$5,000 threshold.

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):

Recovery on a Lien Imposed during the Lifetime of the Recipient:

- Recovery shall be made on the lien from the recipient's estate, or at any time upon the sale of the property subject to the lien, but only after the death of the recipient's surviving spouse, if any, and only at a time when:
 - The recipient has no surviving child who is under age twenty-one (21);
 - The recipient has no surviving child of any age who is blind or disabled as defined in 42 U.S.C. 1382c as amended; and
 - In the case of a lien on the recipient's home, when none of the following is lawfully residing in such home who has lawfully resided in the home on a continuous basis since the date of the recipient's admission to the medical institution:

- A sibling of the recipient, who was residing in the recipient's home for a period of at least one (1) year immediately before the date of the recipient's admission to the medical institution; or
- A son or daughter of the recipient, who was residing in the recipient's home for a period of at least two (2) years immediately before the date of the recipient's admission to the medical institution, and who establishes; by a preponderance of the evidence that he provided necessary care to the recipient, and the care he provided allowed the recipient to remain at home rather than in a medical institution.

Recovery Upon Sale of Property Subject to a Lien Imposed During the Lifetime of the Recipient:

Should the property upon which a lien is imposed be sold prior to the recipient's death, the Department shall seek recovery of all MA paid on behalf of the recipient, subject to the restrictions listed above.

Recovery of the MA paid on behalf of the recipient from the proceeds from the sale of the property does not preclude the Department from recovering additional MA paid from the recipient's estate.

Recovery of Medical Assistance Paid:

The Department is required to recover the following:

- The costs of all MA correctly paid on or after July 1, 1995, on behalf of the recipient who was permanently institutionalized; and
- The costs of MA correctly paid on behalf of a recipient who received MA at age fifty-five (55) or older on or after July 1, 1994; and
- The costs of MA correctly paid on behalf of a recipient who received MA at age sixty-five (65) or older on or after July 1, 1988.

Medical assistance includes a wide range of services, including nursing home and community based or in-home care services. It also includes any hospital and prescription drug services the participant received while in a nursing home, or while receiving in-home care. Medical assistance also includes capitation payments to Medicaid contracted health insurance companies or medical providers administering a defined package of benefits.

Recovery from the Estate of Spouse:

If the deceased recipient has a surviving spouse, recovery shall be delayed. Recovery will then be made from the spouse's estate after both spouses are deceased. A claim against the estate of a surviving spouse of a predeceased recipient is limited to the value of the assets of the estate that were community property, or the deceased recipient's share of the separate property, and jointly owned property.

Advance Notice of the Estate Claim:

The Department shall notify the recipient's authorized representative of the amount of the estate claim after the death of the recipient, or after the death of the surviving spouse. The notice shall include instructions for applying for an undue hardship waiver within ninety (90) days of the death of the recipient or within thirty (30) days of receiving notice of the Department's claim, whichever is later.

Method for Applying for Undue Hardship Waiver:

The request for an undue hardship waiver must be in writing, and must be directed to the Department of Health and Welfare, Estate Recovery Unit, P.O. Box 83720, Boise, Idaho 83720-0036.

Hearing and Appeal Procedures:

The Department's notice of the estate claim shall contain instructions for applying for a fair hearing within thirty (30) days of the date on the notice. Hearings shall be governed by the fair hearing provisions in IDAPA 16.05.03 "Rules---Governing Contested Case Proceedings and Declaratory Rulings." The request for a fair hearing must be in writing, and must be directed to the Department of Health and Welfare, Estate Recovery Unit, P.O. Box 83720, Boise, Idaho 83720-0036.