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State/Territory Name: Texas

State Plan Amendment (SPA) #: 26-0003

This file contains the following documents in the order listed:

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

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Medicaid and CHIP Operations Group

July 31, 2026

Emily Zalkovsky
State Medicaid Director
Texas Health and Human Services Commission (HHSC)
P.O. Box 13247
Austin, TX 78711-3247

Re: Texas State Plan Amendment (SPA) – 26-0003

Dear Director Zalkovsky:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 26-0003. The purpose of this amendment is to make changes to the Medicaid Estate Recovery Program (MERP). The changes include clarifying MERP eligibility requirements to ensure proper recovery of Medicaid long-term care costs; updating outdated terminology and citations; increasing the minimum amount of an estate subject to recovery under MERP; and cleaning up language throughout for consistency.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations. This letter informs you that Texas' Medicaid SPA TN 26-0003 was approved on July 31, 2026, with an effective date of July 2, 2026.

Enclosed are copies of Form CMS-179 and approved SPA pages to be incorporated into the Texas State Plan.

If you have any questions, please contact Ford Blunt at (214) 767-6381 or via email at Ford.Blunt@cms.hhs.gov.

Sincerely,

[redacted]

Nicole McKnight, Acting Director
Division of Program Operations

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 26-0003

2. STATE: TX

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

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 2, 2026

5. FEDERAL STATUTE/REGULATION CITATION
42 CFR § 433.36

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY **2026** $ 0
b. FFY **2027** $ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
SEE ATTACHMENT TO BLOCKS 7 & 8

7. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
SEE ATTACHMENT TO BLOCKS 7 & 8

9. SUBJECT OF AMENDMENT

This amendment aligns the State Plan with changes proposed to Texas Administrative Code (TAC) Title 1, Part 15, Chapter 373, Medicaid Estate Recovery Program, Subchapter A, General; Subchapter B, Recovery Claims; and Subchapter C, Notice, pertaining to the Medicaid Estate Recover Program (MERP). The changes include clarifying MERP eligibility requirements to ensure proper recovery of Medicaid long-term care costs; updating outdated terminology and citations; increasing the minimum amount of an estate subject to recovery under MERP; and cleaning up language throughout for consistency.

10. 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: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt.

11. SIGNATURE OF STATE AGENCY OFFICIAL
[redacted]

12. TYPED NAME
Emily Zalkovsky

13. TITLE
State Medicaid Director

14. DATE SUBMITTED
June 8, 2026

15. RETURN TO
Emily Zalkovsky
State Medicaid Director
Post Office Box 13247, MC: H-100
Austin, Texas 78711

FOR CMS USE ONLY

16. DATE RECEIVED
June 8, 2026

17. DATE APPROVED
July 31, 2026

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
July 2, 2026

19. SIGNATURE OF APPROVING OFFICIAL
[redacted]

20. TYPED NAME OF APPROVING OFFICIAL
Nicole McKnight

21. TITLE OF APPROVING OFFICIAL
Acting Director, Division of Program Operations

22. REMARKS

Attachment to Blocks 7 & 8 of CMS Form 179

Transmittal Number 26-0003

Number of the Plan Section or Attachment	**Number of the Superseded Plan Section or Attachment**
Attachment 4.17-A	Attachment 4.17-A
Pages 1-6	Pages 1-6 (TN 04-11)
Basic State Plan	Basic State Plan
Page 53	Page 53 (TN 04-11)
Page 53a	Page 53a (TN 10-22)
Page 53a-1	Page 53a-1 (TN 10-22)
Page 53b	Page 53b (TN 10-22)
Page 53c	Page 53c (TN 04-11)
Page 53d	Page 53d (TN 04-11)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

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 an 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 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 procedures, and due process requirements.)

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

(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:

(3) 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.

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:

Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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(c) 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 the medical assistance for four Medicare cost sharing benefits: (Part A and Part 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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

Citation (s)

____ 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.

_X_ The State adjusts or recovers from 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:

A Medicaid Estate Recovery claim may be filed against the estate of a deceased Medicaid recipient for covered Medicaid services when the recipient:

(1) Was aged 55 years or older at the time the services were received; and

(2) Began receiving covered Medicaid long-term care services on or after March 1, 2005.

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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

(d)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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

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:**

Not applicable since Texas is not pursuing liens.

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 since Texas is not pursuing liens.

3. **The State defines the terms below as follows:**

Estate - The real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions and substitutions that is included in the definition of the probate estate in Texas Estates Code § 22.012.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

4. The State defines undue hardship as follows:

§373.209 Undue Hardship Waivers

(a) MERP will not recover from estates if recovery would cause undue hardship. An undue hardship waiver request form will be provided with the MERP Notice of Intent to File a Claim. Undue hardship waiver requests must be made within 60 calendar days of the date of the MERP Notice of Intent to File a Claim.

(b) Grounds for undue hardship waivers include:

(1) the estate property subject to recovery has been the site of the operation of a family business, farm, or ranch at that location for at least 12 months prior to the death of the decedent; produces 50 percent or more of the heirs' and legatees' livelihood; and recovery by the State would affect the property and result in the heirs or legatees losing their primary source of income;

(2) heirs and legatees would become eligible for public assistance, medical assistance, or both if a recovery claim were made;

(3) allowing one or more survivors to receive the estate will enable the survivor to discontinue eligibility for public assistance, medical assistance, or both;

(4) the Medicaid recipient received medical assistance as the result of a crime committed against the recipient; or

(5) other compelling reasons.

(c) An undue hardship does not exist solely because:

(1) recovery would prevent heirs or legatees from receiving an anticipated inheritance; or

(2) the circumstances giving rise to the hardship were created by, or are the result of, estate planning methods under which assets were sheltered or divested contrary to the requirements of Medicaid law in order to avoid estate recovery.

(d) After receiving a Medicaid estate recovery claim, an heir may assert that recovery against a deceased Medicaid recipient's homestead would be an undue hardship and the homestead should therefore be exempt from recovery for the cost of Medicaid long-term care services. MERP will exempt a decedent's homestead from estate recovery based on undue hardship when the following conditions have been established to MERP's satisfaction:

(1) The tax appraisal district value of the homestead for the most recent tax year at the time of the decedent's death is less than $150,000. If the tax appraisal district value of the homestead for that year exceeds $150,000, only the first $150,000 shall be exempt from estate recovery. Any equity value in excess of $150,000 is subject to estate recovery.

(2) One or more siblings or direct descendants of the deceased person will inherit the homestead of the deceased Medicaid recipient, provided that each sibling or direct descendant inheriting the homestead has a gross family income below 300 percent of the federal poverty threshold as determined by the previous year's tax return.

(3) When there are multiple heirs and not all heirs qualify for the hardship waiver, only that percentage of the homestead that corresponds to the qualifying heir or heirs' share of the homestead will be exempt from Medicaid estate recovery.

(4) "300 percent of the federal poverty threshold" is a gross income test; no exclusions or deductions are allowed.

(5) MERP will consider each heir separately. Heirs will not be aggregated into one family unless the heirs are minor children who are siblings. In the case of an adult heir, the heir's family will be limited to the heir, the heir's

spouse, and the heir's biological or legally adopted minor children and stepchildren residing in the household. In the case of an heir who is a minor, the heir's family will be the heir, his or her parent or parents, stepparent residing in the household, and the heir's minor siblings residing in the household, including half-, step-, and legally adopted siblings.

(e) MERP has sole authority to waive its Medicaid estate recovery claim and to grant undue hardship waivers. An undue hardship waiver determination will be made by MERP within 40 calendar days of MERP receiving the undue hardship waiver request form and all required supporting documents.

§373.211. Right to a Review of an Undue Hardship Waiver Denial.

(a) If MERP denies an undue hardship waiver request, the applicant may request MERP to review the decision. MERP must receive the request to review the decision within 60 calendar days of the applicant receiving notice of the denial. A review is an informal process and not a hearing.

(b) MERP will review the request within 40 calendar days from the date the request and all supporting documents are received by MERP. All requests for a review of the denial of an undue hardship waiver request must be made in writing to the address included in the denial letter.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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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:

MERP has sole authority to waive its Medicaid estate recovery claim and to grant undue hardship waivers. An undue hardship waiver determination will be made by MERP within 40 calendar days of MERP receiving the undue hardship waiver request form and all required supporting documents.

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

§373.215. Recovery Not Cost-Effective.

No Medicaid estate recovery claim will be filed if it is not cost effective. A claim will not be cost-effective if:

(1) the value of the recoverable estate is $15,000 or less;

(2) the recoverable amount of Medicaid costs is $5,000 or less; or

(3) the cost involved in the sale of the property would be equal to or greater than the value of the property.

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):

§373.301. Notice Upon Application.

(a) Written notice of the MERP provisions will be provided to individuals or their legal representative when applying for covered Medicaid long-term care services.

(b) An individual committed by a court order to an Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) after an evaluation of fitness or competency, or that individual's guardian, will be notified of the MERP provisions by facility staff at the time of their admission to the facility.

§373.303. Additional Application Notice Provision to Recipients and Others.

Written notice about MERP is given upon a request for an application for Medicaid benefits, release from a waiver interest list, or notice of admission to a nursing facility, or an ICF/IID. The notice is provided to:

(1) the recipient;

(2) the recipient's guardian of the person, if any, and guardian of the estate, if any, provided the name and address of the guardian or guardians are known;

(3) the recipient's agent under a durable power of attorney, if the name and address of the agent are known;

(4) the recipient's agent under a medical power of attorney, if the name and address of the agent are known; or

(5) if none of the above are known, to family members acting on behalf of the recipient, provided the name and address of those family members acting on behalf of the recipient are known.

§373.305. Medicaid Application Estate Recovery Notice Contents.

Written notice provided under §373.303 of the Texas Administrative Code (TAC) will include the following information:

(1) description of MERP;

(2) information as to covered Medicaid long-term care services subject to estate recovery;

(3) claim procedures found in Texas Estates Code §355.102;

(4) information about the applicable "look-back period" for transfers of property for less than market value;

(5) description of undue hardship waiver requests regarding a recovery claim and the procedures for requesting that waiver; and

(6) information about the MERP Notice of Intent to File a Claim and the Medicaid estate recovery claim on the death of a Medicaid recipient.**§373.307. Notice of Intent to File a Claim upon the Death of a Medicaid Recipient.**

(a) Within 60 calendar days of being notified of the death of a Medicaid recipient, MERP will provide a Notice of Intent to File a Claim to one or more of the following:

(1) estate representative;

(2) decedent's guardian of the person and guardian of the estate provided MERP knows the name and address of the guardian or guardians;

(3) decedent's agent under a durable power of attorney, if MERP knows the name and address of the agent;

(4) decedent's agent under a medical power of attorney, if MERP knows the name and address of the agent;

(5) a nursing facility who provided covered Medicaid services;

(6) last known address connected to the deceased recipient; and

(7) if MERP does not know the name and address of any of the people listed above, family members who have acted on behalf of the decedent for whom MERP knows their names and addresses.

(b) MERP will provide written notice of its intent to file an Estate recovery claim against the estate of a decedent to individuals identified in subsection (a) of this section. The notice will include:

(1) a program overview;

(2) a questionnaire that seeks to determine whether the deceased recipient had:

(A) a surviving spouse;

(B) a surviving child under age 21;

(C) a surviving child of any age who is blind or disabled, as defined by 42 U.S.C. §1382c; or

(D) an adult child residing in the decedent's homestead as an unmarried individual for at least twelve consecutive months immediately prior to the decedent’s death.

(c) Undue hardship request forms and supporting documentation must be submitted to MERP within 60 calendar days of the date of the Notice of Intent to File a Claim. No action will be taken on an undue hardship request submitted without supporting documentation.

(d) The Notice of Intent to File a Claim will state the source and the date MERP received the notification of the death of the decedent.