

## **Table of Contents**

**State Name:** Virginia

**State Plan Amendment (SPA) #:** 09-10

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
150 S. Independence Mall West  
Suite 216, The Public Ledger Building  
Philadelphia, Pennsylvania 19106-3499



**Region III/Division of Medicaid and Children's Health Operations**

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**'OCT 06 2009'**

Patrick W. Finnerty, Director  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, Virginia 23219

Dear Mr. Finnerty:

We have reviewed State Plan Amendment (SPA) 09-10, in which you clarify your estate recovery process. This SPA, as modified by your email note dated September 24, 2009, is acceptable. Therefore, we are approving SPA 09-10 with an effective date of July 1, 2009. Enclosed are the approved SPA pages and signed CMS-179 form.

If you have further questions about this SPA, please contact Jake Hubik at (215) 861-4181.

Sincerely,

/S/

Ted Gallagher  
Associate Regional Administrator

Enclosures

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b> IR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER 09 - 10	2. STATE Virginia
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE July 1, 2009	

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 Part 433	7. FEDERAL BUDGET IMPACT a. FFY 2010 \$ 0.00 b. FFY 2011 \$ 0.00
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Preprint Section 4.17, pp. 53.1, 53.2 and 53.3 and Attachment 4.17-C, pp. 1-6 of 6	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Same pages

10. SUBJECT OF AMENDMENT  
Estate Recovery Update

11. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT<sup>2010</sup>       OTHER, AS SPECIFIED  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

Secretary of Health and Human Resources

12. SIGNATURE OF STATE AGENCY OFFICIAL /S/ Patrick W. Finnerty	16. RETURN TO Dept. of Medical Assistance Services 600 East Broad Street, #1300 Richmond VA 23219 Attn: Regulation Coordinator
13. TYPED NAME	
14. TITLE Director	
15. DATE SUBMITTED 7/10/09	

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED 7/10/09	18. DATE APPROVED OCT 06 2009
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**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL July 1, 2009	20. SIGNATURE OF REGIONAL OFFICIAL /S/
21. TYPED NAME TED Gallagher	22. TITLE Associate Regional Administrator

23. REMARKS



Revision: HCFA-AT-82-29  
December, 1982

(BPP)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

Citation

42 CFR 433.36(c)  
AT-78-90  
47 FR 43644

4.17 (c)

Adjustments or recoveries for Medicaid claims correctly paid are as follows. See Attachment 4.17-C.

(1) For permanently institutionalized individuals, adjustments, or recoveries are made from the individual's estate.

(2) For any individual who received medical assistance at age 55 or older, recovery of payments are made for nursing facility services, home and community-based services, and related hospital and prescription drug services.

(i) Payments are recovered for other Medicaid services provided to individuals at age 55.  
All services covered under the Plan.

(ii) Payments are recovered for other Medicaid services provided to individuals at age .....  
Not applicable.

(3) If an individual covered under a qualified long-term care partnership insurance policy pursuant to § 32.1-325 of the *Code of Virginia* received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290(6) (State Plan Attachment 2.6-A, Supplement 8c), the Commonwealth does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.

(d) No money payment under another program are reduced as a means of recovering Medicaid claims incorrectly paid.

TN No. 09-10  
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TN No. 06-08

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Revision: HCFA-AT-82-29  
December, 1982

(BPP)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

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(e) Liens. See Attachment 4.17-A--

(1) Specifies the process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the process meets the requirements of 42 CFR 433.36(d).

The Commonwealth does not impose liens therefore this section is not applicable.

(2) Specifies the criteria by which a son or daughter can establish that he or she has been providing care under 42 CFR 433.36(f).

The Commonwealth does not impose liens therefore this subsection is not applicable.

(3) Definitions: individual's home; equity interest in home; residing in home for at least one or two year, on a continuing basis; discharge from the medical institution and return home; and lawfully residing.

The Commonwealth does not impose liens therefore this section is not applicable.

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TN No. 09-10  
Supersedes  
TN No. 95-09.

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December, 1982

(BPP)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

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(f) Estate Recoveries.

Attachment 4.17-C (12VAC 30-20-141) specifies the policy for estate recoveries.

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TN No. 09-10  
Supersedes  
TN No. 95-09

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Estate Recoveries

12VAC30-20-141.

A. Definitions. The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the *Social Security Act* (42 USC § 1396) as applicable.

"Applicable medical assistance payment" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the *Social Security Act*.

"Claim" means, for the purposes of this section, action taken by DMAS to recover from the estate of an individual, who was age 55 or older when that person received medical assistance, the total amount of assistance paid for services consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.

"Cost effective" means that both the dollar amount of the medical assistance payments (claim) and the value of the estate at least exceed the administrative costs of recovery.

"Dual eligibles" mean individuals who are entitled to Medicare hospital insurance under Part A or supplementary medical insurance under Part B, or both, and are eligible for some form of Medicaid benefit.

"Estate" means, with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of his death.

"Homestead of modest value" means a home that is worth 50% or less of the average, or median, price, as contained in the most recent U.S. Census data or any other such source of home value information as published in the agency's guidance documents, of homes in the county or city, as appropriate, where the homestead is located as of the date of the individual's death.

"Undue hardship" means that DMAS has determined that enforcement of a claim to recover Medicaid benefits would result in substantial hardship to the devisees, legatees, and heirs or dependents of the deceased individual against whose estate the Medicaid claim exists.

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B. Under the authority and consistent with the requirements of the *Social Security Act* § 1917 (the *Act*), the Commonwealth shall recover applicable medical assistance payments when such payments have been correctly or incorrectly paid on behalf of certain individuals. The Department of Medical Assistance Services (DMAS) shall provide notice of the Commonwealth's Medicaid estate recovery program at the time of application for medical assistance.

C. **Adjustment and recovery.** Adjustment or recovery can only be made after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child under age 21, or a blind or disabled child as defined in § 1614 of the *Act*. The Commonwealth shall seek adjustment or recovery of all medical assistance payments correctly paid on behalf of an individual who is age 55 or older under the State Plan as follows:

1. The Commonwealth shall seek adjustment or recovery from the estate of an individual who was age 55 or older when that person received medical assistance. The Commonwealth shall recover amounts up to the total amount spent on the individual's behalf for medical assistance for all items or services provided for the individual under the State Plan.

2. The Commonwealth shall recover from the estates of the following dual eligibles who receive full Medicaid benefits in addition to Medicare: (i) qualified Medicare beneficiaries with full Medicaid benefits (QMB Plus), (ii) specified low-income Medicare beneficiaries with full Medicaid benefits (SLMB Plus), and (iii) Medicare beneficiaries eligible for a limited package of Medicaid benefits (QMB, SLMB, qualified individuals (QI) or qualified disabled and working individuals (QDWI)). The Commonwealth shall recover from the individual's estate for all medical assistance payments made on behalf of the individual. In addition, the Commonwealth shall include in the Commonwealth's claim against the estate, amounts expended for Medicare cost-sharing or Medicare premiums, or both.

3. The Commonwealth shall recover from individuals with long-term care insurance policies. However, the Commonwealth shall not seek adjustment or recovery from the individual's estate for all Medicaid costs for nursing facility and other long-term care services if assets or resources are disregarded to the extent of payments made under a qualified long-term care partnership insurance policy.



4. Estate recovery and managed care. When a Medicaid beneficiary is enrolled in a managed care organization and services are provided by the managed care organization that are included under the State Plan, the Commonwealth shall seek adjustment or recovery from the individual's estate for the capitation payments in the Commonwealth's claim against the estate. When the individual enrolls in the managed care organization, the Commonwealth shall provide a separate notice to the individual that explains that the capitation payments made to the managed care organization are included in whole in the claim against the estate. The Commonwealth shall recover from the individual's estate the total capitation payment for the period the individual was enrolled in the managed care organization.

5. The following American Indian/Alaska Native (AI/AN) income, resources, and property shall be exempt from Medicaid estate recovery pursuant to § 1917(b)(3) of the *Act* for hardship applicable to federally recognized tribes:

a. Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Court of Federal Claims) that are exempt from Medicaid estate recovery by other laws and regulations;

b. Ownership interest in trust or non-trust property, including real property and improvements:

(1) Located on a reservation (any federally recognized Indian tribe's reservation or near a reservation) as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(2) For any federally recognized tribe not described in this subdivision, located within the most recent boundaries of a prior federal reservation.

(3) Protection of non-trust property described in this subdivision is limited to circumstances when it passes from an Indian (as defined in § 4 of the Indian Health Care Improvement Act, 25 USC §§ 1601-1683) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nevertheless protect as family members; to a tribe or tribal organization or to one or more Indians, or all of these;

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- c. Income left as a remainder in an estate derived from property protected in this subdivision, that was either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians, as long as the individual can clearly trace such income as coming from the protected property.
- d. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including, but not necessarily limited to, extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians derived from these sources as long as the individual can clearly trace the interest as coming from protected sources.
- e. Ownership interests in or usage rights to items not covered by this subdivision that have unique religious, spiritual, traditional, or cultural significance or rights, or all of these, that support subsistence or a traditional lifestyle according to applicable tribal law or custom.
6. The Commonwealth shall recover the following income, resources and property from the estates of American Indians and Alaska Natives:
- a. Ownership interests in assets and property, both real and personal, that are not described in this subdivision.
- b. Any income and assets left as a remainder in an estate that do not derive from protected property or sources in this subdivision.
7. Reparation payments to individuals. Government reparation payments to special populations shall be exempt from Medicaid estate recovery.
8. Annuities. The Commonwealth considers annuities to be legal devices by which ownership of assets, such as estates, is defined and therefore may seek recovery from individuals' estates that may include such annuities.

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D. Undue hardship. Whenever estate recovery would work an undue hardship on the deceased individual's heirs, the Commonwealth shall waive adjustment or recovery. Recovery from deceased individuals' estates shall be waived when the heirs are themselves Medicaid eligible. Anyone who may be affected by Medicaid estate recovery may apply for an undue hardship waiver. DMAS shall determine the merit of such applications.

1. Special consideration shall be shown in cases in which the estate subject to recovery is: (i) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business; (ii) a homestead of modest value; or (iii) other compelling circumstances exist as may be set out in agency guidance documents.

2. An undue hardship exists when the Commonwealth determines that it would not be cost effective to recover the assistance paid.

3. In cases where recovery is not waived and heirs of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a non-liquid asset that is subject to recovery, alternative methods of recovery may be considered. DMAS may also establish a reasonable payment schedule.

4. The Commonwealth may limit the hardship waiver to the time period during which the undue hardship circumstances existed or continue to exist.

5. An undue hardship shall not exist if the beneficiary created the hardship by resorting to estate planning methods under which the beneficiary divested assets in order to avoid estate recovery.

E. DMAS shall establish collection procedures to include identification of the estate administrator or executor, determination of the medical assistance claim amount, notification procedures, and such other procedures as are appropriate to pursue the recovery of medical assistance expenditures. Such procedures will be set out in an agency guidance document.

F. Recovery or adjustment not cost effective. DMAS shall establish a cost effectiveness threshold below which estate recovery will not be pursued.

1. The Commonwealth may waive adjustment or recovery in cases in which it is determined that it would not be cost effective for the Commonwealth to recover from a deceased individual's estate. The estate administrator, executor, survivor, or heir does not need to assert undue hardship in such situations.

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2. In determining whether recovery would be cost effective, the department may consider, but is not limited to consideration of, the following costs: staff time, litigation costs, expert witness fees, deposition expenses, travel expenses, office supplies, postage, advertising, and publishing costs. DMAS shall adjust the cost effective threshold as the agency's administrative costs change.

G. Appeals. The DMAS Appeals Division will administer appeals related to the recovery of funds pursuant to 12VAC30-110.

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