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State/Territory Name: Maine

State Plan Amendment (SPA) #:18-0003

This file contains the following documents in the order listed:

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

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203



Division of Medicaid and Children's Health Operations / Boston Regional Office

August 8, 2018

Ricker Hamilton, Commissioner
Department of Health and Human Services
221 State Street
Augusta, Maine 04333-0011

Dear Commissioner Hamilton:

We are now ready to approve State Plan Amendment (SPA) No. ME 18-0003. Attached you will find an approved copy of the SPA. This SPA is effective February 1, 2018.

The purpose of this SPA is to amend the State's approved Title XIX State Plan to update the estate recovery process under the Medicaid State Plan. This SPA is estimated to have no Federal budget impact.

If you have any questions regarding this SPA, please contact Aimee Campbell-O'Connor, Maine State Lead, at 617/565-1642, or at Aimee.Campbell-O'Connor@cms.hhs.gov.

Sincerely,

/s/

Richard R. McGreal
Associate Regional Administrator

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 18-0003	2. STATE Maine
FOR: HEALTH CARE FINANCING ADMINISTRATION		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR Centers for Medicare and Medicaid Services Department of Health and Human Services		4. PROPOSED EFFECTIVE DATE February 1, 2018	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>):			
<input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT <i>COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)</i>			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 433		7. FEDERAL BUDGET IMPACT: a. FFY 2018 increase: \$0 b. FFY 2019 increase: \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Page 53f, Attachment 4.17-A Page 1 through 2-E		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Page 53f, Attachment 4.17-A Page 2 through 2-D	
10. SUBJECT OF AMENDMENT: Estate Recovery			
11. GOVERNOR'S REVIEW (<i>Check One</i>):			
<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL		<input checked="" type="checkbox"/> OTHER, AS SPECIFIED: Stefanie Nadeau, Director, MaineCare Services	
12. SIGNATURE OF STATE AGENCY OFFICIAL: /s/		16. RETURN TO:	
13. TYPED NAME: Stefanie Nadeau		Stefanie Nadeau Director, MaineCare Services #11 State House Station 242 State Street Augusta, Maine 04333-0011	
14. TITLE: Director, MaineCare Services			
15. DATE SUBMITTED: December 21, 2017			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: 3/30/18		18. DATE APPROVED: 8/8/18	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 2/1/18		20. SIGNATURE OF REGIONAL OFFICIAL: /s/	
21. TYPED NAME: Richard McGreal		22. TITLE: Associate Regional Administrator	
23. REMARKS: 8/8/18- State provided authority for pen and ink updates to the 179 to make the pagination consistent with the state's submission.			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

Maine

OFFICIAL

 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. Maine does not impose liens. See 42 CFR §433.36(c).

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. Maine does not impose liens. See 42 CFR §433.36(c).

3. The State defines the terms below as follows:

- estate

All real and personal property and other assets included in the recipient's estate; and any other real and personal property and other assets in which the recipient had any legal interest at the time of death, to the extent *of* that interest, including assets conveyed to a survivor, heir or assign of the deceased recipient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other arrangement but not including joint tenancy in real property. This provision shall be interpreted in a manner consistent with the Medicaid eligibility rules.

- individual's home

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

- equity interest in the home

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

- residing in the home for at least one or two years on a continuous basis, and

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

- lawfully residing.

Not applicable. Maine does not impose liens. See 42 CFR § 433.36(c).

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Maine

LIENS AND ADJUSTMENTS OR RECOVERIES**4. GENERAL REQUIREMENTS FOR ALL WAIVERS**

A claim under 5.03(B) may be waived if enforcement of the claim would cause an undue hardship for the person, providing that the person holds a beneficial interest in the Member's estate, as defined in this Section, and properly requests a hardship waiver. An applicant may request an undue hardship waiver because the applicant is reliant upon the assets of the estate or an undue hardship waiver based upon care given to the Member. The specific requirements for each type of waiver are set forth below. To qualify for a waiver, a person who is not a son or daughter of the deceased member must also be an adult, aged eighteen (18) or over. If a determination is made that an undue hardship exists, the Department may waive all or a portion of its claim.

Only one (1) waiver, undue hardship, or undue hardship based on care given will be granted per estate.

A. APPLICATION PROCESS: A person applying to the Department for consideration of an undue hardship waiver ("the applicant") must comply with the following:

1. An applicant must file an application on a form prescribed by the Department; and
2. The request for an undue hardship waiver must be made within six (6) months from the Member's death or within sixty (60) days from the notice of the Department's claim, whichever is later; and
3. The applicant must be either the son or daughter of the Member or an adult aged eighteen (18) or older; and
4. The Department may require the applicant to submit any information and documentation regarding the applicant's and all household members' finances, tax returns, property, employment, liabilities, expenses, and any other matters relevant and necessary to determine whether an undue hardship would result from recovery. If the information requested by the Department is not provided within sixty (60) days of the written request of the Department, or if the request is materially incomplete, the request for an undue hardship waiver may be denied; and
5. The applicant must prove that they have a beneficial interest in the estate:
 - a. through a legal right to the property of the estate through a will;
 - b. through the law of intestate succession; or
 - c. by establishing to the Department's satisfaction, through written documentation that the applicant:
 1. cohabitated with the Member for the five consecutive years prior to the Member's most recent eligibility for MaineCare benefits;
 2. provided significant support for the household and to maintain property in the estate during that time; and
 3. along with the Member held themselves out to the public as married or in a civil union.

Should the applicant's beneficial interest in the estate be less than 100%, the Department must reduce the undue hardship waiver, if granted, to meet the applicant's beneficial interest.

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LIENS AND ADJUSTMENTS OR RECOVERIES

If the applicant is securing agreement from other heirs to increase their legal interest in the estate, the applicant must do so through irrevocable assignment by the other heirs.

If the asset of concern to the applicant is the decedent's home, the applicant must prove that the home was the applicant's primary residence for two or more years immediately prior to the death of the MaineCare recipient, that the applicant's contribution to the upkeep of the house was significant, and that it was the understanding and belief of both the MaineCare recipient and the applicant that this was the home of both the applicant and the MaineCare recipient; and

6. Only one waiver application per estate may be submitted to the Department. The waiver applicant may only request one type of waiver per application, and;
7. The Department shall determine whether an undue hardship exists within ninety (90) days from the date of the receipt of all information requested. Appropriate notice of the decision will be sent to the person making the request. All decisions regarding the undue hardship waiver will be provided in writing and provide an explanation if the application is denied. The written decision must also provide information about how to appeal the denial to the Department's Administrative Hearings Unit.

B. LIMITATIONS ON WAIVER REQUESTS: An undue hardship does not exist if any of the following are present:

1. The decedent or applicant created the undue hardship by using estate planning, gifting or other methods to divert or shelter assets to avoid estate recovery; or
2. The circumstances indicate that the undue hardship was created for the purposes of avoiding or defeating recovery, including, but not limited to, undue influence on the decedent by the applicant or other family members; or
3. The sole basis for the request is lack of income pursuant to sub-section (B)(2)(b) above and sale of the real property in the estate will net the applicant more than \$10,000.00. In determining whether the sale of real property will net the applicant more than \$10,000.00, the Department may establish the value of the real property based upon:
 - a. Municipal tax valuation;
 - b. An appraisal report issued within the past year;
 - c. Real estate professional's estimate of fair market value;
 - d. Sales history for the real estate; or
 - e. Other information establishing a fair market value for the real property.

5. WAIVERS

A. UNDUE HARDSHIP WAIVER: An applicant may request a waiver of a claim under § 5.03(B) if enforcement of the claim would cause an undue hardship for the applicant.

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LIENS AND ADJUSTMENTS OR RECOVERIES

Eligibility criteria for an undue hardship waiver: The applicant must demonstrate they have a beneficial interest in the estate and that the applicant is dependent upon the assets of the estate, as defined below.

1. **Dependence upon Estate Assets:** The applicant must demonstrate their financial circumstances require them to rely upon the assets of the estate by meeting one of the following criteria:
 - a. The estate assets or property received by survival or distribution are part of a business, including a working farm,
 1. upon which the applicant was dependent for applicant's livelihood during the decedent's lifetime, and
 2. the recovery of which by the Department would deprive the applicant of their sole means of livelihood, or
 - b. The applicant's household income and asset level combined is less than 180% of the Federal Poverty Income level. The request shall contain a written statement of the circumstances constituting the hardship and all supporting documentation.

B. UNDUE HARDSHIP WAIVER BASED ON CARE GIVEN EXEMPTION

MaineCare may exempt a portion of a Member's estate from estate recovery for health maintenance activities and personal care services performed for the Member by one individual who has a beneficial interest in the estate. If the current income level of the waiver applicant is below two hundred percent (200%) of the current Federal Poverty Level, adjusted for the person's household size, MaineCare may designate a portion of a Member's estate as exempt from its estate recovery efforts if a person can demonstrate that health care maintenance activities or personal care services have been provided to a Member, as outlined below:

1. The applicant requesting the care given exemption provided health maintenance activities or personal care services as defined herein to the decedent during part or all of the two (2) years immediately prior to the Member's death or institutionalization, enabling the decedent to remain at home and avoid institutionalization for an equivalent period of time. The person requesting the exemption must provide corroborating statements from the decedent's primary care physician or other approved medical care provider acceptable to MaineCare.
2. Any care given exemption granted will not exceed the value of MaineCare benefits paid on the behalf of the Member, which would otherwise be subject to Estate Recovery. Following the approval of the undue hardship waiver based on a care given exemption, the Department will use one of the following formulas to determine the exempt amount:
 - a. If the decedent received care including health maintenance and personal care activities defined in Sections 5.02-6 and 5.02-11, that enabled the decedent to remain at home and avoid placement in institutionalized care as described in Section 5.02-7, the Department may grant an exemption not to exceed thirty-two thousand dollars (\$32,000) per year, prorated for each month of approved care given; or

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- b. If the decedent received care including personal care services and/or health maintenance activities less than those services he or she would have received in institutionalized care as described in Section 5.02-7, the Department may grant an exemption not to exceed twelve thousand dollars (\$12,000) per year, pro-rated for each month of approved care given; or
- c. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.02 every day, the maximum exemption of twelve thousand dollars (\$12,000) per year may be granted; or
- d. If the decedent received approved care for three (3) or more health maintenance or personal care activities defined in Section 5.02 at least three (3) times per week, a maximum exemption of six thousand dollars (\$6,000) per year may be granted.

These allowances are in place to assist the Member in maintaining independent living at home and reduce overutilization of institutional services.

3. Healthcare maintenance activities or personal care services previously used during the application process to reduce a transfer of assets cannot be counted again toward a care given exemption or a claim reduction.
4. All care given exemptions will be based on and limited to the two (2) year time period immediately prior to the Member's death or institutionalization.
5. An applicant may not be granted a waiver pursuant to this section for any services rendered to a Member and for which the applicant received compensation, either monetary or non-monetary.

6. CLAIM REDUCTION

- A. When the collection of the Department's claim would otherwise deplete the estate fully, the Department, at its discretion may reduce its claim in order to permit whole or partial reimbursement of an heir or devisee for use of personal resources to protect against damage or loss of value to the Member's real property occurring during the Member's last two years that the Member was institutionalized if the Member executed a Department approved Intent to Return Home form and delivered that signed form to the eligibility office..
The heir or devisee must request such reduction in writing, and the request must be supported by proof of payments made and the reasonableness of such payments.
- B. All reasonable requests for a claim reduction will be considered on an individual basis. The procedure for making a request is as follows:
 1. A request for claim reduction must be made within six (6) months from the Member's death or within thirty (30) days from the notice of the Department's claim, whichever is later.
 2. The request must contain a written statement of the circumstances constituting the claim reduction and all supporting documentation.

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C. The Department may request additional Information, which must be provided within sixty (60) days of the request. If the information is not provided within sixty (60) days, the request for claim reduction may be denied. The information requested may include but not be limited to the following:

1. Will or bequest instructions; and/or
2. Receipts/documentation of personal resources used to maintain property or pay Member debts.

D. All decisions regarding the claim reduction will be provided in writing.

7. COLLECTION PROCEDURES:

When it is determined that a Medicaid recipient's estate is subject to recovery the Department may file:

1. a claim in Probate Court against all assets included in the deceased Member's probated estate. The process for filing such a claim is governed by existing provisions of the State of Maine Probate Code (Article 18-A M.R.S. Article 3, Part 8.) regarding creditors' claims.
2. a claim in any court of competent jurisdiction against real and personal property and other assets in which the recipient had any legal interest at death to the extent of that interest.
3. a claim in any court of competent jurisdiction or any other legal means to recover the cost of medical services provided during a period of inaccurate eligibility. A notice of intent to recover shall be provided prior to filing suit.
4. If asserted against the estate, a claim may not be enforced until:
 - a. the Member has no surviving spouse; and
 - b. the Member has no surviving child who is under age twenty-one (21) or who is blind or permanently and totally disabled. For the purposes of this section, a surviving child must be blind or determined to be disabled at the time of recovery.
5. The Department shall provide heirs, assignees or transferees of a deceased Member an opportunity to pay a claim under this subsection through a voluntary payment arrangement that is acceptable to the Department. The payment arrangement may consist of a payment plan, promissory note, or other payment mechanism.

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LIENS AND ADJUSTMENTS OR RECOVERIES

8. ADVANCE NOTICE REQUIREMENTS:

- A. Reasonable efforts to give notice of the Estate Recovery Program will be provided to Members at the time of application for Medicaid.

Reasonable efforts to give notice will be provided pursuant to the relevant provisions of the Probate Code or to the legally authorized representative of the Member's estate when recovery is being sought. If there is no legally authorized representative the State shall make reasonable efforts to notify known family Members or heirs. If no one comes forward on the Member's behalf to settle the estate the State may seek appointment as personal representative as a creditor pursuant to the Probate Code. Notice shall include the action the State intends to take, the basis for the action, the amount sought to be recovered and a copy of these rules.

- B. Lack of notice pursuant to this section does not bar application of the Estate Recovery Program.