

### 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:*

The State requests verification from the attending physician of the institutionalized individual's status immediately preceding giving notice of the State's intent to file a real property lien.

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 State uses the following criteria:

- \*written proof verifying the date the son or daughter moved into the home;
- \*number of hours per day which the son or daughter provided on-site care, and personal care;
- \*any part-time or full-time jobs held while providing care;
- \*any schools or other similar institutions the son or daughter attended while providing care;
- \*specifics regarding the type of care the son or daughter provided, i.e., nursing care, daily living care, homemaker services, transportation, financial, etc.;
- \*any service agency, governmental or private, which provided care, the dates provided and the extent of the care provided;
- \*letter from the attending physician of the institutionalized individual, stating what kind of care, and duration of care, that was needed to prevent medical institutionalization;
- \*all other factors relevant to making the determination in a particular case.

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

\**estate* – For recipients deceased prior to August 1, 2003, estate is defined as used in Minnesota Statutes, Chapter 524, Uniform Probate Code. For recipients who die on or after August 1, 2003, estate is defined as the probate estate under Minnesota Statutes, Chapter 524, together with all of the person's interests established on or after August 1, 2003 or proceeds from those interests in real property owned by the person as a life tenant or joint tenant with a right of survivorship at the time of death, and to the extent the following interests become part of the probate estate, all interests or proceeds of those interests in securities, brokerage accounts or investment accounts owned by the person in beneficiary form and all interests in joint accounts, multiple party accounts and pay on death accounts or proceeds of those accounts. For recipients who die on or after July 1, 2009, estate includes assets conveyed to a survivor, heir, or assign of the recipient through survivorship, living trust, or other arrangements.

Minnesota also recovers from the estate of the deceased spouse of a predeceased Medicaid recipient according to Minnesota Statutes §256B.15. For Medicaid recipients who die on or after July 1, 2009, the estate of the Medicaid recipient is defined by state law to include legal title or interest in the undivided whole of all property owned by either spouse or the couple at the time of the recipient's death, property jointly owned or marital property at the time of the recipient's death, and any interests or proceeds of such interests that pass

through a joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement. Recovery of a claim against the estate of a spouse who did not receive medical assistance ("nonrecipient spouse"), for medical assistance paid on behalf of his or her predeceased spouse, applies to the full value of all assets and interests in the estate of the nonrecipient spouse that were property of or can be traced to property held by the recipient spouse or the nonrecipient spouse or both during the marriage. Any assets, proceeds of assets and income from such assets, that were jointly owned property at any time during the marriage or marital property including all property in which either spouse had an interest at the time of marriage and property acquired by either or both during the marriage, regardless of how acquired, titled or owned, or whether transferred between spouses, are subject to recovery. Recovery in the estate of the nonrecipient spouse does not apply to assets attributable to a subsequent spouse when the nonrecipient spouse has remarried, or to assets acquired individually with non-marital assets or interests by the nonrecipient spouse after the death of the recipient spouse.

For an individual covered under a long-term care insurance partnership policy issued on or after July 1, 2006, estate does not include assets or resources disregarded for Medicaid eligibility under Attachment 2.6-A, Supplement 8b and any unused amount at death of assets that may be disregarded based on the total dollar amount of benefits utilized by the participant under the partnership policy.

The personal representative of the participant's estate has the burden of proving that assets in the estate of the participant or participant's surviving spouse were assets, portions of assets or proceeds from assets disregarded for Medicaid eligibility during the participant's lifetime.

If the value of assets disregarded during a participant's lifetime is less than the amount of benefits received under the participant's long-term care partnership policy, the personal representative of the participant may apply any unused amount of partnership asset protection to additional assets in the estate so that the total amount of disregarded assets is equal the amount of benefits received.

The personal representative has the burden of establishing the unused value of partnership asset protection. To determine a participant's unused amount of partnership asset protection at the time of estate recovery, reduce the total amount of the participant's partnership policy benefits utilized by the assets disregarded for Medicaid eligibility purposes during lifetime, valued as follows:

- (i) The value on the date of the participant's death of assets, portions of asset or proceeds of assets retained or possessed by, accessible to or under the control of the participant or the participant's on the date of the participant's death;
- (ii) The value on the date of transfer of assets, portions of assets or proceeds of assets transferred to a third party during the participant's lifetime by either the participant or the participant's spouse.

\*individual's home – An individual's home, for the purpose of the Medical Assistance lien, is real property in which the recipient has an ownership interest, and which the recipient occupied as a primary dwelling immediately prior to admission to a medical institution.

\**equity interest in the home* – Equity interest in the home means an ownership interest recognized under Minnesota law.

\**residing in the home for at least one or two years on a continuous basis* – Residing in the home on a continuous basis means the person occupies the home as his or her primary dwelling, and intends to continue to occupy such home for the indefinite future.

\**lawfully residing* – Lawfully residing means residing in a manner not contrary to, or forbidden by law.

\* *discharge from the medical institution and return home* – Discharge from a medical institution is actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to a home per plan of treatment.

4. *The State defines undue hardship as follows:*

The State follows the mandatory hardship standards for exemption of certain income, resource and property interests of American Indian and Alaska Natives specified in section 3810(A)(7) of the State Medicaid Manual.

The State does not otherwise define undue hardship in finite terms, but guides the determination process. These circumstances are not exclusive as there may be other situations that cause undue hardship. An undue hardship may exist when the circumstances described in one or more of the following paragraphs are present:

A. The estate claim could not be paid except by the sale of assets (real or personal property), subject to probate proceedings, for which the following statements are true for a period of at least 180 days prior to the date the decedent died and continue as true –

- the assets are used by the waiver applicant to produce income in his or her trade profession, or occupation, (trade, profession or occupation include a working farm that the waiver applicant actually operates, but does not include a farm that is not worked by the applicant, or a farm that is rented); and
- the assets are a necessary part of the waiver applicant's trade, profession or occupation; and
- the trade, profession or occupation in which the assets are used is the waiver applicant's sole source of income; and
- the waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.

B. The estate claim could not be paid except by the sale of the decedent's real estate subject to probate proceedings and the following are true –

- the waiver applicant, with an ownership interest in the property, actually and continuously occupies the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to occupy the dwelling; and
  - the real estate for which the hardship waiver is requested was classified as homestead property for property tax purposes under Minnesota Statutes, section 273.124 throughout the entire period of time referred to in the prior paragraph.
- C. Notwithstanding anything else to the contrary, hardship does not exist if the decedent took any ~~of the following illegal actions to divest or divert assets in order to avoid estate recovery, and the waiver applicant's circumstances are wholly or partially a result or a consequence of those actions. , there is not hardship for~~
- ~~• actions which divested or diverted assets in order to avoid recovery or of medical assistance paid for the decedent or the decedent's spouse, from the decedent's estate; or~~
  - ~~• actions which divested or diverted assets with the result or effect that medical assistance paid for the decedent or the decedent's spouse are wholly or partially unrecoverable from the decedent's estate.~~

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:*

- A. The Department of Human Services delegates the authority to recover Medicaid claims to county human service agencies. Claimants may request a waiver for undue hardship from the county agency filing the claim. The written notice claimants receive of the county's decision includes information on the right to appeal the decision through the State's administrative fair hearing process under Minnesota Statutes section 256.045.
- B. The county agency will not waive an estate claim, even if circumstances are present that would grant a waiver for undue hardship, if the decedent's heirs or survivors would not receive a benefit from the waiver because of other filed claims against the estate.
- C. The county agency will withdraw any estate claim, either fully or partially, after a determination of hardship has been made to all or part of the estate's assets. In the event that an estate claim has not been filed, the county agency will not file an estate claim in cases where a determination of hardship has been made on all or part of the estate assets.
- D. An estate claim need not be filed in probate when it would not be cost-effective to make a recovery from the deceased medical assistance recipient's or recipient's spouse's estate. The decision to not file an estate claim can be made without an application being made for a waiver based on undue hardship.

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

Cost-effective for estate claim purposes means that the total amount of the claim that the State is legally entitled to file, or the total amount the State is legally entitled to collect after filing an estate claim is equal to or greater than the estimated costs for filing, pursuing, and collecting the estate claim. In determining that recovery from an estate is not cost-effective, the costs to pursue

the recovery are considered, including attorney time, travel, court fees, fees for a personal representative, staff and technical support costs.

7. *The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):*

The State follows these steps:

- A. Reasonable effort to identify as many heirs and devisees as possible, including occupants with an ownership interest in the decedent's homestead.
- B. ~~Notice sent~~ Send to each of the identified ~~heirs and devisees~~ individuals a Notice of Claim and an Application for a Waiver of Claim. This form contains
  1. a statement of the claim
  2. notice of the right to apply for a hardship waiver
  3. a statement of what constitutes undue hardship
  4. procedures and instructions for filing an application for an undue hardship, and the time period of 30 days to file an application from receipt of notice
  5. information regarding appeal rights and procedures
- C. Review and determination on each application for waiver
  1. 30 day time period to make a determination on the application for waiver
  2. written response of the determination
  3. information regarding appeal rights and procedures