

Table of Contents

State/Territory Name: Maine

State Plan Amendment (SPA) #: 20-0030

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Summary Form (with 179-like data)
- 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

March 25, 2021

VIA E-MAIL

Michelle Probert, Director
Office of MaineCare Services
Department of Health and Human Services
109 Capitol Street, 11 State House Station
Augusta, Maine 04333-0011

Dear Ms. Probert:

Enclosed is an approved copy of the Maine State Plan Amendment (SPA) 20-0030, received on December 21, 2020 proposing to update Maine's Estate Recovery Program. This SPA was approved January 19, 2021, and the effective date for this SPA is November 1, 2020, as requested by your agency.

If you have questions concerning this letter, please contact Gilson DaSilva, Division of Program Operations (South Branch) at (617) 565-1227 or via e-mail at Gilson.dasilva@cms.hhs.gov.

Sincerely,

A black rectangular redaction box covers the signature of James G. Scott. There are some faint red marks above the box, possibly from a stamp or handwritten initials.

James G. Scott, Director
Division of Program Operations

cc: Kristin Merrill, State Plan Manager, Office of MaineCare Services

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER
20 - 0030

2. STATE
Maine

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
11/30/2020

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 433.36

7. FEDERAL BUDGET IMPACT

a. FFY **2021** \$ **N/A**

b. FFY **2022** \$ **N/A**

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
ATTACHMENT 4.17-A Page 2-B, 2-C, 2-D

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)
ATTACHMENT 4.17-A Page 2-B, 2-C, 2-D

10. SUBJECT OF AMENDMENT

Updates to Maine's Estate Recovery program

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

**Michelle Probert
Director, MaineCare Services
#11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011**

13. TYPED NAME

Michelle Probert

14. TITLE

Director, MaineCare Services

15. DATE SUBMITTED

12/21/2020

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED **12/21/2020**

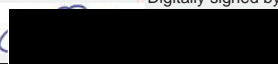
18. DATE APPROVED **01/19/2021**

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL **11/01/2020**

20. SIGNATURE OF REGIONAL OFFICIAL

Digitally signed by



21. TYPED NAME

James G. Scott

22. TITLE

Director, Division of Program Operations

23. REMARKS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Maine

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. The income and asset level of the applicant for the 52 weeks preceding the Member's death, plus the applicant's income and assets at the time of application, shall be used to determine waiver eligibility. The Department may also request documentation of the applicant's income for the two years preceding the Member's death and any other financial information that may support the application.

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 24 hour a day care including health maintenance and personal care activities defined in Sections 5.02-6 and 5.02-12, that enabled the decedent to remain at home and avoid placement in institutionalized care as described in Section 5.02-8, and MaineCare was not paying for in home services at the time, 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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Maine

LIENS AND ADJUSTMENTS OR RECOVERIES

- 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 5.02-8, 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. In circumstances where an applicant may qualify for more than one level of care, the highest amount for one application will be granted.

- 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 vacant real property occurring during the 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.

For claims of real property upkeep and preservation following the Member's death, any expenses beyond two years following the death will not be allowed unless the estate provides a plan for payment of the claim that the Department approves.

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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
Maine
LIENS AND ADJUSTMENTS OR RECOVERIES

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
 - c. the member has no surviving child 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 the Department seeks recovery.

The time the Department seeks recovery means the earlier of (1) the date of the Department's notice of claim to the legally authorized representative of the estate or known family members or heirs; or (2) the date on which the Department files a claim in Probate Court.

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.