

Department of Health & Human Services
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519



September 19, 2012

Stephen Fitton, Medicaid Director
Medical Services Administration
Federal Liaison Unit
Michigan Department of Community Health
400 South Pine
Lansing, Michigan 48933

ATTN: Loni Hackney

Dear Mr. Fitton:

Enclosed for your records is an approved copy of the following State Plan Amendment:

- Transmittal: #12-010 Revises Estate Recovery definitions
- Effective: April 1, 2012.

If you have any questions, please contact Leslie Campbell at (312) 353-1557 or Leslie.Campbell@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink that reads "Verlon Johnson". The signature is written in a cursive, flowing style.

Verlon Johnson
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 12 - 10	2. STATE: Michigan
TO: REGIONAL ADMINISTRATOR HEALTH FINANCING ADMINISTRATION DEPARTMENT OF HUMAN SERVICES		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT		4. PROPOSED EFFECTIVE DATE April 1, 2012	
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 2012 \$ 200,000 b. FFY 2013 \$ 400,000	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.17-A, Pages 1-5 4.17, pg 53b SF		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.17-A, Pages 1-5 4.17, pg 53b SF	
10. SUBJECT OF AMENDMENT: Estate Recovery			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED Stephen Fitton, Director <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL Medical Services Administration			
12. SIGNATURE OF STATE AGENCY OFFICIAL: <i>Stephen Fitton</i>		16. RETURN TO: Medical Services Administration Actuarial Division Capitol Commons Center - 7th Floor 400 South Pine Street Lansing, Michigan 48933 Attn: Loni Hackney	
13. TYPED NAME: Stephen Fitton			
14. TITLE: Director, Medical Services Administration			
15. DATE SUBMITTED: June 19, 2012			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: JUN 19 2012		18. DATE APPROVED: SEP 19 2012	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: APR - 1 2012		20. SIGNATURE OF REGIONAL OFFICIAL: <i>Verlon Johnson</i>	
21. TYPE NAME: Verlon Johnson		22. TITLE: Associate Regional Administrator	
23. REMARKS:			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

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 is not a TEFRA state. Determination of permanent institutionalization is not required or performed.

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):

Because 42 CFR §433.36(f) is a provision required only if a State chooses to impose a lien against an individual's real property prior to his or her death, and the State is not a TEFRA state, the State does not have nor need such criteria.

3. The State defines the terms below as follows:

- estate –
MCL 700.1104(B) "estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout the administration. ("as the property is originally constituted and as it exists throughout administration" describes an asset that has changed forms. As an example: an individual has real estate which is sold in parcels and the proceeds from the sale of the separate parcels are invested in cds. Even though the asset is no longer in its original form, it is still part of the estate when the estate is distributed.) Additionally, the state's estate recovery statute (MCL 400.112H (A)) defines estate as ". . . All property and other assets included within an individual's estate that is subject to probate administration. . ."
- Survivor – an individual who is entitled to inherit from the decedent's estate, who does not predecease the deceased beneficiary
- individual's home – any shelter used by an individual or spouse as a place of residence in which the individual has a home-ownership interest
- equity interest in the home – any equitable right, title or interest in real property
- residing in the home for at least one or two years on a continuous basis – occupancy of an individual's home by a sibling, child or other survivor using the home as the principal place of residence
- discharge from the medical institution and return home – the attending physician has signed an order for discharge from the nursing home, following which the individual has returned to reside in his or her own home, and
- lawfully residing – use of the home of an individual residing in a nursing facility as a primary place of residence by a spouse, a minor, blind or disabled child, a sibling or other survivor. Such property must be the spouse's, child's, sibling's or other survivor's mailing address or legal address for driver's licensure and/or voter registration.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of MICHIGAN

Liens and Adjustments or Recoveries

4. The State defines undue hardship as follows:

An undue hardship exists when (1) the estate subject to recovery is the primary income producing asset of the survivors (where such income is limited), including, but not limited to, a family farm or business; (2) the estate subject to recovery is a home of modest value or (3) the State's recovery of a decedent's estate would cause a survivor to become or remain eligible for Medicaid.

There is a presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery. The agency will not grant an undue hardship waiver if the granting of such waiver results in the payment of claims to other creditors with a lower priority standing.

Home of modest value is defined as A home valued AT fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death.

For individuals who apply for but do not meet the definition of undue hardship as found in MCL §400.112g and provided above, the State will consider granting an exemption when a survivor who was residing in the deceased beneficiary's home continuously for at least two years immediately before the beneficiary's date of death, provided care that kept the deceased beneficiary out of an institution, even if the deceased beneficiary never entered an institution. This exemption will only be granted in circumstances where non-institutional long-term care services approved under the State Plan were provided and only after the means test has been satisfied.

The State is following its own definition of undue hardship in accordance with MCL §400.112g(3)(e). When considering whether to grant an undue hardship waiver, a means test will be applied. *West Virginia v. Thompson*, 475 F.3d 204. An applicant will satisfy the means test only if both of the following are true:

total household income of the applicant is less than 200 percent of the poverty level for a household of the same size; and

total household resources of the applicant do not exceed \$10,000.

Undue hardship waivers are temporary. Undue hardship waivers expire when the conditions which qualified an estate, or a portion of an estate, for a waiver no longer exist.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, or when recovery is not cost-effective.

Review of hardship waivers begins with the State's vendor. The vendor, in accordance with its contract with the State, reviews all incoming waiver applications and makes an initial recommendation to accept or deny and sends it to the Estate Recovery Specialist.

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State of MICHIGAN

Liens and Adjustments or Recoveries

The Estate Recovery Specialist's responsibilities are:

- monitors state and federal laws and regulations pertaining to estate recovery
- conducts all initial hardship waiver reviews
- monitors progress of filed claims in probate
- assists vendor in sending notices of intent to file
- ensures adherence to applicable timeframes
- develops, tests, and implements the ERS, automated Estate Recovery Support System
- approves all correspondence and informational materials
- coordinates with the Office of Legal Affairs and the Office of the Attorney General
- verifies information in recommendations received from the vendor and in the waiver applications
- makes recommendations to approve or deny waiver applications to the Court Originated Liability Section Manager

Section Manager's responsibilities are:

- directs the planning, development, and implementation of the Court Originated Liability Section
- directs the activities of staff in pursuing recoveries
- evaluates methods for maximizing reimbursement from liable sources
- ensures adherence to state and federal laws and regulations
- approves or denies waiver applications

The vendor will use the following criteria when making an initial undue hardship waiver recommendation:

- whether the estate is the primary income-producing asset of the survivors
- whether the estate is a home of modest value
- whether recovery from the estate will cause a survivor to become or remain eligible for Medicaid
- whether an actual hardship exists after application of the means test

The Estate Recovery Support System is a module of the third party liability database that is used to process estate recovery cases.

6. The State defines cost-effective as follows:

Recovery is considered cost-effective when the potential recovery amount of the estate exceeds the cost of filing the claim and any legal work dealing with the claim, or if the recovery amount is above a \$1,000 threshold.

7. The State uses the following collection procedures:

The State identifies deceased recipients subject to estate recovery via a match with the Medicaid recipient eligibility file using data from the National Social Security Death Index and State Vital Statistics, and claims paid with a discharge status code indicating death. The match is run weekly.

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The State may also supplement its match with recipients identified by its Estate Recovery Contractor. Deceased recipients are also identified by obtaining referrals from local DHS offices, service providers, long-term care facilities, attorneys, personal representatives, family members of recipients, and possibly by monitoring newly opened probate court records for high-population counties in Michigan.

Under the Michigan Probate Code, a personal representative is required to publish notice to creditors to present their claims to the estate. The personal representative must send a copy of the published notice to all known creditors of the estate. A known creditor of the decedent is any creditor whose existence is reasonably ascertainable through an investigation of the decedent's records for the 2 years prior to death. (MCL 700.3801(1)) the State will be a creditor ascertainable from review of the decedent's past two years' records; therefore, the State will be a known creditor and the personal representative will be required to send it notice of the probate estate.

The personal representative is also required, by state law to:

- (1) within 91 days after appointment or other time specified by court rule, a personal representative, who is not a special personal representative or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of an encumbrance that may exist with reference to each listed item.
- (2) the personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee. (MCL 700.3706)

The personal representative shall keep each presumptive distributee informed of the estate settlement. Until a beneficiary's share is fully distributed, the personal representative shall annually, and upon completion of the estate settlement, account to each beneficiary by supplying a statement of the activities of the estate and of the personal representative, specifying all receipts and disbursements and identifying property belonging to the estate. MCL 700.3703(4)

- (D) that, during the course of administering the estate, the personal representative must provide all interested persons with all of the following:
 - (i) a copy of the petition for the personal representative's appointment and a copy of the will, if any, with the notice.
 - (ii) a copy of the inventory.
 - (iii) a copy of the settlement petition or of the closing statement.
 - (iv) unless waived, a copy of the account, including, but not limited to, fiduciary fees and attorney fees charged to the estate (MCL 700.3705).

Within 30 days of learning of the death of a Medicaid recipient who is subject to estate recovery, MDCH mails a Notice of Intent (NOI) to the personal representative of the recipient's estate. If the personal representative is not known, the NOI is sent to the family member contact the recipient listed on their most recent application. The NOI indicates that the state intends to file a claim against the estate in probate court to seek reimbursement for payments made by the Medicaid program (not to exceed the value of the estate).

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Liens and Adjustments or Recoveries

The NOI also indicates that the State may waive recovery in the event that recovery would result in an undue hardship. The NOI provides the State's definition of an undue hardship along with a contact phone number and address to request an undue hardship application. The NOI also advises that an undue hardship application may be downloaded from the estate recovery website and gives the url. Lastly, the NOI states that adverse decisions may be appealed under the Administrative Procedures Act, (MCL 24.201-24.328) within 60 days of receiving notice of the State's final decision.

Upon confirmation that a case does not meet any statutory exemptions or hardship conditions and that probate has been opened, the State files a claim against the estate and pursues recovery. The State's estate recovery claim is administered through the State Probate Court system and all claims are subject to review by the Probate Court.

The Probate Court's allowance or denial of the State's claim is subject to the appellate review available to all other Probate Court decisions.

The State will petition a court pursuant to estates and protected individuals code, for distribution of estate assets upon determination that the personal representative has failed to distribute the proceeds of the estate in a timely manner (MCL §700.3415; 3807(1); 3951; 3952; 3953)

8. The State assures CMS that the full FMAP share of all recoveries will be credited timely to CMS via the CMS-64 report.

The State will provide CMS copies of the reports mandated by the Michigan Legislature. Such reports will be forwarded to CMS at the same time the reports are presented to the Legislature.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: MICHIGAN

Citation(s)

- (4) 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.
- The State adjusts or recovers from the 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:
- All assets and resources not otherwise excluded under this provision of the Michigan Medicaid Program.
- 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.

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