



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

June 18, 2018

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Division of Medicaid  
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Atlanta Federal Center  
61 Forsyth Street, SW Suite 4T20  
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SUBJECT: State Plan Amendment (SPA)

Title XIX, Social Security Act  
Transmittal #2018-0002

Please find attached an amendment for North Carolina's State Plan under Title XIX of the Social Security Act for the Medical Assistance Program. The affected pages are Attachment 4.17-A, Page 1, Attachment 4.17-A, Page 2, Attachment 4.17-A, Page 4 and Attachment 4.17-A Page 6.

The purpose of the revision to the State Plan Estate Recovery section will ensure that the SPA reflects the program administration. We have removed some definitions to ensure that everyone can understand requirements, which should eliminate misinterpretations of the program rules and regulations. We have added additional criteria for heirs to meet the undue hardship waiver requirements, but we have also tightened the controls for the undue hardship application and undue hardship approval process.

This amendment is effective October 1, 2018.

Your approval of this state plan amendment is requested. If you have any questions or concerns, please contact me or Teresa Smith 919-855-4116.

Sincerely,

 Mandy Cohen, MD, MPH  
Secretary

Enclosures

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES •**

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Carolina

LIENS AND ADJUSTMENTS OR RECOVERIES

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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:

Review of documentary evidence (level of care documentation, plan of care, hospital discharge summary, discharge planner's records, or physician's statement) indicates no plans or date for discharge or specific dates that institutional care is needed. When an individual continues to be institutionalized beyond the plans for discharge, it is presumed to be permanent.

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. The State of North Carolina does not impose TEFRA liens.

3. The State defines the terms below as follows:

Note: North Carolina does not impose TEFRA liens. The definitions below apply generally to North Carolina's Medicaid Estate recovery program and specifically to all section of Attachment 4.17-A of the North Carolina Medicaid State Plan.

- Estate: Pursuant to N.C. Gen. Stat. § 108A-70.5(b)(2), for Medicaid estate recovery purposes, the term "estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to N.C. Gen. Stat. § 28A-15-1. For individuals who have received benefits under a qualified long-term care partnership policy as described in G.S. 108A-70.4, "estate" also includes any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.
- Tenancy in common: For Medicaid estate recovery purposes and under North Carolina law, a "tenancy in common" is a tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship.

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- Reside on real property continuously: For Medicaid estate recovery purposes, to “reside on real property continuously” means that a person is using the property as his or her primary residence continuously during the time period at issue.
- Heir: For Medicaid estate recovery purposes, “heir” is defined as provided in N.C. Gen. Stat. §§ 28A-1-1(3) and 29-2(3) as any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the North Carolina General Statutes. “Heir” does not include a “devisee,” as defined in N.C. Gen. Stat § 28A-1-1(1a). For Medicaid estate recovery purposes, even if an individual dies testate, the individual’s heirs are those persons who would have been entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the North Carolina General Statutes.
- Lineal descendants: For Medicaid estate recovery purposes, “lineal descendants” is defined as provided in N.C. Gen. Stat. § 29-2(4) as the children of a person and successive generations of children of such children.
- Qualified undue hardship applicant: For Medicaid estate recovery purposes, and regardless of whether the decedent dies testate or intestate, a “qualified undue hardship applicant” includes only lineal descendants of the decedent, brothers and sisters of the decedent, lineal descendants of brothers and sisters of the decedent, and heirs of the decedent.
- Sole source of income: For Medicaid estate recovery purposes, “sole source of income” means that the income is the only source of income for a qualified undue hardship applicant and his or her spouse and related family members in his or her household.
- Gross income available: For Medicaid estate recovery purposes, “gross income available” means the total income of a qualified undue hardship applicant and his or her spouse and related family members in his or her household prior to any deductions or adjustments.
- Assets: For Medicaid estate recovery purposes, “assets” means all of the real and personal property, both legal and equitable, of a qualified undue hardship applicant and his or her spouse and related family members in his or her household.
- Undue hardship waiver: For Medicaid estate recovery purposes, an “undue hardship waiver” is a full or partial waiver of the State Medicaid agency’s estate recovery claim. A partial waiver may be a waiver that applies to only some of the assets in the decedent’s estate, or may be limited in its duration, or both. Examples of a time-limited waiver include, but are not limited to, waivers for the lifetime of the qualified undue applicant or waivers limited to the time that the qualified undue applicant continues to meet the undue hardship criteria. A time-limited undue hardship waiver is also known as a “deferral.”

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- b. The qualified undue hardship applicant's ownership interest in the real property was acquired at least 24 months prior to the Medicaid beneficiary's death, as evidenced by a valid and properly recorded deed; and
  - c. The real property has a value of less than \$100,000 determined as follows:
    - (1) By the most current County tax assessment value of the property; or
    - (2) By an appraisal of the property, obtained at the expense of the qualified undue hardship applicant, by an appraiser licensed by and in good standing with the North Carolina Appraisal Board; and
  - d. The qualified undue hardship applicant is residing on and has continuously resided on the real property since the decedent's death; and
  - e. The qualified undue hardship applicant resided on the real property for at least 12 months immediately prior to and continuously until the date of the decedent's death; and
  - f. The gross income available to the qualified undue hardship applicant and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level; and
  - g. The assets of the qualified undue hardship applicant and his or her spouse and related family members in his or her household, excluding the qualified undue hardship applicant's tenancy in common interest in the real property, are valued below twelve thousand dollars (\$12,000).
- B. An undue hardship waiver or deferral applies only during the lifetime of the qualified undue hardship applicant and only as long as the qualified undue hardship applicant continues to meet the criteria for one of the undue hardship definitions. A waiver or deferral of Medicaid estate recovery based on undue hardship only applies as a waiver or deferral of estate recovery for the following property:
- 1. For a qualified undue hardship applicant who meets the criteria for the first undue hardship definition, the property of the decedent's estate that serves as the sole source of income; or
  - 2. For a qualified undue hardship applicant who meets the criteria for the second or third undue hardship definitions, the real property on which the qualified undue hardship applicant resides.

The State Medicaid agency may continue to pursue its estate claim against any property of the Medicaid beneficiary's estate that is not subject to the undue hardship waiver or deferral.

5. The following standards and procedures are used by the State for waving or deferring estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:
- A. A claim of undue hardship must be made by or on behalf of a qualified undue hardship applicant by submitting a complete undue hardship application to the State Medicaid agency together with all documentation necessary for the agency to evaluate the claim.
  - B. In the event that an estate is opened within six months of the Medicaid beneficiary's death, a claim of undue hardship must be made within 60 days of the date that the agency presents its estate claim according to one of the methods provided in N.C. Gen. Stat. § 28A-19-1(a).

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- F. Each claim of undue hardship will be evaluated within 90 calendar days from the date of receipt by the State Medicaid agency of a complete application and all necessary documentation. In the event of an incomplete application or incomplete documentation, the State Medicaid agency may extend the time for the qualified undue hardship applicant to provide a complete application and complete documentation for an additional 30 days. If a complete application and all necessary documentation are not received by the State Medicaid agency within this time frame, the undue hardship claim will be denied.
- G. A written notice of decision will be mailed to the undue hardship applicant within 10 calendar days after the State Medicaid agency has completed its review. The State Medicaid agency will either grant or deny the claim of undue hardship. If the undue hardship claim is granted, the State Medicaid agency will not pursue its estate recovery claim against the property related to the undue hardship as long as the qualified undue hardship applicant continues to meet the undue hardship criteria.
- H. If the qualified undue hardship applicant dies or the State Medicaid agency determines that the applicant no longer meets the undue hardship criteria, the State Medicaid agency may resume pursuit of the Medicaid estate claim against the property subject to an undue hardship waiver or deferral. The State Medicaid agency may require the qualified undue hardship applicant to submit additional documentation at any time to demonstrate that the applicant continues to meet the undue hardship criteria. If the State Medicaid agency determines that the qualified undue hardship applicant no longer meets the undue hardship criteria, a written notice of decision will be mailed to the qualified undue hardship applicant within 10 calendar days of the determination.
- I. If the undue hardship applicant disagrees with the State Medicaid agency decision, he or she may appeal to the Office of Administrative Hearings (OAH) within 60 calendar days from the date that the written decision is mailed to the undue hardship applicant.
6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):
- The gross assets in the estate prior to any disbursements, distributions, or any other payments are below \$5,000, or the amount of Medicaid payments subject to recovery is less than \$3,000. In either case, the State will waive estate recovery. A waiver based on cost-effectiveness may be a conditional waiver and may specify that the waiver will cease if additional assets are subsequently discovered that may be property of the estate subject to estate recovery.
7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):