



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DAVE RICHARD
DEPUTY SECRETARY FOR MEDICAL ASSISTANCE

MEMORANDUM

TO: Mandy Cohen, MD, MPH
Secretary

FROM: Dave Richard 
Deputy Secretary for Medical Assistance

SUBJECT: State Plan Amendment
Title XIX, Social Security Act
Transmittal #2017-005

DATE: May 18, 2017

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 Text Page 53a, and Attachment 4.17.A, Pages 1 through 7.

This state plan revises the Estate Recovery section which will ensure that the SPA is in line with the North Carolina Administrative Code and the Medicaid Manual. The Agency has added more definitions to ensure that everyone can understand requirements which should avoid any misinterpretations of the program rules and regulations. Also, the Agency has added additional criteria for heirs to meet the undue hardship waiver requirements and tighten the controls for the undue hardship application and undue hardship approval process.

This amendment is effective June 1, 2017.

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

DR:ts

Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Carolina(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

X Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) X The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under 1917(a)(1)(B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

Personal Care Services

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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:

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.
- Individual's home: Not applicable. The State of North Carolina does not impose TEFRA liens.
- Equity interest in the home: Not applicable. The State of North Carolina does not impose TEFRA liens.
- 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.
- Residing in the home for at least one or two years on a continuous basis: Not applicable. The State of North Carolina does not impose TEFRA liens.

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- Lawfully residing: Not applicable. The State of North Carolina does not impose TEFRA liens.
- 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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4. The State defines undue hardship as follows:

A. Only a qualified undue hardship applicant may be granted a claim of undue hardship. In order for a claim of undue hardship to be granted, the qualified undue hardship applicant must meet all of the requirements for at least one of the three following undue hardship definitions:

1. Real or personal property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 meets the following conditions:

- a. The property is the sole source of income for a qualified undue hardship applicant and his or her spouse and related family members in his or her household, and
- b. 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.

OR

2. Recovery would result in the sale of real property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 and the following conditions are met:

- a. The qualified undue hardship applicant is residing on and has continuously resided on the real property since the decedent's death; and
- b. The qualified undue hardship applicant resided on the property for at least 12 months immediately prior to and continuously until the date of the decedent's death; and
- c. 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
- d. The assets of the qualified undue hardship applicant and his or her spouse and related family members in his or her household are valued below twelve thousand dollars (\$12,000).

OR

3. Recovery would result in the sale of real property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 and the following conditions are met:

- a. The qualified undue hardship applicant owns a tenancy in common interest of at least 25% in the real property, as evidenced by a valid and properly recorded deed; and

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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.
- 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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- C. In the event that an estate is not opened within six months of the Medicaid beneficiary's death, a claim of undue hardship must be made within 60 days of the earliest date that notice of the Medicaid claim is served upon any of the following:
1. A family member of the Medicaid beneficiary; or
 2. A person who served as guardian, power of attorney, or health care power of attorney for the Medicaid beneficiary during the beneficiary's lifetime; or
 3. A person who received or signed a notice of Medicaid estate recovery form on behalf of the Medicaid beneficiary; or
 4. A person who served as a representative of the Medicaid beneficiary for purposes of applying for Medicaid or communicating with the Medicaid agency or County Department of Social Services about the beneficiary's Medicaid benefits.
- D. Service may include transmission of the claim by personal delivery, mail, fax, or electronic means. For service by mail, service is complete upon placing the claim notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. Service by fax or electronic means is complete upon transmission by the agency. Service of the claim notice may be made by the State Medicaid agency, a County Department of Social Services, the State Medicaid agency's fiscal agent, or a contractor of the State Medicaid agency.
- E. The undue hardship application must be submitted on a form provided by the State Medicaid agency and must be complete in order to be considered by the agency. Necessary documentation for consideration of an undue hardship claim includes any documentation that is necessary, in the judgment of the State Medicaid agency, to verify that the qualified undue hardship applicant meets the criteria for undue hardship. Necessary documentation may include, but is not limited to, copies of the following documents:
- The birth certificate of the qualified undue hardship applicant or other documentation acceptable to the State Medicaid agency showing relationship to the Medicaid beneficiary;
 - Income, wage, tax, or employment documents of the qualified undue hardship applicant and his or her spouse and related family members in his or her household;
 - Documentation of assets owned by the qualified undue hardship applicant and his or her spouse and related family members in his or her household, including real and personal property records and financial account statements;
 - Documentation showing how property included in the estate is the sole source of income for a qualified undue hardship applicant and his or her spouse and related family members in his or her household;
 - Documentation showing ownership information and dates of residency of the qualified undue hardship applicant on the real property of the estate, including real property records, tax records, or utility records.

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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.
5. 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.
6. 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):

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- A. At the time an individual applies for Medicaid, the State Medicaid agency or County Department of Social Services will give written notice to the applicant, or the applicant's representative, that a claim may be filed against the applicant's estate to recover Medicaid payments made on the applicant's behalf. This written notice may be included as part of the application for Medicaid or may be included on other documentation provided to the applicant or to the applicant's representative.
- B. Within 90 days of date that the Notice to Creditors is personally served upon the State Medicaid agency, as required by N.C. Gen. Stat. § 28A-14-1(b), the State Medicaid agency shall present its estate claim according to one of the methods provided in N.C. Gen. Stat. § 28A-19-1(a).
- C. The State Medicaid agency will defer estate recovery in the following circumstances:
 - 1. when the spouse of the Medicaid beneficiary is still living; or
 - 2. when the beneficiary has a surviving child, who is under age 21; or
 - 3. when the beneficiary has a surviving child of any age who is blind or disabled as provided in 42 U.S.C. § 1396p(b)(2)(A); or
 - 4. when a qualified undue hardship applicant continues to meet the undue hardship criteria.

Estate recovery will be deferred only as long as at least one of these four circumstances is present. When none of the four circumstances are present, the State Medicaid agency will resume estate recovery. If the State Medicaid agency defers pursuing recovery based on one of these four circumstances, the State Medicaid agency may take legal measures to secure its claim against property of the Medicaid beneficiary's estate.