



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**
Division of Health Benefits

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

DAVE RICHARD • Deputy Secretary, NC Medicaid

January 25, 2023

James Scott, Director
Division of Program Operations
Department of Health & Human Services
Centers for Medicare & Medicaid Services
601 East 12th Street Room 355
Kansas City, Missouri 64106

SUBJECT: State Plan Amendment
Title XIX, Social Security Act
Transmittal #2023-0001

Dear Mr. Scott:

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 Pages 3, 4 and 6. The purpose of this revision to the State Plan Amendment Estate Recovery section will be to ensure that the SPA reflects the program administration. We have increased the thresholds for the Estate Recovery program. The estate value threshold has been changed from \$5,000 to \$50,000 and the Medicaid claim amount threshold has been changed from \$3,000 to \$10,000. Revisions have also been made to the undue hardship criteria increasing the amount of assets for a qualified undue hardship applicant or related family member from \$12,000 to \$25,000.

The proposed effective date is January 01, 2023.

Your approval of this state plan amendment is requested. If you have any questions or concerns, please contact me or Cecilia Williams at (919) 270-2530.

Sincerely,

DocuSigned by:

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Dave Richard
Deputy Secretary

Enclosures

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Carolina

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. Effective for dates of death on or after January 1, 2023 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 twenty-five thousand dollars (\$25,000).
- 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. Effective for dates of death on or after January 1, 2023 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 twenty-five thousand dollars (\$25,000).
- 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 waiving 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):
- Effective for dates of death on or after January 1, 2023 cost-effective refers to circumstances in which all the following conditions are met: (1) the gross estate assets prior to any disbursements, distributions, or any other payments are at least \$50,000 (2) the Medicaid claim is at least \$10,000 (3) the actual recovery from the estate on the Medicaid claim (regardless of the actual claim amount) is expected to be at least \$5,000. 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. The State has 3 years from the date of discovery to pursue any assets subsequently discovered.
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):