

Response to HCR 69 of the 2018 Regular Legislative Session

*Request for a study concerning means by which to improve the
Medicaid estate recovery functions of the La. Department of Health*

Prepared by:

Louisiana Department of Health

Bureau of Health Services Financing

April 2019



Contents

1	Preface	2
2	Estate Recovery.....	3
2.1	Louisiana’s Current Estate Recovery Process	3
2.2	Means to Increase Recovery Amounts in a Cost-Neutral Manner	7
3	TEFRA Liens	12
3.1	Benefits of TEFRA Liens.....	12
3.2	Amendments to Governing Authorities Necessary to Institute Use of TEFRA Liens	16
4	Data Systems to Facilitate Easier Identification of Assets Subject to Recovery	17
4.1	LDH’s New Eligibility and Enrollment System	17
4.2	Other Data System Resources.....	17
6	Potential Utilization of Vendors to Assist in Recovery Efforts	19
7	Conclusion.....	20
	Appendix: Median and Half-Median Value of Homes by Parish.....	21
	Bibliography	22

1 Preface

Title XIX of the Social Security Act (42 USC 1396p) requires state Medicaid programs to seek recovery of payments for nursing facility services, home and community-based services, and related hospital and prescription drug services. For individuals age 55 or older, these recoveries are sought from their estates after death. Federal law also allows states to impose liens on real property during the lifetime of a Medicaid enrollee who is permanently institutionalized, with some exceptions.¹ These measures are designed to allow states to recover federal and state taxpayer funds expended on the care of an individual.

Act 226 of the 2003 regular legislative session established guidelines for Louisiana's Medicaid Estate Recovery program. These guidelines provide for compliance with federal regulations while "recognizing the state's long tradition of protecting the citizens' rights to home ownership and the state's interest in assuring the transfer of real property within family units."² Because of the legislative intent to establish a program that prioritizes the "rights of descendants to inherit the immovable property of their ascendants," the Louisiana Department of Health (LDH, or "the Department") designed its Estate Recovery program to comply with federal mandates without using the most aggressive options to claim money from the estate of a deceased recipient. As a result, LDH's estate recoveries have been historically low in relation to other states.

During the 2018 regular legislative session, the legislature recognized a need for an objective study of methods by which to improve LDH's estate recovery efforts and passed House Concurrent Resolution (HCR) 69. In response to this resolution, LDH thoroughly examined its existing practices, Louisiana's governing rules and established strategies for estate recovery, the policies and procedures of other high-performing states, and the US Department of Health and Human Services' research on estate recovery and related topics.

This report is submitted to provide research findings and feedback received from other states relative to the legislature's request for examination of the following topics, as outlined in HCR 69:

- 1) Means by which to increase recovery amounts in a cost-neutral matter utilizing existing staff and departmental resources;
- 2) Benefits of wider usage of Medicaid liens authorized through TEFRA (aka TEFRA liens);
- 3) Administrative actions, including amendments to the Medicaid state plan or legislation necessary to institute greater use of TEFRA liens in Medicaid long-term care (LTC) programs;
- 4) The potential establishment of a new data system or improvements to existing data systems to facilitate easier identification of assets subject to recovery; and
- 5) The potential utilization of public or private vendors to assist LDH in its recovery efforts.

¹ <https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html>

² LA R.S. 46:153.4

2 Estate Recovery

2.1 Louisiana's Current Estate Recovery Process

2.1.1 Governing Authorities

The Recovery and Premium Assistance Unit (RPA) of LDH is responsible for pursuing reimbursement of Louisiana Medicaid expenditures for certain individuals who are deceased and had Medicaid payments made on their behalf for long term care, Home and Community Based Services (HCBS), and related hospital and prescription drug services, pursuant to the following governing authorities:

- Section 1917(a) and (b) of the Social Security Act
- 42 CFR 433.36
- LA R.S. 46:153.4
- Louisiana Administrative Code Title 50: Part I, Subpart 9 Recovery
- LA Medicaid State Plan Section 4.17

These governing authorities establish mandatory and optional criteria for individuals and payments subject to estate recovery.

2.1.2 Individuals and Payments Subject to Estate Recovery

Section 1917(b)(1) of the Social Security Act states that the state shall seek recovery of any Medicaid payments made on behalf of an individual who was 55 years of age or older when the individual received Medicaid services. Recoveries must be sought on payment for the following services only:

- Nursing facility services (also referred to as long-term care, or LTC)
- Home and community-based services, or HCBS
- Hospital and prescription drug services related to LTC and/or HCBS services

Section 1917(a) also contains an optional provision that allows for recovery of payments made for any Medicaid covered services. However, Louisiana does not pursue recovery for payments made for these services.

Individuals are not required to acknowledge receipt of a copy of the estate recovery policy, nor are they required to agree to the estate recovery process in order to be eligible for Medicaid. However, LTC and HCBS enrollees are informed at the time of application and renewal that claims for Medicaid assistance may be subject to recovery from their estates.

2.1.3 Referrals and Case Establishment

Upon an eligible Medicaid recipient's death, referrals to the RPA unit may come from two sources: Medicaid eligibility staff or the family/family's attorney. If the Medicaid program paid \$1,000 or more for the decedent's care and there is no known surviving spouse or child who is minor, disabled, or blind, a "Notice of Medicaid Estate Recovery" is issued. The notice provides the amount of the State's privilege (the amount owed to the state), an explanation of the Department's estate recovery program (including provisions for waiver, exemption, reduction, and deferral), the opportunity to request an administrative review with LDH, and the right to request a fair hearing with the Division of Administrative Law (DAL), along with corresponding timelines and deadlines. If no response is received within 60 days, RPA proceeds with the estate recovery process.

2.1.4 Scenarios Where Estate Recovery Is Not Pursued

2.1.4.1 *Cost Effectiveness*

If the state's privilege amount, the amount paid by Medicaid for the services enumerated in Section 2.2, is less than \$1,000, estate recovery is not pursued as these cases are not considered cost effective.

2.1.4.2 *Case Deferrals*

Recovery can only be made after the death of the decedent's surviving spouse. If a spouse survives the decedent, the estate recovery case must be placed in deferred status, with a deferral notice issued to the surviving spouse or other family member. Upon notification of the death of the surviving spouse, the case is opened and recovery begins.

2.1.4.3 *Exemptions*

An estate is exempt from estate recovery if one of the following applies:

- There is a child who is disabled, blind, or minor that survived the decedent;
- A child lived in the decedent's home with him/her to provide care for the two years immediately preceding entry into the facility; or
- A sibling lived in the decedent's home with him/her to provide care for the year immediately preceding entry into the facility.

2.1.4.4 *Undue Hardship Waivers*

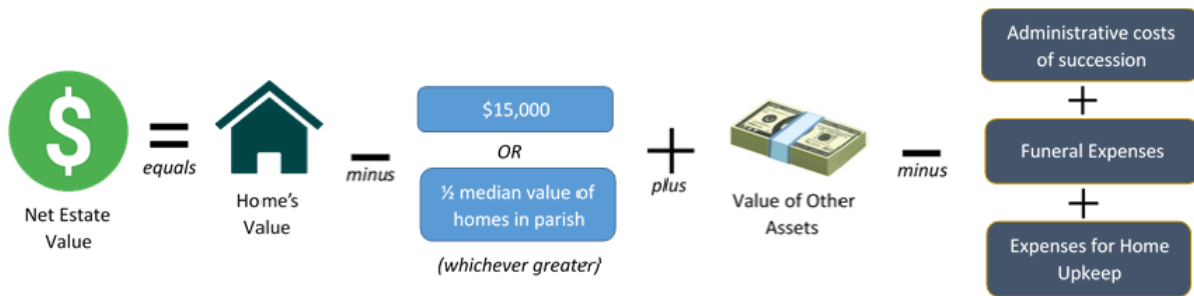
Undue hardship waivers are available to first-degree heirs (typically children) of the decedent, whose family income is 300 percent or less of the federal poverty level³. Waiver requests must be submitted via the Undue Hardship Waiver Application within 30 days of the date of the Notice of Medicaid Estate Recovery. LDH's RPA unit verifies the information provided and issues a written notice of the decision within 45 days of receipt of the request. If the waiver request is approved for one child, the estate recovery is waived, an Exemption Notice is issued, and the case is closed. However, if the request is denied, a Notice of Waiver Denial is issued and the recovery continues.

2.1.5 Calculation of Estate Value

The estate is defined in LAC Title 50: Part I, Subpart 9 Recovery as the gross total of all assets owned by the deceased at death as determined by Louisiana succession law, and any interest in any property.

The net estate value is calculated by determining the decedent's percentage of ownership interest in the home and the value of the decedent's property and assets, minus any applicable offsets, exemptions, and waivers allowable by governing regulations.

³ The Federal Poverty Level (FPL) varies by the number of individuals contained in the household. FPLs are published at <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>.



To determine the value of the homestead, LDH multiplies the decedent's interest in the home by the home's appraised value and deducts either \$15,000 or one-half of the median value of homes in the parish where the homestead is located (whichever is greater), as required by state law. When an appraisal is not provided, LDH utilizes resources such as parish tax assessments, Zillow.com, Trulia.com, and Realtor.com to conduct a preliminary assessment of the value of the homestead, in order to determine the feasibility of filing a lien to protect the State's interest. Other estate assets are added to the total estate value.

LDH considers the following verified expenses as offsets, which reduce the amount owed to LDH, known as the privilege amount:

- Administrative costs (i.e. appraisal cost, attorney fees and court costs associated with succession);
- Funeral expenses up to \$10,000, excluding pre-paid burial arrangements; and
- Reasonable and necessary expenses for upkeep of the home while the decedent resided in the nursing home (regardless of whether the surviving spouse or other relative was residing in the home)—i.e. homeowner's insurance, property taxes, utility bills, yard maintenance, necessary repairs of home to maintain structural integrity (exclusive of desired upgrades), etc.

2.1.6 Recovery Mechanisms

If the privilege amount or net estate value is less than \$10,000, the RPA unit sends reminder notices of the state's privilege every six months until paid.

If the privilege amount and net estate value is \$10,000 or greater, a proof of claim (lien) is filed against the decedent's estate in the parish mortgage records. The proof of claim remains on file until LDH's claim is paid or is otherwise resolved. Ownership of the homestead and filing fees are researched before the claim is filed, and the costs for filing proof of claims range from \$100-\$135. A copy of the claim is mailed to the family contact and/or attorney via certified mail.

There are also fees associated with withdrawing a proof of claim. LDH only assumes the cost of cancelling proof of claims in instances where the filing was due to LDH's error. In instances where the state receives payment or the claim is otherwise satisfied (ex. Information resulting in a waiver, exemption, reduction, etc. is received after the deadline), the decedent's estate is responsible for payment of cancellation fees.

2.1.7 Transfers of Home/Property Discovered Post-Death

Occasionally, the RPA unit discovers that a decedent's home or property was transferred out of the decedent's name before his/her death and was not reported to LDH. Because eligibility for LTC and HCBS programs may depend upon an individual's assets, the RPA unit coordinates with Medicaid eligibility staff to review the decedent's resulting Medicaid eligibility and other resources from which LDH may recover. If LDH determines ineligible benefits were paid and there were assets other than the home/property from which LDH may recover, recovery is pursued by LDH's Legal Department. If there are no other assets in the estate, LDH is unable to perform any type of recovery.

2.1.8 Estate Recovery Staffing and Activity

In recent years, RPA has dedicated two to three full-time staff to estate recoveries. The RPA unit also contains several staff whose duties are divided among estate recovery and other programs managed by the unit. The total number of staff available to the RPA unit include:

Current Estate Recovery Staffing (2015 to present)		% FTE Dedicated to Estate Recovery
2	Attorneys	33%
1	Program Manager 2	20%
1	Program Manager 1B	25%
1	Program Supervisor	25%
1	Program Specialist	50-100%
2	RPA Support	100%
1	Admin Coordinator 4	15%
3	Student Workers (PTE)	
12	Total RPA Staff	

The table below displays the number of liens filed beginning with SFY 2010, when the state began filing proof of claim liens.

SFY	Notices Sent	Liens Filed	Cancelled Liens	Lien Costs	Total Amount Recovered	Cases Where Recovery Complete	Open Cases*	Deferred Cases*	Legal Cases
2010	860	4	1	\$130	\$525,578	57	765	697	16
2011	810	19	2	\$590	\$660,332	56	888	901	15
2012	1,005	56	1	\$1,819	\$545,445	59	1,129	1,155	17
2013	1,007	116	1	\$3,982	\$738,159	54	1,256	1,397	20
2014	1,158	138	1	\$4,995	\$502,985	47	1,356	1,675	23
2015	672 [†]	33	3	\$1,398	\$683,814	39	776	1,854	22
2016	641	20	0	\$752	\$287,927	22	843	1,991	27
2017	967	17	0	\$705	\$538,905	24	1,075	2,219	34
2018	1,064	26	0	\$2,605	\$713,084	32	1,479	2,518	48
TOTAL	8,184	429	9	\$16,976	\$5,196,229	390			

[†]Decrease is attributable to a decrease in FTE allocated to estate recovery.

Table of terminology:

Column Header	Description
SFY	State Fiscal Year
Notices Sent	Number of "Notice of Estate Recovery" Letters sent from LDH to recipients

Column Header	Description
Liens Filed	<i>Number of Proof of Claim liens filed by the Department</i>
Cancelled Liens	<i>Number of Proof of Claim liens cancelled due to LDH error</i>
Lien Costs	<i>Lien filing and cancellation costs with clerk of court</i>
Total Amount Recovered	<i>Estate recovery collections during the fiscal year</i>
Cases Where Recovery Complete	<i>Number of cases closed due to collection on the estate by the Department</i>
Open Cases	<i>Count of cases where recovery has not yet been completed; includes recoveries on liens and on cases where a lien was not filed. Only cases in Open status at end of the fiscal year counted in this column. Some cases carry over multiple years and so the annual amounts cannot be totaled.</i>
Deferred Cases	<i>Count of all cases in deferred status as of the end of the fiscal year, as described in section 2.1.4.2. These could occur in multiple years and so this column cannot be totaled.</i>
Legal Cases	<i>Cases referred to LDH's Legal Department to pursue recovery. This includes but is not limited to situations where LDH determines ineligible benefits were paid and there were assets other than the home/property from which LDH may recover. These could carry over in multiple years and so this column cannot be totaled.</i>

2.2 Means to Increase Recovery Amounts in a Cost-Neutral Manner

LDH conducted a review of its existing processes and resources in order to assess methods to increase funds received through estate recovery. LDH offers the following recommendations, which could increase estate recoveries without increases to funding or staffing resources:

2.2.1 Increase Accessibility and Clarity of Information on Louisiana's Estate Recovery Program

Public awareness of the estate recovery program and the rights and responsibilities of the decedent and his/her heir(s) is expected to yield greater adherence to programmatic requirements, as heirs and succession attorneys may not currently be aware of their obligations. Today, information regarding Louisiana Medicaid's estate recovery policy and process is not readily available to the public in an easily digestible format. To rectify this, LDH plans to create an estate recovery page on its website, inclusive of general estate recovery program information, means to submit online requests for information, and links to governing statutes and regulations.

Clarification of the language included on estate recovery notices could also help heirs understand their rights and responsibilities once the estate recovery process has begun. LDH suggests a review of current estate recovery notices and other materials to identify opportunities for language clarification.

2.2.2 Modify Case Exemption and Deferral Policies

The following changes to LDH's existing estate recovery procedures could potentially increase its estate recovery amounts:

- In cases where there is a child who is disabled who survived the decedent, rather than exempting the case from recovery, defer recovery until either:
 - The child is no longer disabled or



- The child is deceased.
- In cases where there is a child under the age of 18 who survived the decedent, rather than exempting the case from recovery, defer recovery until either:
 - The child is age 18 or
 - The child is deceased.
- File proof of claims and provide the state's claim amount to the decedent's family for cases that will be deferred. This claim amount can be included in the decedent's succession documentation, even though the state will not immediately pursue recovery. Currently, the RPA unit does not calculate claim amounts until the deferred status is removed, meaning that the family of the surviving spouse is unaware of the claim amount until the case is reopened for pursuit of recovery. Providing this information for inclusion in the decedent's succession may result in a larger percentage of successful recoveries, resulting from increased awareness of the state's claim.

2.2.3 Remove Half-Median Value Exclusion

LDH has found the greatest barrier to estate recoveries to be the statutory exclusion of recovery on the first \$15,000 of the homestead or one-half the median value of homes in the parish where the homestead is located, whichever is greater. Over the past decade or longer, most Louisiana parishes have maintained median values with one-half that is greater than \$15,000. Current half-median values of homes range between about \$28,000 for homes in East Carroll parish and \$100,000 for homes in St. Tammany parish⁴. Since the homestead is generally a Medicaid enrollee's largest asset, this exemption significantly hinders LDH's recovery efforts, often resulting in a zero net estate value from which to recover. As a result, LDH recommends revising RS 46:153.4 to remove this exclusion. This would create a larger pool of assets subject to estate recovery, thereby increasing estate recovery collections.

2.2.4 Modify Criteria for Allowable Maintenance Expenses

A review of other states' policies regarding home maintenance expenses found the potential for the development of tighter restrictions on privilege amount reductions for allowable maintenance expenses of the homestead.

 <p>Alabama</p>	<p>Deduction of maintenance expenses is only allowed if the home is vacant.</p>
 <p>Iowa</p>	<p>Deduction of maintenance expenses is generally not permitted; however, they are allowable in some cases. Requests for maintenance expense deductions are handled on a case-by-case basis and sometimes must be resolved through an administrative hearing process.</p> <p>Example of allowable expenses:</p>

⁴ A full list of the median and half-median values of homes in each parish can be found in Appendix A.

- Expenses that are incurred over a short period of time and that are associated with the sale of the home or the maintenance of the home's value.
- Examples of non-allowable expenses:
- Rental expenses associated with an individual living in the home.
 - "Unreasonable" expenses, such as new roof, new siding, etc.

In order to align with other state policies that result in larger estate recovery amounts, LDH recommends:

- Revision of R.S. 46:153.4(G) to include the following language:
If the homestead is part of the succession estate and while the homestead remains vacant, the department's recovery against the homestead may be reduced in consideration of the reasonable and necessary documented expenses to maintain the homestead incurred by the recipient's heirs subsequent to the recipient's admission to a long-term care facility.
- Amendment to LAC 50: Part I. Administration, Subpart 9 Recovery, section 8103(C)(3) to include the stipulation that the expenses must be for a period when the homestead remained vacant.

2.2.5 Reduce the Income Standard for Undue Hardship of an Heir

State statute currently requires the Department to use 300% of the Federal Poverty Level (FPL) as its income standard for undue hardship of an heir. However, other states utilize lower percentages. For instance, Massachusetts uses 133% of FPL and Michigan uses 200% of FPL as the income standard for undue hardship.

- LDH recommends reducing Louisiana's standard for undue hardship via:
 - Revision of R.S. 46:153.4(F)(2);
 - Amendment of LAC 50: Part I. Administration, Subpart 9. Recovery, section 8101, Definitions; and
 - Amendment of the Medicaid State Plan Section 4:17, Attachment 4.17a(4).

2.2.6 Legislation Mandating LDH Clearance on Successions

Massachusetts, which has an impressive estate recovery record, requires that a copy of any petition for admission to probate of a decedent's will or for administration of a decedent's estate be provided to its state Medicaid agency for estate recovery clearance before successions can be settled. These notifications are required regardless of the decedent's Medicaid enrollment status.

Similarly, Louisiana could implement legislation mandating LDH estate recovery clearance be filed on Medicaid recipients only before succession is filed or completed in order to protect the state's privilege. LDH believes that requiring all estates, regardless of Medicaid enrollment status, to provide probate or succession notice to LDH would be unreasonably burdensome on the estates of non-recipients, and would add unnecessary administrative burdens on LDH. LDH would review to see if an estate recovery case should be opened and provide either a notice of the state's privilege or a clearance notice. It should be noted that LDH anticipates that a minimum of two additional staff members would be required to research each case and issue either clearances or a notice of the state's privilege amount; however, the

increased number of estate recovery cases identified and resulting monies collected is likely to offset this cost.

In order to enact this policy, LDH recommends the following updates to existing legislation:

- Amend R.S. 46:153.4 by adding a section that reads:
 - l.(a) No judgment of possession shall be rendered, no inheritance or legacy shall be delivered, and no succession representative shall be discharged unless:*
 - i) a Medicaid Estate Recovery Certificate of Clearance issued by the Louisiana Department of Health has been submitted to the court, which certificate shall be issued by the Department only if a copy of the petition for possession, the formal inventory or sworn descriptive list, the affidavit of death and heirship, and a copy of the testament, if any, have been duly filed therewith, and any Medicaid estate recovery owed to the Department by the decedent or the decedent's estate has been paid; or*
 - ii) an affidavit signed under penalty of perjury by all persons named as heirs or legatees in the proposed judgment of possession is filed, attesting that the decedent received no long term care nor home and community based service Medicaid benefits after the age of 54.*
 - (b) In the case of a small succession proceeding instituted pursuant to Code of Civil Procedure 3421 et seq, no inheritance or legacy shall be delivered, and no succession representative shall be discharged unless:*
 - i) a Medicaid Estate Recovery Certificate of Clearance issued by the Louisiana Department of Health has been submitted with the affidavit of small succession, which certificate shall be issued by the Department only if a copy of the affidavit of small succession, and a copy of the testament, if any, have been duly filed therewith, and any Medicaid estate recovery owed to the Department by the decedent or the decedent's estate has been paid; or*
 - ii) an affidavit signed under penalty of perjury by all persons named as heirs or legatees in the proposed judgment of possession is filed, attesting that the decedent received no long term care Medicaid benefits after the age of 54.*
- Amend R.S. 9:2422 by adding the following:
 - No judgment of possession shall be rendered, no inheritance or legacy shall be delivered, and no succession representative shall be discharged unless:*
 - i) a Medicaid Estate Recovery Certificate of Clearance issued by the Louisiana Department of Health has been submitted to the court, which certificate shall be issued by the Department only if a copy of the petition for possession, the formal inventory or sworn descriptive list, the affidavit of death and heirship, and a copy of the testament, if any, have been duly filed therewith, and any Medicaid estate recovery owed to the Department by the decedent or the decedent's estate has been paid; or*

- ii) *an affidavit signed under penalty of perjury by all persons named as heirs or legatees in the proposed judgment of possession is filed, attesting that the decedent received no long term care Medicaid nor home and community based service Medicaid benefits after the age of 54.*

In the case of a small succession proceeding instituted pursuant Code of Civil Procedure 3421 et seq, no inheritance or legacy shall be delivered, and no succession representative shall be discharged unless:

- i) *a Medicaid Estate Recovery Certificate of Clearance issued by the Louisiana Department of Health has been submitted with the affidavit of small succession, which certificate shall be issued by the Department only if a copy of the affidavit of small succession and a copy of the testament, if any, have been duly filed therewith, and any Medicaid estate recovery owed to the Department by the decedent or the decedent's estate has been paid; or*
- ii) *an affidavit signed under penalty of perjury by all persons named as heirs or legatees in the proposed judgment of possession is filed, attesting that the decedent received no long term care nor home and community based service Medicaid benefits after the age of 54.*

3 TEFRA Liens

Unlike estate recovery, the Tax Equity and Fiscal Responsibility Act (TEFRA) allows states to file liens against immovable property *during the Medicaid recipient's lifetime* for expenses incurred as the result of permanent, medical institutionalization of a Medicaid recipient of *any age*. This gives states the ability to recover Medicaid payments for a recipient's long-term care expenses if his/her property is sold while he/she is still alive. TEFRA liens are the only type of lien that may be placed on a Medicaid enrollee's immovable property prior to death. The federal TEFRA provision at 42 CFR 433.36 allows states to file a TEFRA lien against immovable property (including the homestead) after a determination is made that a Medicaid recipient of any age who is in a medical institution (including nursing facilities and intermediate care facilities for individuals with intellectual/developmental disabilities) cannot be reasonably expected to return home.

In order for a TEFRA lien to be filed, the state must make a determination on all of the following:

TEFRA Lien Eligibility Factor	Implication
Whether the applicant/enrollee owns property (and whether or not it was his/her former home)	Property must exist in order for a TEFRA lien to be filed.
Whether the individual is medically institutionalized.	The individual must be medically institutionalized in order for a TEFRA lien to be filed on the individual's property.
Whether a spouse or another protected relative lives in the home. Protected relatives include: <ul style="list-style-type: none">• Child(ren) under 21• Child of any age who is blind or permanently disabled• Sibling with equity interest in the home who has lawfully resided in the home for at least one year before the enrollee's entry into the medical institution	A TEFRA lien cannot be placed on the home if a protected relative lives there, and transfer of ownership to the protected relative is allowable without penalty. Thus, the transfer would not impact the enrollee's eligibility, and subsequent estate recovery after the recipient is deceased would not apply.
Whether the applicant/enrollee can be reasonably expected to return home, if he/she indicates the intent to return home.	A TEFRA lien can be filed only when the individual cannot be reasonably expected to return home.

42 CFR 433.36 requires states to notify the applicant/enrollee of its intent to file a TEFRA lien on his/her property, explain the process resulting in its determination, and provide appeal rights on its decision. The TEFRA lien would be dissolved when a protected relative lives in the home, when the enrollee is no longer institutionalized, or when the enrollee no longer owns the home/property and the state's claim has been satisfied.

3.1 Benefits of TEFRA Liens

3.1.1 Unreported Transfers of Home/Property

Currently, there are instances where LDH does not discover transfers of home or property until after the Medicaid recipient's death, through the estate recovery process. However, there are often no assets from which to recover at this point, since the home or property is generally the sole or largest asset in the estates of Medicaid decedents.

One of the main benefits of TEFRA liens is that LDH would be notified prior to the transfer of the home to another individual, giving the state an opportunity to recover funds expended on the individual's medical care during the individual's lifetime rather than post-death. This notification would also allow LDH to reassess the individual's resources and conduct an interim eligibility assessment. If the eligibility assessment determines that an individual is no longer eligible to receive Medicaid services, the state would achieve cost-avoidance of LTC payments that would have been made on the individual's behalf.

3.1.2 Extends Post-Death

If a TEFRA lien were on file at the time of the enrollee's death, LDH would not have to file a post-death proof of claim. The TEFRA lien would remain on file until the decedent no longer has ownership interest in the home/property.

3.1.3 Increased Recoveries

Using data provided by Massachusetts to project Louisiana TEFRA recoveries, LDH can expect to file about ninety-six TEFRA liens per year if utilized (see section 4.1.4, Lien Filing Costs, for calculations). In Massachusetts, the number of TEFRA liens from which recovery is made during the member's lifetime is about sixteen percent; and, on average, they have approximately 2,300 active TEFRA liens on file.

<i>Massachusetts' SFY17 TEFRA Data</i>					
Medicaid Population	LTC Medicaid Population	HCBS Medicaid Population	Total LTC/HCBS Population	New TEFRA Liens Recorded	Collections Resulting from TEFRA liens
1,840,853	30,562	30,491	61,667	136	\$6,013,420

Recoveries made during the recipient's lifetime would eliminate the need for estate recovery, which by definition occurs after an individual's death. Therefore, while overall recoveries are expected to increase, they would no longer be classified as "estate recoveries."

3.1.4 Fiscal Impact of TEFRA Lien Implementation

Since Massachusetts has reported impressive estate recoveries, has an LTC/HCBS population similar to that of Louisiana's, and has an established TEFRA lien process, its program was used as a model for this exercise. A summary of the estimated fiscal impact is provided in the table below, with detailed explanations of each contained in subsequent sections.

Item	Cost Increase (Decrease)	
	Year 1	Outyears
Staffing (Salaries + Benefits)	\$892,655	\$910,508*
Equipment, Supplies, Phone Services, etc.	\$19,868	\$17,000
Publication Design and Printing	\$25,000	\$0
System Changes	\$420,000	\$0
Appeals	\$0	\$0
TEFRA Lien Filing Costs	\$11,660	\$11,660
Subtotal – Known Costs	\$1,369,183	\$939,168
TEFRA Lien Recoveries	(Indeterminable)	(Indeterminable)

*Salaries may increase each year due to Civil Service annual market adjustments.

Staffing

LDH's assessment is that use of TEFRA liens would require additional staff to perform the following functions:

- Medicaid Eligibility staff would be required to gather additional information at application in order to determine if a Medicaid applicant owns any property on which the state may place a TEFRA lien, ascertain if a protected relative lives in the home owned by the applicant (if any), and determine if the applicant can be reasonably expected to return home. It is estimated that four staff at the Medicaid Analyst 1 level would be required within the state's long-term care unit to execute these tasks.
- In order to accommodate the increased workload associated with filing more liens, one Program Manager 1-B (supervisor) and one Program Specialist 1 would be required.
- Likewise, LDH's legal team would require an additional Attorney 2 to absorb the additional workload associated with increased filings and cancellations for TEFRA liens.

Section	Position	Annual Salary	Quantity	Total Salary
Eligibility Field Operations	Medicaid Analyst 1	\$40,571	6	\$243,426
RPA Unit	Program Manager 1-B	\$88,213	1	\$88,213
RPA Unit	Program Specialist 1	\$59,722	2	\$119,444
Legal	Attorney 2	\$72,010	2	\$144,020
TOTAL SALARY				\$595,103
TOTAL SALARY + BENEFITS				\$892,655

The associated cost of equipment, supplies, phone services, etc. for the staff are estimated at \$19,868 in the first year and \$17,000 each year thereafter.

Publications and Printing

Medicaid paper applications would need to be revised and reprinted to incorporate information on TEFRA liens. LDH would need to design and print a comprehensive TEFRA informational booklet to be provided to LTC applicants.

Cost estimate for update of the paper application and creation of a TEFRA booklet (in English, Spanish, and Vietnamese)	
Booklet Design	80 hours @ \$25/hr.= \$2,000
Printing New Booklet	\$3,000
Paper Application Redesign	240 hours @ \$25/hr.= \$6,000
Printing New Applications	\$14,000
TOTAL COST ESTIMATE	\$25,000

Enrollment and Eligibility System Changes

Implementation of TEFRA liens would require changes to the new eligibility determination system which was implemented in November 2018. Changes to existing processes to incorporate TEFRA lien methods would put significant burden on the continued project of implementing a modernized eligibility system, as this is already a substantial transition. Any necessary system changes can be done no sooner than 2020, which is after the second phase of implementation that is expected to occur in 2019.

Required system changes would include, at a minimum:

- Updates to the online Medicaid application;
- Updates to the user interface utilized by Medicaid eligibility staff;

- Creation of system workflows to alert RPA staff of newly enrolled individuals who may be subject to TEFRA liens;
- Creation of system workflows to alert RPA staff of a Medicaid recipient's discharge and the potential need to cancel a TEFRA lien; and
Creation of a notice to inform the applicant/enrollee of the state's intent to file a TEFRA lien on his/her property, explain the process resulting in its determination, and provide appeal rights on its decision.

Deloitte, the contractor for the design and development of the new eligibility system, estimates that these tasks would take about 3,500 hours to complete at an estimated cost of \$420,000.

Appeals

An increase in administrative appeal hearings related to LDH's determination to file TEFRA liens may occur. In Massachusetts, 30 appeals challenging TEFRA liens were filed from January 2017 through August 2018. Alabama reports that no TEFRA lien appeals have ever been filed. As a result, LDH expects that the workload resulting from any additional appeals could be absorbed by current staff.

Lien Filing Costs

Like proof of claims, TEFRA liens are filed in the mortgage records of the parish where the immovable property is located. The cost to file a lien varies from parish to parish and ranges from \$100 to \$135. LDH estimates that approximately 96 TEFRA liens would be filed each state fiscal year based on comparable ratios for the number of TEFRA liens filed by Massachusetts (MA) in state fiscal year 2017⁵.

MA LTC+HCBS Population*	MA Number New TEFRA Liens Filed*	Percent TEFRA Liens Filed	LA LTC+HCBS Population*	LA Estimated TEFRA Liens	LA Estimated Cost to File TEFRA Liens
A	B	C (B/A*100)	D	E (D*C)	F (E*\$135)
61,677	136	0.22%	43,350	96	\$12,960

*as of 6/30/2017

Assuming that 96 TEFRA liens are filed each year at a cost of \$135 per lien, the annual cost of filing TEFRA liens will be about \$12,960, which is about \$11,660 more than the current average annual cost of filing post-death proof of claims. The cause of the cost increase is attributable to the expected increase in the volume of liens filed.

It is not anticipated that LDH will incur any routine costs for cancellation of liens resulting from an individual's discharge from the institution. An analysis of state fiscal year 2017 enrollment data showed that on average, 120 individuals per month are discharged from long-term care facilities. However, LDH will not have filed TEFRA liens for each of these individuals. Assuming that the ratio of TEFRA liens filed remains constant with this subset of individuals, LDH will be required to cancel a TEFRA lien about once every four years. Therefore, it is assumed that any increase in lien cancellation fees would be nominal and could be absorbed within the current operating budget.

⁵ SFY 17 data is the most recent data available as of the report production date.

Lien Collections

Because TEFRA liens are not subject to the reduction of the home's value by \$15,000 or one-half the median value of homes in the parish, LDH anticipates the average lien amount will increase by at least \$27,950 (the lowest half-median value of homes in a parish). However, it is unknown at this time when this additional revenue would be realized by the state, as collections often do not occur until several years after the lien is filed.

3.2 Amendments to Governing Authorities Necessary to Institute Use of TEFRA Liens

If use of TEFRA liens were to be instituted in Louisiana, all governing state statutes, rules, and Medicaid State Plan documents would need to be revised to incorporate the related changes. Each required administrative action would have to go through established approval and implementation processes before LDH could begin filing TEFRA liens.

3.2.1 Louisiana State Statute

LA R.S. 46:153.4 would need to be amended through the legislative process to allow for the use of TEFRA liens.

3.2.2 Louisiana's Medicaid State Plan

At minimum, Louisiana's Medicaid State Plan would need to be amended to:

- Indicate the use of TEFRA liens;
- Define the process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home;
- Define the criteria used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR 433.36(f); and
- Define the following:
 1. "Equity interest in the home"
 2. "Residing in the home for at least one or two years on a continuous basis"
 3. "Lawfully residing"

Barring any unusual circumstances, CMS approval for a State Plan Amendment is a six-step process that takes a minimum of four months to complete.

3.2.3 Louisiana Administrative Code

Rule changes would need to be implemented via amendments and additions to the Louisiana Administrative Code, so that the Administrative Code matches the State Plan. Rule promulgation costs are \$108 per published page. Once the new and/or amended language has been drafted and approved through LDH's internal review process, the formal rulemaking process is a minimum four-month process that involves LDH, the Office of the State Register, the Legislative Fiscal Office, the public, and the Legislative Oversight Committee.

4 Data Systems to Facilitate Easier Identification of Assets Subject to Recovery

As technology progresses, LDH continues to explore ways to improve its existing data systems to facilitate easier identification of assets subject to estate recovery. LDH's recovery system is continuously evolving with system updates made to improve its function. Additionally, LDH's initiatives to establish a new eligibility system and a modernized enterprise architecture offer LDH the opportunity for expanded growth both within and external to LDH. These modernized systems can be used to better link Eligibility Field Operations' activity with the RPA unit's estate recovery strategies as well as interface with outside resources for asset identification.

4.1 LDH's New Eligibility and Enrollment System

Upon death notification of individuals in LTC and HCBS programs, the new eligibility system will automatically generate a task for eligibility staff to review the case for estate recovery. It will also incorporate a new automated asset verification process, where a web-based service will identify assets to help ensure that all resources subject to estate recovery are identified. These features are scheduled for inclusion in the second release of the new eligibility system in 2019.

Because planning for the estate recovery module of the Medicaid systems modernization project is ongoing, LDH continues to seek strategies to improve current estate recovery processes and procedures through automation that can be incorporated into the new module. Such strategies include automatic filtering on key estate recovery criteria and electronic transmission of pertinent data into the estate recovery module.

4.2 Other Data System Resources

In addition to the various Clerk of Court websites that provide tax assessment information, the RPA unit recently began use of the Louisiana Clerk Remote Access Authority website at <https://www.laclerksportal.org/> to assist with research of land records and marriage licenses (to assess relationship for possible waivers/exemptions). Although only limited information is available at no cost, this site provides information beneficial to LDH's overall research. More detailed information is available for a set fee per parish; however, budget constraints have prevented the RPA unit from accessing this data. The additional information available and the fees for accessing the information vary from parish to parish. The Lafourche Parish fee schedule has been provided below as an example:

Available Subscriptions for Lafourche Parish Clerk of Public Records Search		
1 Year Unlimited Access to Index and Images	\$550.00 Annually	\$1.00 per page to print
6 Month Unlimited Access to Index and Images	\$300.00 Semi-Annually	\$1.00 per page to print
30 Day Unlimited Access to Index and Images	\$50.00 Monthly	\$1.00 per page to print
1 Day Unlimited Access to Index and Images	\$20.00 Daily	\$1.00 per page to print

**Map/Plot images available*

Several states have reported use of software services such as LexisNexis, Accurint, and CoreLogic/RealQuest. Typically in exchange for a per-search fee, these services identify addresses where the decedent may have owned real estate. States that use these services report similar benefits and challenges, and all have shared that they continue to rely heavily upon their county tax assessment records. Benefits of these services include identification of property not disclosed on the Medicaid application, as well as identification of property sales and transfers. However, states have reported that

information obtained is not always current and reliable and must be verified through a secondary source, typically county tax assessment records. Search fees for these records range from \$0.35 to \$1. As an example, Iowa reports that it pays about \$400 per month for these services.

6 Potential Utilization of Vendors to Assist in Recovery Efforts

In order to gather information on other states' estate recovery programs, LDH conducted an informal poll of other state Medicaid agencies, the results of which are listed in the table below. Out of the 18 states that responded, 10 reported in-house, state-run programs, six contract out their programs to private vendors, and two have public vendors. Previous informal state polls on this topic had the majority, approximately 40, reporting in house programs.

State Data Reported on Use of Vendor versus In House Estate Recovery Programs					
State	In-house or contracted	Vendor	Contingency Fee	Collections	Notes
California	In house				
Florida	Contracted	HMS	Encompasses all TPL recovery efforts	7 year average = \$7,363,873.43	Legislature mandated outsource of all TPL recovery efforts over a decade ago.
Georgia	Contracted	HMS	11.35%	SFY17 = \$4M; through 04/2018 = \$3.2M	\$25k estate recovery threshold
Indiana	In house				
Iowa	Contracted	HMS		SFY17 = slightly over \$26M	Used HMS since program started there in 1994; negotiating contingency fee for new contract
Maine	In house				
Massachusetts	Sister Agency	UMass		SFY17 = \$62,256,207 SFY18 = \$71,194,441	University of Mass's Medical School's Center for Health Care Financing administers the program; collections include recoveries for SNTs, annuities, TEFRA, and probated estates
Michigan	In house			SFY17 = \$5,858,635.23	Started with vendor in 2011, but took program back in 2013. Since then, recoveries have steadily increased. 1 st year of operation = \$459,783.82
Minnesota	Combination	County			State-supervised, county administered program; although TEFRA liens and notice of potential claim lien programs, annuity and trust collections, and claim calculations are done in house at state office
Montana	In house				
Nevada	In house				
Ohio	Contracted	AG's Office	10%, by statute	SFY17 = \$42M	Estimate similar collections for SFY18
Oklahoma	In house				
South Dakota	In house				
Texas	Contracted	HMS	8.75%		
Vermont	In house				
Virginia	In house				
Wyoming	Contracted	Conduent	None—part of their MMIS contract		Have not conducted in house since 1996, although private contract attorneys assisting. In 1996, began using MMIS Fiscal Agent to assist. In 2012, transitioned from using private legal counsel to assist to using the AG's office. No data on partial in-house vs partial contracted performance.

7 Conclusion

Approaches to federally mandated estate recoveries vary from state to state and are established based upon each state's unique population demographics, needs, and available resources. Louisiana's estate recovery program has collected less money than other state programs due to the strong statutory emphasis on protecting inheritance rights rather than recovering Medicaid funds expended on an individual's behalf.

It is LDH's assessment that there are opportunities for improvement in its estate recovery efforts, whether by adjusting the current proof of claims process or by implementing a new TEFRA lien process. In either scenario, removal of the half-median value exemption on homes would greatly improve the amount of money collected through the estate recovery program. Many of the improvements described in this report require legislative action; however, in the interim, LDH will continue to pursue strategies to improve its estate recovery processes through actions available under its existing authorities (ex. process automation).

Appendix: Median and Half-Median Value of Homes by Parish

Median Values of Owner-Occupied Housing Units, 2012-2016

Parish	Median	Half-Median (calculated)
Acadia	\$91,600	\$45,800
Allen	\$82,700	\$41,350
Ascension	\$172,300	\$86,150
Assumption	\$108,600	\$54,300
Avoyelles	\$93,000	\$46,500
Beauregard	\$108,700	\$54,350
Bienville	\$78,300	\$39,150
Bossier	\$158,400	\$79,200
Caddo	\$132,400	\$66,200
Calcasieu	\$126,600	\$63,300
Caldwell	\$61,200	\$30,600
Cameron	\$94,800	\$47,400
Catahoula	\$73,700	\$36,850
Claiborne	\$76,100	\$38,050
DeSoto	\$103,600	\$51,800
East Baton Rouge	\$173,200	\$86,600
East Carroll	\$55,900	\$27,950
East Feliciana	\$137,100	\$68,550
Evangeline	\$86,600	\$43,300
Franklin	\$82,100	\$41,050
Grant	\$87,200	\$43,600
Iberia	\$100,300	\$50,150
Iberville	\$115,500	\$57,750
Jackson	\$85,300	\$42,650
Jefferson	\$173,500	\$86,750
Jefferson Davis	\$97,600	\$48,800
Lafayette	\$168,300	\$84,150
Lafourche	\$138,200	\$69,100
LaSalle	\$69,100	\$34,550
Lincoln	\$141,300	\$70,650
Livingston	\$152,700	\$76,350

Parish	Median	Half-Median (calculated)
Madison	\$62,000	\$31,000
Morehouse	\$80,500	\$40,250
Natchitoches	\$105,400	\$52,700
Orleans	\$197,000	\$98,500
Plaquemines	\$153,700	\$76,850
Pointe Coupee	\$121,400	\$60,700
Rapides	\$129,000	\$64,500
Red River	\$83,900	\$41,950
Richland	\$86,900	\$43,450
Sabine	\$78,900	\$39,450
St. Bernard	\$133,400	\$66,700
St. Charles	\$190,200	\$95,100
St. Helena	\$89,900	\$44,950
St. James	\$134,500	\$67,250
St. John	\$151,000	\$75,500
St. Landry	\$95,200	\$47,600
St. Martin	\$108,900	\$54,450
St. Mary	\$95,500	\$47,750
St. Tammany	\$202,000	\$101,000
Tangipahoa	\$143,300	\$71,650
Tensas	\$57,200	\$28,600
Terrebonne	\$139,200	\$69,600
Union	\$89,500	\$44,750
Vermillion	\$103,800	\$51,900
Vernon	\$107,900	\$53,950
Washington	\$82,100	\$41,050
Webster	\$80,800	\$40,400
West Baton Rouge	\$168,600	\$84,300
West Carroll	\$73,100	\$36,550
West Feliciana	\$197,700	\$98,850
Winn	\$71,700	\$35,850

Source: www.census.gov, accessed 11/5/2018

Bibliography

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Medicaid Estate Recovery*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services.

http://medicaid.alabama.gov/documents/7.0_Providers/7.1_Benefit_Coordination_3rd_Party/7.1.1_Estate_Recovery_Property_Liens/7.1.1_Estate_Recovery_HHS_5-22-17.pdf

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Medicaid Treatment of the Home: Determining Eligibility and Repayment for Long-Term Care*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/74091/hometreat.pdf>

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Spouses of Medicaid Long-Term Care Recipients*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/74086/spouses.pdf>

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Medicaid Liens*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/74096/liens.pdf>

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Medicaid Liens and Estate Recovery in Massachusetts*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/74106/MALiens.pdf>

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2005). *Medicaid Estate Recovery Collections*. Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/74396/estreccol.pdf>

Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2016). *ASPE Research Brief: How Much Nursing Home Care Can Home Equity Finance?* Washington, D.C.: Office of the Assistant Secretary for Policy and Evaluation, U. S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/255436/homeequity.pdf>

Louisiana Department of Health

628 North Fourth Street, Baton Rouge, Louisiana 70802

(225) 342-9500

www.ldh.la.gov



www.facebook.com/LaHealthDept



www.twitter.com/LADeptHealth