

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: LOUISIANA

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:

NOT APPLICABLE

- 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

STATE <u>Louisiana</u>	A
DATE REC'D <u>3-22-11</u>	
DATE APPV'D <u>5-27-11</u>	
DATE EFF <u>1-1-11</u>	
HCFA 179 <u>11-01</u>	

- 3. The State defines the terms below as follows:

- o estate - is defined as the gross (total value) estate of the deceased as determined by Louisiana succession law and any interest in any property, whether movable or immovable, corporeal or incorporeal. .
- o individual's home - is defined as the primary place of residence of the deceased recipient prior to recipient's admission to a long term care facility or when the recipient began receiving home and community services.
- o equity interest in the home -
NOT APPLICABLE
- o residing in the home for at least one or two years on a continuous basis, and
NOT APPLICABLE
- o lawfully residing.
NOT APPLICABLE
- o Heir – An heir is a descendant in the first degree.
- o Privilege – is defined under Louisiana Civil Code Article 3168 as a right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages. LSA-R.S. 46:153.4 grants to the Department of Health and Hospitals a privilege on the total estate with a priority equivalent to an expense of last illness as prescribed in Civil Code Article 3252 et seq. The Department does not impose liens on the property of Medicaid recipients. At the time of death and notification to a family member, attorney or legal representative, the Department acquires a privilege on the succession of the deceased Medicaid recipient. The use of privilege allows the Department to recover from the entire succession of the deceased Medicaid recipient and not just from their homestead.

SUPERSEDES: TN- 04-11

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4. The State defines undue hardship as follows: (1) compelling circumstances which would result in placing an unreasonable burden on the surviving spouse and/or an heir; (2) and if an heir's family income is 300 percent or less of the U.S. Department of Health and Human Services Federal Poverty Level Guidelines as published annually in the *Federal Register*. Undue hardship may be considered to exist in situations wherein:

- 1) The estate is the sole income-producing asset of an heir and income is limited (e.g., a family farm or other family business which produces a limited amount of income when the farm or business is the sole asset of the survivors);
- 2) Recovery would result in an heir becoming eligible to receive public assistance, including but not limited to Medicaid;
- 3) Any other compelling circumstances that would result in placing an unreasonable burden on an heir.

Undue hardship does not exist if the individual created the hardship by resorting to estate planning methods under which the individual divested assets in order to avoid estate recovery. It is the obligation of the heirs to prove undue hardship by a preponderance of evidence.

If the individual obtained estate planning advice from legal counsel and followed this advice, the resulting financial situation does not qualify for an undue hardship waiver.

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

Upon receipt of waiver of estate recovery based on claim of hardship, the Bureau will allow thirty (30) days for receipt of hardship documentation from executor/legally authorized representative or heir.

Upon receipt of the required documentation of hardship, the Bureau will review the documentation and make a determination of whether undue hardship does in fact exist;

If it is determined that undue hardship does not exist, the Bureau will notify the legally authorized representative or heir of the determination in the notice of Medicaid Estate Recovery and of the right to appeal.

The waiver determination hearing and appeal request will be processed by the appropriate state administrative tribunal.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

The Medicaid agency balances and weighs that which it may reasonably expect to recover against the costs in legal time and litigation associated with the recovery process. Recovery is deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery by an amount equal to or greater than \$1000.

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):

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- a. The Bureau mails the written notice of Medicaid Estate Recovery to the executor/legally authorized representative or succession attorney advising of the State's intent to recover. The notice must include:
 - 1) the deceased recipient's name and Medicaid identification number;
 - 2) the action the State intends to take;
 - 3) the reason for the action;
 - 4) the dates of services associated with the recovery action and the estimated amount of the Department's claim, i.e., amount to be recovered against the recipient's estate;
 - 5) the authorized representative's right to a hearing;
 - 6) the method by which the authorized representative may obtain a hearing;
 - 7) the right to and procedure for applying for a hardship waiver; and
 - 8) the time periods involved in requesting a hearing or in exercising any procedural requirements under the Medicaid Estate Recovery Program.
- b. The executor/legally authorized representative shall submit a completed hardship waiver application with supporting documentation within 30 days from of the mail date of the notice of Medicaid Estate Recovery.
- c. The executor/legally authorized representative shall submit an appeal notice within 30 days of the mail date of the notice of Medicaid Estate Recovery.
- d. The Bureau submits all required documentation to Bureau staff or its designee responsible for making a determination of hardship, informal appeal, or administrative appeal.
- e. The Bureau notifies the executor/legally authorized representative of determination of requests for hardship waiver, informal appeal, or administrative appeal within forty-five (45) days of receipt of all required documentation.

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