

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

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:

The Department requires either a physician's statement indicating that the individual is unable to return to their home or the recipient's residence is a medical institution for a period of six consecutive months, whichever occurs first. Notice is given to the recipient when they are determined to be permanently institutionalized and he/she may appeal the Department's determination within ninety days in accordance with the procedures in 465 Nebraska Administrative Code.

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):

The Department determines that an adult child meets the criteria for exception when that adult child has lived in the recipient's home for at least two years immediately before the recipient of medical assistance was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the Department that he or she provided care that delayed the recipient's admission.

3. For the purposes of estate recovery, the State defines the terms below as follows:

- Estate means the estate of a recipient of medical assistance, including:
 - (1) Any real estate, personal property, or other asset in which the recipient had any legal title or interest at the time of the recipient's death, to the extent of such interests;
 - (2) Assets to be transferred to a beneficiary through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death; and
 - (3) Assets conveyed or otherwise transferred to a survivor, an heir, an assignee, a beneficiary, or a devisee of the recipient of medical assistance through joint tenancy, tenancy in common, transfer on death deed, survivorship,

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conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer at or as a result of the recipient's death to the full extent authorized in 42 U.S.C. 1396p(b)(4)(B). Such other arrangements include insurance policies or annuities in which the recipient of medical assistance had at the time of death any incidents of ownership of the policy or annuity or the power to designate beneficiaries and any pension rights or completed retirement plans or accounts of the recipient. A completed retirement plan or account is one which because of the death of the recipient of medical assistance ceases to have elements of retirement relating to such recipient and under which one or more beneficiaries exist after such recipient's death.

Estate of a recipient of medical assistance does not include:

- (1) Insurance policies in proportion to the premiums and other payments to the insurance carrier that were paid by someone other than the recipient of medical assistance or the recipient's spouse;
 - (2) Insurance proceeds and accounts in institutions under federal supervision or supervision of the Department of Banking and Finance or Department of Insurance to the extent subject to a security interest where the secured party is not a related transferee as defined in section Nebraska Revised Statute 68-990;
 - (3) Insurance proceeds, any trust account subject to the Burial Pre-Need Sale Act, or any limited lines funeral insurance policy to the extent used to pay for funeral, burial, or cremation expenses of the recipient of medical assistance;
 - (4) Conveyances of real estate made prior to August 24, 2017, that are subject to the grantor's retention of a life estate or an estate for a period of time; and
 - (5) Any pension rights or completed retirement plans to the extent that such rights or plans are exempt from claims for reimbursement of medical assistance under federal law.
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- Individual's home: Included in the definition of estate.
 - Equity interest in the home: Included in the definition of estate.
 - Residing in the home for at least one or two years on a continuous basis: Defined as stated in 42 U.S.C 1396p.
 - Discharge from the medical institution and return home: Not applicable. The State of Nebraska does not impose TEFRA liens.
 - Lawfully residing: The recipient of medical assistance's sibling or adult child is considered to be lawfully residing in the home if the sibling or adult child is residing in the home with the permission of the owner, or if the owner is under guardianship or conservatorship, with the permission of the guardian or conservator.
4. Any of the following circumstances may constitute an undue hardship that results in a complete or partial waiver of claim:
- (1) An heir of the recipient resided in the recipient's home for two years prior to the recipient's entry into a nursing home and during that time provided the type and quantity of unreimbursed care that delayed the recipient's entry into a nursing home;
 - (2) An heir of the recipient resided in the recipient's home for two years prior to the recipient's receipt of recoverable medical services and during that time provided the type and quantity of unreimbursed care that delayed the recipient's receipt of those services;
 - (3) Payment of the Department's claim would cause an heir of the deceased recipient to become eligible for public assistance;
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- (4) Waiver of the Department's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or
- (5) Other situations that the Department, in its discretion and on a case-by-case basis upon consideration of all facts and circumstances, determines constitutes an undue hardship.

An undue hardship does not exist if action taken by the recipient, whether directly or by another person pursuant to sufficient authorization, impermissibly divested or diverted assets to avoid estate recovery.

An undue-hardship waiver application must be submitted in writing to the Department within thirty days of the creditor's claim-filing deadline or ninety days from the recipient's date of death if there is no probate proceeding. The application must explain:

- (1) How the applicant is related to the now-deceased Medicaid recipient, and include documents or other evidence of this relationship; and
- (2) The specific reason(s) why the application should be granted, according to 471 NAC 38-004.03, and include documents or other evidence to support the application.

The applicant will receive a written decision within ninety days after the Department has received the application. If the application is denied (completely or partially), the decision will include general information about appealing the decision.

- 5. Recovery is not cost-effective when the cost of collection would likely exceed the amount of the Department's claim.
 - 6. The Department evaluates cases for potential estate recovery via local caseworker referrals, attorney referrals, creditor's notices filed in probate proceedings, and any other credible sources of information. If the estate is being probated, the Department files a claim and follows the appropriate procedures as defined in the Nebraska Probate Code. If the estate is not being probated, and when deemed cost effective, the Department will pursue reimbursement of its claim by working with the family, attorney, guardian, or other person handling the recipient's estate. The Department may also utilize appropriate and cost effective legal options to obtain reimbursement of its claim. Waivers based on undue hardship are defined and granted, as stated above.
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