

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: California

4.17 Liens and Adjustments or Recoveries

Citation

42 CFR 433.36 (c)
1902 (a) (18) and
1917 (a) and (b) of the Act

(a) Liens

- ___ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.
- ___ The State complies with requirements of section 1917 (a) of the act and regulations at 42 CFR 433.36 (c) – (g) with respect to any lien imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his or her behalf
- X The State imposes liens on real property on account of benefits incorrectly paid.
- ___ The State imposes TEFRA liens 1917 (a) (i) (B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institutions, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income for personal needs.
- The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)
- X The State imposes liens on both real and personal property of an individual after the individual's death.

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(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 individuals permanently residing in an institution, 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.

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

- (2) The State determines "an individual permanently residing in an institution status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under section 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:

For individuals who die prior to January 1, 2017, all services included in State plan for recipients age 55 and over except those payments made for personal care services provided under In-Home Support Services, and all Medicare cost sharing as identified in section 4.17(b)(3)

For individuals who die on or after January 1, 2017, the State will recover only for the services required by the State Medicaid Manual, Section 3810(A)(2) (Continued).

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4.17 (b) Adjustments or Recoveries

(3) (Continued)

Limitations on Estate Recovery - Medicare Cost Sharing:

(i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.

(ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

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(4) X The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.

 The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)

 The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.

 X The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

The Department will reduce its claim in accordance with Title 22, California Code of Regulations, Section 50453.7 (b), for insurance benefits received under the California Partnership for Long Term Care.

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(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917 (b) (2) of the Act and regulations at 42 CFR section 433.36 (h) - (i)

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
 - (a) For individuals who die on or after January 1, 2017, no claim will be made for their predeceased spouse.
- (2) With respect to liens on the home of any individual who the State determines is permanently residing in an institution and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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(4) Japanese Reparation payments, or where the reparation payments described above have been converted to another form, amounts of resources equal to the amount of these reparation payments, received by the deceased Medi-Cal beneficiary or inherited by the deceased spouse of that beneficiary, or both, shall be exempt from estate recovery

(5) Forced or Involuntary Sterilization Reparation Payments, received by the deceased Medi-Cal beneficiary or inherited by any recipient through distribution or survival, shall be exempt from estate recovery.

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(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - o estate (at a minimum, estate as defined under State probate law). Except for the grandfathered States listed in section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, life insurance policy that names the estate as the beneficiary or reverts to the estate, or any retirement account that names the estate as the beneficiary or reverts to the estate.
 - o individual's home,
 - o equity interest in the home,
 - o residing in the home for at least 1 or 2 years,
 - o on a continuous basis,
 - o discharge from the medical institution and return home, and
 - o lawfully residing.

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- (4) Describe the standards and procedures for waiving estate recovery when it would cause substantial hardship.
 - (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
 - (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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