STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NEVADA

LIENS AND ADJUSTMENT 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:

   a. An individual who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded or other medical institution, and for whom no discharge plan has been established is presumed to be "permanently institutionalized" unless refuted by credible evidence such as written statements from the primary physician or patient evaluation by the Welfare Division's medical review team.

   b. The Welfare Division will consider and may pursue a real property lien against a whole or partial interest in real property owned by an individual when the individual also meets criteria published within subsection 1.a. of this plan.

   c. Prior to imposition of a real property lien, the Welfare Division will mail a written notice to the affected recipient and their designated representative at their last known address(es). The notice will advise of the Division's intent to pursue a lien, the process by which the recipient may request a hearing, hearing procedures, and by whom and on what basis the determination that the recipient cannot reasonably be expected to be discharged from the institution will be made. The notice will also contain an explanation of the term "lien" and advise the recipient that imposition of a lien does not mean the recipient will lose ownership of their home.

   d. Disputed issues will be brought before the Division's hearing officer for a binding determination.

2. Children of the institutionalized individual will be considered to be caregivers (as defined in 42 CFR, section 433.36(f)), when through clear and convincing evidence they substantiate:

   a. They are the natural or adopted child of the institutionalized individual; and

   b. Maintained residency in the institutionalized individual's home for at least two years immediately preceding the individual's admission in the nursing facility, intermediate care facility for the mentally retarded or other medical institution; and

c. Provided care for the institutionalized individual which meets or exceeds published state standards established for Intermediate Care Level (ICL 1), which includes, as necessary, assisting the individual with ambulatory needs, feeding, grooming, personal hygiene, oral hygiene, nail care, bathing, toilet activities, skin care and medical needs.

Individuals who seek a recovery delay/exclusion under 42 CFR, section 433.36(f) will be given the opportunity to provide written details of their activities as a provider of care. The agency will review all requests individually and provide written notice of acceptance or rejection to the requesting party claim. Rejected requests may be appealed through the administrative hearing process.

3. The State defines the terms below as follows:

- estate

  "ESTATE" - means all assets included in the estate of a deceased recipient of assistance to the medically indigent and any other assets in or to which he/she had an interest or legal title at the time of his death, to the extent of that interest or title. The term includes assets passing by reason of joint tenancy, reserved life estate, survivorship or trust.

- individual's home

  "INDIVIDUAL'S HOME" - Property in which the recipient of assistance to the medically indigent has an ownership interest (whole or part) and that serves as their primary place or residence. It may include the shelter in which they live and the land on which the shelter is located. It does not include property which is adjacent to the land on which the shelter is located and is not part of the same parcel of land.

- equity interest in the home

  "EQUITY INTEREST IN THE HOME" - The current market value of the individual's interest in the individual's home less any legally binding encumbrances on it.

- residing in the home for at least one or two years on a continuous basis, and

  "RESIDING IN THE HOME FOR AT LEAST ONE (or 2) TWO YEAR(S)" - An uncontested and consensual occupancy of the recipient's home as the primary residence for one or two years. Temporary absences for vacation, hospitalization or work requirements do not adversely affect the day count.

  "ON A CONTINUING BASIS" - To go on without interruption.

"DISCHARGE FROM THE MEDICAL INSTITUTION AND RETURN HOME" - The lawful release of a recipient by the medical facility followed by their return to the individual's home.

o lawfully residing.

"LAWFULLY RESIDING" - Permitted by law to live in.

4. The State defines hardship as follows:

Undue and substantial hardship resulting in severe financial duress or a significant compromise to an individual's health care or shelter needs.

The Administrator of the Welfare Division is empowered with the authority to evaluate all Medicaid Estate Recovery hardship requests for the purpose of determining what, if any, action should occur. The Administrator may order:

a. the claim be permanently discharged thereby terminating all current and future recovery actions; or

b. recovery of the claim be temporarily suspended permitting recovery to be accomplished at a time when permitted by state statute; or

c. the claim be compromised accepting recovery of a portion of the claim as full satisfaction of the claim; or

d. recovery to be accomplished through an installment plan, promissory note, or other legal means; or

e. full payment of the claim, without exception.

Before making a hardship decision, the Administrator may consider each factor individually or a combination of factors and may base her decision accordingly. The factors are:

a. The gross annual income, property and other assets of the individual requesting the hardship waiver and their immediate family.

b. The present ability of the individual requesting the hardship waiver to pay the Medicaid claim from recipient's estate.

c. The relationship of the decedent to the individual requesting the hardship waiver.

d. The employability of the individual requesting the hardship waiver and their immediate family members.

e. The type and level of care provided by the individual requesting the hardship waiver to the decedent and the extent to which the care delayed or prevented the institutionalization of the decedent;

f. The individual requesting the hardship waiver resided with the decedent for two years or more immediately prior to the decedent's death or institutionalization and continues to reside in the decedent's residence and prior occupancy permitted the decedent to reside at home rather than in an institution.

g. The estimated value of real or personal property at issue.

h. The financial impact of recovery against other affected parties, such as heirs to the estate, county entities, state and federal agencies or other creditors.

i. The impact on individuals (other than those already addressed in 42 CFR 433.36) who could be forced to vacate the decedent's residence.

If the hardship request is associated with an individual's desire to acquire a new principal residence, the Welfare Division may agree to transfer an existing lien to permit the acquisition of the new residence if the applicant authorizes transfer of the lien to the new principal residence.

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

Waiving estate recoveries - Requests for hardship waivers must be submitted in writing to the Administrator of the Nevada State Welfare Division. The Administrator will independently review each request to determine if estate recovery actions should be waived. The Administrator may contact the requesting party or personnel assigned to Medicaid Estate Recovery to obtain additional information.

The Administrator may at her discretion, waive recovery of the claim, reduce the amount to be recovered, modify the method by which the claim is recovered or deny the hardship request.

Recovery not cost-effective - The Welfare Division may elect not to recover a Medicaid Estate Recovery claim when:

a. The Medicaid claims paid on behalf of the individual are less than $100; or

b. When the individual's estate has a value of $100 or less; or

c. When recovery of the claim must be accomplished through a court with jurisdiction outside of the State of Nevada.

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

Cost-effective recovery is accomplished when the amount recovered exceeds the administrative (direct or indirect) expense associated with obtaining the recovery.

The Nevada State Welfare Division has automated many of the estate recovery activities thereby minimizing correspondence costs. Individual case analysis and management is not required until a ninety (90) day delinquency has occurred.

Therefore, case costs would begin to accrue after this time. Costs such as, but not limited to, staff costs, document filing fees, legal costs, postage, copying, travel and indirect administrative costs would be considered.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirements, the method for applying for a waiver, hearings and appeals procedures, and time frames involved):

Collection Procedures - Immediately following case identification, all known heirs, survivors and designated representatives are notified of:

a. The Welfare Division's interest in the decedent's estate and of the right to recovery.

b. The amount of Medicaid assistance paid, to date, on behalf of the decedent.

c. The priority of estate creditors as defined by Nevada State Law.

d. The method through which an undue hardship waiver may be pursued. (for individuals other than those already addressed in 42 CFR 433.36)

Application for Undue Hardship Waiver - Any heir or survivor may seek an Undue Hardship Waiver by writing to the Welfare Division Administrator. The petitioner's letter must completely detail the circumstances surrounding their request. Documentary evidence which supports the petitioner's claim should be attached.

Hearing and Appeal Procedures -

a. Action to Enforce Recovery:

Actions to enforce recovery of Medicaid Estate Recovery claims are accomplished through legal means using, if necessary, the appropriate court of jurisdiction. Use of the court protects the due process right of all and guarantees safe protection of the law.

Appeal rights are specifically addressed in Nevada state law.

b. Action to Determine Permanent Institutional Status:

Individuals under 55 years of age who are inpatients in a nursing facility, intermediate care facility for the mentally retarded or other medical institution will be given to opportunity to contest "Permanent Institutional Status" using the Welfare Division hearing process already in place.

The decision of the hearing officer may be appealed through the appropriate district court.

Time Frames Involved -

a. Action to Enforce Recovery:

Limitations of time to contest specific actions are detailed in Nevada State Law.

b. Action to Determine Permanent Institutional Status:

A request for hearing to contest the Welfare Division's classification of an individual as "Permanent Institutional Status" must be received by the Hearing Officer not later than thirty (30) days after the initial notification is mailed.

An appeal of the Hearing Officer's decision as to the individual's "Permanent Institutional Status" must be filed with the District Court not later than ninety (90) days after the date of the decision.