

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: <u>01 - 002</u>	2. STATE: Ohio
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	

TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE 01/01/96 <u>01/01/01</u> <i>HM'S</i>
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5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 42CFR 433.36(c), 1902(a)(18) and 1917(a) and (b) of the Act	7. FEDERAL BUDGET IMPACT: a. FFY <u>0</u> \$ _____ b. FFY <u>0</u> \$ _____
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8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: 53, 53a, 53b, 53c, 53d, 53e, and Attachment 4.17-A pages 1 and 2.	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): 53, 53a, and 53b.
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10. SUBJECT OF AMENDMENT:
Provides the rules to be applied to Ohio's estate recovery program.

GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED: Governor has delegated signature approval to ODJFS director.
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL: <i>Jacqueline Romer-Sensky</i>	16. RETURN TO: Ohio Department of Job and Family Services 30 E. Broad St., XXXXXX 27th FL Columbus, Ohio 43266-0423 ATTN: Becky Jackson Office of Ohio Health Plans
13. TYPED NAME: Jacqueline Romer-Sensky	
14. TITLE: Director	
15. DATE SUBMITTED: <u>2/28/01</u>	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 3/7/01	18. DATE APPROVED: <u>May 14, 2001</u>
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PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: <u>JANUARY 1, 2001</u>	20. SIGNATURE OF REGIONAL OFFICIAL: <i>Manuel Hood - Gruffin, Acting ARA</i>
21. TYPED NAME: Cheryl A. Harris	22. TITLE: Associate Regional Administrator Division of Medicaid and Children's Health

23. REMARKS:

RECEIVED
MAR 06 2001
DMCH - IL/IN/OH

Revision: HCFA-PM-95-3
May 1995

(MB)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

Citation

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

4.17 Liens and Adjustments or Recoveries

(a) Liens

— That State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the 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 or her death on account of medical assistance paid or to be paid on his or her behalf.

— The State imposes liens on real property on account of benefits incorrectly paid.

— The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other individual is required to contribute toward the cost of institution care all but a minimal amount of income required 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 4.27-A. (NOTE: If the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

— The State imposes liens on both real and personal property of an individual after the individual's death.

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Supersedes
TN No. 83-3

Approval Date APR 14 2001

Effective Date ~~1-1-96~~ 1-1-01

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May 1995

(MB)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

(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 permanently institutionalized individuals, 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 "permanent institutional 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.

_____ In addition to adjustment recovery of payments for services listed above, payments are adjusted or recovered for other services under the State Plan as listed below:

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53(b)

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

- (4) 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, 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.

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 other individual to the extent described below:

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53 (c)
(MB)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

(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 not surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the state determines is permanently institutionalized 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 that 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 established to the satisfaction of the State that the care of 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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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

(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:
 - estate (at a minimum, estate as defined Under State probate law). Except for the grand fathered 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 (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, life estate, living trust, or other arrangement),
 - individual's home,
 - equity interest in the home,
 - residing in the home for at least 1 or 2 years
 - on a continuous basis
 - discharge from the medical institution and return home, and
 - lawfully residing.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue 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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

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:
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 adult child resided in the home for at least two year immediately before the individual became institutional and provided care to the individual which delayed institutionalization of the individual. A level of care assessment must be completed to determine if the individual would have required institutionalization from the beginning and throughout the 2-year period if the adult child had not provided personal care.

3. The State defines the terms below as follows:

*estate: All property to be administered on behalf of a decedent, under supervision of the probate division of the court of common pleas.

*individual's home: Any shelter used by an individual or spouse as the principal place of residence in which the individual has a home-ownership interest. The home may be either real or personal property, fixed or mobile, and located on land or water. Houses, cooperative and condominium apartments, mobile homes, motor homes and houseboats are examples of qualifying homes.

*equity interest in the home: A formal, legal interest that was established prior to application/re-application for Medicaid.

*residing in the home for at least one or two years on a continuous basis: Individual documents that they resided in a home for at least one year immediately before the individual became institutionalized.

*lawfully residing: resides in the home in full compliance with the law.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Ohio

4. **State defines undue hardship as follows:**

The state may waive seeking recovery of medical assistance correctly paid if it is determined that recovery would work an undue hardship. Some examples of undue hardship are the following:

The estate subject to recovery is the sole income-producing asset of the survivors such as a family farm or other family business which produces a limited amount of income or when the farm or business is the sole asset of the survivors.

Without receipt of the estate proceeds, the survivor would become eligible for public assistance.

Recovery would deprive the survivor of necessary food, shelter or clothing. Deprivation does not include situations in which the survivor is merely inconveniences, but would not put the individual at risk of serious harm.

The survivor provides clear and convincing evidence that he or she made substantial personal financial contributions to the deceased person and, therefore, has an equity interest in the property.

The survivor is age sixty-five or older and is financially dependent upon receipt of the estate proceeds.

The survivor is totally and permanently disabled and is financially dependent upon receipt of the estate proceeds and if, and only if, the estate proceeds are preserved for the benefit of the disabled survivor.

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.**

Undue hardship waivers may be requested only by the estate's representative for circumstances relating to undue hardship relating to immediate family members of the decedent.

The director of the Ohio Department of Job and Family Services, or designee, may grant an undue hardship waiver on a case-by-case basis when there are compelling circumstances.

The granting of an undue hardship waiver may involve either a permanent waiver of recovery efforts, or a temporary deferral or postponement of recovery, including negotiation of a modified recovery agreement or the imposition of a lien on property.

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

Recovery is considered as not cost-effective only when the costs of filing the claim and any legal work dealing with the claim are more than what could be recovered from the estate.

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):**

In order to inform all applicants for and recipients of Medicaid, of the provisions of the estate recovery program, an information sheet explaining the program is given out with all applications and reapplications. Additionally, as part of the application interview for individuals who appear to have potential for Medicaid, the caseworker must include a discussion of the estate recovery program.

Upon learning of the death of a Medicaid recipient, a notice will be sent by the Ohio Attorney General's office to the person handling the decedent's estate if that person can be ascertained from the probate records. If that person cannot be ascertained, the notice will be included with the claim it files in probate court. The notice includes the following information: the action the state intends to take, the reason for the action, the amount to be recovered, an explanation of the undue hardship provision, the procedure for applying for a hardship waiver, the individuals who are eligible to apply for a hardship waiver, and the legal remedy to appeal a hardship decision.

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