

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
02-01

2. STATE
Oregon

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID) Medical Assistance

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

FEB - 8 2002

4. PROPOSED EFFECTIVE DATE
April 1, 2002

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:
HCFA-PM-95-3

7. FEDERAL BUDGET IMPACT:
a. FFY \$ 0
b. FFY \$ 0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Pages 53 through 53e
Attachment 4.17-A, pages 1 through 2-b

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):
Pages 53 through 53e
Attachment 4.17-A, pages 1 through 2-b

10. SUBJECT OF AMENDMENT:

This transmittal regarding Medicaid estate recoveries is being submitted to reflect the recent state law changes, new federal guidelines, and estate recovery policies.

11. GOVERNOR'S REVIEW (Check One):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

Per Attachment 7.3A

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Hersh Crawford *Bobby S Mink*
13. TYPED NAME: Hersh Crawford Bobby Mink

14. TITLE: Administrator, OMAP Director, DHS

15. DATE SUBMITTED: **2-6-02**

16. RETURN TO:

Office of Medical Assistance Programs
Department of Human Services
500 Summer Street NE, 3rd Floor, E35
Salem, OR 97301

ATTN: Carole Van Eck

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: **FEB - 8 2002**

18. DATE APPROVED: **APR 17 2002**

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: **APR 1 2002**

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME: *Bonnie Butterfield*

22. TITLE: **ASSOCIATE REGIONAL ADMINISTRATOR
DIVISION OF MEDICAID AND STATE OPERATIONS**

23. REMARKS:

FORWARDED: 2/6 • Salem

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

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

Citation

42 CFR 433.36(c) 4.17 Liens and Adjustments or Recoveries
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 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 medical institution, where the individual is required to contribute toward the cost of institutional 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 4.17-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.)

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

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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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.

X 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 §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:

Capitated Rate under the Oregon Health Plan for individuals 55 years or older.

Medical Assistance paid on behalf of an individual for nursing facility, community based care and other long term care services who received benefits under a long term care insurance policy.

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(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, 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.

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:

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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 §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.
- (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 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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(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, life estate, living trust, or other arrangement),
 - 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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53e

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- (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.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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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:

N/A (Oregon is not a TEFRA lien state.)

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):

N/A

3. The State defines the terms below as follows:

- o **ESTATE:** For medical assistance provided prior to July 18, 1995, estate is defined as all real and personal property and other assets included within the individual's, **or the individual's surviving spouse's**, probatable estate. For medical assistance provided after July 18, 1995, estate also includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other similar arrangement. Under other similar arrangement, the State will pursue recovery against an annuity that was the property of the deceased Medicaid beneficiary.
- o **INDIVIDUAL'S HOME** means any dwelling unit in which an individual has an ownership interest and is used as the individual's principal place of residence; such dwelling unit may consist of a house, boat, trailer, mobile home or other habitation. It is the dwelling that the individual considers his or her fixed or permanent residence and to which, whenever absent, the person intends to return. The individual's home includes the real property on which the dwelling is located, all tangible personal property located therein, and any related outbuildings necessary to its operation. Only one dwelling unit may be considered an individual's home. Outbuildings necessary to the operation of the home include

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outdoor toilets, garage, shed, spring or well house, and barns or other buildings that house animals used for the individual's consumption. An individual's home, in most instances, is located within the state of Oregon. However, an individual's home may be located outside the state of Oregon.

- o **EQUITY INTEREST IN THE HOME** means the value of an individual's home less the unpaid principal balance of any loans or other liens or encumbrance affecting the individual's home.
- o **RESIDING IN THE HOME FOR AT LEAST ONE OR TWO YEARS ON A CONTINUOUS BASIS** means uninterrupted residence by an individual in the individual's home, provided, however, that such residence may be interrupted by absences from the home if, while absent, the individual has the intent to return home.
- o **LAWFULLY RESIDING** means that an individual has a legal right to reside in an individual's home.

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

The **Department** may waive enforcement of any estate recovery claim if it finds that enforcing the claim would result in an undue hardship to the beneficiaries, heirs, or family claiming entitlement to receive the assets of the deceased client. In determining whether an undue hardship exists, the **Department** may consider whether enforcement of the claim would cause the waiver applicant to become eligible for public or medical assistance **and** become homeless. (ORS 416.340)

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:**

At the discretion of the **Department**, waiver of an estate recovery claim may include, but is not limited to, forgiveness of all or part of the claim, or taking a **promissory note and** mortgage or trust deed in lieu of **immediate** enforcement of the claim.

No waiver may be granted if the **Department** finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred, or otherwise encumbered assets, in whole or in part, to avoid estate recovery.

No waiver will be granted if the **Department** finds that the undue hardship will not be remedied by the grant of the waiver.

The **Department** will provide written notice of the hardship waiver rules to the personal representative or other person handling the deceased client's estate, and other persons as described in the **Department's** rules.

Persons claiming entitlement to receive assets may apply for a hardship waiver by submitting a written request to the **Department**. The information to be included on the request is specified in the **Department's** rules.

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

Each Estate Administrator has the authority to determine if an estate will be pursued for collection based on the **likelihood of recovering the** value of the claim as it compares to the **cost of collection**.

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):

Upon the death of a recipient of assistance subject to recovery, and provided the recipient has no surviving spouse, minor child, or a child who is blind or disabled according to SSI criteria, and provided there is no real property or titled personal property which would require the filing of an estate proceeding, (small estate or probate), the **Department** may claim any funds up to \$25,000 which belonged to the recipient and which are on deposit with a bank (ORS 708.430), savings and loan (ORS 722.262), or credit union (ORS 723.463).

When the Estate Administration **team** receives a report on deceased persons meeting the conditions above, the **team** sends the banking letter, an affidavit, and indemnity agreement to the identified financial institution claiming the account of the decedent. Individuals who contact us and notify us of creditors who have a priority before the State are advised to send the billings to the Estate Administrator and the bill is satisfied to the extent that the assets are available, **e.g.**, funeral expenses.

A small estate **may be filed** when an individual dies leaving an estate with a fair market value of \$140,000.00 or less; not more than \$50,000.00 attributable to personal property and not more than \$90,000.00 attributable to real property. An affidavit may not be filed until 30 days after the death of the decedent. A probate proceeding can be filed at any time **for an estate of any dollar value or when the value of the estate exceeds the small estate limitations**.

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If, after sufficient passage of time, neither the heirs nor devisees have filed an estate proceeding, then the **Department** handling the estate, under the authority of Oregon Revised Statutes, has the authority to act as the personal representative or nominate a personal representative. The practice of Estate Administration is to nominate a personal representative.

In both situations, the Estate Administration Unit files the written notice with the **personal representative or claiming successor and provides a copy to the** probate court of our claim as a priority creditor. The heirs or the personal representative has the right to deny the claim and a summary determination will occur in Probate Court.

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