
Liens and Adjustments or Recoveries

Procedures and Definitions:

I. Procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

In accordance with 42 CFR 433.36, the state presumes that a client residing in a medical institution for at least 120 consecutive days is not reasonably expected to return home. Transfers from one medical institution to another do not interrupt the 120 day period but discharge from a medical institution to a community setting will terminate the 120 day period. Re-admission to a medical institution starts a new 120 day period. Please see Section VI below for advance notice and waiver application requirements and hearing and appeals procedures.

II. Criteria by which a son or a daughter can establish that he or she has been providing care:

An exemption to estate recovery is made in cases where a son or daughter can establish that they provided care to the individual that enabled them to stay at home rather than in an institution. The adult child must provide documentation that they resided with the parent for at least 24-months immediately preceding the beneficiary's admission into an institution and that they have resided there continuously since the institutionalization began. Documentation must establish that the adult child used the beneficiary's address as their mailing address, on their driver's license or voter registration, and that their address remained unchanged throughout this entire time period. Additionally, a parent's or treating physician's written statement that the adult child's presence in the home enabled the parent to live in the community is accepted as proof of providing required care.

III. Definitions

Estate

Includes all real and personal property of the decedent, trust, or other person whose affairs are subject to the Alaska Uniform Probate Code (AS 13.06-13.13) as originally constituted and as it exists from time to time during its administration.

Individual's Home

The dwelling in which the recipient has an ownership interest and which the recipient occupied as his/her primary dwelling prior to, or subsequent to, his/her admission to a medical institution.

Equity Interest in the Home

Equity interest in the home is recognized by Alaska Law and generally understood to be equal to the fair market value less any encumbrances.

Residing in the Home for at Least One or Two Years on a Continuing Basis

Exemptions to estate recovery are made if a sibling of the recipient can document that they have resided continuously in the home for at least 12-months prior to the institutionalization and have remained in the home since. Documentation must establish that the sibling child used the beneficiary's address as their mailing address, on their driver's license or voter registration, and that their address remained unchanged throughout this entire time period. Please see Section II, above, for verification requirements of adult children living in the home for at least two years on a continuing basis.

Lawfully Residing

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Residing in a manner not contrary to or forbidden by law and with the recipient's knowledge and consent.

IV. Standards and procedures for waiving estate recovery when it would cause undue hardship:

One or more of the following conditions may constitute a finding of undue hardship resulting in all or part of the Department's claim against an estate to be waived in an effort to avoid impoverishment of the deceased recipient's family:

- The estate's only asset produces income and recovery would cause the survivors' loss of livelihood;
- A survivor's primary residence is the estate's only significant asset and state recovery of it would cause impoverishment of the survivor as defined below:
 - State recovery of estate's proceeds would make the survivor eligible for public assistance;
 - A survivor could discontinue eligibility for public assistance if they were to receive the estate;
 - Recovery would deprive the survivor of food, clothing, shelter or other necessities of life, or medical care, thereby endangering the survivor's health and safety.
- The estate subject to recovery is a home of modest value defined as 50% or less of the average price of homes within the region or major community, based on Alaska Department of Labor statistics and periodically compared to census data adjusted for inflation. Home value is determined as of the date of the recipient's death.

Applicants for undue hardship waivers must have a beneficial interest in the estate and must apply within thirty (30) days of receiving notice of the Department's claim. An application filed up to thirty (30) days late may be treated as timely if the applicant demonstrates good cause for filing late. The filing of a claim by the Department in a probate proceeding shall constitute notice to all heirs.

Other conditions for waiving estate recovery:

- Low income Medicare beneficiaries who receive assistance from the Alaska Medical Assistance Program only in the form of payment for their Medicare copayments and/or deductibles are exempt from estate recovery.
- Medicaid expenditures made for services that the recipient would not have been required to pay for if the recipient were not eligible for Medicaid are exempt from recovery.
- Certain American Indian and Alaska Native income, resources, and property (including rents, leases, royalties, usage rights, or income from them) are exempt from recovery if they are :
 - located on or near, or within the most recent boundaries of a current or prior federally recognized or designated reservation,
 - derived from tribal lands,
 - related to natural resources (including their extraction or harvesting) derived from protected tribal lands, if the protected source can be clearly traced;
 - held in trust status or judgement funds that are exempt from recovery by other laws and regulations,
 - originally protected assets and ownership interests that have been inherited, if the protected source can be clearly traced;
 - ownership interests in or usages rights to items not covered above, with unique religious spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

V. Cost effectiveness defined:

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The department will pursue a claim only if it determines that the potential recovery amount would result in twice the administrative and legal cost of pursuing the claim, with a minimum pursuable net amount of \$10,000. In assessing the value of an estate, the department will consider all other claims against the estate having precedence under state statute. Administrative and legal costs include, but are not limited to, the costs of:

- a. Advertising, filing, and exercising the lien,
- b. legal representation of the state in court,
- c. tracking property with potential for a lien and then tracking its subsequent recovery,
- d. any and all costs associated with repair of the property to bring it into saleable condition,
- e. insurance costs to protect the asset,
- f. all costs associated with advertising, listing and selling the home including any and all applicable closing fees.

VI. Describes collection procedures including advance notice requirements, methods for applying for a waiver, hearing and appeals procedures, and time frames:

When the State determines that a client cannot be expected to return home, or learns of the death of a client, the case is reviewed to determine the value of the estate, whether there are heirs, and if it will be cost-effective to proceed with recovery. Once the decision is reached to place a lien on the estate, the department provides written notice to known representatives, heirs, or beneficiaries of the State's intent to proceed with collection on the estate. This notice specifies:

- The client's name, social security number, if known, date of birth and date of death, if deceased;
- How the term "lien" is defined;
- That the individual will not lose ownership of their home if a lien is imposed;
- The amount of recoverable Medical Assistance correctly paid on behalf of the client;
- The department's intent to file a lien against the client's real property to recover the applicable Medical Assistance paid on behalf of the client.

Notices also provide information on how to request a hardship waiver and how to appeal the department's decision to proceed with recovery. Appeals may contest the amount of recoverable medical assistance identified by the department or whether the deceased client had legal title to the real property at the time of the client's death. Appeals must be written, signed, and sent to the Third Party Liability section of the Division of Health Care Services within 30 days of the date of receipt of the notice. Appeals must also include the reason for contesting the Department's decision and contact information for the representative.

Additionally, the notice presents the following information to heirs for requesting an undue hardship waiver of estate recovery:

- How to request a waiver,
- Where to submit a waiver request;
- Waiver requests must be submitted within 30 days of recovery notice receipt;
- Decisions on waiver requests are made by the department within 30 days of the request;
- Appeal rights available to them if a waiver request is denied.

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