

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

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:

The State may place a lien on the member's home when there is not a reasonable expectation that the member will return home and when none of the following persons are living in the home:

- (a) The member's spouse;
- (b) A child under twenty-one (21) years of age;
- (c) A disabled child of any age; or
- (d) A sibling with an equity interest in the home who has lived in the home for at least one (1) year before the member entered the nursing home.

The Department shall notify the member and the personal representative, if applicable, of its determination that the member is permanently institutionalized and not reasonably expected to return home and its intent to file a lien on member's real property. Notice must include an explanation of liens and their effect on an individual's ownership of real property. The notice must also state that imposing a lien does not mean the individual will lose their home. A lien may not be filed less than thirty-one (31) days from the date of the notice to the member and before any hearing process has been completed, if a hearing is requested.

A member or his or her designee may, within thirty (30) days after receipt of notice request an administrative hearing under this rule. A member is deemed to have received notice within five (5) days from the date of the notice. Administrative hearings and appeals by Medicaid members are governed by the procedure and time limits set in Georgia Administrative Comprehensive Chapter §290-1-1-.01. Only one (1) appeal shall be afforded on behalf of a member, for each notice received. The member or his/her representative bears the burden of proof in proving that the member is not permanently institutionalized. The administrative law judge shall make the determination that an individual can or cannot reasonably be expected to be discharged from the institution.

The Department or its designee shall file a notice of lien with the recorder of the county in which the real property subject to the lien is located. The notice shall be filed prior to the member's death and shall include the following:

- (a) Name and place of residence of the real property subject to the lien; and
- (b) Legal description of the real property subject to the lien.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

The Department shall file one (1) copy of the notice of lien with the local DFCS office in the county in which the real property is located. The county in which the real property is located shall retain a copy of the notice with the county office's records. The Department or its designee shall provide one (1) copy of the notice of lien to the member or the member's authorized representative, if applicable, whose real property is affected.

The lien continues from the date of filing until the lien is satisfied, released or expires. From the date on which the notice of lien is recorded in the office of the county recorder, the notice of lien:

- (a) Constitutes due notice against the member or member's estate for any amount recoverable under this article; and
- (b) Gives a specific lien in favor of the Department on the Medicaid member's interest in the real property.

The State may not place a lien on an individual's home if anyone of the following individuals are living in the home:

- (a) The member's spouse ;
- (b) The member's child under twenty-one (21) years of age;
- (c) The member's blind or disabled child of any age as defined in §1614 of the Act;
- (d) The member's brother or sister who has an equity interest in the home and who has been in the member's home for at least one year immediately before the member's admission to a nursing home.

The Department has the authority to release any lien placed upon the property of an individual deemed permanently institutionalized should that person be discharged and return to a non-institutional home environment. The Department shall release a lien obtained under this rule within thirty (30) days after the Department receives notice that the member is no longer institutionalized and is living in his or her home. If the real property subject to the lien is sold, the office shall release its lien at the closing and the lien shall attach to the net proceeds of the sale.

"Permanently institutionalized" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for 6 consecutive months or more.

- 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):

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

The son or daughter has resided in the home at least two (2) years immediately before the member's admission to the institution. The member's sibling has resided in the residence at least one (1) year prior to the member's entrance to a nursing home. The son, daughter or sibling must provide the State with acceptable documentation that is clear and convincing evidence to prove residency and equity interest such as receipts, mortgage statements, bills, mail forwarded to member's address, and no other known residence for that sibling, son or daughter during that time frame. The sibling, son, or daughter has the burden of proof in all administrative reviews and/or hearings.

3. The State defines the terms below as follows:

"Estate" means all real and personal property under the probate code. Estate also includes real property passing by reason of joint tenancy, right of survivorship, life estate, survivorship, trust, annuity, homestead or any other arrangement. The estate also includes a life estate interest and excess funds from a burial trust or contract, promissory notes, cash, and personal property.

"Individual's home" means true, fixed and permanent home and principal establishment to which whenever absent, the individual has the intention of returning to his domicile.

"Equity interest in the home" means value of the property that the individual holds legal interest in to beyond the amount owed on it in mortgages and liens.

"Residing in the home for at least one or two years" Means the principal place of residence.

"On a continuous basis" means that the qualifying relative lived with the member in the member's residence as his or her principal place of residence without any breaks in the time frame.

"Discharge from the medical institution and return home" means that in order to be a qualifying discharge the member must be dismissed from the nursing institution and/or facility for at least thirty (30) days. Also, the member's personal effects and bed must be released at the same time of his/her discharge.

"Lawfully residing" means permissive use by the owner/power of attorney and the law.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

4. The state defines undue hardship as follows:
- “Undue hardship”** means (1) The asset to be recovered is the sole income-producing asset of the Medicaid beneficiary’s heirs; or (2) The recovery of the assets would result in the heirs becoming eligible for governmental public assistance based on need and/or medical assistance programs.
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:
- Procedures-
- The creditor’s claim contains information on the right to apply for an undue hardship waiver.
 - The personal representative completes a request for Undue Hardship Waiver within 30 days of the creditor’s claim being filed, enclosed supporting documentation and forwards it to the Department for an evaluation on whether to grant a waiver. If a waiver is granted, recovery may be terminated or the Department may compromise by delaying recovery until the death of the eligible heir. In determining whether an undue hardship exists, the following criteria will be used:
 - (a) The asset to be recovered is a income producing farm of one or more of the heirs and the annual gross income is limited to \$25,000 or less; or
 - (b) The recovery of assets would result in the applicant becoming eligible for governmental public assistance based on need and/or medical assistance programs.
 - Heirs who disagree with the Department’s denial may file for an administrative appeal within 30 days of the notice of denial.
 - The heirs have the burden of proof in all administrative reviews and/or hearings.
6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):
- The State employs the following methodology in determining if recovery is cost effective. The regulations of estate recovery mandate that we must pay years support for the family, funeral expense up to five thousand dollars (\$5000.00), necessary expenses of administration, and unpaid taxes prior to any claims for Medicaid. In addition, the State must pay the third party administrator of the estate recovery program’s collection expenses and pay a special assistant attorney general to handle these claims in Probate Court. Estates valued at \$25,000 or less are exempt from estate recovery because it is not cost effective for the state to pursue recovery.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: **GEORGIA**

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):
- At application and during re-determination the applicant or the member is notified of the estate recovery program.
 - Potential recovery cases are identified by data matches, newspaper clipping services, and referrals received from, probate courts, nursing facilities and local county offices.
 - After death of the member, a Notice of Intent to File a Claim Against the Decedent's Estate is forwarded to the member's representative or the representative's attorney. In addition, a questionnaire is forwarded requesting information about a surviving spouse, a child under the age of 21, a blind or disabled child, any real property, and the administration of the estate.
 - If all the criteria to pursue estate recovery is met, upon the estate being opened, the Department files a Creditor's Claim for the total amount of medical assistance paid on the deceased member's behalf.
 - If an estate is not opened, the State may recoup funds through the member's bank account. The administrator of the program may present an affidavit to a financial institution requesting that the financial institution release account proceeds to recover the cost of services correctly provided to a member. The affidavit shall include the following information:
 - (a) The name of the decedent;
 - (b) The name of any person who gave notice that the decedent was a Medicaid member and that person's relationship to the decedent;
 - (c) The name of the financial institution;
 - (d) The account number;
 - (e) A description of the claim for estate recovery;
 - (f) The amount of funds to be recovered.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

A financial institution shall release account proceeds to the administrator of the program if all of the following conditions apply:

- (a) The decedent held an account at the financial institution that was in the decedent's name only;
- (b) No estate has been, and it is reasonable to assume that no estate will be, opened for the decedent;
- (c) The decedent has no outstanding debts known to the administrator of the program;
- (d) The financial institution has received no objections or has determined that no valid objections to release proceeds have been received.

If proceeds have been released pursuant to this section and the Department receives notice of a valid claim to the proceeds that has a higher priority under O.C.G.A. §53-7-40 than the claim of this section, the Department may refund the proceeds to the financial institution or pay them to the person or government entity with the claim.