

State Plan Under Title XIX of the Social Security Act

State/ Territory: INDIANA**Liens and Adjustments or Recoveries**

1. The State uses the following process to determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home.

The State requests verification from the attending physician of the institutionalized individual's status immediately preceding giving notice of the State's intent to file a lien on the recipient's real property.

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).

A written statement from the son or daughter describing the type and amount of care provided to the parent by the son or daughter and the effect such care may have had on the parent's ability to remain at home. The statement should include appropriate documentation to substantiate that the care was necessary and provided. Such documentation may include doctor's statements, statements of neighbors or other relatives, copies of cancelled checks, bank statements, credit card statements, income tax returns or other documents or correspondence evidencing the extent and type of care provided.

3. The State defines the terms below as follows:

- Estate

All real and personal property and other assets included within an individual's probate estate;

Any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002 and;

Any real or personal property conveyed through a non-probate transfer.

Nonprobate transfer means a valid transfer, effective at death, by a transferor:

Whose last domicile was in Indiana; and

Who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and;

-Use the property for the benefit of the transferor; or

-Apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of survivorship interest in a tenancy by the entireties real estate, or payment of death proceeds of a life insurance policy.

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Any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of:

- A) the Medicaid recipient; or*
- B) the Medicaid recipient's spouse*

Assets included in the estate of the Medicaid recipient's surviving spouse are included after the death of the surviving spouse. If the surviving spouse has remarried, assets that are attributable to the surviving spouse's subsequent spouse are not included.

- Individual's home

The recipient's place of residence prior to institutionalization

- Equity interest in the home

Any equitable right, title, or interest in real property.

- Residing in the home for at least two years on a continuous basis

Using the home as the principal place of residence.

- Discharge from the medical institution and return home

Discharge from a medical institution is actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to home as per a plan of treatment.

- Lawfully residing

Residing in the recipient's place of residence with the permission of the owners, or if under guardianship, the owner's legal guardian.

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4. THE STATE DEFINES UNDUE HARDSHIP AS FOLLOWS:

- (1) causing an heir to become eligible for public assistance
- (2) causing an heir who is currently eligible for public assistance to remain dependent on that public assistance
- (3) the complete loss of sole income-producing asset of the heir when the heir's income does not exceed 100% of the federal poverty level
- (4) other compelling circumstances as determined on a case-by-case basis by the State

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:

Applications for undue hardship waivers shall be filed with the Medicaid agency within 90 calendar days of the date that the executor or personal representative of the deceased's estate receives notification of the State's claim. The Medicaid agency shall review and rule on an application for waiver of the State's claim within 45 calendar days of the receipt of a properly completed waiver application. The agency may not grant an undue hardship waiver if the granting of such waiver will result in the payment of claims to other creditors with a lower priority standing in accordance with IC 29-1-14-9.

6. THE STATE DEFINES COST-EFFECTIVE AS FOLLOWS (INCLUDE METHODOLOGY/THRESHOLDS USED TO DETERMINE COST-EFFECTIVENESS):

Recovery is not cost-effective when OMPP determines that attorneys' fees and other expenses of collection equal or exceed the amount that OMPP expects to collect. If the agency determines that it is most cost-effective to compromise the State's claim, the compromise must be approved by the Attorney General and the Governor.

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):

When the agency receives notice of the death of a recipient, former recipient, or a deceased recipient's spouse, the agency will file a claim against the estate in probate court. If the estate is valued at under \$25,000 and no probate estate is opened, the agency will file an affidavit in support of its claim with any entity that holds funds or property belonging to the deceased. The agency shall notify the executor or personal representative of the deceased recipient's estate of the State's claim and the affected heir's right to apply for an undue hardship waiver. If the agency reviews such an application and determines that an undue hardship does not exist, the agency shall notify the applicant in writing and inform the applicant of his right to request an administrative hearing within 30 days of receipt of the agency's decision that an undue hardship waiver has been denied.

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