

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

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:

Medical certification

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):

Income Tax Records
Property Tax Records
Proof of Payment for Medically Necessary Supplies
Affidavit

3. The State defines the terms below as follows:

- o estate - Real and personal property belonging to a person or a decedent at the time of his death including any intangible interest therein. The term "estate" includes all property identified in State Code.
- o individual's home - Primary place of residence prior to nursing facility.
- o equity interest in the home - Interest based upon inheritance, payments on mortgage note or down payment, or other interest as documented by deed.
- o residing in the home for at least one or two years on a continuous basis, and
- o lawfully residing. - Open notorious and permissive use of dwelling as residence.

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- 4. The State defines undue hardship as follows: Circumstances which would adversely affect the equity interest of a beneficiary or heir in intestacy's ability to carry on the family business in which he or she was actively engaged at least one year prior to the recipient's receipt of benefits. (If a family business is the sole income producing asset of the survivors where a beneficiary or an heir in intestacy contributed to a recipient's small business by working there exclusively for a period of one year prior to the recipient's receipt of benefits.)
- 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: Recovery would jeopardize the survival of the family unit or severely disrupt the family's income because of circumstances beyond the control of the recipient. An undue hardship shall not be found if the individual or recipient created the hardship by resorting to estate planning methods under which the individual divested assets in order to avoid estate recovery. West Virginia will apply §1917 of the Social Security Act to all adjustments or recovery under this plan.

The following situations may be considered undue hardship situations and no lien shall be placed or recovery made from the estates of recipients when evidence is presented to the Bureau that:

An adult child maintains continuous employment in the family business for a period of time beginning at least (3) years before the parent became a recipient until the time of the parent's death if the property which would otherwise be subject to an estate recovery lien is an integral part of the business and is required for the continued viability of the business; or

The secretary determines that it is not cost effective for the State to pursue recovery from the estate.

The following situations may be considered undue hardships upon presentation of proof:

An Adult child, regardless of whether he/she was living in the family home, is able to present proof of monetary support to his/her parent for medical care and other necessities prior to the date the parent became a recipient. Such support shall reduce the medical assistance lien on a dollar-for-dollar basis;

An adult grandchild whose parents are both deceased prior to the date the grandparent became a recipient is able to present proof of monetary support to his/her grandparent for medical care and other necessities prior to the date the grandparent became a recipient. Such support shall reduce the medical assistance lien on a dollar-for-dollar basis; or

A sibling is able to present proof of monetary support to his/her sibling for medical care and other necessities prior to the date the sibling became a recipient. Such support shall reduce the medical assistance lien on a dollar-for-dollar basis.

Other necessities are defined as utilities, major home repairs, real estate taxes, real estate insurance, and normal upkeep and maintenance.

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

The value of the estate must exceed \$5,000 at the time the estate is admitted to probate.

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7. The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals, procedures, and time frames involved):

Recipients and beneficiaries of an estate may apply for an undue hardship waiver by presenting evidence to the Bureau that recovery from the recipient's estate will jeopardize the survival of the family unit or severely disrupt the family's income unless the circumstances which will cause such disruption were created by the recipient's use of estate planning methods designed to avoid estate recovery.

An application for an undue hardship waiver shall be submitted to the Bureau within forty-five (45) days of the placement of the lien.

The Bureau shall have ninety (90) days from the date of receipt in which to issue a denial of a request for a hardship waiver or to advise the applicant that additional time will be needed to consider the request.

An application for an undue hardship waiver must set out in specificity the reason for the request, the name, telephone number and address of the person making the request, financial and other evidence which supports the reason for the request and an authorization allowing the Bureau to validate the evidence presented in support of the request.

The presence of a will bequeathing specific property to beneficiaries cannot be used as evidence of an under hardship.

Documentation of an inter vivos gift cannot be used as evidence of an undue hardship unless the gift would not have been considered an uncompensated transfer and resulted in imposition of a penalty period.

Those persons adversely affected by the enforcement of undue hardship provisions may request an administrative review or appeal to determine any rights, duties, interests or privileges or to contest the failure to grant an undue hardship waiver by requesting an administrative review within (30) days after receipt of a notice of an adverse administrative action, or evidentiary hearing within (30) days after receipt of notice of decision from the administrative review conference or other adverse ruling.

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Process by which individuals of a medical institution cannot reasonably be expected to be discharged and returned home. The individual will be considered permanently institutionalized.

There is established a rebuttable presumption that a recipient is permanently institutionalized if the recipient has been in residence in an institution for six (6) months or longer.

The presumption of permanent institutionalization after six (6) months can be rebutted by documentation that the recipient will be discharged within a reasonable period of time not to exceed three (3) months and that the recipient has a place to which he/she can return. If the individual is not discharged within this three (3) month period, a presumption of permanent institutionalization will be reestablished.

If it is determined that a recipient is permanently institutionalized, the recipient and his/her legal guardian will be informed in writing and the rights to a hearing and the hearing process will be explained.

The recipient and/or the legal guardian will have thirty (30) days from the date of receipt to request a hearing.

The hearing process will follow the usual hearing procedure of two (2) levels. An informal first level followed by a written decision and then recourse to the next level which is a evidentiary hearing before the Commissioner or his/her designee. Any medical documentation and/or evidence submitted will be reviewed by appropriate medical personnel. The Commissioner or his/her designee will consider medical evidence from the recipient's physician and/or evidence from the recipient's family regarding the ability to be discharged and return home.

No lien will be placed upon property belonging to a recipient until after a final determination is made. Any lien will be dissolved within thirty (30) days upon a recipient's discharge from a facility and return home.

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