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### Liens and Adjustments or Recoveries

- A. The Medicaid agency uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home as specified under regulations at 42 CFR 433.36(d):

Kentucky does not impose liens against property, therefore the specified determination is not applicable.

- B. 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):

Kentucky does not impose liens against property, therefore the specified criteria is not applicable.

- C. The Medicaid agency uses the following definitions:

**Aged institutionalized individual** - a recipient age fifty five (55) or older who received Nursing Facility (NF) services, Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR/DD) services, Home and Community Based Services (HCBS) or Supports for Community Living (SCL) services with payment for these services made, wholly or in part, by the Medicaid Program.

**Estate** - all real and personal property or other assets in which the deceased recipient had a legal title or interest, to the extent of his or her interest, as defined for purposes of state probate law. In addition, it shall include all other assets in which the deceased individual had legal title or interest at the time of death, to the extent of his or her interest. Examples include assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common survivorship, life estate, living trust or other arrangement.

**Estate representative** - the court appointed fiduciary or the fiduciary's attorney, the recipient family member or other interested party who represents to the Medicaid agency in writing that he or she is the representative for the deceased Medicaid recipient's estate.

**Period of institutionalization** - the period of time an aged institutionalized or permanently institutionalized individual received Medicaid services.

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Liens and Adjustments or Recoveries (continued)

Permanently institutionalized – a Medicaid recipient residing in a nursing facility or intermediate care facility for the mentally retarded or developmentally disabled for six (6) months or more.

Recipient family member - the surviving spouse, child or sibling of a deceased Medicaid recipient.

Surviving child - a Medicaid recipient's living child under age 21, or a child who is blind or disabled as defined in 42 USC 1382c.

Undue hardship - The Medicaid agency determines that an undue hardship exists when an asset subject to recovery is the sole income-producing asset, family farm or business, conveyed to the surviving recipient family member. A sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.

- D. The Medicaid agency uses the following procedure to provide general notice to the Medicaid recipient or the recipient's representative at the time of application or reapplication for institutionalized services:

The Medicaid agency provides a written general notice to the recipient or the recipient's representative that explains the provisions of the estate recovery program. The general notice contains information regarding when an estate is subject to recovery, the type of charges that will be included in an estate recovery claim, how the executor or estate representative will be notified, and information about exemptions and limitations to estate recovery.

- E. The Medicaid agency uses the following collection procedures:

1. Upon the death of an institutionalized recipient, the institutional provider is required to notify the eligibility office within ten (10) days of the death. The eligibility office then notifies the Medicaid agency of the death.
2. The Medicaid agency calculates the total estate recovery claim by totaling the claims paid on behalf of a deceased recipient for any period of institutionalization. The amount of the claim includes the following:
  - a. Where applicable, the expenditures for Nursing Facility (NF) services, Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR/DD) services; Home and Community Based Services (HCBS); or Supports for Community Living (SCL) services;
  - b. Costs of related prescription drugs, hospital services, related physician services, Medicare cost-sharing, or Medicare premiums; and

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Liens and Adjustments or Recoveries (continued)

- c. Any capitation payment made by the Medicaid agency to a managed care organization on behalf of the deceased recipient.
  3. The amount recovered shall not exceed the amount paid by the Medicaid agency on behalf of the deceased recipient for services received during periods of institutionalization.
- F. The Medicaid agency uses the following procedure to file its claim and provide notice of intent to recovery to the estate representative, family member or heir of the deceased Medicaid recipient:
1. The agency provides written notice to the estate representative, family member or heir of the deceased Medicaid recipient if the agency has such information. If no estate representative exists, notice shall be provided to the family members or heirs if the recipient has provided the agency with this information through the eligibility application process. The estate representative is responsible for notifying individuals who are affected by the proposed recovery.
  2. The notice includes the action the agency intends to initiate, the reason for the action, the amount of Medicaid's claim, exemptions and limitations to estate recovery, the address to contact the Medicaid agency and advises the representative to contact the Medicaid agency if more information is needed regarding Medicaid's claim. The notice advises the representative to respond to Medicaid's claim within 60 days.
  3. Included with the written notice is the general notice, as provided at the time of eligibility or recertification, advising the representative of the exemptions and the conditions that are considered when requesting an undue hardship exemption. The notice also contains a listing of the documentation the Medicaid agency will accept in proof of the request for an exemption.
- G. Estate recovery may be waived if either of the following two criteria is met:
1. The administrative cost of recovering from the estate is more than the total date-of-death value of the estate subject to recovery.
    - a. The administrative cost shall be comprised of the estimated financial equivalent of agency staff time and resources required to recover the full claim in any individual case.

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Liens and Adjustments or Recoveries (continued)

- b. This administrative cost shall be compared to actual date of death value, less any exemptions or limitations to recovery known at the time the estimate is made, including any payments made to contractors who may perform the recovery function. If the cost is equal or greater to the value subject to recovery, it shall be determined not cost effective to pursue recovery.
  - c. Based upon a review of historical data regarding the average value of cases, including extrapolated estimates of the expanded value of the estate under current rules, and the staff time and resources involved in securing recovery, the agency has determined that it is not cost effective to recover when the total date-of-death value of the estate is \$10,000 or less.
2. An undue hardship exists.
- a. The estate representative shall apply for an undue hardship exemption by making a written request to the Medicaid agency within 30 days of receipt of Medicaid's notice of the claim, and must also provide documentation to substantiate an undue hardship exists.
  - b. Medicaid will issue a decision on the exemption request within 30 days of receipt of the request and all supporting documentation. If a hardship exemption is denied, an estate representative's may request an appeal within 30 days of the denial, and an administrative hearing shall be conducted.
  - c. An undue hardship shall not exist if the deceased recipient created the hardship by resorting to estate planning methods under which the recipient illegally divested assets to avoid estate recovery.
- H. The Medicaid agency may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir. The estate representative shall submit to the Medicaid agency a written request for an exemption and provide verification of the cost of such exemption to the satisfaction of the Medicaid agency.
- I. A deceased recipient's estate shall be subject to recovery of Medicaid expenditures if it is adjudicated through a final administrative appeal process or court action that the recipient qualified for Medicaid fraudulently. If the recipient qualified for Medicaid benefits fraudulently, the exemptions or limitations established by administrative regulation shall not apply.
- J. The Division of Program Integrity, Recovery Operations Branch or its designee is responsible for collecting the payments, considering requests for exemptions, processing hearing requests and depositing funds in the appropriate Medicaid account.