

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kansas

LIENS AND ADJUSTMENTS OR RECOVERIES

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1. **The State uses the following process for determining that an institutionalized individual cannot reasonable be expected to be discharged from the medical institution and return home:**

There is a rebuttable presumption that a recipient is permanently institutionalized if the individual has 1) resided in a nursing facility, ICF/MR, or other medical institution for 6 months or longer, and 2) is required as a condition of receiving services to apply their income to the cost of care except for a Personal Needs Allowance (PNA). Verification is obtained from the individual's attending or admitting physician regarding the expectation and ability of the individual to return to the home. A lien is not imposed where the physician indicates the individual will likely return home.

If the state makes a determination that the recipient is not reasonably expected to be discharged from the medical institution and returned to their home, the state will send a notice to the recipient, and to the personal representative, guardian or conservator of the recipient. The notice will be in letter form and will contain the following information:

- a. the reason for the medical determination;
- b. the potential for the imposition of a lien on real estate owned by the recipient;
- c. the present value of the potential lien;
- d. the real estate subject to the potential lien;
- e. the applicable exemptions limiting the imposition of liens;
- f. the meaning of the term "lien";
- g. the statement that the imposition of a lien will not change the individual's ownership interest in the property nor cause the individual to lose eligibility due to placement of the lien;
- h. the administrative hearing rights of the recipient in the matter;
- i. the method and applicable time period for requesting an administrative hearing;
- j. the person who should receive the hearing request;
- k. the office that will be responsible for determining the issues in the hearing;
- l. the procedures used in the hearing;

The recipient or their representative may request a hearing within 30 days of the notice by contacting the agency or the administrative hearing office. The request for an administrative hearing must be in writing and reference the agency determination being contested by the recipient or their representative. The administrative hearing will follow the process and procedure noted in the Kansas Administrative Procedure Act. If no request for a hearing is received, the state will place a lien on the real property. If a hearing is requested, no action will occur until the final determination is reached, as specified by Kansas Administrative Procedure Act.

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):**

If a son or daughter claims they have provided care which would prevent the state from enforcing a lien on property, the state will use the following in determining the request:

- a) The son or daughter:
 - 1) has resided in and used the home as his or her principal place of residence for a continuous period of two years immediately prior to the date the recipient was admitted to a facility; and

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kansas

- 2) has resided in the recipient's residence on a continuous basis since that time.
- b) The recipient required care to remain in the home as evidenced by physician's records or statement, level of care scores or other relevant information such as home health records or private insurance records.
- c) The son or daughter provides a description of the type of care provided, including the duration and amounts of each service, and any documentation which supports the son or daughter's statements.
- d) Other information relevant to the particular case.
3. **The State defines the terms below as follows:**
- o **estate** – For services received prior to July 1, 2004, probate estate is defined through case law as those assets in which the decedents held an interest in his or her own right. For services received on or after July 1, 2004 the medical assistance estate is defined in K.S.A. 39-709 as including all real and personal property and other assets in which a decedent had any legal interest or title at the time of or immediately before death, to the extent of the interest or title.
 - o **individual's home** – Real property in which the recipient has an ownership interest and which he or she occupied as a primary place of residence immediately prior to admission to a medical institution.
 - o **equity interest in the home** – Ownership interest as recognized under Kansas law in property meeting the above definition of the individual's home.
 - o **residing in the home for at least one or two years on a continuous basis** – Consensual occupancy of the home as the primary residence without absence of more than a temporary period.
 - o **lawfully residing** – Living in the home with permission of the owner, or person with authority to give permission, and otherwise residing in a manner not contrary to or forbidden by law.
 - o **discharge from the medical institution and return home** – The release of an individual to the home property with an intent to stay.

4. **The State defines undue hardship as follows:**

The applicant can demonstrate that enforcement of the claim would result in an undue hardship to the applicant based on the factors listed in 5 below.

5. **The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause undue hardship, and when recovery is not cost-effective:**

A recipient of medical assistance, a representative of the recipient, a surviving family member of a deceased recipient or a representative of a surviving family member of a deceased recipient may request a waiver of recovery action. The request should be presented to the State by giving the request to the eligibility case worker for the recipient or by sending the request to the estate recovery unit at the address noted in the pre-litigation letter. The request should be presented within 30 days of the date on the pre-litigation letter. (This letter notice is explained in more detail in Paragraph 7). The request for waiver should be:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kansas

- a) in writing;
- b) identify the recipient;
- c) identify the requestor of the waiver, if different than the recipient, and their relationship to the recipient;
- d) identify the specific recovery action to be waived;
- e) the length of the waiver, if applicable, and
- f) the basis for the request for waiver of recovery.

The following guiding factors are used when making a determination on a request for waiver of recovery action:

- a) The impact of recovery on the financial circumstances or livelihood of the heirs or waiver applicant; examples include:
 - 1. The family or individual may have to rely on public assistance if hardship is not granted;
 - 2. The assets are a necessary part of the trade or profession in which a significant portion of the remaining family's income is derived.
- b) Actions of the family in assisting the decedent; particularly when such actions helped avoid or reduce medical costs which would have otherwise been incurred by the Medicaid program;
- c) The existence of other claims or liens, besides the state's claim or lien, which prevent the waiver applicant from receiving the assets.
- d) Other compelling circumstances as present by the waiver applicant.

The State will respond to a request for waiver of recovery action within 30 days of receipt of the request by sending a letter to the requestor of the waiver. The letter will state the decision of the State and its reasons for the decision.

If the State determines that a recovery would cause an undue hardship on an heir who has applied for a waiver, no recovery will be initiated. Similarly, if proceeding with the recovery would not be cost effective for the Agency, no recovery will be initiated.

In the situation where the waiver is granted and the waiver applicant dies before the expiration of the applicable time period for the filing of a probate action, the State may proceed with the recovery. This possibility will be noted in the decision letter granting the waiver.

If the waiver applicant and the State agree, the waiver of recovery may be granted for a limited time and use. If the waiver applicant and the State agree, a waiver of recovery may be granted subject to a payment plan allowing for a recovery using periodic payments by the waiver applicant.

If the State determines that no waiver, limited or complete, will be granted the recipient or their representative may request a hearing within 30 days of the date on the decision letter by the agency by contacting the agency or the administrative hearing office. The request for an administrative hearing must be in writing and reference the agency determination being contested by the recipient or their representative. The administrative hearing will follow the process and procedure noted in the Kansas Administrative Procedure Act. Any appeals from the decision of the hearing office will follow the procedure noted in the Kansas Administrative Procedure Act. No action will occur until the final determination is reached, as specified by Kansas Administrative Procedure Act.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kansas

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

The estimated costs involved in filing, pursuing and collecting the estate claim are less than the total expected amount of recovery. These costs include, but are not limited to, administrative costs, court costs, costs of litigation, travel costs, expert witness fees and deposition expenses.

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

Notice Requirements

Kansas uses four general categories of notices: informational notice as part of application for medical assistance; post-death general notice to families of medical assistance recipients; pre-litigation notice to families and interested parties of recovery action; and mandated notice to recipient and/or representative of State's intent to impose a medical assistance lien on real estate.

Application Notice

When a person applies for medical assistance, they are advised about estate recovery by an advisal printed above the signature lines of the application and by a separate pamphlet concerning estate recovery. The pamphlet provides information about estate recovery in Kansas including the means of recovery, the affected population, the potential for liens, the availability of administrative hearings, the availability of waiver of recovery action, and the means for contacting estate recovery staff. The pamphlet is provided by the eligibility worker as part of the application process.

Post-Death

When the State receives notification of the death of a Medicaid recipient, the eligibility information from the case is reviewed for recovery action. If the eligibility information indicates potential estate assets, a letter is sent to the surviving family or their representative that provides:

- The name and identifying information of the deceased medical assistance recipient;
- The amount of the claim;
- The nature and value of assets available for recovery;
- Protections from recovery allowed to certain classes (surviving spouse, minor child, disabled child, etc.);
- Availability of waiver of recovery for surviving family members when recovery could create an undue hardship and how to apply for same;
- A request for information concerning the family's intent to probate the estate; and
- Information for contacting estate recovery staff.

Under Kansas probate law, the state is a creditor of the estate. If the family does not wish to initiate a probate action, a creditor may initiate a probate action but, such action must be filed and set for hearing within six months of the death of the decedent. This general post-death letter and notice is used as an information gathering device in determining whether the State should proceed with a creditor's probate action.

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KANSAS MEDICAID STATE PLAN

Attachment 4.17-A

Page 5

Estate Recovery recovers medical care costs from the assets or estates of certain Medicaid consumers. Under federal law, the Estate Recovery Unit (ERU) is allowed to establish a claim for Medicaid on a member who received assistance prior to their death, was 55 years of age or older at the time of receipt of services or was an inpatient in a long-term care institutional facility (and was determined permanently institutionalized) where Medicaid paid a portion of the cost (regardless of the age at the time of receipt of services).

The probate claim is normally filed against the member's estate; however, if there is a surviving spouse, no claim is filed. Upon the death of the surviving spouse, a claim is filed against that spouse's estate, with the exception of the existence of a surviving child that is under 21 years of age, blind or permanently disabled according to the criteria used by the Social Security Administration.

Pre – litigation:

If the State elects to initiate an action in court, a pre-filing letter will be sent to the recipient, if alive, or to the family or representative of the deceased recipient. This pre – filing letter is an accepted practice in collection matters in Kansas. The pre – filing letter contains the information from the general post – death letter noted above and the further advise to the impacted party of the nature of the litigation action (probate action, quiet title, etc.) and the date by which the state anticipates filing the action. Once filed, any subsequent notices will be governed by Kansas civil code and procedure, probate code and procedure and statutes and caselaw specific to the area of law.

Lien Notice:

If the State elects to initiate a lien recovery, a notice will be sent that complies with the procedure and criteria noted above.