

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Tennessee

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:

A determination that an individual cannot reasonably be expected to be discharged to return home shall be made in accordance with the following process.

First, the PreAdmission Evaluation (PAE) for level of care which is certified by the physician shall specify whether discharge is expected and the anticipated length of stay in the institution. The following shall be deemed sufficient evidence that a person cannot reasonably be expected to return home and is thus permanently institutionalized:

- (1) An approved PAE, certified by the physician indicating that discharge is not expected, or
- (2) The continued stay of a resident of a medical institution at the end of a temporary stay predicted by his physician at the time of admission to be no longer than six months in duration.

Written notice of the determination that the individual residing in a medical institution cannot reasonably be expected to be discharged to return home shall be issued to the individual or his designated correspondent. The notice shall explain the right to request a reconsideration review. Such request must be submitted in writing to the Bureau of TennCare, Long Term Care Division, within 30 days of receipt of the written notice. The reconsideration review shall be a Commissioner's Administrative Hearing.

- 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):

Not applicable. Tennessee does not apply TEFRA liens.

- 3. The State defines the terms below as follows:

o estate

The term "Estate" includes all property and other assets, including real property, owned by the individual at the moment immediately preceding death and as limited or expanded by T.C.A. Titles 30, 31, and 32 and by the Courts of the State of Tennessee.

o individual's home

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as the place where one dwells; a settled abode where a person lives and to which, whenever he is absent, he has the intention of returning.

o equity interest in the home

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o residing in the home for at least one or two years on a continuous basis,
and

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as dwelling permanently or continuously in a home (as that term is defined above) for the applicable period. Unexplained absence or absence from the home for a continuous period of thirty (30) days or more creates a rebuttable presumption of abandonment.

o lawfully residing.

For the purposes of this section (Attachment 4.17A) and subject to State probate law, this term is defined as dwelling permanently or continuously with the consent of the person(s) who has beneficial ownership and the right to present use and enjoyment of the premises and not subject to an order to vacate the premises by a court of competent jurisdiction.

4. The State defines undue hardship as follows:

"Undue hardship" is constituted to be any of the following three circumstances:

- (1) The property of the estate subject to recovery is the sole income-producing asset of survivors, such as a family farm or other family business. There is no value limitation on the sole income-producing asset.
- (2) A sibling of the individual meets all of the following criteria:
 - (a) He was lawfully residing in the individual's home for a period of one year immediately before the individual's admission to the medical institution;
 - (b) He provided care to such individual for that one year, which permitted the individual to reside at home rather than in an institution; and
 - (c) He has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

The undue hardship shall be considered to no longer exist when such person no longer resides in such home.

- (3) A child of the individual meets all of the following criteria:
 - (a) He was lawfully residing in the individual's home for a period of two years immediately before the individual's admission to the medical institution;
 - (b) He provided care to such individual for those two years, which permitted the individual to reside at home rather than in an institution; and
 - (c) He has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

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The undue hardship shall be considered to no longer exist when such person no longer resides in such home.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship:

After the death of a beneficiary that is subject to estate recovery, a "Request for Release" (RFR) form and informational packet is provided to the beneficiary's last known address or authorized representative. The informational packet and RFR form explain the estate recovery process and also contain information about applying for an undue hardship. The RFR form is also made publicly available through the State Medicaid agency's website and provided to each county's probate court clerk.

Heirs or interested parties must submit the RFR form to the State Medicaid agency to determine if there is a claim. If there is a claim, the claim is provided to the requesting party. Information on how to apply for an undue hardship is provided a second time in the State's response to the RFR.

If the undue hardship request is approved, a deferral letter is provided to the person requesting the undue hardship. If the undue hardship request is denied, the requesting party may move the Probate Court for an order to waive (either completely or partially) or defer recovery. T.C.A. § 71-5-116.

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

All claims \$10,000 and below are not cost effective. If the claim is below \$10,000, then a release of the claim is provided by the State.

Additionally, it is not cost effective when the estimated costs of recovery, together with the estimated total of other claims with preference over the Medicaid claim, exceeds or nearly exceeds the assets in the decedent's estate. The phrase "nearly exceeds" recognizes uncertainty and allows a claim to be released or adjusted if the estimated gain is disproportionately small. It is not a number that can be quantified except on a case-by-case basis.

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):

- (1) Pursuant to T.C.A. § 71-5-116(c)(2), all probate estates must obtain a TennCare release prior to closing the estate.

- (2) Personal representatives must submit an RFR to the State Medicaid agency pursuant to T.C.A. § 71-5-116(d)(1)(B).

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- (3) Upon receipt of the RFR, the State provides to the personal representative in writing a claim setting out the amount to which it is entitled under law for estate recovery. If there is a claim, information on how to apply for statutory basis for waiver and undue hardship are provided. The standards and procedures for waiving estate recovery as an undue hardship are outlined in Item 5 above.
- (4) Upon receipt of notice of the opening of a Probate estate, the State files with the court having probate jurisdiction a claim as required by Tennessee probate law. The clerk of court is under a duty to send a copy of the claim to the personal representative. Recovery of such amount goes forward in accordance with the Tennessee Probate Code and all other applicable Tennessee Code sections and judicial decisions related to probate matters. An estate recovery claim has third priority status, following only administrative costs and funeral expenses. General creditor claims have a lower priority status than estate recovery claims. [See, T.C.A. § 30-2-317.] The State receives payments on claims by lump sum and in the normal course of probate proceedings. Accordingly, there are no administrative procedures for payment schedules or payment delays.