

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: South Dakota

### LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process to determine that a person residing in an institution cannot reasonably be expected to be discharged from the medical institution and return home:

Persons residing in a long-term care facility or institution who retain their home property with the intent to return home are identified and monitored. If the long-term care facility or institution indicates the person is not likely to be discharged within three months, the State sends notice to the person of intent to place a lien against the person's home property and other real property and files the lien for record. If the long-term care facility or institution indicates the person is likely to be discharged within three months but the person has not been discharged after seven continuous months, the State sends written notice to the person of intent to place a lien against the person's home property and other real property and files the lien for record. If the person disagrees with the decision to impose a lien he or she may request in writing an administrative hearing within 30 days of receiving the notice of intent to place a lien.

The written notice of intent to impose a lien explains:

- (a) What a lien is;
  - (b) The purpose of the lien, when it is placed, and the legal description of the property;
  - (c) That the lien does not affect ownership, control, or Medicaid eligibility;
  - (d) That the lien will dissolve when the recipient returns to his or her home property;
  - (e) That the State will not impose a lien if any of the following lawfully reside in the home:
    - (i) The person's spouse;
    - (ii) The person's biological or adopted child who is under the age of 21 or is blind or disabled, as defined and determined under Section 1614 of the Social Security Act;
    - (iii) The person's sibling who has equity interest in the home and who has resided in the home for a period of one continuous year immediately prior to the individual being admitted to a facility;
    - (iv) The person's biological or adopted adult child who has resided in the home and used the home as his or her principal place of residence at least two continuous years immediately prior to the date the individual was admitted to a facility and who can establish to the State that he or she provided care which permitted the person to remain at home rather than in an institution or long-term care facility.
  - (f) That the amount of the lien will be the amount of Medical Assistance paid on behalf of the person for institutional care (i.e., nursing facility services, intermediate care facility services for the mentally retarded, HCBS, and related hospital and prescription drug services). This would include all episodes of institutional care.
2. The following criteria are used for establishing that a permanently institutionalized person's biological or adopted son or daughter provided care as specified under regulations at 42 CFR

TN No. 09-1  
Supersedes  
TN No. 96-09

Approval Date 8/27/09

Effective Date 7/01/09

§433.36(f):

- (a) The biological or adopted son or daughter had 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 individual who qualifies for Medicaid was admitted to a facility and
- (b) The individual was evaluated and determined in need of long-term care at least two years prior to the date of admittance to the facility.

3. The State defines the terms below as follows:

- (a) Estate—All real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors and includes all personal property within or out of state. It also includes any funds remaining in an person's prepaid burial trust after the person's burial expenses were paid;
- (b) Individual's Home—A shelter which the Medicaid person owns and uses as his or her principal place of residence, including the buildings and contiguous property;
- (c) Equity Interest In the Home—Ownership interest;
- (d) Residing In the Home for At Least One Or Two Years On a Continuous Basis—The person has resided in and used the home as his or her principal place of residence for a continuous period of at least two years immediately prior to the date the person was admitted to a long-term care facility;
- (e) Discharge from the medical institution and return home—The person leaves the medical institution, returns home, and intends to remain home indefinitely; and
- (f) Lawfully Residing—The individual's sibling is considered to be lawfully residing in the home if the person is residing in the home with the permission of the owner, or if the owner is under guardianship or conservatorship, with the permission of the guardian or conservator.

4. The State defines undue hardship as follows:

Undue hardship is severe financial distress or a significant compromise to a person's health care or shelter needs.

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

Under South Dakota probate law, heirs initiate formal probate procedures to settle estates. (The State initiates probate procedures if there are no heirs.) A personal representative is appointed who gives notice to creditors. The State and other creditors must submit claims to the personal representative within four months of the notice. The State's claim is subject to State laws on payment of claims, including consideration of exemptions and priority of claims. The Circuit Court determines the allowance of the State's claim as a creditor.

The State may consider a compromise or waiver of its estate recovery claim under South Dakota law if recovery would cause undue hardship or is dependent upon a determination of liability of a third party in favor of a deceased Medicaid person and his or her heirs' or personal representative's attorney affirms through a sworn affidavit that the remainder of the settlement after payment of attorney's fees and costs is equal to or less than the amount of the State's claim for estate recovery, except that Medical assistance claims

TN No. 09-1  
Supersedes  
TN No. 96-09

Approval Date 8/27/09

Effective Date 7/01/09

related to assignment or subrogation rights under South Dakota law will not be compromised or waived by the State.

The State may compromise or waive its estate recovery claim up to a maximum of \$15,000 as of July 1, 2009, adjusted annually thereafter on July 1 by the medical care component of the Federal consumer price index or a fixed percentage increase of not less than 2 percent or more than 5 percent.

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

Cost-effectiveness exists if the quotient is greater than 1 when the amount recovered is divided by the cost of recovery. The average cost of initiating recovery in an uncomplicated recovery case is used as the cost of recovery in determining whether recovery will be cost-effective. Because the cost of recovery is subject to periodic fluctuations in personnel and postage costs, no specific dollar threshold is used.

However, a recovery of less than \$100 is waived as not cost effective. Other guidelines the State uses to determine cost-effectiveness are:

- (a) Because the costs of estate administration can deplete an estate valued at \$3,000 or less, the State evaluates each such case individually to determine cost effectiveness; and
- (b) After consultation with counsel, the State evaluates individually any claims rejected or disallowed in Circuit Court to determine if initiating further legal action is cost-effective.

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):

Following receipt of a notification of death of a Medicaid person who was residing in a nursing facility, intermediate care facility for mentally retarded, or person receiving home and community based services, the State sends written notice to the family contact for the person informing of the State's intent to recover any and all related medical assistance costs from the person's resource account after funeral expenses are paid.

The State pursues recovery from resource accounts allowed under Medicaid eligibility in accordance with State law and affidavit process in Uniform Probate Code for estates less than \$50,000. The State pursues all other estate recovery, except that pursued via property liens, pursuant to Uniform Probate Code.