

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

LIENS AND ADJUSTMENTS OR RECOVERIES

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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:

The Department requires either a physician's statement indicating that the individual is unable to return to their home or the recipient's residence in a medical institution for a period of 6 months, whichever occurs first. Notice is given to the recipient when they enter the medical institution and he/she may appeal the Department's determination within 90 days in accordance with the procedures 465 Nebraska Administrative Code.

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):

N/A as the State does not impose TEFRA liens.

3. The State defines the terms below as follows:

- Estate means all real and personal property and other assets included within the individuals estate as defined for, purposes of State probate law.
- Individual's home: N/A as the State does not impose TEFRA liens
- Equity interest in the home: N/A as the State does not impose TEFRA liens.
- Residing in the home for at least one or two years on a continuous basis: N/A as the State does not impose TEFRA liens.
- Lawfully residing: N/A as the State does not impose TEFRA liens.

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4. Anyone of the following situations may constitute an undue hardship:

- (1) An heir of the recipient resided in the recipient's home on a continuous basis for two years prior to the recipient's entry into a nursing home and the heir provided the type of unreimbursed care that delayed the recipient's entry into a nursing home;
- (2) An heir of the recipient resided in the recipient's home for two years prior to the recipient's receipt of recoverable medical services and the heir provided unreimbursed care that delayed the recipient's receipt of those services;
- (3) Payment of the Department's claim would cause heirs of the deceased recipient to be eligible for public assistance;
- (4) Waiver of the Department's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or
- (5) Other compelling circumstances.

Any heir of the estate of a Medicaid recipient may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully.

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:

A waiver applicant must be an heir of the estate and must apply for a waiver in writing within thirty days from the creditor's claim filing deadline or ninety days from the recipient's date of death if the estate is not probated. The written application must include:

- (1) A written statement of the applicant's relationship to the recipient with supporting documentation; and
- (2) A written statement of the basis for the hardship waiver under 471 NAC 38-004.02 with supporting documentation.

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The Department must review each application and issue a written decision within ninety days after the Department's receipt of the application. The Department's written decision must advise the applicant of the procedure for requesting an administrative hearing should the applicant want to appeal the Department's decision.

5. Recovery is not cost-effective when the cost of collection exceeds the amount of the Department's claim.
6. 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):

The Department evaluates cases for potential estate recovery via local caseworker referrals, attorney referrals and creditor's notices filed in probate proceedings. If the estate is being probated, the Department files a claim and follows the appropriate procedures as defined in the Nebraska Probate Code. If the estate is not being probated, the Department works with the family, attorney, guardian, or other person handling the recipient's estate, to obtain reimbursement of its claim. Waivers based on undue hardship are defined and granted, as stated above.