

**equity interest in the home* – Equity interest in the home means an ownership interest recognized under Minnesota law.

**residing in the home for at least one or two years on a continuous basis* – Residing in the home on a continuous basis means the person occupies the home as his or her primary dwelling, and intends to continue to occupy such home for the indefinite future.

**lawfully residing* – Lawfully residing means residing in a manner not contrary to, or forbidden by law.

** discharge from the medical institution and return home* – Discharge from a medical institution is actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to a home per plan of treatment.

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

The State follows the mandatory hardship standards for exemption of certain income, resource and property interests of American Indian and Alaska Natives specified in section 3810(A)(7) of the State Medicaid Manual.

The State does not otherwise define undue hardship in finite terms, but guides the determination process. These circumstances are not exclusive as there may be other situations that cause undue hardship. An undue hardship may exist when the circumstances described in one or more of the following paragraphs are present:

A. The estate claim could not be paid except by the sale of assets (real or personal property), subject to probate proceedings, for which the following statements are true for a period of at least 180 days prior to the date the decedent died and continue as true –

- the assets are used by the waiver applicant to produce income in his or her trade profession, or occupation, (trade, profession or occupation include a working farm that the waiver applicant actually operates, but does not include a farm that is not worked by the applicant, or a farm that is rented); and
- the assets are a necessary part of the waiver applicant's trade, profession or occupation; and
- the trade, profession or occupation in which the assets are used is the waiver applicant's sole source of income; and
- the waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.

B. The estate claim could not be paid except by the sale of the decedent's real estate subject to probate proceedings and the following are true –

- the waiver applicant, with an ownership interest in the property, actually and continuously occupies the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to occupy the dwelling; or an adult grandchild of the decedent resided in the decedent medical assistance recipient's home for at least two years immediately before the grandparent's institutionalization and since the date of the grandparent's institutionalization, continues to lawfully reside in the dwelling following the grandparent's death, and establishes by a preponderance of the evidence having provided care to the grandparent who received medical assistance, that the care was provided before institutionalization, and that the care permitted the grandparent to reside at home rather than in an institution; and
 - the real estate for which the hardship waiver is requested was classified as homestead property for property tax purposes under Minnesota Statutes, section 273.124 throughout the entire period of time referred to in the prior paragraph.
- C. Notwithstanding anything else to the contrary, hardship does not exist if the decedent took any illegal actions to divest or divert assets in order to avoid estate recovery.
5. *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. The Department of Human Services delegates the authority to recover Medicaid claims to county human service agencies. Claimants may request a waiver for undue hardship from the county agency filing the claim. The written notice claimants receive of the county's decision includes information on the right to appeal the decision through the State's administrative fair hearing process under Minnesota Statutes section 256.045.
 - B. The county agency will not waive an estate claim, even if circumstances are present that would grant a waiver for undue hardship, if the decedent's heirs or survivors would not receive a benefit from the waiver because of other filed claims against the estate.
 - C. The county agency will withdraw any estate claim, either fully or partially, after a determination of hardship has been made to all or part of the estate's assets. In the event that an estate claim has not been filed, the county agency will not file an estate claim in cases where a determination of hardship has been made on all or part of the estate assets.
 - D. An estate claim need not be filed in probate when it would not be cost-effective to make a recovery from the deceased medical assistance recipient's or recipient's spouse's estate. The decision to not file an estate claim can be made without an application being made for a waiver based on undue hardship.
6. *The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):*
- Cost-effective for estate claim purposes means that the total amount of the claim that the State is legally entitled to file, or the total amount the State is legally entitled to collect after filing an estate claim is equal to or greater than the estimated costs for filing, pursuing, and collecting the estate claim. In determining that recovery from an estate is not cost-effective, the costs to pursue the recovery are considered, including attorney time, travel, court fees, fees for a personal representative, staff and technical support costs.

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

The State follows these steps:

- A.** Reasonable effort to identify as many heirs and devisees as possible, including occupants with an ownership interest in the decedent's homestead.
- B.** Send to each of the identified individuals a Notice of Claim and an Application for a Waiver of Claim. This form contains
 - 1. a statement of the claim
 - 2. notice of the right to apply for a hardship waiver
 - 3. a statement of what constitutes undue hardship
 - 4. procedures and instructions for filing an application for an undue hardship, and the time period of 30 days to file an application from receipt of notice
 - 5. information regarding appeal rights and procedures
- C.** Review and determination on each application for waiver
 - 1. 30 day time period to make a determination on the application for waiver
 - 2. written response of the determination
 - 3. information regarding appeal rights and procedures