

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Wisconsin

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:

The worker in the certifying agency determines whether an individual residing in a nursing home cannot reasonably be expected to return home before starting the lien placement process.

This decision is made based on the individual's medical condition; for example if the stay is for recuperative purposes following acute care it is likely that the person can be expected to go home. On the other hand, if the individual has a diagnosis indicating a chronic condition, that is, a non-reversible and disabling ailment, it is likely that he or she will not be able to return home to live. This information is usually available from the hospital discharge planner, the nursing home's social worker and the individual or his or her family. If in doubt, the presumption would be that the person cannot be expected to return home. A statement signed by the individual's physician describing the individual's ability to return home based on their condition is considered in making this determination.

As part of the lien placement procedure, written notice is given to the individual that states that all requirements for imposing a lien are satisfied. The notice advises the individual of the rights to a fair hearing by sending a request to the Office of Administrative Hearings (OAH) within 45 days. The OAH address is stated in the notice.

An individual residing in a nursing home is entitled to an appeal of the county agency's determination that a lien can be filed or his or her home pursuant to the fair hearing process set forth under sect. 49.50(8), Wis. Stats., PW-PA 20.18, Wis. Admin. Code and HSS 104.01(5), Wis. Admin. Code.

No action to file a lien is taken until the 45 days have expired. If a fair hearing is requested, lien filing is deferred pending the outcome of the 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):

The son or daughter may demonstrate having rendered care or assistance that resulted in a delay in the need for institutionalized care by means of a notarized statement from an institutionalized individual's

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physician or another person or persons who have personal knowledge of the living circumstances of the individual. The statement must indicate that the individual was able to remain in his or her home because of the care provided by the child. A notarized statement only from the child will not satisfy this requirement.

3. The State defines the terms below as follows:

- o estate: All real and personal property within an individual's estate as provided in Wisconsin probate law.
- o individual's home: Property in which the individual has an ownership interest consisting of the individual's dwelling and the land used and operated in connection with the dwelling.
- o equity interest in the home: Possession of an ownership interest in the home. Such an ownership interest may be as a joint tenant, tenant in common, holder of a life estate, or other, similar form of ownership in which real estate may be jointly held, whether or not with a legally divided interest.
- o residing in the home for at least one or two years on a continuous basis: Continuous use of an individual's home by a sibling or child of the individual as a primary place of residence. A sibling must have resided in the home during the 12 consecutive months prior to the individual's receipt of institutionalized care. A child must have resided in the home during the 24 consecutive months prior to the individual's receipt of institutionalized care. During this time, the home was the individual's or child's mail address and/or address for driver's licensure and/or address used or legal to be used for voting registration.
- o discharge from the medical institution and return home: The attending physician has signed an order for discharge from the nursing home, following which the individual has returned to reside in his or her own home.
- o lawfully residing: Use of the home of an individual residing in a nursing home as a primary place of residence by a spouse, or a minor, blind or disabled child, or sibling with an ownership interest in the home. Such property must be the spouse's, child's or sibling's mail address, and/or address for driver's licensure, and/or address used or legal to be used for voting registration.

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4. The State defines undue hardship as follows:
- (a) If pursuing recovery would cause the heir or beneficiary to become or remain eligible for supplemental security income (SSI), food stamps under 7 USC ss. 2011 to 2029, aid to families with dependent children (AFDC) or medical assistance.
 - (b) If pursuing recovery would result in the heir or beneficiary losing his or her means of livelihood because the estate includes real property that is part of their business, including a working farm.
 - (c) If the heir or beneficiary is receiving State-funded general relief, relief to needy Indian persons or veterans benefits based on need.

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.

When an application requesting waiver of recovery due to hardship is received, a form is sent to the applicant. This form assists the applicant in providing the information the State needs to decide whether recovery will be waived. The information needed to determine whether hardship exists includes verification that the applicant is an heir or beneficiary of the deceased's will, the applicant's asset and income amounts, proof of eligibility for assistance programs and information concerning the applicant's business or livelihood.

The information provided by the applicant is reviewed and a decision is made whether the applicant meets the criteria of undue hardship. If the applicant meets the standard of undue hardship, recovery of the applicant's portion of the estate is waived. If undue hardship does not exist, the applicant is notified in writing. The applicant may request a fair hearing on the State's decision.

The State also has provisions to partially waive recovery to allow heirs and beneficiaries to retain personal effects of the deceased. The State will reduce its claim by up to \$3,000 if necessary to allow the deceased individual's heirs or beneficiaries to retain the following personal property:

- (a) The deceased's wearing apparel and jewelry held for personal use.
- (b) Household furniture, furnishing and appliances.

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- (c) Other tangible personal property not used in trade, agriculture or other business, not to exceed \$1,000 in value.

The State will also take a lien in full or partial settlement of an estate claim against the portion of the estate that is a home if any of the following reside in the home:

- (a) A child of the deceased individual of any age who resided in the home for at least 24 months before the individual became institutionalized or began receiving home and community-based waiver services and who provided care to the individual that delayed the individual's receipt of such services.
- (b) A sibling of the deceased individual who resided in the home for at least 12 months before the individual became institutionalized or began receiving home and community-based waiver services.

These liens are filed through the probate court and there are provisions that allow the above individuals to sell the home and purchase another home. The lien transfers to the new home.

Cost effectiveness of recovery is determined on a case by case basis considering but not limited to the following factors:

- (a) The administrative cost to recover.
- (b) The amount of the State's claim against the estate.
- (c) The amount of assets in the estate.
- (c) The type and degree of liquidity of the assets in the estate.
- (d) Claims of other priority creditors

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

Claims and liens are adjusted and settled to obtain the fullest amount practicable.

Generally, the State will file a claim in a court-supervised estate when the amount of the claim exceeds \$100. In the case of assets transferred without court supervision, the State generally will file a claim against

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the estate when both the claim amount and the amount of assets in the estate exceed \$50. The State will act to recover from nursing home personal accounts when both the claim amount and the asset amount exceed \$10. Experience has shown that recovery is cost-effective at these thresholds in most instances.

The state also recovers the costs of other state-funded health care programs from estates. Benefits paid on behalf of individuals participating in the Wisconsin Chronic Disease Program and the Community Options Program are recovered by the same methods used to recover medical assistance. Claims to recover benefits for all three programs may be filed in an individual's estate.

Wisconsin probate law divides claims against an estate into classes of priority and claims are paid according to that priority. All debts, charges or taxes owed to the United States, the state or a governmental subdivision or municipality of the state belong to the same class of claims. There is no priority among claims belonging to the same class. When estate assets are insufficient to pay all claims of a particular class, the payment of claims in that class is prorated. Generally, in estates probated with court supervision, payment toward individual claims in a class is prorated according to each claim's size in proportion to the total amount of claims in that class.

Estates under \$10,000 that do not include an interest in real estate may be settled by affidavit without court supervision. To achieve cost-effectiveness in recoveries from these small sum estates, the state prorates the amounts recovered for the various programs by standard fixed formulas. These formulas are based on the amount of benefits paid by each program in relation to the amount of reported assets of the estate.

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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):

The person handling the estate of a recipient or the surviving spouse of a recipient is required to give notice to the State when an estate is being probated or assets are being transferred. The name and address of the person handling the estate is contained in the notice given to the State.

The State either files a claim with the court or with the person handling the estate. In either case, the person handling the estate is provided with a copy of the claim and written notice of the hardship waiver provisions. The person handling the estate is responsible for notifying all heirs and beneficiaries of the deceased of the hardship waiver provisions. If the person handling the individual's estate cannot be determined, notice is included with the claim filed in probate court. The person handling the estate will then review the hardship waiver provisions when examining claims against the estate.

The hardship waiver notice specifies the individuals eligible to apply for a waiver, the criteria for granting a waiver, the application and review process and the applicant's right to a hearing. The heir or beneficiary must apply for a waiver within 45 days after the date the State mailed its claim or notice, whichever is later. The application must include the relationship of the applicant to the deceased, the criteria on which the application is based and supporting documentation.

The State has 90 days from the date the application was received to issue a written decision. The State will consider all information received within 60 days following the date the application is received. If the application is denied, the applicant is informed in writing and advised that he or she may request a fair hearing by sending a request to the Office of Administrative Hearings within 45 days. The address is stated. The fair hearing process is set forth in HSS 108.02(12)(e), Wis. Admin. Code.

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