

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 or an individual who is institutionalized in a hospital rather than 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 nonreversible 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 or hospital'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 alien are satisfied. The notice advises the individual of the rights to a fair hearing by sending a request to the Division of Hearings and Appeals (DHA) within 45 days. The DHA address is stated in the notice.

An individual residing in a nursing home or hospital is entitled to an appeal of the county agency's determination that a lien can be filed on his or her home pursuant to the fair hearing process set forth under DHS 1(4).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 §433.361(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 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:
  - Estate: For estate recovery purposes, all real and personal property to which the individual held any legal title or in which the individual had any legal interest at the time of death, to the extent of that title or interest, including assets transferred or conveyed to a survivor, heir or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust or any other arrangement, excluding an irrevocable trust.
  - 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.
  - 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, as marital property, or other, similar form or ownership in which real estate may be jointly held, whether or not with a logistically divided interest.

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- 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 siblings or child's mail address, and/or address for driver's licensure, and/or address used or legal to be used for voting registration.
  - Discharge from the medical institution and return home: The attending physician has signed an order for discharge from the nursing home or hospital, following which the individual has returned to reside in his or her own home.
  - Lawfully residing: Use of the home of an individual residing in a nursing home or an individual who is institutionalized in a hospital rather than 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 on driver's license, and/or address used for legal purposes including voter registration.
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 without supporting documentation related to proof of eligibility, 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 or the deceased's will or a co-owner or beneficiary of the deceased's non-probate property, the applicant's asset and income amounts, proof of eligibility for assistance programs and information concerning the applicant's business or livelihood.

When an applicant requesting waiver of recovery due to hardship is received with all the supporting documentation including proof of eligibility for assistance programs, a form is not sent to the applicant.

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 \$5,000 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,

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- (b) Household furniture, furnishings and appliances
- (c) Other tangible personal property not used in trade, agriculture or other business, not to exceed \$3,000 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 against homes that are transferred outside of the probate process. There are provisions that allow the above individuals to sell the home and purchase another home. The lien transfers to the new home.

Wisconsin may impose a post-death lien on the decedent's real property when the decedent is survived by a blind or disabled child or a child under age 21. The lien may not be enforced or recovered from during the lifetime of the blind or disabled child or before the minor child turns age 21. If the minor, blind or disabled child refinances the real property, the lien is subordinated to the new encumbrance. If the real property is sold for fair market value during the lifetime of the blind or disabled child or before the minor child turns age 21, the lien is released without recovery.

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,
- (d) The type and degree of liquidity of the assets in the estate,
- (c) 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 the estate when both the claim amount and the amount of assets in the estate exceed \$50. 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, the Community Options Program, and non-Medicaid funded Family Care are recovered by the same methods used to recover medical assistance. Claims to recover benefits for all programs may be filed in an individual's estate, the individual's surviving spouse's estate and against non- probate property.

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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 \$50,000 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.

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 estate of a 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 individuals' 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

For non-probate property, the State sends its claim to the co-owners and/or beneficiaries of a recipient's non-probate property. The State's claim includes written notice of the hardship waiver provisions and of the co-owners' and beneficiaries' right to request a fair hearing on the value of the recipient's interest in the non-probate property. The request for a fair hearing on the value of the recipient's interest must be made to the Division of Hearings and Appeals within 45 days of the date the State's claim was sent.

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 fair 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 Division of Hearings and Appeals within 45 days. The address is stated. The fair hearing process is set forth in s. DHS

108.02(12)(e), Wis. Admin. Code.

8. The State files claims to recover assets from deceased members. Certain income, property and resources of Native Americans and Alaska Natives are exempt from estate recovery. These are:
- Income and resources held in trust status.
  - Trust or non-trust property located within or near a current or prior federally recognized reservation, pueblo, or colony; or other geographic areas designated by the Bureau of Indian Affairs (BIA) Secretary.

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- Other geographic areas are service areas for tribes where the BIA provides financial assistance and social services programs to tribal members.
- Exemptions apply only to a tribal member's primary residence or homestead.
- Income and resources derived from reservation land. This includes income from rents, leases, usage rights, and natural resources (the origins must be able to be clearly traced to tribal land).
- Government reparation payments.
- Anything not included above that has unique religious, spiritual, traditional, and/or cultural significance that support survival or a traditional lifestyle according to tribal law or custom.

Also, exempt non-trust property is protected when it is passed down from a Native American to a relative. It is not necessary for the relative to be a tribal member in order for this non-trust property to be exempt.

Further, certain assets are also exempt from estate recovery for tribal members who have long-term care insurance policies that qualify under the Wisconsin Long-Term Care Insurance Partnership (LTCIP) program.

Recovery of the imposed lien that was placed prior to the individual death against the property can only be made after the individual's death if:

1. There is no surviving spouse; and
2. There is no surviving child under the age of 21 or surviving child that is blind or permanently and totally disabled, or a surviving child that is blind and disabled as defined in Section 1614.