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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:

Florida assumes that all institutionalized individuals whose home is not counted due to a statement of their intent to return home when they are able will return home when they are able. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

2. The following criteria are used for establishing that a permanently institutionalized son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

3. The State defines the terms below as follows:

● estate

Property of a decedent that is the subject of administration. (Section 731.201, Florida Statutes)

A. individual's home

Permanent residence means that place where a person has his true, fixed and permanent home and principal establishment to which, whenever absent, he has the intention of returning.

B. equity interest in the home

Not applicable. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

C. residing in the home for at least one or two years

Not applicable. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

D. on a continuing basis

Not applicable. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

E. discharge from the medical institution and return home

Not applicable. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

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F. lawfully residing

Not applicable. Florida Medicaid current policy is not to file liens against homestead property. Florida does recover other estate assets.

4. The State defines undue hardship as follows:

An undue hardship might exist when:

- A. There is property in the estate, and the property is listed as residential property by the County Tax Assessor's Office, and the heir(s):
- o owns a business, including farming and ranching, that is located at the residential property, and
 - o the business has been in operation at the residential property for at least 12 months preceding the death of the decedent;
 - o the business produces more than 50% of the heir's livelihood; and
 - o the recovery of the property would result in the heir(s) loss of their means of livelihood;
- or
- B. The heir(s) currently reside in the residence, and
- o resided there at the time of the death of the decedent;
 - o has made the residence his or her primary residence for the 12 months immediately preceding the death of the decedent; and
 - o owns no other residence;
- C. The only asset is a homestead of modest value;
- D. The heir(s) would be deprived of food, clothing, shelter, or medical care necessary for the maintenance of life or health;
- E. The heir(s) can document that they provided full-time care to the recipient that delayed the recipient's entry into a nursing home. The individual must be either the decedent's sibling or the son or daughter of the decedent and have resided in the individual's home for at least one year prior to death; or
- F. The cost involved in the sale of property would be equal to or greater than the value of the property.

"Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

An undue hardship does not exist solely because recovery will prevent any heirs from receiving an anticipated inheritance.

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:

Hardship Waiver:

The State's claim form contains a provision that informs the personal representative that a procedure exists to apply for a hardship waiver and to contact the contractor for a copy of the Request for Hardship Waiver.

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Upon receiving a request for a Hardship Waiver Request Form (by telephone or mail), the contractor will send to the requester, the following forms that are provided below:

RECEIPT OF REQUEST FOR WAIVER

(DATE)

Name of Personal Representative
Address
City, State Zip Code

Dear _____:
RE: Estate of: _____
MEDICAID I.D. #: _____

(NAME OF CONTRACTOR), on behalf of the State of Florida, by and through the Agency for Health Care Administration (AHCA), has received your request for waiver of AHCA's claim against the above-named estate. Your request will be given every consideration.

So that we may evaluate your request, please complete the attached form and provide documentation that justifies your basis for the request.

Send the completed form and documentation to:

Contractor Name
Address
City, State Zip Code

If we do not receive the necessary documentation within 30 days from the date given above, we will assume that you have withdrawn your request and that you will proceed to honor the State's claim accordingly.

(NAME OF CONTRACTOR)

REQUEST FOR WAIVER OF ESTATE RECOVERY

Mail to:
CONTRACTOR
On Behalf of the State of Florida
Address
City, State Zip

DECEDENT NAME: _____
DECEDENT'S STREET ADDRESS: _____
DECEDENT'S SOCIAL SECURITY NUMBER: _____
DECEDENT'S MEDICAID ID NUMBER: _____

Based upon the payment of medical services paid by the State of Florida, Agency for Health Care Administration (the Agency) on behalf of the decedent, the Agency intends to seek recovery for the services paid. The purpose of seeking recovery is to offset the cost of medical services paid by the taxpayers. Recovery will be sought from the proceeds of the decedent's estate.

The Agency's action is based upon its rights found in 42 CFR 433.156, Section 409.910, Florida Statutes, and the Omnibus Budget Reconciliation Act of 1995 (OBRA). Federal law prohibits recovery from the estate of a recipient only if the individual is survived by: 1) a spouse; 2) a child under 21 years of age; 3) a blind or disabled child; or 4) if recovery would place an undue hardship on the survivors. Where the State determines that estate recovery would work an undue hardship on the survivors or heirs, recovery may be compromised or waived.

(Continued below)

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Undue Hardship may exist when:

1. There is property in the estate, and the property is listed as residential property by the County Tax Assessor's Office, and the heir(s) owns a business, including farming and ranching, that is located at the residential property, and the business has been in operation at the residential property for at least 12 months preceding the death of the decedent:
 - o the business produces more than 50% of the heir's livelihood; and
 - o the recovery of the property would result in the heir(s) loss of their means of livelihood; or
2. The heir(s) currently reside in the residence, and
 - o resided there at the time of the death of the decedent;
 - o has made the residence his or her primary residence for the 12 months immediately preceding the death of the decedent; and
 - o owns no other residence;
3. The only asset is a homestead of modest value;
4. The heir(s) would be deprived of food, clothing, shelter, or medical care necessary for the maintenance of life or health;
5. The heir(s) can document that they provided full-time care to the recipient that delayed the recipient's entry into a nursing home. The individual must be either the decedent's sibling or the son or daughter of the decedent and have resided in the individual's home for at least one year; or
6. The cost involved in the sale of property would be equal to or greater than the value of the property.

"Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

An undue hardship does not exist solely because recovery will prevent any heirs from receiving an anticipated inheritance, but rather exists based on criteria 1 - 6 as stated above.

When establishing the amount of reduction in the State's claim, consideration will be given to:

1. contributions by the beneficiary to the value of the asset or to the support or care of the decedent;
2. any outstanding debt with a higher priority (e.g., mortgage) which has been assumed by the heir; and
3. other compelling circumstances.

The personal representative must complete the following section (Part 1) and provide a written explanation of his/her justification for the requested waiver or compromise of the State's claim against the estate (Part 2). Attach the explanation to this form. All requests should be accompanied by documented evidence of your basis. For example, if your basis for waiver or compromise is that the surviving heir is disabled, proof of the permanent disability must be attached to this form. Only requests that are accompanied by documentation will be considered.

PART 1:

I have read the criteria provided above and believe that recovery of the state's expenditures would result in an undue hardship.

Signature of Personal Representative

Date

Personal Representative's Street Address, City, State, Zip Code

Personal Representative's Telephone Number (including area code)

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PART 2:

Attach documentation to justify your claim of undue hardship. Letters of Administration must be included if issued. Alternatively, provide a statement signed by all heirs or potential heirs which supports the claim of undue hardship. The statement must identify all heirs or potential heirs, providing the full name, street address, telephone numbers, and relationship to decedent.

Examples of acceptable documentation include, but are not limited to:

- marriage license
- birth certificate
- Social Security Administration or Veteran's Administration Disability
- mortgage
- deed
- IRS forms (such as 1040 or Farm Deduction form)
- proof of residency such as driver's license or W-2
- canceled checks
- court orders
- realtor's statements (on corporate letterhead)
- physician's statements
- tax records.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF _____

Before me this day personally appeared _____
(Name of Affiant)

who, being duly sworn, deposes and says: I hereby swear that the attached documentation is true and correct to the best of my knowledge.

(Signature of Applicant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19____, by

(Name of person making statement.)

Personally known _____
OR Produced Identification _____
Type of Identification Produced _____

(SEAL)

PRINT, TYPE OR STAMP NAME OR NOTARY

Upon receipt of the Request, the contractor reviews the Request for completeness and the presence of documentation. If the package is not complete, the contractor marks the deficiency and returns the package to the requester with instructions to complete the missing or incomplete items.

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If the Request is complete, the contractor makes a recommendation to the State indicating their opinion as to whether the request meets the criteria for a hardship waiver. The Request, along with the documentation and recommendation, is forwarded to the State for approval or disapproval. All requests are received by the Estate Recovery staff, logged, reviewed, and transferred to the Chief, Medicaid Third Party Liability and Contract Management for final approval or disapproval. Within 15 days of receipt, the State will notify the Personal Representative and contractor of the State's decision.

All personnel who have responsibilities for reviewing requests from attorneys who are asking Medicaid to reduce or eliminate its claim will review the following questions prior to making a recommendation or decision about such request:

- A. Is there a letter from an attorney, or representative of the estate, which requests Medicaid to reduce or eliminate its claim?
- B. Is the request for reduction of Medicaid's claim fully documented and supported with specific, verifiable and relevant information?
- C. Is there a complete estate inventory attached to the request that details the estate's total value; and, is there a document that shows current and proposed distribution of all financial and real property assets of the estate in the event the request for Medicaid to reduce its claim is approved?
- D. Does the request confirm the presence of a competing and legitimate heir to the estate, as defined in Florida Statutes?
- E. Is there any information presented in the request to suggest or confirm that Medicaid's claim is flawed?
- F. Is there adequate information to support that if disposition of the estate is argued in court, a decision against Medicaid would create an adverse precedent and be harmful to the estate recovery program?
- G. If the petition is based upon humanitarian reasons, is there enough strong and corroborating information presented to shock the conscious, and forcefully argue that the claim should be reduced or eliminated?
- H. Is the total recoverable potential of the claim worthy of a prolonged and costly dispute?
- I. If the request is for disposition of property, is there any documentation detailing the description and location of the property and its current market appraised value, and what efforts have been made to liquidate same?
- J. Is there convincing information to support that if the rights to the estate's asset are argued in a court of law, Medicaid would lose?

All disapproval notices include a statement informing the Personal Representative that he may appeal the State's decision pursuant to Section 120.57, Florida Statutes, which provides an administrative hearing process for appealing decisions made by a State agency which affect the substantial interest of a party.

The State may compromise its claim when an undue hardship would result from full collection.

Cost Effectiveness

The standards are included in the response to question 6 below.

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The contractor determines the amount of the state's claim by reviewing the FMMIS. If the claim is under \$100, no claim is filed.

When the contractor determines from inspection of the inventory that only exempted property exists, no claim is filed. If a claim has already been filed, the claim may be withdrawn.

When the State determines that the amount of time, effort, and cost expended by the contractor are not equal to or greater than the net proceeds to be recovered, the State may instruct the contractor to cease recovery efforts.

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

A. Liquid assets: \$100.00

Agency staff have determined that the State would expend at least \$100 in the processing of a claim. This amount includes \$15 for filing of the claim with the appropriate clerk of the court, \$25 for opening and closing a file, and \$60 for processing a check. In the event the Agency made a recovery in the amount of \$100, the Agency would spend an equal amount for processing the claim and check. This would not be cost effective for the State.

B. Non-liquid assets:

automobile - \$1,000 minimum value. The State will pursue its right of recovery only if the net proceeds based upon the National Automobile Dealers Association (NADA) wholesale price is at least equal to or more than twice the cost of disposition of the automobile. This provision applies only to automobiles included in the estate (not the first exempt automobile).

non-homestead real property - \$50,000 equity. The State may compromise its claim when the claim amount is equal to or greater than the county tax assessor's value of the real property. Because of the high cost of disposing of real property, the State may not accept the transfer of real property in payment of the claim. Therefore, it becomes necessary that the personal representative sell the property. The Estate Recovery program may compromise its claim to the extent that the heirs may receive an amount equal to the actual attorney's fees awarded or personal representative's fees, awarded, whichever is less, provided it does not conflict with other provisions of Florida law. In such cases, the State must anticipate that it will receive an amount equal to or more than the amount received by the heirs in order to compromise. The individual's equity in the property becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence unless there is a surviving spouse or surviving child who is under age 21 or blind or disabled.

C. Pursuit of the State's claim may be terminated or compromised when in the opinion of the program's administration, in conjunction with the General Counsel, it is unlikely that the State would prevail in court based on current case law.

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D. Pursuit of the State's claim may be compromised when the personal representative's attorney fails to raise a legitimate defense that, if litigated, would likely be upheld by the court.

7. The State utilizes 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 may pursue its right of third party recovery after the death of the recipient and his/her surviving spouse, if any, and only when the individual has no surviving child under age 21, or a blind or disabled child as defined in §1614 of the Act. When a recipient's estate contains the proceeds from a tort recovery for which Medicaid paid the medical services, the State may continue to seek third party reimbursement from the estate of a recipient of any age.

At the time of Medicaid eligibility determination and redetermination, the applicant is informed in writing that acceptance of State aid creates a debt to the State, and that this debt may be recovered in full or in part after the death of the recipient. The applicant is provided a copy of the "Rights and Responsibilities Form" (HRS-ES Form 2064), which advises the applicant or representative of his/her rights and responsibilities under the program.

The Florida Constitution protects homestead from forced sale by creditors. Therefore, the State does not file any claims against the homestead property of living or deceased Medicaid recipients.

Beneficiary deaths are reported by district eligibility workers by use of a paper form (HRS Form 325). The contractor has instituted a process whereby he/she receives reports, on a monthly basis, from the 67 county Clerks of the Court that identify opened estates. The contractor matches names of decedents whose estates have been opened with the Medicaid eligibility file. The contractor files claims in the estates of deceased Medicaid recipients. This claim apprises the personal representative, court, interested parties, and other creditors of the State's intention to pursue recovery on the debt.

In addition, the contractor receives leads from the following sources:

1. direct notice from personal representative's attorneys;
2. direct notice from Medicaid staff (Agency for Health Care Administration);
3. direct notice from nursing home and hospital staff;
4. heirs; and
5. notices issued in Florida newspapers.

Florida Medicaid Estate Recovery staff estimate that the following process takes approximately six months to one year before reimbursement is received by the State. Much of this process is governed by Florida probate law (Chapters 731 - 735, Florida Statutes) and the Rules of Probate and Appellate Procedures. Such provisions apply to all creditor claims - not solely to the Florida Medicaid program.

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Upon the death of a Florida resident, the personal representative's attorney files a Notice of Administration with the Clerk of the Court in the last known county of residence. Florida law requires personal representatives to locate and notify all ascertainable creditors. Creditors have 30 days from receipt of a Notice of Administration or within 90 days of issuance of the Notice to file a claim with the Clerk of the Court. The contractor researches data received from various sources to identify newly opened estates. The names identified are matched against the individuals maintained on the Florida Medicaid Management Information System (FMMIS). Upon matching the records, the FMMIS is searched for paid claim history. All claims paid by the Florida Medicaid program on or after October 1, 1993, are included in the claim.

As the facts of the case become known, it is sometimes necessary to reduce the amount of the State's claim for various reasons. In each case where the State reduces its' claim, the justification is documented in the case file and in the settlement offers. All reductions of the State's claim must be approved by the Agency for Health Care Administration's General Counsel's office and Chief, Medicaid Third Party Liability and Contract Management.

In the event the personal representative disagrees with the State's claim, an Objection to Claim is filed with the Clerk of the Court. All Objections are received and reviewed by the State's contractor and must be answered within 30 days. Objections are addressed depending on the legal defenses claimed in the Objection. The contractor files a Motion for Summary Judgment for Objections which appear to be frivolous or have no statutory basis. In the event the personal representative's attorney filed the Objection for a frivolous reason, the contractor attempts to resolve the issue without court intervention. Suit is filed in court for Objections that involve legitimate legal questions and frivolous cases that are unresolved. The court then awards the amount to be distributed to the State. Once Medicaid has received the money owed, a Satisfaction form is prepared by the contractor and executed. The Satisfaction is mailed to the person remitting the funds (usually the personal representative or their attorney). It is their responsibility to file the Satisfaction with the Clerk of the Court.

OPTIONAL FORM 99 (7-90) *Call when received*

FAX TRANSMITTAL # of pages = 17

To Robbie Barefield From Carel Landford
 Decl./Agency Phone # 404-331-006400

Fax # 404-922-4502 Fax 404-331-20628
 NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

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