



Region 10  
2201 Sixth Avenue, MS/RX 43  
Seattle, Washington 98121

**MAR 07 2011**

Susan Dreyfus, Secretary  
Department of Social and Health Services  
Post Office Box 45010  
Olympia, Washington 98504-5010

**RE: Washington State Plan Amendment (SPA) Transmittal Number 10-019**

Dear Ms. Dreyfus:

The Centers for Medicare & Medicaid Services (CMS) Seattle Regional Office has completed its review of State Plan Amendment (SPA) Transmittal Number 10-019. This amendment implements Section 115 of MIPPA, which exempts Medicare cost-sharing benefits with the dates of service on or after January 1, 2010, from estate recovery for qualified Medicare Savings Program eligibles age 55 or over. In addition, Washington imposes TEFRA liens on the real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution on or after July 1, 2010.

This SPA is approved effective July 1, 2010.

If you have any additional questions or require any further assistance, please contact me, or have your staff contact Maria Garza at (206) 615-2542 or [maria.garza@cms.hhs.gov](mailto:maria.garza@cms.hhs.gov).

Sincerely,

Barbara K. Richards  
Associate Regional Administrator  
Division of Medicaid and Children's Health  
Operations

cc:  
Douglas Porter, Administrator, State Medicaid Director  
Mary Anne Lindeblad, Assistant Secretary  
Ann Myers, State Plan Coordinator

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:  
**10-019**

2. STATE  
Washington

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE  
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE  
July 1, 2010

5. TYPE OF PLAN MATERIAL (Check One):

- NEW STATE PLAN
- AMENDMENT TO BE CONSIDERED AS NEW PLAN
- AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

(MIPPA) Section 1917(b)(1) of the Social Security Act  
(TEFRA) Section 1917(a)(1)(B)(ii) of the Social Security Act. (P+I)

7. FEDERAL BUDGET IMPACT:

- a. FFY 2010 \$0 MIPPA + TEFRA (P+I)
- b. FFY 2011 \$0 MIPPA + TEFRA (P+I)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

~~(MIPPA)~~  
Numbered Pages 53, 53a, 53a-1 (P+I)  
Attachment 4.17-A page 2d (MIPPA) (P+I)  
~~(TEFRA) Numbered page 53, attachment 4.17-A page 1~~  
(P+I)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):

Numbered Pages 53, 53a (MIPPA) (P+I)  
Attachment 4.17-A page 2d (MIPPA) (P+I)  
~~(TEFRA) Numbered page 53, attachment 4.17-A, pg 1.~~  
(P+I)

10. SUBJECT OF AMENDMENT: Estate Recovery - state elects to impose TEFRA liens on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution on or after July 1, 2010  
Estate Recovery per MIPPA. Section 115, exemption of Medicare Cost Sharing benefits with dates of service on or after January 1, 2010, for qualified duals age 55 or over. (P+I)

11. GOVERNOR'S REVIEW (Check One):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
- COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
- NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
- OTHER, AS SPECIFIED: Exempt

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:  
Susan N. Dreyfus

14. TITLE:  
Secretary

15. DATE SUBMITTED:

Sept 29, 2010

16. RETURN TO:

Ann Myers  
Department of Social and Health Services  
Medicaid Purchasing Administration  
626 8<sup>th</sup> Ave SE MS: 45504  
POB 5504  
Olympia, WA 98504-5504

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED: September 29, 2010

18. DATE APPROVED: **MAR 07 2011**

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVAL: **JUL 01 2010**

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

Barbara K. Richards

22. TITLE:

23. REMARKS:

2/14/2011 - Pen & Ink changes authorized by the State.

REVISION: HCFA-PM-95-3 (MB)  
May 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
MEDICAL ASSISTANCE PROGRAM

State/Territory: WASHINGTON

Citation

42 CFR 433.36(c)  
1902(a)(18) and  
1917(a) and (b) of  
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

- / / The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.
- The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFS 433.36(c) – (g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.
- /X/ The State imposes liens on real property on account of benefits incorrectly paid.
- /X/ The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.
- The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)
- /X/ The State imposes liens on both real and personal property of an individual after the individual's death.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
MEDICAL ASSISTANCE PROGRAM

State/Territory: WASHINGTON

4.17 Liens and Adjustments or Recoveries (cont.)

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h) – (i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.  
/ / Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.
- (2) The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).
- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

/X/ In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

All Medicaid services listed in Attachments 3.1-A and 3.1-B provided to eligible clients age 55 and over, except for Medicare cost sharing benefits identified in 4.17 (b)(3-Continued). Through Dec. 31, 2009, Medicare cost-sharing and Medicare premiums for individuals also receiving Medicaid (dual eligibles), and premium payments to managed care organizations will be included in the statement of claim.

REVISION: HCFA-PM-95-3 (MB)  
May 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
MEDICAL ASSISTANCE PROGRAM

State/Territory: WASHINGTON

4.17 Liens and Adjustments or Recoveries (cont)

(b) (3) Adjustments or Recoveries (cont)

1917(b)(1)

Limitations on Estate Recovery – Medicare Cost Sharing:

- (i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid agency. The date of service for premiums is the date the State Medicaid agency paid the premium.
- (ii) In addition to being a qualified dual eligible, the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, and co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drug and hospital services) as well as optional Medicaid services identified in the State Plan, which are applicable to the categories of dual eligibles referenced above.

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON**LIENS AND ADJUSTMENTS OR RECOVERIES**

1. The state uses the following processes for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The department's primary determination is:

- The client's statement of intent to return home;
- A recommendation from the client's primary physician regarding permanent institutionalization; or
- Performance of a new medical review.

The department may make a secondary determination based on an existing determination that the client meets nursing facility or ICF/MR level of care criteria, in conjunction with a review of prior medical records by the state.

A determination that an individual is not likely to return home, made for purposes of imposing a lien, is entirely separate from and will have no effect or impact on the home's exemption as a resource for eligibility purposes based on the individual's declared intent to return to the home.

The client has the opportunity to dispute a "no potential for discharge" finding via an administrative hearing, allowing the client/representative to present medical evidence.

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 department accepts documentation from the client, the client's doctor, visiting nurse, home health provider, clergyman, or other bona fide witness:

That the client's child lived in the client's home for two years immediately before the institutionalization of the client; and

Provided care to the client which allowed the client to remain in the client's home.

A lien may not be placed on an individual's home if any of the following are lawfully residing in the home:

- The client's spouse;
- A child under 21 or blind or disabled; or
- A sibling having equity interest in the home and residing in the home for at least one year before the recipient is institutionalized.

3. The State defines the terms below as follows:

*Estate* means:

- All real and personal property and any other assets that pass upon the client's death under the client's will or by intestate succession.
- An estate also includes:  
For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets, except property passing through a community property agreement; or  
For a client who died after July 27, 1997, nonprobate assets.
- The value of the estate will be reduced by any valid liability against the deceased client's property at the time of death.

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WASHINGTON

## LIENS AND ADJUSTMENTS OR RECOVERIES (cont.)

## 7. Collection procedures (cont.)

within twenty-eight days of the date the applicant received the department's notice of intent to file a lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

- Be served on the Office of Financial Recovery in a manner in which shows proof of receipt, such as personal service or certified mail, return receipt requested.

Upon receipt of an application for an adjudicative proceeding, the department shall provide notice of the proceeding to all other ascertained titled property owners.

If no ascertained titled property owner files an application for the adjudicative proceeding within twenty-eight days of the date the department served a notice of intent to file lien, the department may file a lien against the deceased client's property for the amount of medical assistance long-term care correctly paid on behalf of the deceased client alleged in the notice of intent to file lien.

*Method of Applying for a Waiver, Hearing and Appeals Procedures, and Time Frames Involved:* Same as 4. and 5. above.

## 8. Tribal Exemptions for Estate Recovery

American Indian/Alaska Native income, resources, and property that were exempt from estate recovery as of April 1, 2003 under Federal instructions in the State Medicaid Manual remain exempt from Medicaid estate recovery according to section 1917(b)(3)(B) of the Act.