

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Jacob K. Javits Federal Building
26 Federal Plaza
Room 37-100
New York, New York 10278-0063

CMS

CENTERS for MEDICARE & MEDICAID SERVICES

January 17, 2012

Jason A. Helgeson, Deputy Commissioner
Office of Health Insurance Programs
New York State Department of Health
Corning Tower—Room 1441
Empire State Plaza
Albany, New York 12237

Dear Mr. Helgeson:

We have completed our review of New York State Plan Amendment submittal 11-42 “Definition of Estate” (Attachment 4.17-A, Page 1) and find it acceptable for incorporation into New York’s Medicaid Plan, effective September 8, 2011.

As you know, the State met its own legal requirement for changing the estate definition by putting out emergency regulations, but only for the effective period of those emergency regulations. As such, the change to the state plan can only be approved for the same dates covered by the emergency regulation which are September 8, 2011 through December 5, 2011. The revised estate definition can govern estate recovery claims for the emergency regulation period, but can only apply to Medicaid beneficiaries who date of death is within the same period. This does not mean that the estate recovery claim has to be filed with those dates, however.

New York can file another SPA whenever it chooses; for implementing the revised estate definition, however, the State will either need a new emergency regulation period or for a period with the effective date of regulations promulgated through the regular State process.

Enclosed please find copies of State Plan Amendment 11-42 and Form CMS-179.

Please note that as requested by NYS, we have substituted the CMS-179 submitted with the States response to our August 22, 2011 Request for Additional Information with the revised CMS-179 submitted to our office via the States January 6, 2012 e-mail.

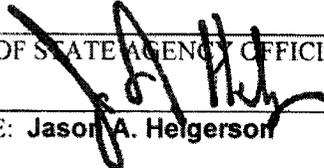
If you have any questions or wish to discuss this further, please contact Patricia Ryan of my staff at 212-616-2436.

Sincerely,



John R. Guhl
Acting, Associate Regional Administrator
Division of Medicaid and Children’s Health

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: #11-42	2. STATE New York
		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 September 8, 2011	
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: Section 1902(a)(18) of the Social Security Act and 42 CFR 433.36		7. FEDERAL BUDGET IMPACT: a. FFY 09/08/11-09/30/11 (\$ 245,631) b. FFY 10/01/11-09/30/12 (\$2,227,184)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.17-A: Page 1 ** SEE REMARKS		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.17-A: Page 1	
10. SUBJECT OF AMENDMENT: Expand the definition of estate to include any other property or assets in which an individual has any legal title or interest at the time of death, including jointly held property, retained life estates, and interests in trusts, to the extent of such interests, provided, however that a claim against a recipient of such property by distribution or survival shall be limited to the value of the property received or the amount of Medical Assistance benefits otherwise recoverable pursuant to the provisions of Section 1902(a)(18) of the Social Security Act. (FMAP = 50% 7/1/11 forward)			
11. GOVERNOR'S REVIEW (Check One): <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health Corning Tower Empire State Plaza Albany, New York 12237	
13. TYPED NAME: Jason A. Helgeson			
14. TITLE: Medicaid Director & Deputy Commissioner Department of Health			
15. DATE SUBMITTED: October 26, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: January 17, 2012	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: September 8, 2011		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: John Guhl		22. TITLE: Acting, Associate Regional Administrator Division of Medicaid and State Operations	
23. REMARKS: ** By means of this SPA, New York State proposes to expand the definition of estate to include any other property or assets in which an individual has any legal title or interest at the time of death, including jointly held property, retained life estates, and interest in trusts, to the extent of such interest, provided, however that a claim against a recipient of such property by distribution or survival shall be limited to the value of the property received or the amount of Medical Assistance benefits otherwise recoverable pursuant to the provisions of Section 1902(a)(18) of the Social Security Act.			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: New York

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:

See Supplement 4.17-A

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):

A son or daughter can establish that he or she has been providing care which permitted the individual to reside at home by submitting evidence that he or she made arrangements or actively participated in arranging for care, either directly or indirectly, full-time or part-time.

3. The State defines the terms below as follows:

- estate: includes all the individual's real and personal property and other assets passing under the terms of a valid will or by intestacy. Pursuant to regulations adopted by the Commissioner of Health, which may be promulgated on an emergency basis, an individual's estate also includes any other property in which the individual has any legal title or interest at the time of death, including jointly held property, retained life estates, and interests in trusts, to the extent of such interests; provided, however, that a claim against a recipient of such property by distribution or survival shall be limited to the value of the property received or the amount of medical assistance benefits otherwise recoverable pursuant to Section 1902(a)(18) of the Social Security Act, whichever is less.
- individual's home: the former principal place of residence owned by the permanently institutionalized individual or the deceased recipient.
- equity interest in the home: an individual's right to the use of and share in the proceeds from the sale of the property, as demonstrated by the presence of his/her name on the title.
- residing in the home for at least one or two years on a continuous basis: and evidence that the relative was in residence on a regular basis for the continuous one or two years.
- lawfully residing: the fact of the son or daughter's presence in the home as evidenced by postal, motor vehicle, or voting records or by the testimony of a neighbor or other party.

TN#: #11-42

Approval Date: JAN 17 2012

Supersedes TN#: #95-28

Effective Date: SEP 08 2011