

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 21, 2011

Mr. Michael Melendez
Associate Regional Administrator
Department of Health & Human Services
Centers for Medicare & Medicaid Services
New York Regional Office
Division of Medicaid and Children's Health
26 Federal Plaza - Room 3800
New York, New York 10278

RE: SPA #11-42

Dear Mr. Melendez:

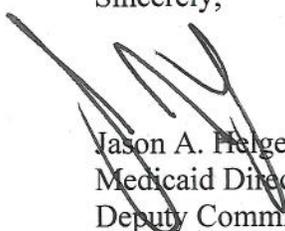
The State requests approval of the enclosed amendment #11-42 to the Title XIX (Medicaid) State Plan effective June 1, 2011 (Appendix I).

A summary of the plan amendment is provided in Appendix II. Copies of pertinent sections of enacted State statute are enclosed for your information (Appendix III).

In keeping with our continued agreement, this amendment is being sent to you prior to the end of the second quarter.

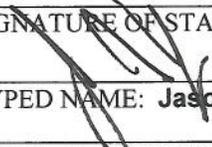
If you or your staff have any questions or need any assistance, please contact Karla Knuth, of my staff, at (518) 473-8822.

Sincerely,



Jason A. Helgeson
Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs

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 June 1, 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 06/01/11-09/30/11 (\$ 483,560) b. FFY 10/01/11-09/30/12 (\$2,600,000)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.17-A: Page 1		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 = 56.88% 4/1/11-6/30/11; 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. Helgerson			
14. TITLE: Medicaid Director & Deputy Commissioner Department of Health			
15. DATE SUBMITTED: June 21, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED:	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

Appendix I
2011 Title XIX State Plan
Second Quarter Amendment
Non-Institutional Services
Amended SPA Pages

Section 360-7.11 is amended to read as follows:

Section 360-7.11. Medical assistance liens and recoveries.

(a) Definitions.

(1) Estate means: (i) all of a decedent's real and personal property and other assets passing under the terms of a valid will or by intestacy; and (ii) any other real and personal property and other assets in which the decedent had any legal title or interest at the time of death, including such assets conveyed to a survivor, heir, or assign of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement, to the extent of the decedent's interest in the property immediately prior to death.

(2) Interest in property immediately prior to death includes the value of:

(i) the person's proportionate share of property held in a joint tenancy, tenancy in common, or similar arrangement;

(ii) a retained life estate, based on the actuarial life expectancy of the life tenant;

(iii) funds in a jointly owned bank account, except to the extent that the surviving joint owner documents his or her interest in the account through verifiable deposits and withdrawals;

(iv) the person's per capita share of jointly owned securities;

(iv) the principal and accumulated interest of a revocable trust;

(v) the principal and accumulated interest of an irrevocable trust funded in whole or in part with the assets of the person or the person's spouse to the extent that the person was entitled to the distribution of such principal and interest pursuant to the terms of the trust, and if the person was entitled to receive trust income, any income that, as of the date of the person's death, was required to be but had not been distributed; and

(vi) remaining payments from an annuity purchased by or with the assets of the person or the person's spouse.

(3) Retained life estate means: (i) a life estate created by a person or the person's spouse in property in which the person or spouse held any interest at the time the life estate was

created; or (ii) a life estate created for the benefit of a person or the person's spouse in property in which the person or spouse held any interest within five years prior to the creation of the life estate.

(b) Liens.

(1) The [social services district] MA program may not impose any lien against a person's property prior to his or her death for MA paid or to be paid on his or her behalf except:

[(1)] (i) based upon a court judgment for benefits incorrectly paid; or

[(2)] (ii) against claims and suits for personal injuries, to recover the amount of MA furnished to a person on and after the date the person incurred the injuries; or

[(3)] (iii) with respect to the real property of a person who is an in-patient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and who is not reasonably expected to be discharged from the medical institution and return home, provided that:

[(i)] (a) any such lien will dissolve upon the person's discharge and return home; and

[(ii)] (b) no lien may be imposed on the person's home if the person's spouse, child under 21 years of age, certified blind or certified disabled child of any age, or sibling who has an equity interest in the home and who resided in the home for at least one year immediately before the date of the person's admission to the medical institution, is lawfully residing in the home.

(2) Liens shall be imposed on property and assets described in subparagraph (ii) of paragraph (1) of subdivision (a) of this section as soon as practicable after the person's death.

[(b) Adjustments and recoveries] (c) Recoveries - generally.

(1) [A social services district] The MA program may make no adjustment or recovery for MA correctly paid except from:

(i) the estate of a person who was [65] 55 years of age or older when he or she received MA; or

(ii) the sale of real property subject to a lien imposed on account of MA furnished to a person described in subparagraph [(a)] (b) (1)(iii) of this section, or from the estate of such a person; or

(iii) a legally responsible relative of an MA recipient, and then only the amount of MA granted, provided the relative has sufficient income and resources which he or she fails or refuses to make available. The amount of income and resources required to be

contributed by a legally responsible relative is determined under Subpart 360-4 of this Part.

(2) An adjustment or recovery under subparagraph (1)(i) or (ii) of this subdivision may be made from a person's estate only after the death of the person's surviving spouse, and only when the person has no surviving child who is under 21 years of age or who is certified blind or certified disabled.

(3) In addition to the limitations set forth in paragraph (2) of this subdivision, in the case of a lien on a person's home, no adjustment or recovery may be made when:

(i) a sibling of the person resided in the home for at least one year immediately before the date of the person's admission to the medical institution, and has lawfully resided in the home on a continuous basis since the date of admission; or

(ii) a child of the person resided in the home for a period of at least two years immediately before the date of the person's admission to a medical institution, provided care to such person which permitted the person to reside at home rather than in an institution, and has lawfully resided in the home on a continuous basis since the date of admission.

(d) Estate recoveries.

(1) Notice of claim. As soon as practicable after the death of a person who received MA or the surviving spouse of such a person, the MA program will provide a written notice of claim to the estate fiduciary, if applicable, and to individuals in possession of property described in subparagraph (ii) of paragraph (1) of subdivision (a) of this section. Such notice will:

(i) set forth the basis for the estate claim, and the specific laws and/or regulations supporting the claim;

(ii) specify the amount determined to be owed to the MA program as of the date of the notice;

(iii) describe the criteria for being granted a deferral or waiver of the estate recovery, and the timeframes for requesting such deferral or waiver;

(iv) indicate that the MA program has imposed or may impose a lien against any real property described in subparagraph (ii) of paragraph (1) of subdivision (a) of this section; and

(v) instruct the estate fiduciary to inform the person's dependents, heirs, or survivors of the MA program's claim and of their right to seek a deferral or waiver of the estate recovery, or to contest the MA program's claim.

(2) Waiver of estate recovery. Recovery of MA correctly paid shall be waived in whole or in part if it would result in undue hardship. Any estate beneficiary, estate fiduciary on behalf of an estate beneficiary, or person in possession of property described in subparagraph (ii) of paragraph (1) of subdivision (a) of this section, may request that recovery be waived on the basis of undue hardship.

(i) Undue hardship may be found to exist when: the estate asset subject to recovery is the sole income-producing asset of the beneficiary or beneficiaries, such as a family farm or business, and income produced by the asset is limited; the estate asset subject to recovery is a home of modest value and the home is the primary residence of the beneficiary; or there are other compelling circumstances.

(ii) Undue hardship will not be found to exist based solely on the inability of any of the beneficiaries to maintain a pre-existing lifestyle, or where the alleged hardship is the result of MA or estate planning methods involving divestiture of assets.

(3) Deferral of estate recovery.

(i) The MA program must defer estate recovery:

(a) during the lifetime of the person's surviving spouse;

(b) during any period in which the person has a surviving child who is under age 21 or who is certified blind or disabled; and

(c) with respect to the home of a deceased Medicaid recipient, when one of the relatives described in paragraph (3) of subdivision (c) of this section.

(ii) The MA program may defer estate recovery if:

(a) the asset subject to recovery is an interest in real property and undue hardship has not been found to exist;

(b) a dependent, heir, or survivor is living in and not willing to sell the real property;

(c) the dependent, heir, or survivor cannot pay the MA estate claim in full unless the property is liquidated;

(d) the dependent, heir, or survivor has applied for but been unable to obtain financing in order to pay the MA claim; and

(e) a written agreement has been entered into between the MA program and the dependent, heir, or survivor whereby the MA program holds a lien on the property, and the dependent, heir, or survivor agrees to pay the amount of the MA claim in accordance with a reasonable payment schedule, subject to reasonable interest;

[(4)] (e) [A social services district] The MA program may maintain an action pursuant to sections 101 and 104 of the Social Services Law to collect from a trustee, grantor, or grantor's spouse any beneficial interest of the grantor or grantor's spouse in any trust established other than by will, to reimburse [such district] the program for the amount of MA granted to, or on behalf of, a grantor or grantor's spouse. The beneficial interest of the grantor or grantor's spouse includes any income and principal amounts to which the grantor or grantor's spouse would be entitled under the terms of the trust, by right or in the discretion of the trustee, assuming the full exercise of discretion by the trustee.

[(5)] (f) If an MA recipient receives an insurance settlement for personal injuries which includes an amount for medical bills, the [social services district] MA program may recover from such amount the cost of MA provided for the treatment of the injuries.

[(6)] (g) [A social services district] The MA program may maintain an action under the Debtor and Creditor Law to set aside any transaction which appears to have been made for the purpose of qualifying a person for MA or for avoiding a lien or recovery of MA paid on behalf of an MA recipient.

(h) Nothing in this section shall authorize the imposition of liens or pursuit of MA recoveries against assets exempted from such liens and recoveries by federal or State law.

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Appendix II
2011 Title XIX State Plan
Second Quarter Amendment
Non-Institutional Services
Summary

Summary
SPA #11-42

This state plan amendment proposes to expand the definition of "estate" to include assets that bypass probate in order to recover more assets from a deceased Medicaid recipient over age 55.

Appendix III
2011 Title XIX State Plan
Second Quarter Amendment
Non-Institutional Services
Authorizing Provisions

CHAPTER 59 OF THE LAWS OF 2011
S.2809-D/A-4009.D - Part H

§ 53. Subdivision 6 of section 369 of the social services law, as added by chapter 170 of the laws of 1994, is amended to read as follows:

6. For purposes of this section, ~~[the term]~~ an individual's "estate" ~~[means]~~ includes all of the individual's real and personal property and other assets ~~[included within the individual's estate and]~~ passing under the terms of a valid will or by intestacy. Pursuant to regulations adopted by the commissioner, 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 this section, whichever is less. Nothing in this subdivision shall be construed as authorizing the department or a social services district to impose liens or make recoveries that are prohibited by federal laws governing the medical assistance program.