

**0312****LIENS & RECOVERY OF MA PAYMENTS****0312.05****LEGAL BASIS**

REV:04/1998

To conform with federal mandates enacted in the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) and Rhode Island law (section 40-8-15 as amended June 30, 1995), lien and recovery policy is modified to apply to the estates of recipients, whether categorically or medically needy, fifty-five (55) years of age or older at the time of receipt of Medical Assistance.

Under previous provisions of state law and the Department of Human Services (DHS) Manual, liens had applied to medically needy recipients, 65 years of age and older, as of May 18, 1982 and to categorically needy recipients, 65 years of age and older, as of June 1, 1994.

**0312.10****APPLICATION OF THE LIEN**

REV:04/1998

The lien shall apply to the individual's estate which includes all real and personal property and other assets includable within the individual's probate estate. Consequently, an individual's probate estate may be comprised of liquid assets as well as real property, including any resources remaining at the time of death which were allowable in the individual's Medical Assistance eligibility determination. For example, the lien would apply to the previously allowable \$4,000 resource (medically needy resource standard).

A lien cannot attach to assets which are not the subject of a probate estate initiated within the State of Rhode Island, or in any other state in which the individual was a domiciliary. For example, real or personal property which passes by operation of law, (e.g., passes to a surviving joint tenant(s) or the surviving tenant by the entirety) or passes to beneficiaries under a contract, deed, or other instruments such as trust agreements or insurance policies, or any other property which does not require the initiation of a probate process to convey title or beneficial interests or ownership to others, is excluded from the lien process. For other forms of investment or when an asset is in question, the Legal Unit at Central Office may be consulted.

The lien for the recovery of Medical Assistance expenditures:

- o Does not attach during the recipient's lifetime;
- o Does not attach to any real or personal property that is not included or includable in the deceased Medicaid recipient's probate estate.

The lien for the recovery of Medical Assistance expenditures:

- o Does cover all periods of receipt of Medical Assistance from and after age 55. The recipient does not have to be receiving Medical Assistance at the time of death.
- o Does attach at death to all assets included or includable within the individual's probate estate. That is, any and all assets that are subject to probate or to assets where there is no probate due to the use of the Rhode Island "small estates" statute (R.I.G.L. Chapter 33-24-1, et seq.).
- o Does attach to and remain a lien upon the estate property, whether or not the property is transferred, and upon all property acquired by the executor or administrator in substitution therefore while that property remains in his or her hands until the Medical Assistance is paid, but the lien shall not affect any tangible personal property or intangible personal property after it has passed to a bona fide purchaser for value.

**0312.15**

#### **EXCEPTIONS TO THE LIEN**

REV:01/2002

A lien SHALL NOT apply:

1. For periods of receipt of Medical Assistance before the recipient reached the age of 55.
2. If the recipient is survived by:
  - o A spouse; or,
  - o A child who is under the age of twenty-one (21); or,
  - o A child who is blind or permanently and totally

disabled as defined in Title XVI (SSI) of the Social Security Act.

An individual who is a survivor of the deceased recipient need not be residing in property of the estate or be a beneficiary of the estate.

Receipt of SSI, RSDI or Railroad Retirement (RR) benefits is acceptable evidence of disability. However, if the child is not in receipt of such benefits, the characteristic of disability must be determined by the Office of Medical Review located at Central Office. Staff is to specify on the AP-65 that the purpose of the referral is to determine whether the child qualifies as a disabled child, thus exempting the parent from the lien provision.

0312.20

## CLIENT NOTIFICATION

REV:04/1998

During application for Medical Assistance for the individual who is fifty-five or older at the time of application or who will turn fifty-five before recertification, the individual, or his/her representative, must be advised that, under Rhode Island law, receipt of Medical Assistance may constitute a lien upon his/her estate. Similarly, at recertification for Medical Assistance for an individual who is fifty-five years of age or older or who will become fifty-five before the next recertification, it must be explained to such individual that the lien is an attachment against the individual's estate, taking effect at death, which allows the Department of Human Services to recover from the individual's estate any Medical Assistance paid on behalf of the individual from the time s/he became fifty-five years of age (and after the effective date of the law). The exceptions in Section 0312.15 relative to certain survivors must be explained to the applicant.

0312.25

## PROCEDURES

REV:01/2002

When an individual aged 55 or older is found eligible for Medical Assistance, the Eligibility Technician/LTC social caseworker completes the sections on the MA-89M pertaining to the recipient's resources and family information.

The MA-89M is filed in the case record. At each recertification, the MA-89M is reviewed with the recipient and the information is revised as needed. The MA-89M remains filed in the case record and used only in event of the individual's death.

**0312.30**

**RECOVERY**

REV:04/1998

Recovery of Medical Assistance expenditures by the Department of Human Services is a function of the Division of Health Care Quality, Financing and Purchasing, TPL Unit. However, it is the responsibility of the Eligibility Technician or LTC worker closing a Medical Assistance case due to the death of an individual aged fifty-five years or older to complete the remaining sections of the MA-89M which has been filed in the case record. The MA-89M is forwarded to the TPL Unit at Central Office.

Based on the information regarding the deceased's resources and the assistance which would by law be recovered, a decision regarding recovery is made by the TPL Unit.

DHS Recovery Practices

- A. The TPL Unit initiates estate recoveries upon receipt of information (from internal or external sources) relative to the death of a Medical Assistance recipient who was at least 55 years of age, and responds to requests from estate representatives to release and/or discharge liens upon payment of reimbursable amounts or upon determination by the TPL Unit that a lien is inapplicable.
- B. The TPL Unit does not automatically file an encumbrance in the land evidence records. It is DHS' policy not to encumber the chain of title to real estate until the DHS claim is contested by the legal representatives of the estate, or until it appears that the legal representatives of the estate are unresponsive to the TPL Unit's inquiries or claims.
- C. Usually, the recovery process begins with a letter to the next of kin or legal representatives requesting estate asset information. In most cases, there are no assets left after payment of funeral expenses and

other preferred debts (R.I.G.L. 33-12-11), and no recovery is pursued by DHS. If requested, the TPL Unit will issue a discharge of lien. If there are any assets remaining to pay the DHS claim, in whole or in part, the TPL Unit will request reimbursement by letter which provides an accounting of the Medical Assistance expenditures. Upon receipt of payment, the TPL Unit will issue a discharge of lien.

- D. If DHS is notified of the pendency of a probate estate either in response to a written notice from the executor/administrator, (see In Re: Estate of Santoro, 572 A. 2d 298, R.I. (1990) and R.I.G.L. 33-11-5.1 for notice to creditor requirements), the TPL Unit will file a formal claim in the estate. Land evidence lien notices are not normally filed at this time (see B. above). Lien notices are filed in the land evidence records if the claim is contested.
- E. In accordance with R.I.G.L. 40-8-15(b), and R.I.G.L. 33-11-5.1, legal representatives and/or the heirs-at-law of the decedent are required to provide to the DHS, TPL Unit, within sixty (60) days of the date of death, written notice identifying the decedent, the assets included in the individual's probate estate, the social security number and date of birth of the decedent, and the names and addresses of all persons interested in, or entitled to take any share of the individual's probate estate.

#### **0312.35**

#### **DISCHARGE OF LIEN**

REV:04/1998

DHS will issue a discharge of its lien in each of the following situations:

1. Upon payment in full of its claim;
2. Upon payment of its claim in part by payment to DHS of all remaining estate assets after allowance for the preferences outlined in R.I.G.L. 33-12-11 and any court approved expenses relating to any pre-existing guardianship or conservatorship of the decedent.
  - a. DHS does not "compromise" or reduce its claim except as provided above;

- b. DHS will require the sale or liquidation of non-liquid assets;
  - c. DHS does not accept deferred or installment payments.
- 3. Upon a determination by DHS that the lien is inapplicable due to:
  - a. A statutory exception listed above; or,
  - b. The decedent was never a recipient of Medical Assistance, was not age 55, or was receiving Medical Assistance but was not "Medically Needy" or "Categorically Needy" during the relevant time periods; or,
  - c. DHS received reimbursement from another third party source or insurer; or,
  - d. No assets are included or includable in the decedent's probate estate.

**0312.35.05**

**Request for Discharge Due to Inapplicability**

REV:04/1998

There is no required form to request a discharge of a lien due to inapplicability. A written request should be sent to the Division of Health Care Quality, Financing and Purchasing, TPL Unit, 600 New London Avenue, Cranston, RI, 02920, and should contain, at a minimum:

- 1. A copy of the Death Certificate;
- 2. The decedent's social security number;
- 3. A detailed explanation of the basis for a finding of inapplicability (for example, no assets of the deceased individual were included or were includable within the individual's probate estate), with appropriate documentation for the finding. Acceptable documentation may include affidavits;
- 4. A description of the real estate (tax assessor's plat/lot numbers and street address).

The TPL Unit will review and verify the information and will compare with information previously disclosed on Medical Assistance applications on file with DHS. If approved, the TPL Unit will issue a discharge of lien.

**0312.40**

**UNDUE HARDSHIP CONSIDERATION**

REV:04/1998

The Department of Human Services (DHS) may make adjustments to and settle estate liens to obtain the fullest amount practicable.

A lien may be postponed in whole or in part when the Department determines execution of the lien would work an undue hardship.

An undue hardship may be found to exist and execution of the lien may be postponed if a sale of real property, in the case of an individual's home, would be required to satisfy a claim, if all of the following conditions are met.

An heir or beneficiary may request that the Department of Human Services delay the execution of its lien if:

- 1) an individual was using the property as a principal place of residence on the date of the recipient's death; and,
- 2) that individual resided in the decedent's home on a continual basis for at least twenty-four (24) months immediately prior to the date of the deceased recipient's death; and,
- 3) that individual has, from the time the Department first presented its claim for recovery against the deceased recipient's estate and after, annual gross income in an amount not to exceed 250 percent of the then applicable federal poverty level (FPL) income standard based on

the same family size, and assets not to exceed the then applicable Medically Needy resource standards (see section 0338.05).

If an individual meets the above criteria, the heir(s) or beneficiary(ies) may submit a request to the Department of Human Services, TPL Unit for consideration of undue hardship and the

delay of the execution of the Department's lien against the property if it appears that the individual is able to continue to reside in the property.

Requests for consideration of undue hardship will be reviewed by a team of three members therein designated by the Director of the Department of Human Services, of which one member will be from the DHS Office of Legal Services. The review team will render decisions by giving due consideration to the equities involved as well as the obligations of the parties involved.

In addition to the foregoing criteria, undue hardship will be determined by the Department on a case-by-case basis and will include, but will not be limited to, the following examples, e.g., the individual or self, on whose behalf the heir(s) or beneficiary(ies) is requesting a consideration of undue hardship, would:

- A. be rendered homeless without the resources to find suitable housing; or,
- B. lose his/her means of livelihood; or,
- C. be deprived of food, clothing, shelter, or medical care such that life would be endangered should a finding of undue hardship be denied.

**0312.40.05**  
REV:04/1998

#### **Application for Undue Hardship Consideration**

A requestor shall mail his or her application for an undue hardship consideration in writing to the Department within 45 days after the date the Department has filed its claim with probate court. The application shall include the following information:

1. the relationship of the undue hardship applicant to the decedent and copies of documents establishing that relationship; and,
2. the basis for the application and documentation supporting the undue hardship applicant's position; and,
3. supporting documentation that the requestor has the legal standing and will be allowed to continue to reside in the property indefinitely should the undue hardship request be



approved.

The Department may require additional documentation, such as a current title examination, a list of existing creditors, etc. as adequate proof that its decision to defer its lien will not otherwise adversely affect its claim.

The Department shall review each application and issue a written decision within 90 days after the application was received by the Department. The Department shall consider and base its decision on all information received with the application and any independent investigation it may undertake.

The decision shall be the final decision of the Department.

#### **0312.40.10                      Undue Hardship Granted**

REV:04/1998

If the Department finds that an undue hardship exists, the execution of the lien is delayed for as long as:

- the undue hardship grantee is alive and residing in the property; and has income and assets not to exceed the amounts specified in Section 0312.40.
- the undue hardship circumstances upon which the decision is based continue to exist; and,
- as long as the property is adequately maintained and continues to exist in its then current state, (e.g., if the structure is destroyed by fire, the lien will be executed against the real estate if it appears that the home will not be rebuilt).

The circumstances of the hardship will be subject to review by the Department at least every two years provided, however, that the grantee must notify the Department of any material change in circumstances, income and/or assets.

#### **0312.40.15                      Transfer/Sale of Property**

REV:04/1998

If the owner of the property sells or transfers ownership of the home, the Department of Human Services will execute the lien.