

0312

LIENS & RECOVERY OF MA PAYMENTS

0312.05

LEGAL BASIS

REV: 11/2012

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 Medicaid.

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

Rhode Island General Law 40-8-15 was again amended in 2012 by the 2013 state budget article (House Bill 7323 Aaa). Effective July 1, 2012, a lien shall attach against property, which is included or includable in the decedent's probate estate, regardless of whether or not a probate proceeding has been commenced in a probate court. Such a lien shall only be effective upon proper prior notice and if the lien is recorded in the land evidence records in accordance with section 40-8-15. The July 1, 2012 amendments also impact notice provisions for: (a) liens filed by the Executive Office of Human Services (EOHHS); and (b) notice to EOHHS upon the filing of a probate estate.

The notice and affidavit provisions of this section apply to all probate proceedings commenced on or after July 1, 2012. All probate estates filed before July 1, 2012 are subject prior notice provisions to the State of Rhode Island the extent provided by law. Nothing in this section shall be interpreted to mean that a probate estate filed before July 1, 2012 is not subject to recovery to the extent of the distribution of Medicaid.

This section, as it applies to all probate proceeding of a decedent aged fifty-five (55) or older, shall include voluntary informal probate proceedings and any references to an executor or administrator shall include, without limitation, a voluntary executor or voluntary administrator.

0312.10

APPLICATION OF THE LIEN

REV:11/2012

The lien shall apply to the individual's estate which includes all real and personal property and other assets that are included or 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 Medicaid eligibility determination. For example, the lien would apply to the previously allowable \$4,000 resource (medically needy resource standard).

Other than as provided in section 0312.12, 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, annuity, 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 shall attach against property of a recipient, which is included or includable in the decedent's probate estate, regardless of whether or not a probate proceeding has been commenced in the probate court by the Executive Office of Health and Human Services or by any other party. Provided, however that such lien shall only attach and shall only be effective against the recipient's real property included or includable in the recipient's probate estate upon proper prior notice and if such lien is recorded in the land evidence records and is in accordance with section 40-8-15. Decedents who have received Medicaid are subject to the assignment and subrogation provisions of sections 40-6-9 and 40-6-10.

The lien for the recovery of Medicaid 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 Medicaid expenditures:

- o Does cover all periods of receipt of Medicaid from and after age fifty-five (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 (RIGL 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 Medicaid 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. If there are questions concerning the passage to a bona fide purchaser, the case will be referred to the EOHHS Legal Office as referenced in section 0312.12
- o Notice of said lien shall be sent to the duly appointed executor or administrator, the decedent's legal representative, if known, or to the decedent's next of kin or heirs at law as stated in the decedent's last application for

Medicaid, thirty (30) days prior to filing in the land evidence records. Said notice shall include appeal rights as noted in section 0312.35.05.

0312.12 Requirements for Transfer/Sale of Property

EFF:11/2012

Whenever an individual who is receiving Medicaid, transfers an interest in real or personal property on or after July 1, 2012, such individual shall notify the Executive Office of Health and Human Services within ten (10) days of the transfer:

EOHHS Legal Office
Louis Pasteur Building
Howard Ave., Building #57
Cranston, RI 02920

Such notice shall also be sent to the individual's local office. The notice shall include, at a minimum, the individual's name, social security number or, if different, the Executive Office of Health and Human Services (EOHHS) identification number, the date of transfer and the dollar value, if any, paid or received by the individual who received benefits under this chapter, and the name of the person and relationship of the person to whom the transfer was made.

In the event a Medicaid recipient fails to provide the required notice of the transfer to the EOHHS and in the event the recipient, his/her guardian, conservator or agent under a power of attorney, if applicable, his/her spouse and/or immediate family members knew or should have known that such individual failed to provide such notice and that person(s) receives any distribution of less than fair market value as a result of the transfer, he or she shall be liable to the EOHHS to the extent of the uncompensated value of the transfer, up to the amount of Medicaid benefits paid on behalf of the recipient.

Moreover, any such individual shall be subject to the provisions of RIGL section 40-6-15 and any remedy provided by applicable state and federal laws and rules and regulations. Failure to comply with the notice requirements set forth in the section shall not affect the marketability of title to real estate transferred.

0312.15 EXCEPTIONS TO THE LIEN

REV:01/2002

A lien SHALL NOT apply:

1. For periods of receipt of Medicaid before the recipient reached the age of fifty-five (55).
2. If the recipient is survived by:
 - a. A spouse; or,
 - b. A child who is under the age of twenty-one (21); or,
 - c. 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, as described above, 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.

0312.15.05 REDUCTIONS OF THE LIEN UNDER QLTCIP Program

REV:07/2008

RI has established a Qualified Long Term Care Insurance Partnership (QLTCIP) program.

This Qualified LTC Insurance Partnership provides:

1. For the disregard of a Medicaid applicant's resources in an amount equal to the benefits paid by their QLTCIP policy as of the time of their application for Medicaid; and
2. For the total amount paid by the individual's QLTCIP policy at the time of death to be disregarded in the determination of the amount to be recovered from a beneficiary's estate.

The amount that will be protected during estate recovery is the same amount that was disregarded in the eligibility determination. (There may be continuing QLTCIP policy payments after Medicaid eligibility is established, so if the person later gains assets, he/she may have more protected than he/she had at the time of eligibility.

Thus, the total amount paid by the individual's QLTCIP at the time of death is to be disregarded in the determination of the amount to be recovered from a beneficiary's estate).

0312.20 CLIENT NOTIFICATION

REV:04/1998

During application for Medicaid for the individual who is fifty-five (55) or older at the time of application or who will turn fifty-five (55) before recertification, the individual, or his/her representative, must be advised that, under Rhode Island law, receipt of Medicaid may constitute a lien upon his/her estate. Similarly, at recertification for Medicaid for an individual who is fifty-five (55) years of age or older or who will become fifty-five (55) 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 Executive Office of Health and Human Services to recover from the individual's estate any Medicaid paid on behalf of the individual from the time s/he became fifty-five (55) 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 fifty-five (55) or older is found eligible for Medicaid, 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:11/2012

Recovery of Medicaid expenditures by the Executive Office of Health and Human Services is a function of the Division of Health Care Quality, Financing and Purchasing, Medicaid Third Party Liability (TPL) Unit and the EOHHS Legal Office. However, it is the responsibility of the Eligibility Technician or LTC worker closing a Medicaid case due to the death of an individual aged fifty-five (55) 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.

Executive Office of Health and Human Services (EOHHS) Recovery Practices:

- A. Upon the filing of a petition for admission to probate of a decedent's will or for administration of a decedent's estate, when the decedent was fifty-five (55) years or older at the time of death, a copy of said petition and a copy of the death certificate shall be sent to the EOHHS. Such notice will be sent to:

EOHHS Legal Office
Louis Pasteur Building
Howard Ave., Building #57
Cranston, RI 02920

The notice requirements of this section are in addition to any notice that may be required pursuant to R.I.G.L. § 33-11-5.1 entitled Duty to notify known or reasonably ascertainable creditors.

If the EOHHS requests additional information, an executor or administrator shall complete and send to the EOHHS a form prescribed by that office and shall provide such additional information within thirty (30) days of the request. Petitioners shall maintain documentation evidencing notice to the EOHHS Legal Office and file a copy of this notice with the probate court prior to hearing. In the case of a voluntary probate proceeding, since there is no hearing, a copy of the notice to EOHHS shall be filed with the probate court with the voluntary petition.

For estates open on or after July 1, 2012, should a petitioner fail to send a copy of the petition and a copy of the death certificate to the EOHHS Legal Office and a decedent has received Medicaid for which the EOHHS is authorized to recover, no distribution and/or payments, including Administration fees, shall be disbursed. Any person and/or entity that

receives a distribution of assets from the decedent's estate shall be liable to the EOHHS to the extent of such distribution.

Compliance with the provisions of this section shall be consistent with the requirements set forth in section 33-11-5 and the requirements of the affidavit of notice set forth in section 33-11-5.2. Nothing in these sections shall limit the EOHHS from recovery, to the extent of the distribution, in accordance with all state and federal laws.

The TPL Unit initiates estate recoveries upon receipt of information (from internal or external sources) relative to the death of a Medicaid recipient who was at least fifty-five (55) years of age, and responds to requests from estate representatives to release and/or discharge liens upon payment of reimbursable amounts.

- B. The TPL Unit does not automatically file an encumbrance in the land evidence records.
- 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 (RIGL 33-12-11), and no recovery is pursued by the EOHHS. If requested, the TPL Unit will issue a discharge of lien. If there are any assets remaining to pay the EOHHS claim, in whole or in part, the TPL Unit will request reimbursement by letter which provides an accounting of the Medicaid expenditures. Upon receipt of payment, the TPL Unit will issue a discharge of lien.
- D. If the EOHHS 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 RIGL 33-11-5.1 for notice to creditor requirements), the EOHHS Legal Office will file a formal claim in the estate. Land evidence lien notices are not normally filed at this time.

0312.35 DISCHARGE OF LIEN

REV:11/2012

The Executive Office of Health and Human Services (EOHHS) 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 EOHHS of all remaining estate assets after allowance for the preferences outlined in RIGL 33-12-11 and any court approved expenses relating to any pre-existing guardianship or conservatorship of the decedent.
 - a. EOHHS does not "compromise" or reduce its claim except as provided above;
 - b. EOHHS will require the sale or liquidation of non-liquid assets;
3. Upon determination that #1 and #2 above are satisfied and the lien is recorded in the land evidence records.

0312.35.05 Discharge of Inapplicable Recorded Lien

REV:11/2012

The Executive Office of Health and Human services will issue a discharge of a recorded lien upon a determination by EOHHS that the lien is inapplicable. Inapplicability occurs in the following situations:

1. If there is a statutory exception as found in section 0312.15; or,
2. The decedent was never a recipient of Medicaid, was not age fifty-five (55), or was receiving Medicaid but was not "Medically Needy" or "Categorically Needy" during the relevant time periods; or,
3. The EOHHS received reimbursement from another third party source or insurer; or,
4. No assets are included or includable in the decedent's probate estate; or

There is no required form to request a discharge of an inapplicable lien.

A written request for discharge should be sent to:

Division of Health Care Quality,
Financing and Purchasing
TPL Unit
Hazard Building
Bldg #74, West Road
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 Medicaid applications on file with the EOHHS. If approved, the TPL Unit will issue and record a discharge of lien within forty-five (45) days of receipt of the request for discharge due to inapplicability or refer the request to the EOHHS Legal Office, if necessary. Any interested party who disputes the applicability of the land records lien, within thirty (30) days of the proper prior notice as provided in section 0312.10, shall be afforded an opportunity to request an administration hearing (RIGL 42-35-9).

0312.40 UNDUE HARDSHIP CONSIDERATION

REV:11/2012

The Executive office of Health and Human Services (EOHHS) 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 EOHHS 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 EOHHS Legal Office 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 Medicaid Director, to include the Long Term Care Administrator, one member from the EOHHS Legal Office, and one member from the Medicaid Office of Policy Development. The review team will render decisions by giving due consideration to the equities involved as well as the obligations of the parties involved.

4. Additionally, 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 Application for Undue Hardship Consideration

REV:04/1998

A requestor shall mail his or her application for an undue hardship consideration in writing to the Department within forty-five (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 ninety (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 Under Hardship

REV:11/2012

If the owner of the property sells or transfers ownership of the home, the Executive Office of Health and Human Services will execute the lien.