

TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 10 - EOHHS GENERAL PROVISIONS

SUBCHAPTER 00 - GENERAL PROVISIONS

Part 4 - Collections and Payments: Liens and Recovery of Medicaid Payments

4.1 LEGAL authority

In accordance with federal mandates and R.I. Gen. Laws § 40-8-15, this lien and recovery regulation applies 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.

4.2 OVERVIEW

- A. 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 R.I. Gen. Laws § 40-8-15.
- B. This Part, as it applies to all probate proceeding of a decedent aged fifty-five years (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.

4.3 Definitions

- A. As used in this section, the following terms shall be construed as follows:
 - 1. "Estate", with respect to a deceased individual, means all real and personal property and other assets included or includable within the individual's probate estate.
 - 2. "Executive Office of Health and Human Services" or "EOHHS" means the state agency established in 2006 under the provisions of R.I. Gen. Laws Chapter 42-7.2 *et seq.* within the executive branch of state government and serves as the principal agency for the purposes of managing the Departments of Children, Youth, and Families (DCYF); Health (DOH); Human Services (DHS); and Behavioral Healthcare, Developmental

Disabilities, and Hospitals (BHDDH). The EOHHS is designated as the "single state agency," authorized under Title XIX of the U.S. Social Security Act (42 U.S.C. § 1396a *et seq.*) and, as such, is legally responsible for the program / fiscal management and administration of the Medicaid Program.

4.4 APPLICATION OF THE LIEN

- A. 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.
- B. Other than as provided in § 4.15 of this Part, 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. Real or personal property which passes by operation of law, 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.
- C. The lien shall attach against property of a beneficiary, 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 EOHHS or by any other party. Provided, however that such lien shall only attach and shall only be effective against the beneficiary's real property included or includable in the beneficiary's probate estate upon proper prior notice and if such lien is recorded in the land evidence records and is in accordance with R.I. Gen. Laws § 40-8-15. Decedents who have received Medicaid are subject to the assignment and subrogation provisions of R.I. Gen. Laws §§ 40-6-9 and 40-6-10.
- D. The lien for the recovery of Medicaid expenditures:
 - 1. Does not attach during the beneficiary's lifetime;
 - 2. Does not attach to any real or personal property that is not included or includable in the deceased Medicaid beneficiary's probate estate.
- E. The lien for the recovery of Medicaid expenditures:
 - 1. Does cover all periods of receipt of Medicaid from and after age fifty-five (55).

2. The recipient does not have to be receiving Medicaid at the time of death.
3. 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. Gen. Laws § 33-24-1 *et seq.*).
4. 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 § 4.5 of this Part.
5. 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 § 4.11 of this Part.

4.5 REQUIREMENTS FOR TRANSFER/SALE OF PROPERTY

- A. 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 EOHHS within ten (10) days of the transfer:
 1. EOHHS Legal Office, Virks Building, 3 West Road, Cranston, RI 02920
- B. 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 EOHHS identification number, the date of transfer and the dollar value, if any, paid or received by the individual who received benefits, and the name of the person and relationship of the person to whom the transfer was made.
- C. In the event a Medicaid beneficiary fails to provide the required notice of the transfer to EOHHS and in the event the beneficiary, 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 beneficiary.

- D. Moreover, any such individual shall be subject to the provisions of R.I. Gen. Laws § 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.

4.6 EXCEPTIONS TO THE LIEN

- A. A lien shall not apply:
1. For periods of receipt of Medicaid before the beneficiary reached the age of fifty-five (55).
 2. If the beneficiary 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.
- B. An individual who is a survivor of the deceased beneficiary, as described above, need not be residing in property of the estate or be a beneficiary of the estate.
- C. 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 EOHHS.

4.7 REDUCTIONS OF THE LIEN UNDER QLTCIP PROGRAM

- A. 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.
 3. The amount that will be protected during estate recovery is the same amount that was disregarded in the eligibility determination. (There may

be continuing QLTICIP 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).

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

4.8 CLIENT NOTIFICATION

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 renewal, 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 renewal 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 renewal, it must be explained to such individual that the lien is an attachment against the individual's estate, taking effect at death, which allows EOHHS 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 § 4.6 of this Part relative to certain survivors must be explained to the applicant.

4.9 RECOVERY

- A. 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 EOHHS.
- B. EOHHS Recovery Practices:
 1. 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:
 - a. EOHHS Legal Office, Virks Building, 3 West Road, Cranston, RI 02920.
 2. The notice requirements of this section are in addition to any notice that may be required pursuant to R.I. Gen. Laws § 33-11-5.1 entitled "Duty to notify known or reasonably ascertainable creditors."
 3. If the EOHHS requests additional information, an executor or administrator shall complete and send to 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.

4. 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.
 5. Compliance with the provisions of this section shall be consistent with the requirements set forth in R.I. Gen. Laws § 33-11-5 and the requirements of the affidavit of notice set forth in R.I. Gen. Laws § 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.
 6. EOHHS initiates estate recoveries upon receipt of information (from internal or external sources) relative to the death of a Medicaid beneficiary 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.
- C. EOHHS does not automatically file an encumbrance in the land evidence records.
- D. 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. Gen. Laws § 33-12-11) and no recovery is pursued by the EOHHS. If requested, EOHHS will issue a discharge of lien. If there are any assets remaining to pay the EOHHS claim, in whole or in part, EOHHS will request reimbursement by letter which provides an accounting of the Medicaid expenditures. Upon receipt of payment, EOHHS will issue a discharge of lien.
- E. If the EOHHS is notified of the pendency of a probate estate either in response to a written notice from the executor/administrator, (see R.I. Gen. Laws § 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.

4.10 DISCHARGE OF LIEN

- A. 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 R.I. Gen. Laws § 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 §§ 4.10(A)(1) and (2) if this Part above are satisfied and the lien is recorded in the land evidence records.

4.11 DISCHARGE OF INAPPLICABLE RECORDED LIEN

- A. EOHHS 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 § 4.6 of this Part; or
 2. The decedent was never a beneficiary 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
 5. There is no required form to request a discharge of an inapplicable lien. A written request for discharge should be sent to:
 - a. EOHHS, Virks Building, 3 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, 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).
- B. EOHHS will review and verify the information and will compare with information previously disclosed on Medicaid applications on file with the EOHHS. If approved, EOHHS 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 § 4.4 of this Part shall be afforded an opportunity to request an administration hearing (R.I. Gen. Laws § 42-35-9).

4.12 UNDUE HARDSHIP CONSIDERATION

- A. EOHHS may make adjustments to and settle estate liens to obtain the fullest amount practicable.
- B. A lien may be postponed in whole or in part when EOHHS determines execution of the lien would work an undue hardship.
- C. 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.
- D. 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 EOHHS 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 (250%) 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.

- E. 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 EOHHS's lien against the property if it appears that the individual is able to continue to reside in the property.
- F. Requests for consideration of undue hardship will be reviewed by a team of three members therein designated by the Medicaid Director. The review team will render decisions by giving due consideration to the equities involved as well as the obligations of the parties involved.
- G. Additionally, undue hardship will be determined by EOHHS on a case-by-case basis and will include, but will not be limited to, the following:
 - 1. Be rendered homeless without the resources to find suitable housing; or
 - 2. Lose his/her means of livelihood; or
 - 3. Be deprived of food, clothing, shelter, or medical care such that life would be endangered should a finding of undue hardship be denied.

4.13 APPLICATION FOR UNDUE HARDSHIP CONSIDERATION

- A. A requestor shall mail his or her application for an undue hardship consideration in writing to EOHHS within forty-five (45) days after the date EOHHS 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.
- B. EOHHS may require additional documentation, such as a current title examination or a list of existing creditors, as adequate proof that its decision to defer its lien will not otherwise adversely affect its claim.
- C. EOHHS shall review each application and issue a written decision within ninety (90) days after the application was received by EOHHS. EOHHS shall consider and base its decision on all information received with the application and any independent investigation it may undertake.

D. The decision shall be the final decision of EOHHS.

4.14 UNDUE HARDSHIP GRANTED

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

1. The undue hardship grantee is alive and residing in the property; and has income and assets not to exceed the amounts specified in this Part.
2. The undue hardship circumstances upon which the decision is based continue to exist; and
3. As long as the property is adequately maintained and continues to exist in its then current state.

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

4.15 TRANSFER/SALE OF PROPERTY UNDER HARDSHIP

If the owner of the property sells or transfers ownership of the home, EOHHS will execute the lien.

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