

MEDICAID OPERATIONS MANUAL
TRANSMITTAL LETTER

October 13, 2009

MEMORANDUM

TO: CUSTODIANS OF MEDICAID OPERATIONS MANUAL

FROM: JOHN A. LIVERATTI, CHIEF OF COMPLIANCE

SUBJECT: MEDICAID OPERATIONS MANUAL CHANGES
CHAPTER 100 – MEDICAID ESTATE RECOVERY (MER) PROGRAM

BACKGROUND AND EXPLANATIONS

The following changes are being made to Medicaid Operations Manual (MOM) Chapter 100 Medicaid Estate Recovery (MER) Program; correction of unit telephone and fax numbers, correction of the NRS sections quoted and clarification in the language to make the section clearer and more defined. The changes will become effective upon approval of the public hearing.

MATERIAL TRANSMITTED

MTL 27/09

CHAPTER 100 - MEDICAID ESTATE
RECOVERY (MER) PROGRAM

Sec. 100

Added "INTRODUCTION"

Added "a"

Added "blind or"

Added "of any age, as defined by Section
1614 of the Social Security Act"

Added "3716"

Added "684-3720"

Sec. 101

Added "p"

MATERIAL SUPERSEDED

MTL 41/03

CHAPTER 100 - MEDICAID ESTATE
RECOVERY (MER) PROGRAM

Deleted "MEDICAID ESTATE
RECOVERY (MER) PROGRAM"

Deleted "currently"

Deleted "8230"

Deleted "687-8229"

Deleted "LEGAL"

Added “422.054,”
Added “01”

Deleted “P”
Deleted “5”

Added “02”

Deleted “53”

Deleted “427.054”

Sec. 103.6.b

Added “, of any age, as defined by Section 1614 of the Social Security Act”

Sec. 103.8

Added “blind or”

Added “of any age, as defined by Section 1614 of the Social Security Act,”

Sec. 103.13.g.3.a

Added “06”

Deleted “55”

Sec. 103.13.g.3.c

Added “or”

Added “, of any age, as defined by Section 1614 of the Social Security Act”

Application (Request) for Hardship Waiver for Correctly Paid Medicaid Benefits

Deleted Application (Request) For Hardship Waiver for Correctly Paid Medicaid Benefits

DIVISION OF HEALTH CARE FINANCING AND POLICY

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100 **INTRODUCTION**

Federal and state law mandates state operation of MER program whereby correctly paid Medicaid benefits are recoverable from the estate of a deceased Medicaid recipient. Recovery is accomplished only after the death of a recipient and at a time when there is no surviving spouse, children under the age of 21, or **blind or disabled children of any age, as defined by Section 1614 of the Social Security Act.**

Regulations of the MER program affect individuals who received Medicaid benefits on or after October 1, 1993. Collections will be pursued against the estate of the recipient up to the amount of Medicaid benefits correctly paid or up to the determined value of the recipient's estate whichever is less.

MER staff are located at the Division of Health Care Financing and Policy, 1000 E. William St. Suite 102, Carson City Nevada 89701; Phone (775) 684-**3716** and Fax (775) 687-**3720**.

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101 AUTHORITY

Authority for operating the Medicaid Estate Recovery (MER) program is published in Section 1917 of the Social Security Act and Nevada Revised Statute [422.054](#), [422.29301](#); [422.29302](#); and et.seq.

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102 DEFINITIONS

102.1 AFFECTED INDIVIDUALS

MER actions are imposed against Medicaid recipients who are:

- 55 years of age or older when they receive Medicaid assistance; or
- An inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, where they are required to spend for costs of medical care all but a minimal amount of income which is permitted for the recipient's personal needs.

102.2 ESTATE

For the purposes of Medicaid Estate Recovery "Estate" means assets included in the estate of the deceased recipient of assistance to the medically indigent and any other assets in or to which the recipient had an interest or legal title immediately before (NRS 422.054) or at the time of death, to the extent of that interest or title. The term includes assets passing by reason of joint tenancy, reserved life estate, survivorship, trust, annuity, homestead or other arrangement.

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103 MER POLICY

103.1 NOTIFICATION TO AFFECTED INDIVIDUALS

Full disclosure of MER program operation is made during the application process. Statements regarding MER are included on the eligibility application and applicants (or their representatives) are given Form 6160-AF, "Medicaid Estate Recovery Notification of Program Operation." Staff MUST attempt to secure the acknowledgement (via signature) of information provided on Form 6160-AF. However, the applicant's (or their representative's) failure to sign the form does not preclude the pursuit of correctly paid benefits.

Form 6160-AF, Medicaid Estate Recovery Notification of Program Operation, must be given to all applicants for Medicaid assistance at the time of application for services and redetermination. Provide the applicant the form in English or Spanish, whichever is appropriate.

One copy of the form will be given to the applicant and one dated copy will be filed in the Medicaid eligibility casefile.

103.2 REFERRAL CASES TO MER UNIT

When a MER affected recipient is no longer Medicaid eligible due to death, the eligibility worker MUST forward their casefile to MER within three (3) working days after the closure of the Medicaid casefile resulting from the death of the Medicaid recipient.

Eligibility staff will request in writing the return of the casefile, if necessary. The written request must include the name and Social Security Number of the client; the date of the request; the eligibility staff member requesting the file and the district office where the file should be sent. This request may be faxed or forwarded to Attention: MER, utilizing interoffice mail. MER staff will provide the casefile within three (3) working days.

Casefiles for Medicaid applicants who have been denied Medicaid eligibility and who do not have a history of prior approval should not be forwarded to the MER unit.

103.3 INITIATION OF MER ACTIVITIES

Upon receipt of the closed Medicaid eligibility casefile, MER personnel will establish a MER recovery case. MER staff will validate the recipient's reported resource information.

103.4 NOTIFICATION OF RECIPIENT'S HEIRS

When MER staff receives notification of an affected Medicaid recipient's death, they will provide their known heirs with a written notice which:

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- a. Advises of the State's intent to recover the value of Medicaid benefits paid on the recipient's behalf from the recipient's estate; and
- b. Provides information addressing Medicaid payments made on behalf of the recipient; and
- c. Includes a statement advising the amount the MER claim may increase if there are additional Medicaid claims which have not yet been processed.

All MER notices will include a statement advising the recipient's heirs of the MER hardship waiver provisions.

103.5 IDENTIFICATION OF MER COLLECTIBLES

After the reported death of an affected recipient, MER personnel will review the recipient's estate to determine an estimated dollar value. Assets information will be recorded in the recipient's MER file and will serve as the maximum amount recoverable under the MER program.

MER actions will be pursued against the estate of the recipient up to the amount of Medicaid benefits correctly paid or up to the determined value of the recipient's estate whichever is less.

103.6 INITIATING MER COLLECTIONS

After the recipient's death, MER personnel will immediately pursue adjustments or recovery of any Medicaid assistance correctly paid on behalf of the recipient from the recipient's estate or upon sale of the recipient's real property.

Any adjustment or recovery against a recipient may be made only after the death of the recipient's surviving spouse, if any, and only at a time when:

- a. The recipient has no surviving child who is under 21 years of age; or
- b. The recipient has no surviving child who is blind or disabled, **of any age, as defined by Section 1614 of the Social Security Act.**

103.7 RECOVERY AGAINST AN ESTATE

After the death of an affected recipient, and in accordance with Nevada Revised Statutes, MER personnel will immediately file a claim against the estate of the recipient for the full value of Medicaid benefits paid on behalf of the recipient. Once MER staff have requested the deceased recipient's casefile, eligibility staff will forward the casefile to MER within three (3) working days.

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Claims will be filed with:

- a. The court having jurisdiction over the recipient's estate pursuant to NRS 147.040; or
- b. Any individual or entity empowered with the legal ability to control, liquidate or transfer any part of the recipient's estate.

103.8 IMPOSITION OF LIENS

Liens may be imposed to protect recovery of estate assets for correctly paid Medicaid benefits when permitted by federal and state law. The purpose of the lien is to facilitate recovery of Medicaid benefits when it is appropriate and allowable by law to do so. It is not intended to impair the ability of the surviving spouse of other qualified individual to sell or refinance the property if so desired, nor is it intended to force the premature sale of the property. Action is never taken on liens until or unless all exemptions allowed by federal law no longer apply.

The State's lien would only be against the interest in that property the Medicaid recipient had at the time of death or the Medicaid claim, whichever is less.

Federal law prohibits recovery on a lien when there is a surviving spouse, children under the age of 21, or blind and/ or disabled children of any age. The State must release a lien if a surviving spouse, child under age 21, or **blind or disabled child, of any age, as defined by Section 1614 of the Social Security Act**, or a legal representative desire to engage in a bona fide sale or financial transaction involving the property. If the property is refinanced, the State has the option of re-petitioning for the placement of the lien.

In the event of incorrectly paid benefits, a lien may be imposed on both real and personal property with authority of a court judgment without regard to circumstances.

NRS 155.020 requires notice be given to the Department of Human Resources of all probate proceedings filed with the court. Any probate notices received in the district office must be faxed immediately to MER.

103.9 POSTPONING/TERMINATING MER ACTIONS

If, after the reported death of the recipient, immediate MER action is prohibited because of exception conditions, MER personnel postpone MER action until all exception conditions are no longer present. Termination of MER action will occur when all real and personal property included as part of the recipient's estate is no longer accessible.

103.10 RECEIPTING/POSTING MER COLLECTIONS

All MER collections will be received by MER personnel located at DHCFP.

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In the event a MER payment is received in the district office, staff must photocopy the negotiable instrument and document:

- a. The name and address of the person making the payment;
- b. The name and Social Security Number of the deceased recipient;
- c. The amount and method of payment; and
- d. The date and signature of the person receiving the payment.

A copy will be provided to the person making the payment and another copy along with the negotiable instrument **MUST** be forwarded to MER, immediately, utilizing interoffice mail.

If payment is made by cash, the office **MUST** follow the procedure outlined above. Cash must be deposited by the district office and cannot be transmitted through the mail. If assistance is needed, please contact MER.

Do not state verbally or in writing this payment releases the heir from Medicaid estate recovery action.

103.11 EXCLUSION FROM RECOVERY

- A. The following income, resources and property are exempt from Medicaid estate recovery;
 1. Certain income and resources of American Indians and Alaska Natives. Income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;
 2. Ownership interest in trust or non-trust property, including real property and improvements:
 - a. Located on a reservation (any federally recognized Indian tribal reservation, Pueblo or Colony, including former reservations in Oklahoma, Alaska Native regions established by Alaska Native Claims Settlement Act and Indian allotment) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or
 - b. For any federally-recognized tribe not described in (a) located within the most recent boundaries of a prior federal reservation.

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- c. Protection of non-trust property described above is limited to circumstances when it passes from an Indian (as defined in section 4 of the Indian Health Care Improvement Act) to one or more relatives (by blood, adoption or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and stepchildren, that their culture would nevertheless protect as family members; to a tribe or tribal organization; and/or to one or more Indians.
- 3. Income left as a remainder in an estate derived from property protected in (b) above that was either collected by an Indian, or by a tribe or tribal organization and distributed to Indian(s), as long as the individual can clearly trace it as coming from the protected property.
- 4. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish and shellfish) resulting from the exercise of federally-protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to Indian(s) derived from these sources as long as the individual can clearly trace it as coming from protected sources; and
- 5. Ownership interest in or usage rights to items not covered by 1 - 4 above that have unique religious, spiritual, traditional and/or cultural significance, or rights that support subsistence or a traditional and/or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.
- 6. Government reparation payments to special populations.
- B. Income, resources and property of American Indians and Alaska Natives, which are not exempt from Medicaid estate recovery:
 - 1. Ownership interests in assets and property, both real and personal, that are not described in the above items.
 - 2. Any income and assets left as a remainder in an estate that do not derive from protected property or sources listed above.

103.12 **HARDSHIP WAIVER**

At the time recovery is initiated, the MER recovery specialist will discuss hardship waivers, compromises or adjustments to the State's claim. Hardship requests will be submitted to the

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Administrator of (or their appointed representative) DHCFP for review. The denial of a hardship waiver or compromise may be appealed through the appropriate court system.

There is no hardship waiver provided at the time of lien placement against the real property of a deceased Medicaid recipient. The equity interest of the heir will be considered to determine the percentage of the deceased recipient's interest in the property. Lien placement is utilized to delay recovery until such time an exemption to recovery does not exist, or in the case of a hardship, until such time as the hardship no longer exists. The State's lien would be the Medicaid benefits paid on behalf of the recipient or the percentage of interest of the deceased recipient at the time of sale, whichever is less.

103.13 HARDSHIP WAIVER CRITERIA

The State will waive enforcement of any estate recovery claim when the requesting party is able to show, through convincing evidence, the State's pursuit of estate recovery subjects them to undue hardship. A claim for emotional hardship is not considered sufficient to warrant waiver approval. No waiver will be granted if the Division finds the undue hardship was created by estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets in whole or part, to avoid estate recovery. In determining whether undue hardship exists, the following criteria will be used:

- a. The asset to be recovered is the sole income-producing asset of the applicant; or
- b. The recovery of the assets would result in the applicant becoming eligible for governmental public assistance based on need and/or medical assistance programs; or
- c. A doctor's written verification of a medical condition that compromises the applicant's ability to repay the Medicaid claim.

If an undue hardship waiver is requested and the State determines that none of the above conditions apply, full payment of the claim may be ordered, recovery may be temporarily waived, compromised or modified. The following factors shall be considered individually or in combination when making a decision to temporarily waive, modify, or compromise estate recovery:

- a. The gross annual income, property and other assets of the applicant and their immediate family;
- b. The type and level of care provided by the applicant (caregiver) to the decedent and the extent to which the care delayed or prevented the institutionalization of the decedent:
 1. The State uses the following process for determining if the applicants will be considered as caregivers when through clear evidence they substantiate:

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- a. Maintained residency in the Medicaid recipient's home for at least two years immediately preceding the recipient's death or admission into a nursing facility, intermediate care facility for the mentally retarded or other medial institutions; and
- b. Provided care for Medicaid recipient which meets or exceeds published state standard established for Intermediate Care Level (ICL 1), which includes as necessary, assisting the individual with ambulatory needs, feeding, grooming, personal hygiene, oral hygiene, nail care, bathing, toilet activities, skin care and medical needs.
- c. The applicant continuously resided with the decedent for two years or more immediately prior to the decedent's death and continues to reside in the decedent's residence and the prior occupancy permitted the decedent to reside at home rather than in an institution;
- d. The estimated value of the real or personal property at issue. If the cost of recovering the asset(s) of the deceased Medicaid recipient is more than the value of the asset(s), it would not be cost effective to recover, and/or
- e. The financial impact of recovery against immediate family members of the applicant.
- f. Applicants who seek a recovery delay (i.e., temporary waiver) will be given the opportunity to provide written details or complete an "Application for a Hardship Waiver Regarding Recovery of Correctly Paid Medicaid Benefits" form within 30-days of notification of the Division's intent to recover.
- g. The following collection methods may be used when recovery is temporarily waived, compromised, or modified:
 2. Reduction of recovery amount;
 3. Reasonable payment schedule based on the asset to be recovered; and/or
 4. Where not prohibited by law, imposition of a lien against the assets of the deceased Medicaid recipient.
 - a. Before imposition of a lien, the Division shall notify all persons having an interest in the estate of the deceased Medicaid recipient and petition the appropriate district court for the imposition of a lien per NRS 422.29306.

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- b. If a lien is placed on an individual’s home, adjustment or recovery will only be made when:
 - 1. There is no surviving spouse;
 - 2. There is no child under the age of 21; or
 - 3. There is no blind or disabled (as defined in Section 1614 of the Social Security Act) child of the Medicaid recipient.
- c. The lien will become due and payable upon the sale, refinance, transfer or change in title to the real property; and/or escrow funding, but only when there is no surviving spouse, children under 21, **or blind or disabled children, of any age, as defined by Section 1614 of the Social Security Act** of the Medicaid recipient. Recovery is limited to the Medicaid recipient’s interest in the property at the time of claim payment not to exceed the Medicaid claim or the percentage of interest of the Medicaid recipient in the asset.
- d. Upon payment of the claim, or need of the statutory exemptions, the division will prepare a release of lien or subordinate the lien. This release will be provided to the appropriate entity; such as, an escrow company or the county recorder’s office.

103.14 PROCEDURES FOR APPLYING FOR HARDSHIP WAIVER

Federal law prohibits recovery during the lifetime of a spouse and/or when there are children under the age of 21, and/or when there are children who are blind and/or disabled.

- a. The State defines undue hardship as severe financial duress or a significant compromise to an individual’s health care or shelter needs.

Application for Undue Hardship Waiver – Any heir or survivor may seek an undue hardship waiver by submitting a written request for a waiver by completing an “Application (Request) for a Hardship Waiver Regarding Recovery of Correctly Paid Medicaid Benefits” form within thirty (30) days of notification of the Division’s intent to recover. Documentary evidence that supports the applicant’s claim should be attached. The written decision of the Administrator of the Division of Health Care Financing and Policy will be provided to the applicant 90-days from receipt of the request.

- b. The following time frames are used by the State in considering the waiving of estate recoveries:

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1. Any beneficiary, heir or family member claiming entitlement to receive the assets of the deceased Medicaid recipient may apply for a hardship waiver by submitting a written request for a waiver within 30 days of being notified of intent to recover to the MER unit.
2. The Division may request additional information or documentation from the waiver applicant. If some or all the additional information or documentation is not provided within 30 days of the request, the hardship waiver request will be considered solely on the basis of the information and documentation provided.
3. Within 90 days of receipt of the undue hardship waiver request, the Division Administrator OR his appointed representative, will issue a written decision granting or denying the applicant's request for an undue hardship waiver.