

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: South Carolina

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

N/A
2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36 (f):

N/A
3. The State defines the terms below as follows:
 - Estate – means all real and personal property and other assets included within the individual's estate as defined in Section 62-1-201(11).
 - individual's home – The place in which one lives; a dwelling.
 - equity interest in the home – the residual value of a business or property beyond any mortgage thereon and liability therein.
 - residing in the home for at least one or two years on a continuous basis, and – N/A
 - lawfully residing. – N/A

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4. The following standards and procedures are used by the State for waiving estate recoveries when recoveries would cause an undue hardship.

(1) with respect to the decedent's home property, if the decedent could have transferred the home property on or after the date of his or her Medicaid application without incurring a penalty under 42 U.S.C. Section 1396p(c). if the property could have been transferred without penalty to a:

- (a) surviving sibling of the decedent who possessed an equity interest in the property and who lived in the home for a period of at least one year immediately prior to the date the decedent was institutionalized; or
- (b) surviving child of the deceased who lived in the home for a period of at least two years immediately before the decedent became institutionalized and who provided care which allowed the decedent to delay institutionalization. Does not apply to a child under the age of 21, or a child who is blind or disabled.

However, hardship under this item only applies if the individual to whom the property could have been transferred without penalty is actually residing in the home, at the time the hardship is claimed and this hardship status only protects a homestead of modest value. A homestead of modest value is defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located as of the date of the beneficiary's death. To the extent the value of the home property exceeds this modest value, that portion is subject to recovery by the department.

(2) with respect to the decedent's home and one acre of land surrounding the house, if an immediate family member .

- (a) has resided in the home for at least two years immediately prior to the recipient's death;
- (b) is actually residing in the home at the time the hardship is claimed;
- (c) owns no other real property or agrees to sell all other interest in real property and give the proceeds to the department; and
- (d) has annual gross family income that does not exceed one hundred eighty-five percent of the federal poverty guidelines.

(3) with respect to a sole income producing asset:

- (a) an immediate family member's annual gross family income would fall below the federal poverty guidelines or immediate family member agrees to pay all income in excess of one hundred eighty-five percent of the federal poverty guidelines to the department until the department recovers all medical assistance due under this section.

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4. An undue hardship waiver may be granted to a mother, father, sister, brother, son or daughter (son or daughter who is over the age of twenty one and who is not blind or disabled) of the decedent. The individual requesting the waiver must be residing in the homestead prior to the recipient's death, the homestead must be their legal residence and without the homestead they would not have a place to live. Instructions for filing a hardship are enclosed in the claims packages. Below are a list of the different waivers and the documentation needed to grant the waiver.

Decedent's Brother or Sister

They must have an equity interest in the property with the decedent and have lived in the home for at least one year prior to the date the decedent went into the nursing home or began receiving community long-term care services.

- an affidavit provided by the person for whom the waiver is to be granted, stating their relationship to the decedent, and that they are residing in the decedent's home.
- a copy of the deed showing that the brother or sister owns a portion (equity interest) of the home, and
- documentation to show the date that the decedent entered the nursing home or the date that the Community Long Term Care services began; and
- documentation to show the date that the brother or sister began residing in the home (i.e., tax returns, benefits statement (received from Social Security), an affidavit from a neighbor)

Decedent's Mother, Father, Sister, Brother, Son or Daughter

They must have lived in the home for at least two years before the decedent went into the nursing home or began receiving community long-term care services. If so, they must provide the following documents:

- an affidavit provided by the person for whom the waiver is to be granted, and
- documentation to show the date that the decedent entered the nursing home or the date that the Community Long Term Care services began.
- benefits statement documentation to show the date that the family member began residing in the home (i.e., tax returns, a benefits statement (received from Social Security), an affidavit from a neighbor).

Definitions:

Immediate family member – mother, father, sister, brother, son or daughter (son or daughter who is over the age of twenty one and who is not blind or disabled as defined in Section 1614 of the Social Security Act) of the decedent.

Residing – must have been actually living in the home for the last two consecutive years without interruption and it is your permanent address and you currently live in the home at the time you make your request for an undue hardship.

Disabled Child – is the legal son or daughter of the recipient who became disabled as defined by Section 1614 of the Social Security Act prior to reaching majority.

Child – is the legal minor son or daughter of the Medicaid recipient who is under the age of 18 or under the age of 22 and a full time student.

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5. The State defines cost-effectiveness as follows (include methodology/thresholds used to determine cost-effectiveness):

If the value of the estate is determined (by receipt of affidavit) to be less than \$25,000, the department will not file a claim. The assets of the estate must be \$25,000 or more and the claims paid by Medicaid must be \$500 or more. If the net assets of the estate are less than \$4,000 after the payment of all priority expenses, then the department will withdraw its claim.

The State may settle its claim for a lesser amount if the State determines that it would be more cost effective and in the best interest of the State to do so than to continue to pursue collection of the full amount of the claim. Criteria to be considered in determining cost effectiveness may include the probability of collecting a larger amount, staff time, cost incurred, legal expense and length of time required to collect.

6. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The application for Nursing Home or Community Base Waiver Services gives notification of the Estate Recovery Law. Upon the death of the recipient, a claims package is mailed to the Personal Representative of the recipient's estate. The package includes the following: Informational letter, creditor's claim, itemization of the claim, instruction for requesting /applying for a waiver, and copy of SC Estate Recovery Law. The letter states that the family has 45 days to request a waiver. Upon receipt of all of the requested information, the case analyst assigned to the case will render their decision within 15 days. If the waiver is denied, Appeals procedures are mailed to the family certified allowing the family 30 days to request an Appeal.