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RECOVERIES

LIENS

Description: A lien is a legally filed claim against property as security for the payment of a debt.

Policy: Generally a lien may be placed against a recipient's:

- exempt real property if the individual is permanently institutionalized; and
- personal injury claim or suit for Medicaid expenditures related to the injury.

A claim may be placed against a recipient's:

- estate including non-probate assets, if the deceased recipient was 55 years of age or older when he or she received Medicaid; and
- estate including non-probate assets, if the deceased recipient of any age was permanently institutionalized.

References:

SSL Sect.	104 106 366.3(a) 369
Dept. Reg.	360-7.11
ADMs	11 OHIP/ADM-8 09 OHIP/ADM-3 02 ADM-03 92 ADM-53

Interpretation: When a recipient is permanently institutionalized and has an interest in real property that is exempt for purposes of Medicaid eligibility, is anticipating a court award, settlement, or claim that resulted from a personal injury or has died and left an estate, a lien is placed against the exempt real property, award, settlement, claim or estate. An award, settlement or claim may result from, but is not limited to insurance payments and lawsuits. Generally, liens against real property and estates are for the amount of Medicaid correctly paid on behalf of the individual, while liens for personal injury are for the cost of medical care provided to treat the personal injury.

Incorrectly paid Medicaid is any Medicaid furnished to a recipient at a

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time when s/he was ineligible. Only by instituting a court action pursuant to SSL Section 369 (2)(a)(i) can a district place a lien on a recipient's real property to recover Medicaid incorrectly paid.

NOTE: If an institutionalized individual is discharged and returns to the community, any liens against his/her real property are removed. If the individual wants to continue Medicaid coverage, his/her eligibility is determined based on his/her new circumstances.

Liens May Not Be Imposed

- Against an A/R's homestead
    - When a sibling with an equity interest in the home of a Medicaid recipient lived in the home for at least one year immediately before the recipient was institutionalized and who has lawfully resided in the home continuously since that time;
    - When an adult child who lived in the home of a Medicaid recipient for at least two years immediately before the recipient was institutionalized, who provided care that may have delayed the recipient's institutionalization and who has lawfully resided in the home continuously since that time;
    - Against the real property of a permanently institutionalized individual if the value of the property when counted in determining eligibility results in the applicant having to spend down excess resources. An example is a permanently institutionalized individual who does not intend to return home and does not have a relative that would allow the homestead to be exempt from a lien (as described above). In such instances, the home is treated as a countable resource.

Institutionalized individuals are given an opportunity to transfer his/her homestead to a specified relative, before a lien is imposed. (See **RESOURCES** TRANSFER OF ASSETS for lists of who an A/R may transfer his/her homestead to without penalty.) Generally, the transfer is made within 90 days of the eligibility determination. A longer period may be allowed if necessitated by delays

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beyond the institutionalized individual's control.

NOTE: A lien may be imposed on a mobile home only if the mobile home is on land owned by the institutionalized individual, and the mobile home has been permanently affixed to the land (e.g., a basement, foundation, or other immovable structure ties the mobile home to the land).

- Against any asset(s) of the recipient including those that pass directly upon the recipient’s death to individuals other than a surviving spouse or minor child, or blind or disabled child during the lifetime of the surviving spouse, or at any time when the recipient has a surviving child who is under age 21 or a child of any age who is certified blind or certified disabled.

- Against the income, resources and property belonging to an American Indian or Alaskan Native.

- Against government reparation payments paid to special populations.

- Against Workers’ Compensation, volunteer firemen’s benefits, Social Security, SSI or other such benefits.

- Against the recipient’s personal injury action that was filed against a nursing home. This prohibition runs for the lifetime of the recipient.

- Against the personal account of a veteran who died in a Veteran’s Administration (VA) nursing facility. If a veteran was transferred from a non-VA facility to a VA facility (e.g. a VA hospital) for treatment and died while in the VA facility no recovery from the personal account maintained by the non-VA facility is pursued. Similarly if the VA contracted for the care of a veteran in a private nursing facility at VA expense recovery is not sought from the personal account maintained by the private nursing facility.

- Against payments made through the Office of Mental Health Comprehensive Outpatient Program (COPs).

If the prohibited period ends (e.g., the spouse dies or a minor child reaches the age of 21) or in the case of a decedent’s home, the sibling or adult child no longer resides in the home or the property is to be sold, a recovery can then be pursued.

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Liens and Qualified Partnership Policyholders

The extent to which liens may be imposed and recoveries pursued with respect to Medicaid recipients who are Qualified Partnership Policyholders (QPPs) depends on the type of plan chosen by the QPP.

Total Asset Protection Plans (TAP) - No liens may be imposed against the real property of a permanently institutionalized individual who is a TAP QPP nor may recoveries be made from the estate of a TAP QPP.

Dollar-for-Dollar Asset Protection (DDAP) Plans - Since homes of DDAP QPPs must be evaluated for their exempt/countable status, a lien shall be placed on the real property of the permanently institutionalized individual DDAP QPP in an amount equivalent to his/her unprotected resources, if any.

Real Property Post Death Lien

If not otherwise prohibited (as described above), a post death lien may be placed on real property that passes outside the probate estate to a joint owner, heir, dependent or survivor to secure their obligation to pay the Medicaid estate claim up to the value of the property received. Such liens should be imposed against real property as soon as practicable after the individual's death to put mortgage lenders and prospective purchasers of the property on notice of the Medicaid program's claim against the property.

Notices

- "Informational Notice to Institutionalized Individuals with Real Property" is provided to the individual at the time of application.
- LDSS 4466 "Notice of Intent to Impose a Lien on Real Property" is provided when the district has determined that a lien will be filed on specified real property.
- "Notice of Medical Assistance Lien" is a sample notice of lien that may be adapted for purposes of filing a SSL Section 369 lien against real property.