

MEDICAID LIENS ON THE HOME PROPERTY OF BENEFICIARIES

Pursuant to Hawaii Administrative Rules sections 17-1705-56 and 17-1705-57 and Hawaii Revised Statutes section 346-29.5, the State may seek to recover Medicaid payments by placing liens on the home property of a Medicaid beneficiary whose stay in a medical institution is likely to be permanent and cannot reasonably be expected to be discharged from the medical institution and returned home. This brochure will answer basic questions about the placement of these liens and how it will affect a Medicaid beneficiary.

WHY DOES THE STATE PLACE A LIEN ON THE HOME PROPERTY OF MEDICAID BENEFICIARIES?

Federal regulations require the State to recover Medicaid payments from medically institutionalized beneficiaries. The placement of a lien on the real property that was the beneficiary's primary residence prior to admission to a long-term care (LTC) facility for the purpose of recovering the amount of Medicaid payments received is authorized by federal and State law.

WHAT COSTS WILL BE RECOVERED?

The lien will be for the amount of Medicaid payments paid on behalf of the beneficiary.

WHO WILL BE AFFECTED?

Medicaid beneficiaries who are inpatients in a nursing facility; intermediate care facility

for the developmentally disabled/intellectually disabled; or other medical institution receiving a nursing facility level of care whose stay in the medical facility is likely to be permanent.

WHAT IS THE PROCESS FOR THE PLACEMENT OF A LIEN ON THE HOME PROPERTY?

- The State shall determine if the beneficiary's stay in the medical institution is likely to be permanent. The determination will be based on whether the recipient can reasonably be expected to be discharged from the medical institution and return home.
- The State shall send a notice to inform the affected beneficiary that a lien may be placed on their home.
- The beneficiary's authorized representative shall have the opportunity to request an administrative hearing if they disagree with the Department's determination to file a lien.
- A lien will be filed on the home property if there is no request for an administrative hearing or if one is requested and the outcome of the hearing is in the State's favor.

WILL THE BENEFICIARY'S HOME PROPERTY BE EXEMPT FROM THE PLACEMENT OF A LIEN UNDER ANY CIRCUMSTANCES?

Yes. The State will not impose a lien on the home property of a beneficiary when the Department has determined that the

beneficiary is expected to be discharged from the medical institution and returned home; **or**

The following individuals are lawfully residing in the home:

- The beneficiary's spouse.
- The beneficiary's dependent child under the age of 21, or who is blind or disabled.
- The beneficiary's sibling who has an equity interest in the home and who has continuously been residing in the home for a period of at least one year prior to the beneficiary's admission to the medical facility or began receiving HCBS in a community care foster family home (CCFFH).

WHAT HAPPENS IF A BENEFICIARY IS DISCHARGED FROM THE MEDICAL FACILITY AND RETURNS HOME?

Any lien imposed shall be dissolved upon the beneficiary's discharge from the medical institution to return home.

DOES THE PLACEMENT OF A LIEN AFFECT A BENEFICIARY'S ELIGIBILITY OR BENEFITS?

No. The placement of a lien does not affect the eligibility or medical benefits that are available to a Medicaid beneficiary.

DOES THE PLACEMENT OF A LIEN AFFECT PROPERTY OWNERSHIP?

No. A lien on the home property does not change the ownership of the property. However, the lien does secure the home property for future reimbursement to the

State for the cost of medical care when the property is sold or transferred.

DOES THE PROGRAM REQUIRE BENEFICIARIES TO SELL THEIR HOMES?

No. Beneficiaries are not required to sell their home as a condition to qualify for Medicaid.

WHEN WILL RECOVERY FROM THE LIEN TAKE PLACE?

If the beneficiary is still living, recovery will take place when the home is sold or transferred.

After the death of the beneficiary, recovery from the lien will not be made while any of the following individuals are lawfully residing in the home:

- The individual's surviving spouse;
- The individual's dependent child who is under 21 years, or a child over 21 who is blind or disabled as defined in chapter 17-1719;
- The individual's sibling who has an equity interest in the home and who was residing in the home for a period of at least one year prior to the individual's admission to the medical institution or began receiving HCBS in a CCFFH; or
- A non-dependent child who resided in the home for at least two (2) years immediately before the beneficiary's admission to the medical facility and provided care that allowed the beneficiary to reside at home instead of in a medical facility or a CCFFH.

These individuals must have continuously lived in the home since the beneficiary's admission to a medical facility or CCFFH.

CAN RECOVERY BE WAIVED IF IT CAUSES HARDSHIP?

Recovery may be waived due to hardship for the period the following conditions exist:

- The estate subject to recovery is the sole income-producing asset of the survivors and is a family farm or other family business; **and** the income produced by the property does not exceed one hundred (100%) percent of the federal poverty guidelines for the number of surviving family members solely dependent on the real property.
- The estate is a homestead of modest value that is occupied by surviving family members who lawfully resided in the home for a continuous period that started at least three (3) months immediately before the beneficiary's admission to the medical facility or began receiving HCBS in a CCFFH, and provided care that allowed the beneficiary to reside at home rather than in an institution; **and**
- The surviving family members do not own other real property other than interest in the home and have income that does not exceed one hundred (100%) percent of the federal poverty limit.

If you have further questions regarding placement of liens, please contact the Department of the Attorney General, Civil Recoveries Division at 586-1126.

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**STATE OF HAWAII
Department of Human Services
Med-QUEST Division**

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