

### 38-000 ESTATE RECOVERY

38-001 Scope and Authority: Medicaid estate recovery is mandated by §1917(b) of the Social Security Act. State statutory requirements are set forth in Neb. Rev. Stat. §68-919.

38-002 Definitions: The following definitions apply for purposes of Medicaid estate recovery:

Claim means the total amount of medical assistance paid after July 16, 1994 for a recipient when the recipient was fifty-five years of age or older or during a period of institutionalization as described in 471 NAC 38-003.

Estate means all real and personal property and other assets included within the Medicaid recipient's estate as defined for purposes of state probate law.

Medical institution means a skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, nursing facility, inpatient hospital or residential treatment center.

Qualified Long-Term Care Partnership Policy means a long-term care insurance policy that has been approved by the Nebraska Department of Insurance.

Recipient means an individual who has received Medicaid benefits.

38-003 Estate Recovery Criteria: The Department of Health and Human Services has a claim for medical assistance paid against Medicaid recipients who meet the following criteria:

1. The recipient was fifty-five years of age or older at the time medical assistance was provided or the recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the Department determines the recipient could not have reasonably been expected to be discharged and resume living at home.
2. The recipient is not survived by a spouse or a child who is either under age twenty-one or blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

### 38-004 Undue Hardship

38-004.01 Purpose: Waivers granted by the Department based on undue hardship are intended to prevent the impoverishment of the deceased recipient's family if the Department were to pursue its estate recovery claim. The fact that family members anticipate or expect an inheritance or may be inconvenienced economically by the lack of an inheritance is not a valid basis for an undue hardship waiver.

38-004.02 Criteria: Any of the following circumstances may constitute an undue hardship and may result in a full or partial compromise of claim:

1. An heir of the recipient resided in the recipient's home for two years prior to the recipient's entry into a nursing home and the heir provided the type of unreimbursed care that delayed the recipient's entry into a nursing home;
2. An heir of the recipient resided in the recipient's home for two years prior to the recipient's receipt of recoverable medical services and the heir provided unreimbursed care that delayed the recipient's receipt of those services;
3. Payment of the Department's claim would cause heirs of the deceased recipient to be eligible for public assistance;
4. Waiver of the Department's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or
5. Other situations which the Department, in its discretion, determines constitutes an undue hardship on the heirs.

38-004.03 Limitations: Any heir of the estate of a Medicaid recipient may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully. An undue hardship does not exist if action taken by the recipient, or by his or her legal representative or heirs, divested or diverted assets from the estate. The Department may grant undue hardship waivers on a case by case basis upon consideration of all the facts and circumstances including any action taken to divert or shelter assets available for estate recovery or to avoid estate recovery.

38-004.04 Application and Review Process: A waiver applicant must have a beneficial interest in the estate and must apply for a waiver in writing within thirty days from the creditor's claim filing deadline or ninety days from the recipient's date of death if the estate is not probated. The written application must include:

1. A statement of the applicant's relationship to the recipient with supporting documentation; and
2. A statement of the basis for the hardship waiver under 471 NAC 38-004.02 with supporting documentation.

The Department must review each application and issue a written decision within ninety days after the Department's receipt of the application. The Department's written decision must advise the applicant of the procedure for requesting an administrative hearing should the applicant want to appeal the Department's decision.

JANUARY 19, 2008  
MANUAL LETTER # 13-2008

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

NMAP SERVICES  
471 NAC 38-005

38-005 Long-Term Care Partnership Program: Neb. Rev. Stat. Section 68-1095.01 established Nebraska's Long-Term Care Partnership Program.

Resources equal to the amount of benefits paid out by a long-term care partnership policy are disregarded for an individual applying for Medicaid if the policy was issued on July 1, 2006 or later and the individual is otherwise Medicaid eligible. The amount of the resource disregard is also excluded from estate recovery.

The Department accepts the Department of Insurance's approval of the policy.

38-005.01 Reciprocity with Other States: The Department will accept partnership policies issued in other states with Qualified Long-Term Care Partnership Programs.