

New York

1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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 returned home:

See Supplement to Attachment 4.17-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):

A son or daughter can establish that he or she has been providing care which permitted the individual to reside at home by submitting evidence that he or she made arrangements or actively participated in arranging for care, either directly or indirectly, full-time or part-time.

3. The State defines the terms below as follows:
 - estate: all real and personal property and other assets included within an individual's estate, and passing under the terms of a valid will or intestacy.
 - individual's home: the former principal place of residence owned by the permanently institutionalized individual or the deceased recipient.
 - equity interest in the home: an individual's right to the use of and share in the proceeds from the sale of the property, as demonstrated by the presence of his/her name on the title.
 - residing in the home for at least one or two years on a continuous basis: and evidence that the relative was in residence on a regular basis for the continuous one or two years.
 - lawfully residing: the fact of the son or daughter's presence in the home as evidenced by postal, motor vehicle or voting records or by the testimony of a neighbor or other party.

TN #12-17

Approval Date September 20, 2012

Supersedes TN #11-42

Effective Date April 1, 2012

New York

2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

4. The State defines undue hardship as follows: Undue hardship must be determined on a case by case basis. It includes (a) loss of a family farm or other family owned and operated business which is an income-producing asset, and (b) other compelling cases.
5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

See Supplement to Attachment 4.17-A

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness): Cost-effectiveness is determined by weighing the amount available for recovery against the expected cost of the recovery action. If finite resources are a factor, the amount of a given potential recovery less its cost must then be weighed against the potential net return of other recovery actions.
7. 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):

Collection Procedures: TEFRA liens are filed against the homesteads of permanently institutionalized individuals. Liens are also filed against the estates of recipients who were permanently institutionalized or 55 years of age or older upon death.

Advance Notification: Language on the Application for Public Assistance, Medical Assistance, Food Stamps, and Services now explains that a recovery may be sought for MA paid from the sale of the home of the applicant (if permanently institutionalized) or from his/her estate. The notification will also be placed in a pamphlet to be distributed at the time of application.

Waiver Applications: These are filed as are any other disputed claims against estates through the State's Surrogate Court, which has jurisdiction over all matters related to estate settlements.

Appeals: A living recipient's appeal regarding a property lien or other recovery action may be made by a conference with the social services district and/or the standard fair hearing process.

Time Frames: All actions against the assets of living recipients are subject to timely notification requirements (at minimum ten days). A decedent's assets may not be distributed until at least six months after the appointment of an estate administrator.

TN #95-28Approval Date September 27, 1996Supersedes TN #92-22Effective Date April 1, 1995