

New York  
1

1. **It will be presumed that an individual will not return home if:**

- (1) a person enters a skilled nursing or intermediate care facility;
- (2) a person is initially admitted to acute care and is then transferred to an alternative level of care, pending placement in a residential care facility (RHCF);  
or
- (3) a person without a community spouse remains in an acute care hospital for more than six calendar months.

The individual or his/her representative may submit medical statements providing evidence that s/he may reasonably be expected to return home, contrary to the presumption of permanent placement based on his/her residence in a medical institution. Should the argument that the placement is temporary be rejected by the social services district, the client or his/her representative may appeal the decision through the fair hearing process.

5. **Notification:**

Advance notification of estate recoveries is provided. Applicants are notified at the time of application that recoveries against their estates may be undertaken.

Recoveries from estates must be made in accordance with the procedures established under the Surrogate's Court Procedure Act (SCPA) with respect to claims against decedent's estates, including recoveries against estates which the social services district waives based upon undue hardship.

When asserting a recovery against the estate of a deceased Medical Assistance (MA) recipient, the social services district must notify the estate's representative in writing of the claim against the estate. This notice should be served on the estate's fiduciary within seven months of the issuance of letters testamentary or letters of administration by the Surrogate Court. The social services district should send the notice to the estate's fiduciary by personal delivery, or by certified mail, return receipt requested, pursuant to §1803 of the SCPA.

The notice sent by the social services district to the estate's fiduciary should set forth the amount of the claim, and must explain that if the representative asserts that the estate recovery would work an undue hardship upon the estate, the social services district may consider waiving the adjustment or recovery. The notice should advise that undue hardship may exist when:

- the estate asset subject to recovery is the sole income-producing asset of the beneficiaries, such as a family farm or family business, and income produced by the asset is limited;

TN   #95-28  

Approval Date   September 27, 1996  

Supersedes TN   NEW  

Effective Date   April 1, 1995

New York

2

- the estate asset subject to recovery is a home of modest value;
- there are other compelling circumstances.

The notice also should advise that undue hardship will not be found by the social services district where the hardship is the result of Medicaid or estate planning methods involving divestiture of assets, or where the only hardship that would result is the inability of any of the beneficiaries to maintain a pre-existing life-style.

**Waiving recoveries based on undue hardship:**

The estate fiduciary must give prompt written notice to the social services district of its rejection of the claim in part or in whole together with an explanation of the basis for the undue hardship. (See §1806 of the SCPA). Upon rejection of the claim by the fiduciary based upon undue hardship, if the social services district does not find a basis for the undue hardship, it may object to the claim rejection in an accounting proceeding or by petitioning the Surrogate Court to decide whether the claim should be paid.

In an accounting proceeding, the social services district may file an objection to the fiduciary's account which rejects its claim based on undue hardship, and have the validity of the claim determined by the Surrogate on this basis. (See §1808 of the SCPA). The social services district must file the objection to the account within eight days of receiving the fiduciary's notice of rejection based upon undue hardship. (See §1808 of the SCPA). If the fiduciary has any affirmative defenses to the social services district's objection to the account, which were not set forth in the rejection served on the district, the fiduciary must reply setting forth the affirmative defenses within five days of the social service's district's service of its objection to the account. (See §1808 of the SCPA). Additionally, a beneficiary, or any other person whose interest in the estate would be adversely affected by allowance of the district's claim may, within eight days of the social services district's filing of its objection to the account, reply to the district's objection by setting forth any affirmative defense not set forth in the fiduciary's account. (See §1808 of the SCPA).

Alternatively, upon receiving notice that the estate's fiduciary has rejected the claim based upon undue hardship, if the social service district does not find adequate basis for waiving the recovery, it may petition the Surrogate Court within sixty days of the fiduciary's rejection of the claim showing the facts and requesting that the fiduciary show cause why the claim should not be allowed. (See §1810 of the SCPA).

TN     #95-28    

Approval Date     September 27, 1996    

Supersedes TN     NEW    

Effective Date     April 1, 1995

