

Department of Health & Human Services
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519



Refer to:

NOV 28 2006

Ms. Christine Bronson
Medicaid Director
Minnesota Department of Human Services
P.O. Box 64983
St. Paul, Minnesota 55164

Dear Ms. Bronson:

Enclosed for your records is an approved copy of the following State Plan Amendment:

Transmittal #06-010 State Long-Term Care Insurance Partnership
--Effective July 1, 2006

If you have any additional questions, please have a member of your staff contact Doris Ross at (312) 353-9843.

Sincerely,

A handwritten signature in black ink, appearing to read "Verlon Johnson". The signature is written in a cursive style with a large, looping initial "V".

Verlon Johnson
Associate Regional Administrator
Division of Medicaid & Children's Health

Enclosure

| | | |
|--|---|----------------|
| TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL | 1. TRANSMITTAL NUMBER: 06-010 | 2. STATE MN |
| | 3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID) | |

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|---|--|
| FOR: HEALTH CARE FINANCING ADMINISTRATION | 4. PROPOSED EFFECTIVE DATE July 1, 2006 |
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5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

| | |
|---|---|
| 6. FEDERAL STATUTE/REGULATION CITATION: P.L. 109-171, section 6021 | 7. FEDERAL BUDGET IMPACT: a. FFY '06 \$ 0 b. FFY '07 \$ 0 |
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|---|---|
| 8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Plan pages 53, 53b Attachment 4.17-A, pages 1-5 Attachment 2.6-A, page 6a Supplement 8c (draft template) to Attachment 2.6-A, pages 1 and 2 | 9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): <i>Plan pages 53, 53b Attachment 4.17-A, pages 1-5 Attachment 2.6-A, page 6</i> |
|---|---|

10. SUBJECT OF AMENDMENT:
State long-term care insurance partnership

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED:
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

| | |
|---|--|
| 12. SIGNATURE OF STATE AGENCY OFFICIAL: <i>Christine Bronson</i> | 16. RETURN TO: Christine Bronson Minnesota Department of Human Services PO Box 64983 540 Cedar Street St. Paul, MN 55154-0983 |
| 13. TYPED NAME: Christine Bronson | |
| 14. TITLE: Medicaid Director | |
| 15. DATE SUBMITTED: 8/24/06 | |

FOR REGIONAL OFFICE USE ONLY

| | |
|---------------------------------------|-----------------------------------|
| 17. DATE RECEIVED: August 30, 2006 | 18. DATE APPROVED: NOV 28 2006 |
|---------------------------------------|-----------------------------------|

PLAN APPROVED - ONE COPY ATTACHED

| | |
|--|--|
| 19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1, 2006 | 20. SIGNATURE OF REGIONAL OFFICIAL: <i>Verlon Johnson</i> |
| 21. TYPED NAME: Verlon Johnson | 22. TITLE: Associate Regional Administrator |

23. REMARKS:

RECEIVED
AUG 30 2006
DMGH - MI/MH...

Revision: HCFA-PM-95-3 (MB)
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: Minnesota

4.17 Liens and Adjustments or Recoveries

Citation
42 CFR 433.36(c)
1902(a)(18)
1917(a) & (b)
of the Act

(a) Liens

The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)–(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

The State imposes liens on real property on account of benefits incorrectly paid.

The State imposes TEFRA liens under §1917(a)(1)(B) on real property an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs, except on property interests disregarded under the long-term care insurance partnership.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (Note: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures and due process requirements.)

The State imposes liens on both real and personal property of an individual after the individual's death except as provided in (b)(4).

TN No. 06-10
Supersedes:
TN No. 95-34

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MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Minnesota

(b) Adjustments or Recoveries cont.

1917(b)(1)(C)

(4) X

The State does not seek adjustment or recovery on account of medical assistance paid under (b)(1) through (b)(3) from assets or resources disregarded for an individual covered after benefits are exhausted under a qualified State long-term care insurance partnership policy. The State adjusts or recovers only to the extent assets or resources in the estate exceed assets or resources protected by the partnership program. For a deceased recipient who qualifies for partnership participation, the estate subject to recovery is described in Attachment 4.17-A.

_____ The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy and the requirements in Attachment 2.6-A, Supplement 8b.

X The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)

_____ The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.

_____ The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

TN No. 06-10
Supersedes:
TN No. 95-34

Approval Date: NOV 28 2006

Effective Date: July 1, 2006

State: Minnesota

| Citation | Condition or Requirement |
|----------|---|
| <u>X</u> | <u>Supplement 4 to ATTACHMENT 2.6-A</u> specifies the methods for determining income eligibility used by States that have more restrictive methods than SSI, permitted under section 1902(f) of the Act. |
| <u>X</u> | <u>Supplement 5 to ATTACHMENT 2.6-A</u> specifies the methods for determining resource eligibility used by States that have more restrictive methods than SSI, permitted under section 1902(f) of the Act. |
| <u>X</u> | <u>Supplement 6 to ATTACHMENT 2.6-A</u> specifies the standards for optional state supplementary payments. |
| <u>X</u> | <u>Supplement 7 to ATTACHMENT 2.6-A</u> specifies the income levels for categorically needy aged, blind and disabled persons who are covered under requirements more restrictive than SSI. |
| <u>X</u> | <u>Supplement 8a to ATTACHMENT 2.6-A</u> specifies the methods for determining income eligibility used by States that are more liberal than the methods of the cash assistance programs, permitted under section 1902(r)(2) of the Act. |
| <u>X</u> | <u>Supplement 8b to ATTACHMENT 2.6-A</u> specifies the methods for determining resource eligibility used by States that are more liberal than the methods of the cash assistance programs, permitted under section 1902(r)(2) of the Act. |
| <u>X</u> | <u>Supplement 8c (draft template) to Attachment 2.6-A</u> specifies the method of determining resource eligibility for a person qualifying for the state's long-term care partnership, permitted under sections 1902(r)(2) and 1917 of the Act. |
| <u>X</u> | <u>Supplement 9 to ATTACHMENT 2.6-A</u> specifies the asset transfers which affect the eligibility of institutionalized individuals. |
| <u>X</u> | <u>Supplement 10 to ATTACHMENT 2.6-A</u> specifies the criteria used to exclude the funds in a Medicaid Qualifying Trust because of undue hardship for categorically and medically needy individuals, as permitted under section 1902(k)(4) of the Act. |
| <u>X</u> | <u>Supplement 12 to ATTACHMENT 2.6-A</u> describes variations from the basic personal needs allowance for institutionalized individuals with greater need in the post-eligibility treatment of income. |
| <u>X</u> | <u>Supplement 13 to ATTACHMENT 2.6-A</u> specifies the eligibility for low-income families under section 1931 of the Act. |
| <u>X</u> | <u>Supplement 15 to ATTACHMENT 2.6-A</u> specifies that Blood Product Settlement Payments will be excluded from income and resource consideration for all categorically and medically needy groups covered by the State under the Act. |

TN No. 06-10
Supersedes

Approval Date NOV 28 2006

Effective Date 07/01/06
HCFA ID: 7985E

TN No. 05-05 and 99-03

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: MINNESOTA

MORE LIBERAL METHODS OF TREATING RESOURCES UNDER §1902(r)(2) OF THE ACT

1902(r)(2)
1917(b)(1)(C)

The following more liberal methodology applies to individuals who are eligible for medical assistance under one of the following eligibility groups:

- Mandatory categorically needy, including aged, blind or disabled groups for which the state uses more restrictive policy under 1902(f); §1902(a)(10)(A)(i)(III), (IV), (VI) and (VII).
- All optional categorically needy groups: §1902(a)(10)(A)(ii).
- Medically needy groups: §1902(a)(10)(C)(i)(III).

An individual who received benefits under a long-term care insurance policy (including a certificate issued under a group insurance contract) that meets the requirements of a qualified State long-term care insurance partnership policy (partnership policy) and who has exhausted the benefits of the partnership policy is given, at the time of requesting Medicaid payment of long-term care services, a disregard up to the amount of the insurance benefit paid to or on behalf of the individual as described in this amendment:

- Disregard during the person's lifetime the value of assets the person designates for protection from recovery in an amount not to exceed the dollar amount of long-term care benefits utilized under a partnership policy;
- Disregard appreciation of or the protected asset's increase in value (including an increase in value due to income, dividends or profits) for a partnership participant to the extent the increase does not cause the amount of the person's total disregard to exceed the dollar value of benefits utilized under a partnership policy;
- Disregard additional assets that become available to a partnership participant with an unused amount of asset protection at the time of qualifying for the partnership, up to the dollar amount of long-term care benefits utilized under a partnership policy; and
- Exclude from assets that may be disregarded the assets in a trust under §1917(d)(4)(A) and (C) or annuities and similar legal instruments under §1917(e).

X

The State Medicaid Agency (agency) stipulates that the following requirements will be satisfied in approving a long-term care policy for qualification of the disregard. Where appropriate, the agency relies on attestations by the commissioner of the Department of Commerce charged

TN No. 06-10
Supersedes
TN No. N/A

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Effective Date 07/01/06

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: MINNESOTA

MORE LIBERAL METHODS OF TREATING RESOURCES
UNDER §1902(r)(2) OF THE ACT

with regulation and oversight of insurance policies sold in the state, regarding information within the expertise of the Department of Commerce.

- The policy is a qualified long-term care insurance policy as defined in §7702(B)(b) of the Internal Revenue Code of 1986.
- The policy meets the requirements of the long-term care insurance model regulation and long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) as those requirements are set forth in section 1917(b)(5) of the Social Security Act.
- The policy, if issued in this State, was issued no earlier than the effective date of this State plan amendment.
- The insured individual was a resident of this State on the date the policy was issued and first became effective. If the policy is later exchanged for a different long-term care policy, the individual was a resident of this State on the date the first policy was issued and became effective.
- The policy meets the inflation protection requirements set forth in section 1917(b)(1)(C)(iii)(IV) of the Social Security Act.
- The commissioner requires the issuer of the policy to make regular reports to the Secretary that include notification regarding when benefit provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.
- The State does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on non-partnership policies.
- The Department of Commerce assures that any individual who sells a partnership policy receives training, and demonstrates evidence of an understanding of such policies and how they relate to other forms of public and private coverage of long-term care.
- The agency provides information and technical assistance to the Department of Commerce on the training described above.

TN No. 06-10
Supersedes
TN No. N/A

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Effective Date 07/01/06

LIENS AND ADJUSTMENTS OR RECOVERIES

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 return home:*

The State requests verification from the attending physician of the institutionalized individual's status immediately preceding giving notice of the State's intent to file a real property lien.

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):*

The State uses the following criteria:

- *written proof verifying the date the son or daughter moved into the home;
- *number of hours per day which the son or daughter provided on-site care, and personal care;
- *any part-time or full-time jobs held while providing care;
- *any schools or other similar institutions the son or daughter attended while providing care;
- *specifics regarding the type of care the son or daughter provided, i.e., nursing care, daily living care, homemaker services, transportation, financial, etc.;
- *any service agency, governmental or private, which provided care, the dates provided and the extent of the care provided;
- *letter from the attending physician of the institutionalized individual, stating what kind of care, and duration of care, that was needed to prevent medical institutionalization;
- *all other factors relevant to making the determination in a particular case.

3. *The State defines the terms below as follows:*

**estate* – For ~~enrollees~~ recipients deceased prior to August 1, 2003, estate is defined as used in Minnesota Statutes, Chapter 524, Uniform Probate Code. For ~~enrollees~~ recipients who die on or after August 1, 2003, estate is defined as the probate estate under Minnesota Statutes, Chapter 524, together with all of the person's interests established on or after August 1, 2003 or proceeds from those interests in real property owned by the person as a life tenant or joint tenant with a right of survivorship at the time of death, and to the extent the following interests become part of the probate estate, all interests or proceeds of those interests in securities owned by the person in beneficiary form and all interests in joint accounts, multiple party accounts and pay on death accounts or proceeds of those accounts.

For an individual covered under a long-term care insurance partnership policy issued on or after July 1, 2006, estate does not include assets or resources disregarded for Medicaid eligibility under Attachment 2.6-A, Supplement 8b and any unused amount at death of assets that may be disregarded based on the total dollar amount of benefits utilized by the participant under the partnership policy.

The personal representative of the participant's estate has the burden of proving that assets in the estate of the participant or participant's surviving spouse were assets, portions of assets or proceeds from assets disregarded for Medicaid eligibility during the participant's lifetime.

The personal representative of the participant may apply any unused amount of partnership asset protection to disregard additional assets in the estate. For a Medicaid recipient who becomes a qualified partnership participant due to the exhaustion of partnership policy benefits at death, the personal representative may disregard assets in the estate up to the amount of benefit utilized by the decedent under the qualifying policy before death.

The personal representative has the burden of establishing the unused value of partnership asset protection. To determine a participant's unused amount of partnership asset protection at the time of estate recovery, reduce the total amount of the participant's partnership policy benefits utilized by the assets disregarded for Medicaid eligibility purposes during lifetime, valued as follows:

- (i) The value on the date of the participant's death of assets, portions of asset or proceeds of assets retained or possessed by, accessible to or under the control of the participant or the participant's on the date of the participant's death;
- (ii) The value on the date of transfer of assets, portions of assets or proceeds of assets transferred to a third party during the participant's lifetime by either the participant or the participant's spouse.

**individual's home* – An individual's home, for the purpose of the Medical Assistance lien, is real property in which the recipient has an ownership interest, and which the recipient occupied as a primary dwelling immediately prior to admission to a medical institution.

**equity interest in the home* – Equity interest in the home means an ownership interest recognized under Minnesota law.

**residing in the home for at least one or two years on a continuous basis* – Residing in the home on a continuous basis means the person occupies the home as his or her primary dwelling, and intends to continue to occupy such home for the indefinite future.

**lawfully residing* – Lawfully residing means residing in a manner not contrary to, or forbidden by law.

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Approved: **NOV 28 2006**
Supersedes: 05-12B

Attachment 4.17-A
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**discharge from the medical institution and return home* – Discharge from a medical institution is actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to a home per plan of treatment.

4. *The State defines undue hardship as follows:*

The State follows the mandatory hardship standards for exemption of certain income, resource and property interests of American Indian and Alaska Natives specified in section 3810(A)(7) of the State Medicaid Manual.

The State does not otherwise define undue hardship in finite terms, but guides the determination process. These circumstances are not exclusive as there may be other situations that cause undue hardship. An undue hardship may exist when the circumstances described in one or more of the following paragraphs are present:

A. The estate claim could not be paid except by the sale of assets (real or personal property), subject to probate proceedings, for which the following statements are true for a period of at least 180 days prior to the date the decedent died and continue as true –

- the assets are used by the waiver applicant to produce income in his or her trade profession, or occupation, (trade, profession or occupation include a working farm that the waiver applicant actually operates, but does not include a farm that is not worked by the applicant, or a farm that is rented); and
- the assets are a necessary part of the waiver applicant's trade, profession or occupation; and
- the trade, profession or occupation in which the assets are used is the waiver applicant's sole source of income; and
- the waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.

B. The estate claim could not be paid except by the sale of the decedent's real estate subject to probate proceedings and the following are true –

- the waiver applicant actually and continuously occupies the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to occupy the dwelling; and

STATE: MINNESOTA

Effective: 7/01/08

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- the real estate for which the hardship waiver is requested was classified as homestead property for property tax purposes under Minnesota Statutes, section 273.124 throughout the entire period of time referred to in the prior paragraph.

C. Notwithstanding anything else to the contrary, if the decedent took any of the following actions, and the waiver applicant's circumstances are wholly or partially a result or a consequence of those actions, there is not hardship for -

- actions which divested or diverted assets in order to avoid recovery or medical assistance paid for the decedent or the decedent's spouse, from the decedent's estate; or
- actions with which divested or diverted assets with the result or effect that medical assistance paid for the decedent or the decedent's spouse are wholly or partially unrecoverable from the decedent's estate.

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:*

- A. The State will not waive an estate claim, even if circumstances are present that would grant a waiver for undue hardship, if the decedent's heirs or survivors would not receive a benefit from the waiver because of other filed claims against the estate.
- B. The State will withdraw any estate claim, either fully or partially, after a determination of hardship has been made to all or part of the estate's assets. In the event that an estate claim has not been filed, the State will not file an estate claim in cases where a determination of hardship has been made on all or part of the estate assets.
- C. An estate claim need not be filed in probate when it would not be cost-effective to make a recovery from the deceased medical assistance recipient's or recipient's spouse's estate. The decision to not file an estate claim can be made without an application being made for a waiver based on undue hardship.

6. *The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):*

Cost-effective for estate claim purposes means that the total amount of the claim that the State is legally entitled to file, or the total amount the State is legally entitled to collect after filing an estate claim ~~the estimated costs for filing, pursuing, and collecting the estate claim are~~ is equal to or greater than the estimated costs for filing, pursuing, and collecting the estate claim, ~~the total amount of the claim that the State is legally entitled to file, or the total amount the State is legally entitled to collect after filing an estate claim.~~

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Approved:

Supersedes: 05-12B

Attachment 4.17-A

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7. *The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):*

The State follows these steps:

- A. Reasonable effort to identify as many heirs and devisees as possible
- B. Notice sent to each of the identified heirs and devisees a Notice of Claim and an Application for a Waiver of Claim. This form contains:
 - 1. a statement of the claim
 - 2. notice of the right to apply for a hardship waiver
 - 3. a statement of what constitutes undue hardship
 - 4. procedures and instructions for filing an application for an undue hardship, and the time period of ~~[delete dash --]~~30 days ~~period~~ to file an application from receipt of notice
 - 5. information regarding appeal rights and procedures
- C. Review and determination on each application for waiver
 - 1. 30 day time period to make a determination on the application for waiver
 - 2. written response of the determination
 - 3. information regarding appeal rights and procedures