

# P A T H

## Department of Prevention, Assistance, Transition, and Health Access

FROM Eileen I. Elliott, Commissioner  
for the Secretary

BULLETIN NO. 02-06

DATE 3/15/02

SUBJECTS Homestead Exemption for Medicaid Estate Recovery

CHANGES ADOPTED EFFECTIVE 7/1/2002

INSTRUCTIONS:

       Maintain Manual - See instructions below.  
  X   Proposed Regulation - Retain bulletin  
and attachments until you receive  
Manual Maintenance Bulletin: 02-06F  
       Information or Instructions - Retain  
until \_\_\_\_\_

MANUAL REFERENCE(S)

TOC M100                      M159

Federal law requires the department to recover Medicaid expenses for long-term care for individuals over age 55 and to define undue hardship criteria exemptions (42 U.S.C. §1396p(b)(3)). This rule proposes to amend the department's undue hardship exemptions from estate recovery as authorized in Act 152 (33 V.S.A. §1906a) and reflected in the terms of the Medicaid state plan amendment approved by the Centers for Medicare and Medicaid Services (formerly the Health Care Finance Administration) on July 20, 2000.

***Specific Changes to Existing Regulations*** *(click blue link at left to see that section)*

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[M159 through M159.2](#) Content in M159.1 revised for consistency with M154. Reorganizes, clarifies, and updates existing regulations.

[M159.21 through M159.22](#) Revises regulation to conform with the conditions of approval given to Vermont to amend its Medicaid state plan provisions related to undue hardship by the Health Care Financing Administration (currently known as the Centers for Medicare and Medicaid Services).

***Comment Period***

A public hearing is scheduled on April 15, 2002, at 10 a.m. in the Secretary's Conference Room, Agency of Human Services, State Office Complex, Waterbury, Vermont.

Written comments may be submitted no later than 4:30 p.m., on April 22, 2002, to Marybeth McCaffrey, Esq., Health Care Policy Analyst; Policy, Planning and Evaluation Division; Department of Prevention, Assistance, Transition, and Health Access; 103 South Main Street, Waterbury, VT 05671-1201.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing regulation content.

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M159

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M159     Adjustment or Recovery

The department may take action either before or after Medicaid payment of a claim to assure appropriate disbursement of Medicaid funds when payment turns out to be inappropriate due to subsequently discovered resources, fraud, error, or the development of third party-liability. Taking administrative action and accepting partial or full reimbursement shall not preclude either simultaneous or subsequent action in civil or criminal court as appropriate.

The department may:

- (a) negotiate adjustment or recovery on a voluntary basis with recipient, provider, or an obligated third party;
- (b) accept adjustment or recovery in conjunction with the imposition of provider sanctions (see M155.4);
- (c) file a lien against any third party to recover Medicaid expenditures from any settlement, judgment, or other income that may be awarded through negligence liability action;
- (d) enter direct civil action to effect adjustment or recovery when other efforts fail; or
- (e) investigate and prepare for referral to the appropriate criminal prosecutor any case presumed subject to adjustment or recovery by way of such action.

Providers may be required to enter a claim against any subsequently discovered health insurance resources previously unknown or overlooked and submit an adjusted Medicaid claim upon collection, with reimbursement as appropriate.

M159.1     Adjustments or Recoveries from Estates

The department shall seek adjustment or recovery from the estates of individuals who died on or after January 1, 1994. This includes amount in personal needs accounts. The individuals must have been 55 years of age or older when they received long-term care services paid for by the Medicaid program for nursing facility services, home-and-community-based waiver services, and related hospital and prescription drug services. Related hospital and prescription drug services are those paid for by the Medicaid program during a period of time when the individual is living in a nursing facility or enrolled in a home-and-community-based waiver program.

The department will file a claim with the probate court as a creditor of the estate to recover its expenditures for long-term care services only after the death of an individual's surviving spouse, if any, and when the individual has no surviving child who is under age 21, or blind, or permanently and totally disabled as defined by the Social Security Administration.

M159.2    Exemptions from Estate Adjustment or Recovery

The department exempts the following assets from estate adjustment or recovery when an heir requests an exemption in writing no later than four months after the publication of notice to creditors of the estate.

(a)    Homes in trust prior to December 1, 1997

Although the department normally recovers for long-term care Medicaid costs incurred after January 1, 1994, when individuals were receiving Medicaid payment of long-term care services before December 1, 1997, the department exempts their homes in revocable trusts from recovery until after May 1, 1998, or, if later, on or after the effective date of the first Medicaid eligibility review completed after December 1, 1997.

(b)    When loss of assets would present an undue hardship

The department will not seek adjustment or recovery from assets when that adjustment or recovery would present an undue hardship to the decedent's family members, as specified below and in subsection M159.21.

(1)    Income-producing assets

Undue hardship exists when adjustment or recovery from an income-producing asset can be made only if the asset, alone or in combination with other related assets, is sold and either or both of the following conditions are met:

- (A)    The assets sold are the sole source of income for the decedent's spouse, parents, children, or siblings.
- (B)    As a result of the sale, the decedent's spouse, parents, children, or siblings would qualify for public assistance (Reach Up benefits, SSI/AABD, general or emergency assistance, or TANF or TANF/MOE benefits from another state).

The department will not seek to recover assets for which the department has imposed a penalty period of ineligibility for Medicaid coverage of long-term care services related to the transfer of those assets.

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M159.21 Undue Hardship Exemptions Applicable to Homesteads

At any time before closure of the probate estate, an heir may assert that adjustment or recovery against the homestead would be an undue hardship and that the homestead should be exempt from adjustment or recovery for the costs of Medicaid long-term care services. The department shall exempt a decedent's home from estate adjustment or recovery based on undue hardship when one or more of the following three conditions have been established to the department's satisfaction.

- (a) A sibling has been living in the home continuously for at least one year immediately before the date the decedent began receiving long-term care services.
- (b) A son or daughter has been living in the home continuously for at least two years immediately prior to the date the decedent began receiving long-term care services and provided care that allowed the decedent to remain at home.
- (c) Conditions (1), (2), and (3) below have been met.
  - (1) The value of the homestead is less than \$125,000.
  - (2) A sibling or lineal heir of the deceased Medicaid beneficiary will inherit the homestead. A lineal heir is a direct descendant, such as a child or grandchild.
  - (3) The heir meets one or both of conditions (A) and (B) below.
    - (A) The heir has gross family income below 300 percent of the federal poverty level. No income exclusions or deductions are allowed. The income of the persons presented in the following table is included in the heir's gross family income, provided that they are living in the heir's household.

Type of Heir	Family Members, If Living in the Heir's Household
Adult 18 years or older; or person younger than 18 and emancipated	Heir Heir's spouse or civil union partner Heir's biological or adoptive child or stepchild
Person younger than 18 and not emancipated	Heir Heir's parent Heir's stepparent Heir's biological or adoptive sibling, stepsibling, or half sibling, if younger than 18 and not emancipated

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M159.21 Undue Hardship Exemptions Applicable to Homesteads (Continued)

(B) The heir demonstrates that significant services or financial support provided to the deceased person by heirs meeting condition (2) or the spouses of such heirs enabled the person to avoid long-term care or delay it at least six months. It is not necessary for the deceased person to have been a Medicaid beneficiary when the services or financial support were provided. Services may have been provided in combination with services provided by governmental or other private entities.

To meet condition (B), the services or financial support must fall into one or both of the following two categories:

(i) Medical or remedial care or support services that were:

- medically necessary;
- provided directly by the heir or the heir's spouse without compensation, or purchased with the heir's funds; and
- provided while the deceased person required medical care and services consistent with the level of care standard for level III residential care homes at a frequency averaging no fewer than three times per week or, if provided less frequently, constituting the equivalent expenditure of time or money.

The department shall not verify the level of care unless it has a reasonable basis for questioning that the level III standard was met.

(ii) Other services or financial support at least as significant as the care or services described in category (i).

When there are two or more heirs, the full value of the homestead is exempt from Medicaid estate adjustment or recovery only if each heir meets conditions (1), (2), and (3) above. When one or more heirs do not meet conditions (1), (2), and (3), the percentage of the value of the homestead corresponding to their share is subject to Medicaid estate adjustment or recovery.

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M159.22

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M159.22 Methodology for Adjusting a Claim Against a Homestead

An estate includes all real and personal property and other assets listed on an inventory filed in the probate court. The probate court oversees the distribution of assets to heirs and the payment of the decedent's outstanding debts, which requires creditors to submit proof of their claims to the court.

The probate court judge compares the total value of claims filed by creditors to the total value of available assets in the estate. The court determines which assets are available to pay debts.

When any heir meets the department's undue hardship criteria as specified in M159.2, some or all of these available assets may be exempt from adjustment or recovery by the department under these rules. Nonexempt assets are those subject to the department's claim because an heir has not met the undue hardship criteria. Creditors other than the department are not subject to these exemptions.

When the total available assets are insufficient to pay all claims, the probate court prioritizes the debts and prorates each claim according to law. Each creditor collects the resulting percentage of its claim.

If there are sufficient nonexempt assets to allow the department to collect its full percentage, it does so. If the nonexempt assets allow the department to collect only a partial amount of its share after the court's proration, it collects that amount. The department shall maintain its original claim so it can be prorated along with all other creditor's claims according to law. The department notifies the court of its decision on the homestead exemption. If the department grants a homestead exemption, it shall inform the court of the maximum payment it will accept against its claim. The department determines the maximum payment it will accept by subtracting the amount of the exemption from the amount of the department's claim.

M159.23 Methodology for Retroactive Homestead Exemption Claims

The undue hardship exemption applicable to homesteads shall be effective for any probate estate opened after June 30, 1999. Heirs seeking the exemption from July 1, 1999, through the effective date of this policy must submit their claim to the department's Third Party Liability Unit in the Office of Vermont Health Access within 60 days following receipt of proper notice from the department. In the sole discretion of the commissioner, the department may make exceptions to the 60-day rule when an heir establishes undue hardship due to lack of notice, a medical need, or natural disaster. Heirs seeking an exemption from the 60-day submission requirement must sign an affidavit describing the condition that prevented them from complying with the 60-day submission requirement and submit the affidavit along with supporting documentation to the commissioner.