

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
State/Territory: SOUTH DAKOTA

SECTION 4. GENERAL PROGRAM ADMINISTRATION

Citation 4.17 Liens and Adjustments or Recoveries

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

(a) Liens

X 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.

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

X The State imposes TEFRA liens 1917(a)(1)(B) on real property of 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.

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.

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Citation 4.17 Liens and Adjustments or Recoveries (continued)

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

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

- (2) X The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under section 1917(a)(1)(B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

_____ In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

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Citation 4.17 Liens and Adjustments or Recoveries (continued)

(b) Adjustments or Recoveries (continued)

(3) (Continued),

Limitations on Estate Recovery – Medicare Cost Sharing:

- (i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, and SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits (Part A and B premiums, deductibles, coinsurance, and co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.
- (ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, and co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

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Citation 4.17 Liens and Adjustments or Recoveries (continued)

(b) Adjustments or Recoveries (continued)

Section 1917(b)(1)(C) of
the Act

(4) If an individual covered under a long-term care insurance policy received benefits for which assets or resources were disregarded as provided for in **ATTACHMENT 2.6-A, SUPPLEMENT 8c** (State Long-Term Care Insurance Partnership), the State does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.

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(c) Adjustments or Recoveries - Limitations

The State complies with the requirements of section 1917(b)(2) of the Act and regulations at 42 CFR 433.36(h) - (i).

- (1) Adjustments or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (i) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (ii) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who established to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish the he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - estate (at a minimum, estate as defined under State probate law). Except for the grandfathered states listed in section 4.17(b)(3), if the state provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or other arrangement),
 - individual's home,
 - equity interest in the home,
 - residing in the home for at least 1 or 2 years,
 - on a continuous basis,
 - discharge from the medical institution and return home, and
 - lawfully residing.

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Citation 4.17 Liens and Adjustments or Recoveries (continued)

(d) ATTACHMENT 4.17-A (continued)

- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.