

Alabama Medicaid Lien Program Q and A

1. What is a TEFRA lien?

Established under federal law, a TEFRA (pre-death) lien may be placed against the real property of certain applicants/recipients who are an inpatient in a nursing facility, Intermediate Care Facility for the Intellectually Disabled, or other long-term medical institutions **AND** have been determined eligible for the Nursing Home Medicaid Program or ICF-IID Medicaid based on eligibility criteria, regulations, and policies.

2. Who is affected?

A person of any age permanently residing in a nursing facility, intermediate care facility for the intellectually disabled, or other medical institutions **AND** cannot reasonably be expected to be discharged home from the medical institution.

3. When does a TEFRA lien become due?

The TEFRA lien shall be due and payable upon the sale, transfer or lease of said property, or upon the death of the Medicaid recipient.

4. What options are available for satisfying the lien?

There are several options for satisfying the lien:

- (a) The sponsor/family can pay the amount due in full (only after the Medicaid recipient has passed away);
- (b) The sponsor/family can sell the property and pay off the lien (can be completed prior to the Medicaid recipient's death as well as after);
- (c) A responsible party can sign a promissory note and make monthly payments to the Agency (these payments have a maximum repayment plan of 48 months); OR
- (d) They can risk foreclosure.

5. How will the family of the Medicaid recipient be contacted about the lien after a Medicaid recipient dies?

A notice, called a Billing Letter, will be sent to the sponsor on record (or the family of) approximately 60 days after the date of death of the Medicaid recipient. This notice will provide the amount Medicaid has expended on the Medicaid recipient's behalf as well as the current tax appraised value(s) of the property(ies).

PLEASE NOTE: The Alabama Medicaid Agency does not (at any point) become the owner of the property. The Agency simply holds a lien (like a mortgage) on the property. The sponsor/family remain responsible for determining how the lien will be satisfied and maintaining the property.

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6. What are the exemptions for lien recovery efforts?

In the case of liens placed on the home, recovery will be delayed until after the death of the surviving spouse, if any, and if:

- a) A sibling is lawfully living in the home and was lawfully residing continuously in the home for at least one year immediately prior to the claimant being admitted to the medical institution; or
- b) If there is a son or daughter of the Medicaid recipient who is and has been residing in the home for at least two years immediately before the date of the individual's admission to the institution and has been residing there on a continuous basis since that time. The son or daughter would have to establish to the Alabama Medicaid Agency's satisfaction that they were providing care which permitted the individual to reside at home rather than in a medical institution.

7. What deferral options does the Agency have available for TEFRA lien cases?

The Agency may defer recovery on the TEFRA lien, if:

- a) A disabled child of the Medicaid recipient lives at the lien property. The Agency would require a copy of the disabled child's birth certificate, a copy of the disabled child's driver's license or other photo identification card, and a copy of the disabled child's Social Security Administration benefits notice *this notice must state you are receiving benefits due to a disability*.
- b) A family member is residing in the lien property. The Agency would require a copy of the family member's driver's license or other photo identification card and at least two (2) sources verifying that the individual is residing there (i.e. bills in your name, income sources in your name at that address, etc.).

****PLEASE NOTE: Deferrals are reviewed annually. You may be contacted by a member of the Property Liens Section to provide additional verification each year.***

8. Are there any situations when a TEFRA lien may not be placed on the recipient's home when the recipient enters a nursing facility?

- a) If there is a spouse residing in the home;
- b) If there is a child under age 21 or blind or disabled residing in the home; or
- c) If there is a sibling of the Medicaid recipient who has an equity interest in the home and is currently residing in the home and has been residing continuously in the home for at least one year immediately before the date of the individual's admission to the institution.

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9. **What happens if someone has been paying taxes and upkeep expenses for maintaining the deceased Medicaid recipient's vacant home?**

A deduction for necessary and reasonable expenses for maintaining the vacant home may be deducted from the TEFRA lien amount if the property is sold. This would only apply to cases regarding Medicaid recipients that were required to sign a lien during the eligibility process. No consideration for reimbursement of household and maintenance expenses will be given for cases where the Medicaid recipient is still alive.

Please complete the Affidavit in Support of Household and Maintenance Expenses on Agency's website under Property Liens.

10. **What if both the Medicaid recipient and their community spouse's names are on the deed?**

Depending on the wording of the deed, property may be a recoverable asset after the Medicaid recipient's death (if no exemptions apply). Please contact an attorney if there are specific questions about the wording.

11. **What if only the community spouse's name is on the deed?**

The only recovery would be if the community spouse received Medicaid services or if the property's ownership was transferred to the Medicaid recipient. Recovery would happen after the Medicaid recipient's death or when the exemptions no longer apply.

12. **Is it true that a Medicaid recipient must turn their home over to the state when the Medicaid recipient moves to the nursing facility or begins receiving home and community based services?**

No. A Medicaid recipient does not have to sign over the deed to the state; however, the Medicaid recipient could be required to sign a TEFRA lien if they are in a nursing facility, intermediate care facility for the intellectually disabled, or other medical institutions. The TEFRA lien will act as the state's claim should the property be sold prior to the Medicaid recipient's death. Medicaid does not take possession of the property.

13. **Can a Medicaid recipient give their home away before entering the nursing facility or receiving home and community based services?**

There are certain situations in which a Medicaid recipient could transfer the ownership of the Medicaid recipient's property. Please contact an attorney to discuss those situations.

14. **How does a Medicaid recipient transfer the deed to the property?**

It is very important to speak with an attorney that has knowledge of Medicaid policies before transferring any property.

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15. What if a Medicaid recipient is discharged home from the nursing facility?

If a Medicaid recipient is discharged home (to the property in which the Agency holds a TEFRA lien) for a specific amount of time, the Agency will issue a lien release once verification that the Medicaid recipient returned to the lien property is provided.

16. How does the family ask for a hardship waiver?

If the heir feels he/she could be considered for an undue hardship, a request for the waiver application must be made within 30 days of receiving the Agency's notice against the estate, or upon the sale, transfer, or conveyance of the real property subject to a TEFRA lien.

The Application for Hardship Waiver can be found on the Agency's website under Property Liens.

17. What is the criteria for an undue hardship?

"Undue Hardship" is defined as the existence of a situation, established by convincing evidence, that the estate subject to recovery is an asset such as a family farm or family business which produces "limited income" (defined as equal to or less than the income limit established in Rule 560-X-25.14) and is the sole income-producing asset of one or more heirs to the estate.

An undue hardship is not available in the following circumstances:

1. For recipients with long term care insurance policies who became Medicaid eligible by virtue of disregarding assets because of payments made by a long term care insurance policy or because of entitlement to receive benefits under a long term care insurance policy;
2. If Medicaid determines the hardship was created by the recipient by resorting to estate planning.

18. The property is selling. What next?

Please have the closing attorney/title company email a copy of the sales contract and preliminary HUD to PropertyLiens@Medicaid.Alabama.Gov. If there are any mortgages, other liens, or judgments (other than the Agency's lien) included on the preliminary HUD, please make sure their payoff verifications are provided as well.

If the sales price is at or above the current tax appraised value, the Agency will not have to approve the sales price. If the sales price is less than the current tax appraised value, the Agency will need to review the sales price. This process varies depending on if the

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Medicaid recipient is still alive or has already passed away. If the Medicaid recipient is still alive, please contact the Medicaid District Office caseworker handling the case. If they have passed away, the Property Liens Section will be able to assist in reviewing the sales price.

****The Checklist for Post-Death Lien Negotiations is available on the Agency's website under Property Liens.****

19. What expenses can be included on the preliminary HUD?

The Agency will allow reasonable closing costs to be included on the preliminary HUD for all cases.

- a. If the Medicaid recipient is still alive, no household and maintenance expenses will be approved. Repair costs must be preapproved by the Property Liens Section. Proof may be requested showing that the repairs are required by the financial institution processing the loan (if applicable).
- b. If the Medicaid recipient has passed away, the Agency may allow up to 2 years of household and maintenance expenses if approved. Proof of payments, along with a completed Affidavit in Support of Household and Maintenance Expenses, would be required. This document is available on the Agency's website under Property Liens.

20. I'm interested in purchasing a property that the Agency holds a lien against. What do I need to do?

The Agency does not own the properties, so you would need to contact the property owner (or family of the property owner) to discuss the possibility of purchasing the property.

PLEASE NOTE: If you decide to satisfy the Medicaid lien, please be aware that by doing so it does not convey ownership to you. Please speak with an attorney if you have any questions prior to satisfying the Medicaid lien.

21. What if we feel the property's tax appraised value is overstated?

You are welcome to contact the County's Tax Assessor's Office to see about a possible property reassessment. If the County reduces the tax appraised value, please provide verification to our office. Another option would be to pay to have a private appraisal at your own expense.

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22. A family member lives in the home. Will Medicaid kick them out?

No. The Agency does not own the property. The Agency would require a copy of the family member's driver's license or other photo identification card and at least two (2) sources verifying that the individual is residing there (i.e. bills in your name, income sources in your name at that address, etc.).

Contact information is provided below.

CONTACT INFORMATION:

Alabama Medicaid Agency
Property Lien Section
PO Box 5624
Montgomery, AL 36103
Office: (334) 242-5304 or (334) 242-5305
Fax: (334) 353-4820
Email: PropertyLiens@Medicaid.Alabama.Gov

Alabama Medicaid Agency
Estate Recovery Section
PO Box 5624
Montgomery, AL 36103
Fax: (334) 353-4820
Or by phone/email to the following:
(334) 242-5727

EstateRecovery@Medicaid.Alabama.Gov

Alabama Medicaid Agency
Estate Notice Office
PO Box 5624
Montgomery, AL 36103
Phone: (334) 242-4097 or (334) 242-4098
Fax: (334) 353-4820
EstateNotice@Medicaid.Alabama.Gov

*Probate cases only

You may also visit the link provided below for additional information regarding Estate Recovery and Property Liens.

https://medicaid.alabama.gov/content/7.0_Providers/7.1_Third_Party/7.1.1_Estate_Recovery.aspx