

EFFECTIVE  
7/1/2019

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

471 NAC 38

TITLE 471 NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 38 ESTATE RECOVERY

001. SCOPE AND AUTHORITY. Medicaid estate recovery is mandated by §1917(b) of the Social Security Act and Nebraska Revised Statute (Neb. Rev. Stat.) §68-919.

002. RESERVED.

003. RESERVED.

004. UNDUE HARDSHIP WAIVER.

004.01 PURPOSE. Waivers granted by the Department based on undue hardship are a rare and extraordinary remedy intended to prevent the impoverishment of the deceased recipient's family if the Department were to pursue an estate-recovery claim. Anticipating or expecting an inheritance, or being inconvenienced economically by the lack of an inheritance, is not a valid basis for an undue-hardship waiver.

004.02 HEIR. Any person who could be considered an heir of the now-deceased Medicaid recipient under the Probate Code may apply for an undue-hardship waiver.

004.03 CRITERIA. Any of the following circumstances may constitute an undue hardship that results in a complete or partial waiver of claim:

- (A) An heir of the recipient resided in the recipient's home for two years prior to the recipient's entry into a nursing home and during that time provided the type and quantity of unreimbursed care that delayed the recipient's entry into a nursing home;
- (B) An heir of the recipient resided in the recipient's home for two years prior to the recipient's receipt of recoverable medical services and during that time provided the type and quantity of unreimbursed care that delayed the recipient's receipt of those services;
- (C) Payment of the Department's claim would cause an heir of the deceased recipient to become eligible for public assistance;
- (D) Waiver of the Department's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or
- (E) Other situations that the Department, in its discretion and on a case-by-case basis upon consideration of all facts and circumstances, determines constitutes an undue hardship.

004.04 LIMITATION. An undue hardship does not exist if action taken by the recipient, whether directly or by another person pursuant to sufficient authorization, impermissibly divested or diverted assets to avoid estate recovery.

004.05 APPLICATION AND REVIEW PROCESS. An undue-hardship waiver application must be submitted in writing to the Department within 30 days of the creditor's claim-filing deadline or 90 days from the recipient's date of death if there is no probate proceeding. The application must explain:

- (A) How the applicant is related to the now-deceased Medicaid recipient, and include documents or other evidence of this relationship; and
- (B) The specific reason(s) why the application should be granted, according to 471 Nebraska Administrative Code (NAC) 38-004.03, and include documents or other evidence to support the application.

The applicant will receive a written decision within 90 days after the Department has received the application. If the application is completely or partially denied, the decision will include general information about appealing the decision.

005. LONG-TERM CARE PARTNERSHIP PROGRAM. Neb. Rev. Stat. §68-1095.01 established Nebraska's Long-Term Care Partnership Program.

Resources equal to the amount of benefits paid out by a long-term care partnership policy are disregarded for an individual applying for Medicaid if the policy was issued on July 1, 2006 or later and the individual is otherwise Medicaid eligible. The amount of the resource disregard is also excluded from estate recovery.

The Department accepts the Department of Insurance's approval of the policy.

005.01 RECIPROCITY WITH OTHER STATES. The Department will accept partnership policies issued in other states with Qualified Long-Term Care Partnership Programs that meet the criteria established in §1917(b)(1)(C) of the Social Security Act.