

# Understanding The Medicaid Liens Process For The Nursing Home Resident

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**What Is A Medicaid Lien?** When a nursing home resident owns property, the value of the property is often such that Medicaid eligibility would not be possible unless the property meets certain Medicaid property exclusions. When Medicaid excludes property in the eligibility process they allow what is known as "conditional" Medicaid eligibility. One of the conditions of receiving Medicaid when the beneficiary owns excluded property is the placement of a lien on the property by Medicaid.

**Why Does Medicaid Take Liens On The Property of a Nursing Home Resident?** The Social Security Act (1902(a)(18) and 1917(a) and (b) describe the conditions under which an agency may impose a lien against a beneficiary's property, and when an agency may make an adjustment or recover funds in satisfaction of the claim against the individual's property or estate. The U.S. Code of Federal Regulations in 433.36 further clarifies the liens process for State Medicaid Agencies. In October, 1982 the Alabama Medicaid Agency adopted a policy regarding the placement of a lien upon real property of Medicaid claimants. The purpose of the Medicaid lien is to allow the Alabama Medicaid Agency a way in which the Agency can recover monies spent on providing care for a nursing home resident whose cost of care was paid by Medicaid.

**Who Can Sign The Medicaid Lien?** The Medicaid lien must be signed by the nursing home resident or his/her legally authorized representative (power of attorney, court appointed guardian/conservator, etc.). If the resident is unable to sign the Medicaid lien and does not have a legally authorized representative he/she must execute a power of attorney. If the resident is unable to execute a power of attorney the family will have to go through probate court to have a guardian/conservator appointed to act on the nursing home resident's behalf.

**Does Medicaid Take A Lien On ALL Property Owned By A Nursing Home Resident?** Medicaid will take a lien on the property of an individual in the following situations:

- Is an inpatient in a Skilled Nursing Facility or an Intermediate Care Facility or Intermediate Care Facility for Mentally Retarded.
- Cannot reasonably be expected to be discharged from the facility and return home within 90 days; and
- Meets all other Medicaid criteria.

**What Does "Cannot Reasonably Be Expected To Be Discharged From The Facility And Return Home Within 90 Days Mean"?** Per the policies established by the Alabama Medicaid Agency and approved by the Center for Medicare and Medicaid Services (CMS) in order to take a lien on a home, the State must determine the claimant cannot reasonably be expected to be discharged from the medical facility and return home due to one or more of the following:

- The claimant states he/she does not intend to return home; or
- The claimant has been or will be in the medical facility beyond a reasonable time frame (a three-month limit); or
- A physician's statement has indicated the claimant cannot reasonably be expected to be discharged from the facility within three months from the date of admission.

**Are There Other Circumstances Under Which Medicaid Will Not Take A Lien On Property?** Yes, under certain situations Medicaid cannot take a lien on the property of a nursing home resident who is approved for Medicaid if any of the following individuals is lawfully residing in the home:

- The Spouse
- The individual's child who is under age 21 or blind or disabled as defined in the State plan or
- The individual's sibling (who has an equity interest in the home, and who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution).

**If No Lien Is Required Because My Stay In The Facility Is Less Than 90 Days Or Due To The Spouse, Child Under Age 21, Disabled Child or Sibling Living In My Home, Does This Mean That Medicaid Will Not Expect Me To Repay Them For The Time I Spent In The Nursing Home?** Not necessarily. Medicaid uses the estate recovery process to recover the cost of claims correctly paid in certain situations. Even if there was not a lien on the nursing home resident's property the Medicaid Agency will still have the opportunity to collect for nursing home expenses paid by Medicaid once the property is no longer the home for the spouse, child, disabled child or sibling.

**If Medicaid Has a Lien On The Property Will They Be Responsible For Paying The Property Taxes?** No, the property taxes must continue to be paid by the property owner. Families should be aware that if property taxes go unpaid and the property is sold for taxes, this action can cause a significant Medicaid eligibility issue for the nursing home resident, including loss of the intent to return home exclusion. Medicaid could require that the property go on the market for sale in order to continue Medicaid eligibility. Failure of the nursing home resident to redeem the property and get it back in his/her name could also result in a transfer of assets penalty.

**If Medicaid Takes a Lien On Property And I Go Back Home, What Happens To The Medicaid Lien?** When a Medicaid recipient is discharged home the Medicaid lien will be released after the resident has been at home for 5 full days. The family should notify the Medicaid office immediately when the resident returns home.

**When Does Medicaid Collect On Their Lien?** As long as the nursing home resident is alive and maintains ownership of the property, the state cannot foreclose on the lien. The state may foreclose on the lien when the property is sold or transferred or when the nursing home resident dies.

**How Does Medicaid Collect On Their Lien?** If the property is sold, transferred or if the nursing home resident dies, Medicaid will calculate all monies it spent on the resident during his/her nursing home stay as well as what the Agency spent on paying Medicare premiums on behalf of the nursing home resident. They will first offer the family the opportunity to redeem the property by repaying Medicaid the amount owed to Medicaid or the tax appraised value of the property, whichever is less. If the family does not wish to redeem the property then Medicaid will proceed with a formal foreclosure.

*Note: This document was prepared by Healthcare Compensation Solutions as an educational tool for nursing homes and the families of their residents who may be required to sign a Medicaid lien in order to gain Medicaid eligibility. It does not act as formal Medicaid policy; therefore, further questions concerning the Medicaid liens process should be directed to the Medicaid District Officer in your area or to the Alabama Medicaid Agency at 334-242-5000, or by mail at Post Office Box 5624, Montgomery, AL 36103-5624.*