

HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Recovery of Payments Correctly Made

Proposed Amendment: N.J.A.C. 10:49-14.1

Authorized By: Jennifer Velez, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq.

Calendar Reference: See Summary below for explanation of exception to rulemaking calendar requirement.

Agency Control Number: 12-P-06.

Proposal Number: PRN 2013-011.

Submit comments by March 25, 2013 to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing to amend N.J.A.C. 10:49-14.1(d), which currently provides that, effective for Medicaid beneficiary estates created on or after October 4, 1999, the Division of Medical Assistance and Health Services (Division) shall file any claim or lien against the estate for Medicaid payments correctly made within 90 days after receiving actual written notice from the personal representative of the estate or any other interested party of the death of the Medicaid beneficiary. The proposed amendment would change the timeframe from 90 days to three years due to the existence of tort recoveries and other assets that can fund a decedent's estate after 90 days from the date that the Division receives actual written notice of a beneficiary's death. The Department believes that extending the deadline to three years will better ensure recoveries of amounts paid by, and subsequently due to, the State.

The Department has determined that the comment period for this notice of proposal will be at least 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

Persons who would receive a benefit from Medicaid beneficiary estates created on or after October 4, 1999 may experience a negative social impact from the proposed amendment because they may receive less from any such estate if the Division files a claim or lien against it after 90 days and within three years from the date on which it receives written notice of the death of the Medicaid beneficiary. The loss of any such income may result in a social impact related to

any personal use to which the funds recovered by the State might have been put. The State would experience a positive social impact as a result of additional funds being available to the State.

Economic Impact

Persons who would receive a benefit from Medicaid beneficiary estates created on or after October 4, 1999 may experience a negative economic impact from the proposed amendment because they may receive less from any such estate if the Division files a successful claim or lien against it after 90 days and within three years from the date on which it receives written notice of the death of the Medicaid beneficiary. The State would experience a positive economic impact equal to any such collection from the estate. The size of such collection would depend on both the amount of the State's claim and the size of the estate.

Federal Standards Statement

The Department, in accordance with 42 CFR 431.10 and Section 1902(a)(5) of the Social Security Act, is the single State agency designated for the administration of the New Jersey Medicaid and NJ FamilyCare program. Sections 1902(a)(18) and 1917 of the Social Security Act (42 U.S.C. § 1396a(a)(18) and §1396p) contain Federal statutory provisions regarding liens and recoveries of assets. Federal regulations at 42 CFR 433.36 contain requirements related to filing of liens for estate recoveries. The Department has reviewed the Federal laws and regulations. The Department has determined that the proposed amendment will not exceed any Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed amendment will result in the creation or loss of jobs in the State of New Jersey.

Agriculture Industry Impact

No impact on the agriculture industry in the State of New Jersey is expected to occur as a result of the proposed amendment.

Regulatory Flexibility Statement

The proposed amendment would affect the estates of some Medicaid beneficiaries, which are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For this reason, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

Since the proposed amendment would amend a provision regarding the filing of claims or liens under the State's Medicaid program, the Department anticipates that the amendment will have no impact on the development of affordable housing or the average costs associated with housing in the State.

Smart Growth Development Impact Analysis

Since the proposed amendment would amend a provision regarding the filing of claims or liens under the State's Medicaid program, the Department anticipates that the amendment will

have no impact on housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

SUBCHAPTER 14. RECOVERY OF PAYMENTS AND SANCTIONS

10:49-14.1 Recovery of payments correctly made

(a) - (c) (No change.)

(d) Effective for estates created on or after October 4, 1999, the Division shall file any claim or lien against an estate under this section within [90 days] **three years** after receiving actual written notice from the personal representative of the estate or any other interested party of the death of the Medicaid beneficiary.

(e) - (n) (No change.)