



# Bulletin

**NUMBER**

#14-21-03C-1

**DATE**

April 27, 2015

**OF INTEREST TO**

County Directors

County Attorneys

Social Services Supervisors  
and Staff

Alternative Care Program  
Administrator

County Fiscal  
Administrative Staff

County Collection Workers

County Financial Workers

**ACTION/DUE DATE**

Please read and implement  
the changes in this bulletin  
when reviewing claims for  
estate recoveries effective  
August 1, 2014

**EXPIRATION DATE**

August 13, 2016

## **Corrected #14-21-03-1: MA Estate Claim Recovery and Undue Hardship Waivers**

**TOPIC**

Clarification of Medical Assistance lien policy and procedural guidance for undue hardship waivers

**PURPOSE**

Correct and clarify language in DHS bulletin #14-21-03 and its attachment A. This corrective bulletin replaces the DHS corrective bulletin #14-21-03C published January 14, 2015.

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**TERMINOLOGY NOTICE**

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

The Minnesota Department of Human Services (DHS) issued bulletin #14-21-03 on August 13, 2014. That bulletin discusses the following:

- Estate recovery claims against Medical Assistance (MA) recipients determined eligible using the modified adjusted gross income (MAGI) methodology
- The suggested procedures for determining undue hardships when evaluating applications for waivers of claims filed against the estate of an MA recipient or the estate of the recipient's surviving spouse

This corrective bulletin clarifies the following sections of bulletin #14-21-03:

1. Section I, Estate recovery claims; subsection B, Policy; item 1, MA liens, on page 3.
2. Attachment A's "Notice of Claim and Application for Waiver of Claim" section; subsection 1, What a Notice of Claim should contain; item c, A Statement of What Constitutes Undue Hardship, on pages 3 and 4 of the attachment.

This corrective bulletin also makes minor grammatical and technical corrections to these sections.

This corrective bulletin replaces the DHS corrective bulletin #14-21-03C published January 14, 2015. Disregard changes that were made in corrective bulletin #14-21-03C published January 14, 2015.

The clarified language is shown in the text below. Added language is underlined. Language that has been removed is shown stricken.

## 1. Clarification of Section I, Estate Recovery Claims:

Section I.B.1 of bulletin #14-21-03 is revised to read as follows:

### 1. MA liens

MA liens are real property liens filed before the death of an MA recipient. The Minnesota Department of Human Services (DHS) cannot place an MA lien against a client's home while the client is ~~[they are]~~ receiving MA and living in the ~~[their]~~ home. MA liens are an instrument DHS uses as a way to secure reimbursement for LTC services received by MA recipients. (See Minnesota Health Care Programs ~~[Program]~~ Manual (HCPM) section 19.50, [Liens and Estate Recovery](#), for more information on MA liens.)~~[-]~~

Currently, DHS files a lien against the property of a person when both of the following apply, regardless of the person's age:

- The person receives MA payments for LTC services and resides in a medical institution.
- DHS has received verification that the person cannot reasonably be expected to return home.

~~[Currently, DHS files liens on all individuals who receive MA payments for LTC services who have resided in a medical institution for 6 months or longer who are not reasonably expected to return home regardless of age.]~~

However, based on the current guidance by CMS, DHS will not file an MA lien on real property owned by an MA recipient who receives MA payment for LTC services and who was determined eligible for MA LTC using the MAGI income methodology.

This does not change how the counties process their lien paperwork for purposes of sending it ~~[them]~~ to DHS for placement of a lien on real property. Counties should continue to send all MA and NPC lien worksheets they believe are applicable to any given recipient.

## **2. Clarification of Attachment A's Statement of What Constitutes an Undue Hardship:**

In Attachment A, in subsection 1 of the "Notice of Claim and Application for Waiver of Claim" section, item c (on pages 3 and 4 of the attachment) is revised to read as follows:

### **c. A Statement of What Constitutes Undue Hardship.**

An undue hardship exists when the circumstances described in either of the following exist:

- The county's estate claim cannot be paid except by the sale of real or personal property subject to the probate proceedings for which all of the following are true for a period of at least 180 days prior to the date ~~[of]~~ the decedent died and from that date through the date when a hardship waiver is granted:
  - The assets are used by the waiver applicant to produce income in his or her trade, profession, or occupation; and
  - The assets are a necessary part of the waiver applicant's trade, profession or occupation; and
  - The trade, profession or occupation in which the assets are used is the waiver ~~[waiver]~~ applicant's sole source of income; and
  - The waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.

OR:

- The county's estate claim could not be paid except by the sale of the decedent's real estate subject to the probate proceedings for which all of the following are true:
  - The waiver applicant actually and continuously occupied the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to do so from that date through the date the waiver is finally granted; and
  - The waiver applicant has an ownership interest in the real estate and had one before the death of the decedent; and
  - The real estate for which the waiver is requested was classified as homestead property for property tax purposes as described by Minnesota Statutes, section 273.124, throughout the entire period of time as referenced in the first of the two subbullets immediately [bullet] above.

An undue hardship does not exist if the following circumstances are present:

- If the decedent took any of the following actions and the waiver applicant's circumstances are related to or a consequence of those actions, the circumstances of the waiver applicant do [~~does~~] not constitute an undue hardship:
  - Actions which divested or diverted assets in order to avoid recovery of amounts advanced on behalf of the decedent or the decedent's spouse for medical assistance from the decedent's estate; or
  - Action which divested or diverted assets with the result or effect that amounts advanced on behalf of the decedent or the decedent's spouse are wholly or partially unrecoverable from the decedent's estate.

See the revised Attachment A in this bulletin.

## Legal References

United States Code, title 42, section 1396p

Minnesota Statutes, section 256B.15

Minnesota Statutes, sections 514.980–514.985

## **Americans with Disabilities Act (ADA) Advisory**

This information is available in accessible formats for people with disabilities by calling (651) 431-3039 (voice) or toll free at (866) 786-3945 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.

## Corrected Attachment A

The following suggested procedure assumes that the county has already filed a claim in the estate of the MA recipient or in the estate of the recipient's surviving spouse as described by Minnesota Statutes, section 256B.15, subd. 1a.

## Definitions

Heir - A person who is entitled to all or a portion of the decedent's property under the laws of the State of Minnesota when the decedent dies without a will.

Devisee – A person receiving property by will.

Reasonable Diligence – The diligence commonly expected from, and ordinarily exercised by a person to satisfy a requirement or to discharge an obligation.

Decedent – The medical assistance recipient who has died or community spouse who has died.

Personal Representative – A person who manages the legal affairs of another because of death.

## Identifying Decedent's Heirs and Devisees Using Reasonable Diligence

### 1. Make a reasonable effort to identify the names and current addresses of as many of the decedent's heirs or devisees as possible.

For example, in the case where a personal representative must search for creditors, the court has identified a reasonably diligent search in the following manner:

A reasonably diligent search does not require extensive search. It must be a good faith search with proper motives within the bounds of reasonable judgment. *In re Estate of Thompson*, 484 N.W.2d 258 at 261, (Minn.App. 1992).

A county must make reasonable efforts to learn the names and current addresses of each of the decedent's heirs and devisees. If the county cannot identify an heir or devisee after applying reasonable efforts it does not have to send that person the notice of the claim or notice of their right to apply for a hardship waiver.

If the county identifies an heir or devisee but cannot determine the person's current mailing address, the notice of claim should be sent to the last known address requesting that it be forwarded and that an address correction be given to sender.

### 2. What is a reasonable effort?

Reasonableness varies based on the given situation. However, in most cases, the county should review the following sources:

**a. The probate file**

The decedent's probate file will usually contain a list of names and addresses of all the heirs and devisees. Additionally, a file should contain the name, address, and telephone number of the personal representative and the attorney for the personal representative. If the probate file does not contain this information, or if the information is incomplete, call the attorney for the estate and ask for the information. The personal representative for the estate may also be able to provide this information.

The county is required to give notice to all identifiable heirs and devisees.

**b. The recipient's file**

The recipient's file will often contain the names, addresses, and telephone numbers of the decedent's authorized representative, family members, or relatives. These persons may be able to supply the needed information.

**c. The county database**

The county's database will often contain the names, addresses and telephone numbers of the decedent's authorized representative, family members, or relatives. These persons may be able to supply the needed information.

**3. Document the county's efforts to obtain the names of all devisees and heirs.**

Document all of the county's efforts to identify the names and current addresses of each of the decedent's heirs and devisees in the claim file for the decedent. The county should retain such documentation especially if the efforts are not successful. This documentation will serve as proof the county used reasonable diligence to identify the decedent's heirs and devisees.

**Notice of Claim and Application for Waiver of Claim**

**1. What a Notice of Claim should contain.**

**a. A Statement of the Claim.**

The Notice of Claim (Notice) should contain a statement that the county has filed a claim under Minnesota Statutes, section 256B.15 in the decedent's estate to recover amounts paid for MA to or on behalf of the decedent or the decedent's predeceased spouse.

**b. Notice of Right to Apply for a Hardship Waiver.**

An applicant for a hardship waiver must be an heir or devisee. The Notice should contain a statement that the applicant has a right to apply for a waiver of the claim if recovery would cause them an undue hardship. An applicant must personally benefit from the Application for waiver of Claim (waiver). If an applicant does not personally benefit from a waiver, the county shall not grant a waiver.

**c. A Statement of What Constitutes Undue Hardship.**

An undue hardship exists when the circumstances described in either of the following exist:

- The county's estate claim cannot be paid except by the sale of real or personal property subject to the probate proceedings for which all of the following are true for a period of at least 180 days prior to the date the decedent died and from that date through the date when a hardship waiver is granted:
  - The assets are used by the waiver applicant to produce income in his or her trade, profession, or occupation; and
  - The assets are a necessary part of the waiver applicant's trade, profession or occupation; and
  - The trade, profession or occupation in which the assets are used is the waiver applicant's sole source of income; and
  - The waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.

OR:

- The county's estate claim could not be paid except by the sale of the decedent's real estate subject to the probate proceedings for which all of the following are true:
  - The waiver applicant actually and continuously occupied the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to do so from that date through the date the waiver is finally granted; and
  - The waiver applicant has an ownership interest in the real estate and had one before the death of the decedent; and
  - The real estate for which the waiver is requested was classified as homestead property for property tax purposes as described by Minnesota Statutes, section 273.124, throughout the entire period of time as referenced in the first of the two subbullets immediately above.

## **Corrected Attachment A**

An undue hardship does not exist if the following circumstances are present:

- If the decedent took any of the following actions and the waiver applicant's circumstances are related to or a consequence of those actions, the circumstances of the waiver applicant do not constitute an undue hardship:
  - Actions which divested or diverted assets in order to avoid recovery of amounts advanced on behalf of the decedent or the decedent's spouse for medical assistance from the decedent's estate; or
  - Action which divested or diverted assets with the result or effect that amounts advanced on behalf of the decedent or the decedent's spouse are wholly or partially unrecoverable from the decedent's estate.

## **2. Procedures and Instructions for Filing an Application for an Undue Hardship Waiver.**

The Notice must:

- Describe the procedure for applying for waiver
- Describe the contents of the application
- Require application for waiver be in writing
- Direct applicant to return waiver to a specific person or unit
- Specify the number of days a waiver must be received from the filing of a Notice of Claim

## **3. Contents of the Application for a Waiver of Claim.**

At a minimum the application should include the following:

- Name of decedent
- Name and probate number of the estate (if applicable)
- County in which probate is pending (if applicable)
- County's case name and file number (if applicable)
- Name, address, home and business telephone numbers of the waiver applicant
- Name, address, telephone number of any person or firm representing the applicant
- Statement that applicant would personally benefit from a waiver
- Statement of the circumstances the applicant believes constitute an undue hardship
- Identification of any documentation applicant should attach
- Application should be signed and dated by the applicant

## **4. The Time Frame in Which Application Must be Made.**

The notice should clearly state:

- The application must be received by the county or postmarked within 30 days of the date of the Notice, whichever is later.

## **Corrected Attachment A**

- That persons who do not make their application within that period of time will give up their right to apply for and receive a waiver.
- The time period for filing the application should begin running the on the date of the Notice.

### **5. The Time Frame Within Which a Determination Will be Made on the Application.**

- The notice should contain a statement that the county will make a determination as to whether or not and to what extent it will grant the application.
- The determination will be made within 30 days of the date it receives application.
- The county may provide for the option to extend the determination period if it finds it necessary to do so.

### **6. Information Regarding Appeal Rights and Procedure.**

- The notice should clearly state the applicant has the right to appeal the county's determination.
- Instruction on how to file an appeal should be included in the determination letter sent by the county.

## **Sending the Notice of Claim**

- The notice of claim may be sent to each heir or devisee by ordinary first class mail.
- The individual mailing the notice must complete an affidavit of mailing.
  - The affidavit will serve as proof of compliance with the notice requirements and the date on which the time period for filing a waiver application begins.
- The county should keep a complete copy of the notice of claim it sends to each heir or devisee for its file and a copy of the affidavit of mailing.

## **Review and Determination of the Application for Waiver**

### **1. Counties should have a procedure for reviewing application for waivers.**

#### **a. Counties should have the following procedures:**

- Receipt and logging of waivers
- Review of waivers
- Responses to waivers

### **2. Counties should have a procedure for issuing determinations.**

#### **a. Counties should have the following procedures:**

- How to issue a determination within 30 days
- Guidelines for extending the response time for a determination

**b. Minimum guidelines for determinations:**

- The determination decision should
  - be in writing
  - be addressed to the applicant or the applicant's attorney
- Summarize the basis for the request
- State the county's decision
- State the reasons for the county's decision
- Contain all necessary information regarding the applicant's rights to appeal and the procedures for doing so.

**c. Minimum guidelines for delivery of a determination:**

- A determination should be sent to the applicant or the applicant's attorney by certified mail, return receipt to the address shown on the waiver application.
- The person sending the determination should complete an affidavit of mailing.
- The affidavit will serve as proof that a determination was mailed if the return receipt is not received.
- The return receipt will serve as proof of the date on which the determination was received and the date on which the period to file an appeal began.
- A copy of the determination, the return receipt, and the affidavit of mailing should be retained for the file.

**3. The County's decision.**

The county may decide to grant or deny an application entirely. In some cases it may not be necessary to grant the application in full in order to avoid undue hardship. In these cases the county may grant the application and waive its claim to the extent necessary to avoid an undue hardship and deny the rest of the application. The county will then proceed with the portion of its claim as to which it has refused to grant the waiver.

**Appealing the County's Determination**

- If the applicant disagrees with the county's decision, the applicant has a right to appeal.
- The applicant can appeal the county's determination to the Appeals Office of the Minnesota Department of Human Services in St. Paul, Minnesota. The appeal process and procedures are those described in Minnesota Statutes, sections 256.045 and 256.0451.
- The county must defend its decisions at the states fair hearing.

## Collection of Claims in Probate

### 1. Collection from an Estate

To the extent an estate claim is allowed in probate and to the extent there are sufficient assets, the personal representative will pay the claim from the estate's assets as part of the process of administering the estate.

### 2. Collection from Heirs or Devisees

When the county does not grant an undue hardship waiver of its claim and the estate's heirs or devisees wish to satisfy the claim without selling non-liquid assets subject to recovery, the county can establish a reasonable payment schedule and charge a reasonable rate of interest on unpaid balances.

If the county makes an agreement for an heir or devisee to pay the claim in installments this agreement should be in writing.

The writing should contain:

- All the terms of the agreement
- A payment schedule
- The rate of interest
- Specify default events
- Specify remedies for default
- The collateral which the heir or devisee has subject to the agreement

### 3. Other Collections

There are multiple types of collections. Should the county need to establish other procedures to collect MA counties should establish such procedures.

## Reference

Below are links to suggested forms to use for the Waiver process:

- [Application for a Waiver of Claim](#) (Newly revised)
- [Determination of Waiver Request](#) (Requestor)
- [Determination of Waiver Request](#) (Attorney)
- [Affidavit of Service](#)
- [Affidavit of Service by Certified Mail](#)
- [Affidavit of Service By Personal Service](#)
- [Notice of Claim for Medical Assistance](#)