12VAC30-10-560. Liens and recoveries.

Liens are not imposed against an individual's property.

A. Adjustments or recoveries for Medicaid claims correctly paid are as follows: See 12VAC30-20-140.

1. For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate.

2. For any individual who received medical assistance at age 55 or older, recovery of payments are made for nursing facility services, home- and community-based services, and related hospital and prescription drug services.

Payments are recovered for all services covered under the plan which are provided to individuals at age 55.

3. For any individual with long-term care insurance policies, if assets or resources are disregarded, recovery is made for all Medicaid costs for nursing facility and other long-term care services from the estate of persons who have such policies.

4. If an individual covered under a long-term care partnership insurance policy received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290(G) the State does not seek adjustment or recovery from the individual’s estate for the amount of assets or resources disregarded.

B. No money payments under another program are reduced as a means of recovering Medicaid claims incorrectly paid.

C. Liens. See 12VAC30-20-130.

1. Specifies the process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home; the description of the process meets the requirements of 42 CFR 433.36(d).

The Commonwealth does not impose liens therefore this subsection is not applicable.

2. Specifies the criteria by which a son or daughter can establish that he or she has been providing care under 42 CFR 433.36(f).

3. Definitions: individual's home; equity interest in home; residing in home for at least 1 or 2 years, on a continuing basis; discharge from the medical institution and return home; and lawfully residing.

The Commonwealth does not impose liens therefore this subsection is not applicable.

D. Estate recoveries.

1. Definitions.

"Applicable medical assistance payments" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the Social Security Act.

"Estate" means with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of death.

2. 12VAC30-20-140, as amended, further specifies the policy for estate recoveries.

CERTIFIED: I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date Patrick W. Finnerty, Director
Dept. of Medical Assistance Service

12VAC30-20-140. Estate recoveries.

A. General. Under the authority and consistent with the requirements of the Social Security Act §1917, the Commonwealth recovers certain Medicaid benefits when they have been correctly paid on behalf of certain individuals. The Commonwealth seeks recovery for all services which have been paid for consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.

B. Identification of deceased recipients' estates. The Medical Assistance Title XIX agency shall take all reasonable measures to determine the existence of deceased eligible individuals with recoverable estates.

C. Initiation of claim and recovery.

1. The Medical Assistance Title XIX agency's estate recovery unit will review and initiate recovery activities for all deceased eligible individual's estates identified which meet agency minimum criteria defined in subsection B of this section. A review of all deceased eligible individuals' applicable medical assistance payments paid correctly must be performed to determine the amount of the Commonwealth's claim against the estate. A "Notice of Claim" shall be sent to the deceased eligible individual's estate administrator or executor upon determination that estate recovery meets the minimum criteria. The "Notice of Claim" shall include, at minimum, (i) the deceased eligible individual's identification information, (ii) the claim amount, (iii) the agency contact, and (iv) the attached summary of applicable medical claims paid. The "Notice of Claim" shall also

contain, but not necessarily be limited to, information regarding the exclusions identified below, the applicant's right to appeal, and the hardship rule.

2. The Medical Assistance Title XIX agency will, at a minimum, initiate recovery when the following conditions are met:

a. Legal estate administrator or executor has been verified.

b. Dollar amount of applicable medical assistance payments (claim amount) and estate meets agency cost effective threshold. The Title XIX agency will determine a cost effective threshold based on the administrative costs to pursue recovery from an estate. The Title XIX agency will adjust the cost effective threshold as the agency's administrative costs change. Recovery shall not be initiated unless both the amount of the claim and the value of the estate at least exceed the administrative cost of recovery.

c. Deceased eligible was single or surviving spouse is deceased.

d. Deceased eligible has no surviving children under 21 or children who are blind or disabled.

e. Deceased eligible was 55 years of age or older when the individual received such medical assistance.

f. Deceased eligible had no surviving sibling who had an equity interest in the deceased's home and such sibling resided in the property for at least one year prior to the deceased's entering a nursing facility.

3. Appeals related to the recovery of funds will be administered by the Medical Assistance Title XIX agency.

4. The Medical Assistance Title XIX agency will pursue recovery only to the extent that payments for applicable medical claims have been correctly made under the State Plan for Medical Assistance.

D. Hardship clause. The Medical Assistance Title XIX agency shall waive its claim if it determines that enforcement of the claim would result in substantial hardship to the devisees, legatees, and heirs or dependents of the individual against whose estate the claim exists. Special consideration shall be given to cases in which the estate subject to recovery is (i) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other business, or (ii) a homestead of modest value, or (iii) other compelling circumstances. In cases where recovery is not waived and beneficiaries of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a nonliquid asset which is subject to recovery, alternative methods of recovery may be considered.

E. If an individual covered under a long-term care partnership insurance policy received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290(6) the State does not seek adjustment or recovery from the individual’s estate for the amount of assets or resources disregarded.

CERTIFIED: I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Service

12VAC30-40-290. More liberal methods of treating resources under §1902(r)(2) of the Act: §1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of $3,500 for the individual and an amount not in excess of $3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life-rights to real property are not counted as a resource. The purchase of a life right in another individual’s home is subject to transfer of asset rules. See 12VAC30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax

purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling $1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds $1,500, the cash surrender value of the policies is counted as a resource.

G. Long-term care partnership insurance policy (Partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.

2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term care Insurance Model Regulation and Long-Term care Insurance Model Act as those requirements are set forth in section 1917(b)(5)(A) of the Social Security Act (42 USC §1396p).

3. The policy was issued no earlier than May 1, 2007.

4. The insured individual was a resident of a Partnership State when coverage first became effective under the policy. If the policy is later exchanged for a different long-

term care policy, the individual was a resident of a Partnership State when coverage under the earliest policy became effective.

5. The policy meets the inflation protection requirements set forth in section 1917(b)(1)(C)(iii)(IV) of the Social Security Act.

6. The Insurance Commissioner requires the issuer of the Partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.

7. The State does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on non-partnership policies.

8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission, described in 14VAC5-200 *et. seq.*, as amended.

H. Reserved

I. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§1902(a)(10)(A)(ii)(VIII), (IX); §1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed $5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for

purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

~~H~~ J. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

~~I~~ K. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

~~J~~L. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

CERTIFIED: I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Service