

# Alabama Medicaid Lien Program Q and A

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## 1. What is a TEFRA lien?

Established under federal law, a TEFRA (pre-death) lien may be placed against the real property of certain applicants/recipients who are an inpatient in a nursing facility, Intermediate Care Facility for the Intellectually Disabled, or other long-term medical institutions **AND** have been determined eligible for the Nursing Home Medicaid Program or ICF-IID Medicaid based on eligibility criteria, regulations, and policies.

## 2. Who is affected?

A person of any age permanently residing in a nursing facility, intermediate care facility for the intellectually disabled, or other medical institutions **AND** cannot reasonably be expected to be discharged home from the medical institution.

## 3. When does a TEFRA lien become due?

The TEFRA lien becomes due when a Medicaid recipient passes away **OR** the property is sold.

## 4. What options are available for satisfying the lien?

There are several options for satisfying the lien:

- (a) The sponsor/family can pay the amount due in full (only after the Medicaid recipient has passed away);
- (b) The sponsor/family can sell the property and pay off the lien (can be completed prior to the Medicaid recipient's death as well as after);
- (c) A responsible party can sign a promissory note and make monthly payments to the Agency (these payments have a maximum repayment plan of 48 months); **OR**
- (d) They can risk foreclosure.

## 5. How will the family of the Medicaid recipient be contacted about the lien after a Medicaid recipient dies?

A notice, called a Billing Letter, will be sent to the sponsor on record approximately 60 days after the date of death of the Medicaid recipient. This notice will provide the amount Medicaid has expended on the Medicaid recipient's behalf as well as the current tax appraised value(s) of the property(ies). The Agency is due the lesser of the two (Medicaid expenses or the tax appraised value).

***PLEASE NOTE: The Alabama Medicaid Agency does not (at any point) become the owner of the property. The Agency simply holds a lien (like a mortgage) on the property. The sponsor/family remain responsible for determining how the lien will be satisfied.***

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### **6. What are the exemptions for lien recovery efforts?**

In the case of liens placed on the home, recovery will be delayed until after the death of the surviving spouse, if any, and if:

- a) A sibling is lawfully living in the home and was lawfully residing continuously in the home for at least one year immediately prior to the claimant being admitted to the medical institution; or
- b) If there is a son or daughter of the Medicaid recipient who is and has been residing in the home for at least two years immediately before the date of the individual's admission to the institution, and has been residing there on a continuous basis since that time. The son or daughter would have to establish to the Alabama Medicaid Agency's satisfaction that they were providing care which permitted the individual to reside at home rather than in a medical institution.

### **7. Are there any situations when a TEFRA lien would not be placed on the recipient's home when the recipient enters a nursing facility?**

- a) If there is a spouse residing in the home;
- b) If there is a child under age 21 or blind or disabled residing in the home; or
- c) If there is a sibling of the Medicaid recipient who has an equity interest in the home and is currently residing in the home and has been residing continuously in the home for at least one year immediately before the date of the individual's admission to the institution.

### **8. What happens if someone has been paying taxes and upkeep expenses for maintaining the deceased's vacant home?**

A deduction for necessary and reasonable expenses for maintaining the vacant home will be deducted from the TEFRA lien amount (up to a specific amount TBD). This would only apply to cases regarding Medicaid recipients that were required to sign a lien during the eligibility process.

### **9. Is it true that a Medicaid recipient has to turn their home over to the state when the Medicaid recipient moves to the nursing facility or begins receiving home and community based services?**

No. A Medicaid recipient does not have to sign over the deed to the state; however, the Medicaid recipient could be required to sign a TEFRA lien if they are in a nursing facility, intermediate care facility for the intellectually disabled, or other medical institutions. The TEFRA lien will act as the state's claim should the property be sold prior to the Medicaid recipient's death. A TEFRA lien is not required for recipients receiving home and community based waiver services.

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### **10. What if both the Medicaid recipient and their community spouse's names are on the deed?**

Depending on the wording of the deed, property may be a recoverable asset after the Medicaid recipient's death (if no exemptions apply). Please contact an attorney if there are specific questions about the particular wording.

### **11. What if only the community spouse's name is on the deed?**

The only recovery would be if the community spouse received Medicaid services or if the property's ownership was transferred to the Medicaid recipient. Recovery would happen after the Medicaid recipient's death or when the exemptions no longer apply.

### **12. Can a Medicaid recipient give their home away before entering the nursing facility or receiving home and community based services?**

There are certain situations in which a Medicaid recipient could transfer the ownership of the Medicaid recipient's property. Please contact an attorney to discuss those situations.

### **13. How does a Medicaid recipient transfer the deed to the property?**

It is very important to speak with an attorney that has knowledge of Medicaid policies before transferring any property.

### **14. What if a Medicaid recipient is discharged home from the nursing facility?**

If a Medicaid recipient is discharged home (to the property in which the Agency holds a TEFRA lien) for a specific amount of time, the Agency will issue a lien release. You must contact the Estate Recovery/Liens Section and request the release.

### **15. How does the family ask for a hardship waiver?**

If the heir feels he/she could be considered for an undue hardship, a request for the waiver application must be made within 30 days of receiving the Agency's notice against the estate, or upon the sale, transfer, or conveyance of the real property subject to a TEFRA lien.

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