

+-----+
 | ADMINISTRATIVE DIRECTIVE |
 +-----+

TRANSMITTAL: 92 ADM-53

DIVISION: Health and
 Long Term Care

TO: Commissioners of
 Social Services

DATE: December 15, 1992

SUBJECT: Medical Assistance Liens and Recoveries

SUGGESTED DISTRIBUTION:	Medical Assistance Staff Public Assistance Staff Fair Hearing Staff Legal Staff Staff Development Coordinators
CONTACT PERSON:	MA Eligibility County Representative - 1-800-342-3715, extension 3-7581 MA New York City Representative: (212) 417-4853 User ID OME060
ATTACHMENTS:	Informational Notice to Institutionalized Individuals With Real Property (Attachment I - available on-line) Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual) (Attachment II - not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88 INF-12		360-4.4(b)	101, 104, 104-b,		92 LCM-73
89 ADM-45		360-4.4(e)	366, 367-f, 369		
89 ADM-47		360-7.11	SSA 1917(a), (b),		42 CFR 433.36
90 ADM-36			and (c) SCPA 1303, 1310 EPTL 7-3.1(c)		42 USCA 1396p

I. PURPOSE

This Administrative Directive (ADM):

- A. notifies social services districts of changes and clarifications in the Medical Assistance (MA) program relating to liens and recoveries; and
- B. advises social services districts of new provisions in the Surrogate's Court Procedure Act (SCPA) which affect the unclaimed resources of a deceased MA recipient.

II. BACKGROUND

A. LIENS AND RECOVERIES

Sections 1917(a) and (b) of the Social Security Act (Act) describe the conditions under which a social services district may impose a lien against the property of an MA recipient, and when a social services district may make an adjustment or recover funds in satisfaction of the lien against the individual's estate or real property.

Section 1917(b) of the Act prohibits, with respect to a lien on the home of an institutionalized recipient, any adjustment or recovery of MA correctly paid as long as a sibling of the individual, who resided in the home for at least one year immediately before the date of the individual's admission to a medical institution, lawfully resides in the home on a continuing basis. Section 1917(b) of the Act also prohibits, with respect to a lien on the home of an institutionalized recipient, any adjustment or recovery of MA correctly paid, as long as an adult child of the individual, who resided in the home for at least two years immediately before the date of the individual's admission to a medical institution and who provided care to the individual, lawfully resides in the home on a continuing basis.

Section 1917(c) of the Act permits the transfer of an institutionalized MA applicant's/recipient's (A/R's) home to a sibling who has an equity interest in the home, and who was residing in the home for at least one year immediately before the date of the individual's admission to a medical institution, or to an adult child who resided in the home for at least two years immediately before the date of the individual's admission to a medical institution and who provided care to the individual.

Section 85 of Chapter 41 of the Laws of 1992 amended Social Services Law (SSL) Section 369.2, effective April 2, 1992, to implement Sections 1917(a) and (b) of the Act. 18 NYCRR 360-4.4(e) and 360-7.11 have been revised to implement SSL Section 369.2.

B. UNCLAIMED RESOURCES OF DECEASED RECIPIENTS

Section 87 of Chapter 41 of the Laws of 1992 added a new Section 1310.8 to the SCPA specifically permitting the possessor of monies belonging to the estate of a recipient, when at least six months have passed since the death of the recipient, to pay to the Department or a social services district up to \$5,000 toward the amount of MA furnished to or on behalf of the deceased recipient, without a formal estate proceeding or the appointment of a fiduciary.

III. PROGRAM IMPLICATIONS

This section details the changes in policy resulting from the enactment of Chapter 41 of the Laws of 1992. In addition, this section clarifies existing policy regarding: liens and recoveries for MA paid on personal injury claims or suits; and recoveries from the estate of a recipient who was at least 65 years of age when he or she received MA.

A. DEFINITIONS

For purposes of this ADM, the following terms are defined:

1. Assignment of proceeds means a legal document stating that an individual assigns his or her right to the proceeds of the sale of real or personal property to the social services district.
2. Dependent relative means a relative of the A/R, provided that over 50 percent of the maintenance needs of the relative are met by the A/R. The term relative includes a child, stepchild, or grandchild; parent, stepparent, or grandparent; aunt, uncle, niece or nephew; brother, sister, stepbrother, stepsister, half brother or half sister; cousin; or in-law.
3. Discharge from a medical institution and return home means the individual is released with a discharge plan by the medical institution, and the individual returns to his or her principal residence (i.e., not a temporary return or visit to the home).
4. Equity interest in the home means that an individual has invested money in the property or has a right to the use of the property without necessarily having title to the property. (See 89 ADM-45, pages 7 and 16.)

5. Fiduciary means a person duly designated or appointed to manage the affairs of the estate of a deceased recipient.
6. Home means the former principal place of residence owned by the institutionalized individual. It includes the shelter, land on which the shelter is located, other buildings on that land, and all contiguous property.

Note: A lien may be imposed on a mobile home only if the mobile home is on land owned by the institutionalized individual, and the mobile home has been permanently affixed to the land (e.g., a basement, foundation, or other immovable structure ties the mobile home to the land).

7. Institutionalized individual means an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, who is not reasonably expected to be discharged from the medical institution and return home. Medical evidence can be presented to show that the individual can reasonably be expected to be discharged from the medical institution and return home. Note that the definition of the term institutionalized individual differs from the terms institutionalized person and institutionalized spouse used in the transfer of assets and spousal impoverishment provisions (see 89 ADM-45 and 89 ADM-47).

Note: Once chronic care budgeting is used, medical evidence is necessary to show that the individual can reasonably be expected to return home.

8. Lawfully residing on a continuing basis means the sibling or child of the institutionalized individual is living in the individual's home, with the consent of the institutionalized individual, without interruption.
9. Lien means a legally filed claim on property as security for the payment of a debt.
10. Minor child means an A/R's child who is under 21 years of age.
11. Provided care means care which permitted the individual to reside at home rather than in an institution. A son or daughter can establish that the care was provided by submitting evidence that he or she made arrangements or actively participated in arranging for care, either directly or indirectly, full-time or part-time. (See 89 ADM-45, pages 8 and 17.)
12. Recovery means repayment for MA paid, from an assignment of proceeds, a lien (e.g., court-ordered, real property, estate, or personal injury settlement), or voluntary repayment.

13. Resided in the home for at least one or two years means the sibling or child lived in the home on a continuing basis during the appropriate period immediately prior to the individual's admission to a medical institution.

B. PERSONAL INJURY SUITS OR CLAIMS

SSL Section 104-b authorizes districts to impose liens on claims and suits for personal injuries for MA furnished on and after the date the injuries occurred. Section 104-b of the SSL also details the procedures to be followed in the placement of the lien.

C. ESTATE OF MA RECIPIENT AGE 65 YEARS OR OLDER

MA correctly paid to or on behalf of a recipient who is 65 years or older is recoverable from the estate of the recipient after there is no surviving spouse, minor child, or child who is certified blind or certified disabled.

The social services district may assert a claim against the estate for the amount of MA paid from the date the recipient turned 65 years old, but not for MA provided more than 10 years preceding the death of the recipient. The social services district is a preferred creditor of the estate. After all debts (including MA) of the estate are satisfied, the remainder goes to the beneficiary designated by will, or by law if no will exists.

D. LIENS

1. A lien may be placed against a person's property for MA paid on his or her behalf:
 - a. based upon a court judgment for MA incorrectly paid;
or
 - b. on a personal injury claim or suit.
2. In addition, effective April 2, 1992, a lien may be imposed on real property for MA paid on behalf of an institutionalized individual, regardless of the individual's age when he or she received MA. A lien placed on the real property of an institutionalized individual must be removed if the institutionalized individual returns home.
 - a. No lien may be imposed on an institutionalized individual's home while any of the following relatives lawfully reside in the home:
 - (1) the spouse;
 - (2) a minor child, or a child who is certified blind or certified disabled; or

(3) a sibling who has an equity interest in the home and who was residing in the home for at least one year.

- b. No lien may be imposed on an MA recipient's real property for MA correctly paid unless the MA recipient is an institutionalized individual.
- c. No lien may be imposed on the real property of an institutionalized individual for MA correctly paid or to be paid pursuant to a long term care insurance policy certified under the Long Term Care Security Program in accordance with the provisions of SSL Section 367-f.

E. RECOVERIES

1. Recovery of MA paid on behalf of an individual may be made:

- a. from the estate of an individual who was 65 years of age or older when he or she received MA, at a time when there is no surviving spouse, minor child, or child who is certified blind or certified disabled;
- b. based upon a court judgment for MA incorrectly paid;
- c. from a personal injury award or settlement; or
- d. from a legally responsible relative who fails or refuses to make his or her income and resources available to the MA recipient, pursuant to SSL Section 366(3)(a).

2. In addition, effective April 2, 1992, recovery may be made as follows:

- a. Real property of an institutionalized individual

In conformance with Section 1917(b) of the Act, SSL Section 369.2 specifies the conditions under which recovery may be made for MA paid on behalf of an institutionalized individual, regardless of age.

Recovery may be made upon the sale of an institutionalized individual's real property subject to a lien described in section III.D.2.

Recovery may be made from the estate of an institutionalized individual, but only after the death of the surviving spouse and when there is no minor child or child who is certified blind or certified disabled.

Also, if the real property lien is on the institutionalized individual's home, recovery cannot be made as long as either of the following relatives of the institutionalized individual lawfully resides in the home on a continuing basis:

- (1) a sibling without an equity interest in the home, who resided in the home for at least one year; or
- (2) a child who provided care and who resided in the home for at least two years.

No recovery may be made for MA correctly paid on behalf of an MA recipient with a long term care insurance policy certified under the Long Term Care Security Program in accordance with SSL 367-f.

Social services districts are reminded that the Debtor and Creditor Law may be utilized to pursue recovery for MA paid on behalf of an MA recipient.

b. Trusts

Section 85 of Chapter 41 of the Laws of 1992 added a new subdivision 3 to Section 369 of the SSL to authorize the Department and any social services district to maintain a court action against the creator of a trust (other than a testamentary trust), the creator's spouse, or the trustee, to recover from the creator's or creator's spouse's beneficial interest in the trust, the amount of MA paid on behalf of the creator or the creator's spouse.

The beneficial interest of the creator or the creator's spouse includes any income and principal amounts to which the creator or the creator's spouse would be entitled under the terms of the trust, by right or in the discretion of the trustee, assuming the full exercise of discretion by the trustee. In accordance with Section 7-3.1(c) of the Estates, Powers and Trusts Law, as enacted by Section 86 of Chapter 41 of the Laws of 1992, for trusts established on or after April 2, 1992, any language limiting the trustee's discretion to make trust funds available to the creator or the creator's spouse in the event that the creator or creator's spouse applies for MA or needs medical care is void as against the public policy of the State. The new trust provisions are detailed in the recently issued ADM "Treatment of Trusts Under the Medical Assistance Program."

F. UNCLAIMED RESOURCES OF DECEASED MA RECIPIENTS

Social services districts may make MA recoveries from the estate of deceased MA recipients, as detailed in sections III.C. and E.

In instances where there is no duly appointed fiduciary to handle the affairs of the estate of a deceased MA recipient, social services districts must pursue recovery in accordance with the provisions of the SCPA.

As detailed in 88 INF-12 "Disposition of the Estate, Including the Personal Incidental Allowance Account, of a Deceased MA Only Recipient," a common settlement of the estate of a deceased MA recipient is made by appointing a voluntary administrator under Section 1303 of the SCPA. This is an abbreviated estate settlement when the gross estate is less than \$10,000 and does not include real property. If no relative of the deceased is willing or able to act as the voluntary administrator, upon notification, the chief fiscal officer or public administrator of the locality must seek the appointment of a voluntary administrator. The voluntary administrator is the only fiduciary with the legal right to receive or distribute estate property. Possessors of estate property (e.g., nursing homes, medical institutions or facilities, banks) are legally liable for wrongfully withholding or disposing of estate property to other than the fiduciary. The social services district can legally receive estate property only from the fiduciary, unless the estate property is obtained under Sections 1310.3 or 1310.8 of the SCPA.

Section 1310 of the SCPA permits certain possessors of monies belonging to a decedent's estate to discharge their obligations to the decedent by paying designated persons without the formality of administration proceedings.

1. Under SCPA Section 1310.3, nursing homes may pay a deceased recipient's funds to a creditor of the estate (including the social services district) for MA paid without a formal or informal administration of the estate, if the recipient has been deceased for at least 30 days, and a surviving spouse, child 18 years of age or older, parent, sibling, niece or nephew requests the funds be paid to a creditor of the estate (including the social services district) and submits an affidavit stating:
 - a. the date of death;
 - b. the relationship of the person making the affidavit to the decedent;
 - c. that no executor or administrator has been appointed;
 - d. the names and addresses of the persons who will be paid; and

- e. that the payment, when added to all other payments made under SCPA Section 1310, is \$10,000 or less.
- 2. Under SCPA Section 1310.8, the possessor of monies belonging to the estate of a deceased recipient may pay up to \$5,000 to a social services district toward the amount of MA furnished to or on behalf of the deceased creditor, without a formal estate proceeding or the appointment of a fiduciary.

SCPA Section 1310.8 applies when at least six months have passed since the death of the recipient. The social services district must provide an affidavit showing:

- a. the date of the decedent's death;
 - b. that no executor or administrator has been appointed to administer the estate;
 - c. the decedent was not survived by a spouse, minor child, or child who is certified blind or certified disabled;
 - d. that the social services district is entitled to be paid; and
 - e. that the deposit does not exceed \$5,000.
- 3. Unless the social services district receives the funds of a deceased recipient pursuant to SCPA Sections 1310.3 or 1310.8, there can be no distribution of a decedent's estate except through the action of a duly appointed estate administrator. If the estate is \$10,000 or less, the estate may be settled by a voluntary administrator appointed pursuant to SCPA Section 1303. See 88 INF-12 for more detailed information of the provisions of SCPA Section 1303.

G. DEBTOR AND CREDITOR LAW

A social services district may maintain an action under the Debtor and Creditor Law to set aside any transaction which appears to have been made for the purpose of qualifying a person for MA or for avoiding a lien or recovery of MA paid on behalf of an MA recipient.

IV. REQUIRED ACTION

Social services districts must apply the policy and procedures set forth in this ADM for all MA-only cases pending or active as of April 2, 1992.

A. NEW CASES

The provisions of this ADM apply to all MA-only applications filed or pending on or after April 2, 1992.

B. UNDERCARE CASES

The provisions of this ADM apply to all MA-only cases active on or after April 2, 1992. The appropriate action must be taken at the next recipient contact but no later than at the next recertification.

C. NOTICES

The "Informational Notice to Institutionalized Individuals With Real Property" (Attachment I) and "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)" (Attachment II) are mandated and must be reproduced by the social services district until such time as the notices become available from this Department. Enter the County name at the top of the reverse side of the "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)." The informational notice may be reproduced on county letterhead. Any other modifications to these notices must be submitted to the Department for approval for use as a local equivalent form in accordance with the procedures contained in the Local Managers Guide.

Social services districts must make the informational notice available to all persons requesting such information, and must include the notice with all MA applications involving an institutionalized individual.

The social services district must provide the "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)" to the institutionalized individual and retain a file copy whenever a lien may be imposed on his or her real property.

The case record should document the date a notice was given to the MA A/R.

D. PROCEDURES TO IMPOSE A LIEN ON THE REAL PROPERTY OF AN INSTITUTIONALIZED INDIVIDUAL

Upon receipt of an MA application of an institutionalized individual, the social services district must determine if the individual owns real property which will be subject to a lien.

1. Documentation

If the institutionalized individual owns a home, the institutionalized individual must provide documentation verifying that a spouse, minor child, certified blind or certified disabled child, or dependent relative lawfully resides in the home on a continuing basis, or that one of the following relatives has lawfully resided in the home on a continuing basis for the required time period immediately before the date of the individual's admission to a medical institution:

- a. a sibling with equity interest, for one year; or
- b. a child who provided care, for two years. Documentation that the child resided with his or her parents for at least two years immediately prior to the institutionalized individual's admission to a medical institution is sufficient to meet the provision of care requirement unless the social services district has evidence to the contrary. (See 89 ADM-45, page 17.)

2. Opportunity to Transfer

The social services district must provide the institutionalized individual the opportunity to transfer the home to a specified relative (see 90 ADM-36, Attachment A, page 12). The social services district must document the intent to transfer, and allow a reasonable timeframe to accomplish the transfer (90 days, or longer if necessary due to difficulty or delay beyond the control of the institutionalized individual).

3. Medical Evidence

If no specified relative resides in the home or the individual owns other real property, the institutionalized individual must be given at least 20 days to present medical evidence which shows the individual is reasonably expected to be discharged from the medical institution and return home. Additional time must be permitted if requested due to difficulty or delay beyond the control of the institutionalized individual in obtaining medical evidence. The institutionalized individual may request an agency conference to discuss the medical evidence.

4. Notice of Intent to Impose a Lien

If the individual cannot reasonably be expected to be discharged from the medical institution and return home, the "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)" is required to be provided to an institutionalized individual who has real property subject to the imposition of a lien.

E. LIENS AND RECOVERIES ON THE REAL PROPERTY OF AN INSTITUTIONALIZED INDIVIDUAL

1. Placement of the Lien

Since the forms and procedures for filing a real property lien vary according to local practice, social services districts should use the Public Assistance lien procedures currently in place.

2. Removal of the Lien

A lien on real property must be removed if the institutionalized individual is discharged from the medical institution and returns home. Social services districts should utilize current Public Assistance procedures for removal of the lien.

3. When a Lien CANNOT be Imposed on a Home

Social services districts cannot impose a lien on the home of an otherwise eligible institutionalized individual as long as one of the following relatives lawfully reside in the home on a continuing basis:

- a. spouse;
- b. minor child, or child who is certified blind or certified disabled; or
- c. sibling with an equity interest in the home and who was residing in the home for at least one year.

4. When a Lien MUST be Imposed but Liquidation CANNOT be Required

Social services districts must authorize MA and impose a lien on the real property of an otherwise eligible institutionalized individual, but cannot require liquidation when:

- a. the real property is a home and a sibling of the institutionalized individual without an equity interest lawfully resides in the home on a continuing basis, and resided in the home for at least one year; or
- b. the real property is a home and a child of the individual lawfully resides in the home on a continuing basis, and the child provided care and resided in the home for at least two years; or
- c. the real property is a home and a dependent relative other than one listed in section IV.E.3. lawfully resides in the home on a continuing basis; or
- d. the real property is income-producing real property used in a trade or business, for an SSI-related institutionalized individual.

In the event that the child, sibling, or dependent relative no longer resides in the home, the MA A/R must agree to liquidate the home.

5. When Liquidation is REQUIRED and Either an Assignment of Proceeds is Taken or a Lien is Imposed

For all other real property not listed above which is a nonliquid excess resource, the social services district has the option to authorize MA for an otherwise eligible institutionalized individual. If the social services district opts to authorize MA, the district must:

- a. require the A/R to liquidate the property and to assign the proceeds of the liquidation to the district; or
- b. require the A/R to liquidate the property, and impose a lien.

Liquidation may or may not be required for jointly-owned excess resources, depending on the form of ownership. However, a lien may be imposed on the A/R's interest in jointly-owned real property, regardless of the form of ownership. (See item 7 of this section.)

6. When the Real Property is Liquidated

When the home or other real property is liquidated, the proceeds of the liquidation will satisfy the social services district lien. Any amount of the proceeds which exceed the amount of MA paid is a liquid resource, and the social services district must redetermine the MA eligibility of the institutionalized individual based on his or her income and resources at that time.

7. Jointly-owned Home

A lien may be imposed on a home owned jointly by the institutionalized individual and another person or persons, subject to the limitations set forth in section IV.E.3. When the property is liquidated, the A/R's (or the A/R's successor's) portion of the proceeds of the liquidation are subject to the lien.

8. Life Estate

A life estate is a limited interest in real property. A life estate holder does not have title to the property, but has the use of the property for a specified time period, usually the lifetime of the life estate holder. The life estate owned by an institutionalized individual generally has limited market value. If a social services district considers the life estate as an available resource, the value of the life estate is determined by the current market value of the property adjusted by the life expectancy of the life estate holder.

In these situations, the social services district may opt to impose a lien on the life estate if none of the following relatives of the institutionalized individual lawfully reside in the home on a continuing basis:

- a. spouse;
- b. minor child, or child who is certified blind or certified disabled;
- c. dependent relative; or
- d. sibling who has an equity interest in the home and who was residing in the home for at least one year.

Liquidation of the life estate interest cannot be required. If the life estate interest is liquidated prior to the death of the institutionalized individual, the proceeds of the liquidation are subject to the social services district lien.

NOTE: A lien on a life estate is not recoverable through the A/R's estate, since the life estate interest ceases upon the occurrence of an event, usually the death of the A/R, and is therefore not included in the A/R's estate.

F. LIENS AND RECOVERIES ON THE REAL PROPERTY OF A NONINSTITUTIONALIZED PERSON

The amendment to SSL Section 369.2 only concerns institutionalized individuals. With respect to a noninstitutionalized person, a lien for MA paid may only be placed on personal injury suits or claims, against the estate of a person who was 65 years or older when he or she received MA, or against property based upon a court judgment for MA incorrectly paid.

In addition, no lien may be imposed on the real property or estate for MA correctly paid or to be paid pursuant to a long term care insurance policy in accordance with the provisions of SSL Section 367-f.

G. MA INCORRECTLY PAID

Incorrectly paid MA is any MA furnished to a person at a time when the person is ineligible to receive MA. The social services district should first request voluntary repayment for MA incorrectly paid. If the recipient does not voluntarily repay, the social services district may initiate a civil recovery action pursuant to SSL Section 104 for MA incorrectly paid. If the social services district receives a judgment in its favor, the social services district may impose a lien against the recipient's property, pursuant to SSL Section 369.2.

The cost effectiveness of pursuing recoveries for MA incorrectly paid must be determined. The cost effectiveness determination is based on a variety of factors, including but not limited to: the administrative cost of court action; the amount of overpayment; and the availability of income or assets from which to recover (whether recovery is lump sum or periodic repayment).

The amount of MA incorrectly paid is calculated from the day of the month the recipient became ineligible for MA or ineligible for full coverage (including any MA paid during the notice period, and pending a fair hearing decision). MA paid prior to the day the recipient became ineligible is MA correctly paid.

However, eligibility under the income and resource spenddown provisions must first be determined, except for Home Relief-related MA recipients. The overpayment is restricted to the amount of spenddown liability. In any event, the amount of recovery cannot exceed the amount of MA paid.

NOTE: Federal regulations prohibit the reduction of money payments from another program (e.g., Public Assistance, Supplemental Security Income) as a means of recovering MA incorrectly paid.

H. UNCLAIMED RESOURCES OF A DECEASED MA RECIPIENT

To recover resources from deceased MA recipients in accordance with the provisions of SCPA Section 1310.8, social services districts must file an affidavit as detailed in section III.F.2.

V. SYSTEMS IMPLICATIONS

There are no systems implications.

VI. EFFECTIVE DATE

The provisions of this ADM are effective December 1, 1992, retroactive to April 2, 1992.

Gregory M. Kaladjian
Executive Deputy Commissioner

INFORMATIONAL NOTICE TO INSTITUTIONALIZED INDIVIDUALS WITH REAL PROPERTY

This notice explains what happens when you apply for Medical Assistance and you own real property, such as your home. Effective April 2, 1992, a lien may be placed on your real property because of Medical Assistance paid or to be paid for you if you are an in-patient in a medical institution and are not reasonably expected to be discharged from the medical institution and return home. A lien is a legally filed claim on your property. You still own your property if a lien is placed on it. When the property is sold, the lien must be satisfied.

If you can give us adequate medical evidence from your doctor or discharge planner that you are reasonably expected to return home, we will not put a lien on your real property. You have 20 days from the date of your interview to give us the medical information. If you have difficulties beyond your control in obtaining the medical evidence, you may request more time. You may request an agency conference to discuss the medical evidence. If you want a conference, you should ask for one as soon as possible.

You will receive a written notice if we determine that you are an in-patient in a medical institution who is not reasonably expected to return home, and we intend to impose a lien on your real property.

If the real property is your home, we will not place a lien as long as you can prove that one of the following persons still lives in your home:

- o your spouse;
- o your child under age 21, or your child of any age who is certified as blind or disabled; or
- o your brother or sister who already has a right to part of your home and lived in your home for at least one year immediately before you went into a medical institution.

If a lien is placed on your home, we will not require you to sell it as long as you can prove that one of the following persons still lives in your home:

- o your brother or sister who lived in the home for at least one year immediately before the date you went into a medical institution;

- o your child who lived in the home for at least two years immediately before the date you went into a medical institution, and who took care of you so that you could stay home rather than go into a medical institution; or
- o any other relative who depends on you for more than 50 percent of his or her support.

If a lien is placed on your real property, the department of social services will remove the lien if you return home from the medical institution.

If you have a long term care insurance policy certified under the Long Term Care Security Program, Medical Assistance may pay for your care after your policy pays for three years. In such instances, we will not place a lien on your real property.