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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #02-87

DIGEST

Amends 405 IAC 2-8-1 to add certain nonprobate assets to the definition of estate for Medicaid estate recovery purposes. Adds 405 IAC 2-8-1.1 to provide an exception for certain nonprobate assets valued at less than \$125,000. Effective 30 days after filing with the secretary of state.

405 IAC 2-8-1

405 IAC 2-8-1.1

SECTION 1. 405 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-8-1 Claims against estate for benefits paid

Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10

Affected: IC 12-15-9; IC 12-15-39.6-10

Sec. 1. (a) Upon the death of a Medicaid recipient fifty-five (55) years of age or older, the office of Medicaid policy and planning (office) shall seek recovery from the recipient's estate for medical assistance paid on behalf of the recipient after the recipient became fifty-five (55) years of age or older. Recovery shall be made for benefits provided prior to October 1, 1993, only if the recipient was sixty-five (65) years of age or older at the time the benefits were provided.

(b) As used in this section, "estate", with respect to a deceased recipient, shall include **all of the following:**

(1) All real and personal property and other assets included within the recipient's estate as defined for purposes of state probate law.

(2) **Any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002.**

(3) **Any real or personal property conveyed through a nonprobate transfer. As used in this section, "nonprobate transfer" means a valid transfer, effective at death, by a transferor who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:**

(A) **use the property for the benefit of the transferor; or**

(B) **apply the property to discharge claims against the transferor's probate estate.**

The term does not include a transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(c) If the recipient is survived by a spouse, recovery shall be made after the death of the surviving spouse. Only those assets that are included in the recipient's estate as defined in subsection (b) are subject to recovery.

(d) If the recipient is survived by a child, no recovery shall be made while the child is either:

(1) under twenty-one (21) years of age; or

(2) blind or disabled as defined in 42 U.S.C. 1382c.

(e) A claim may not be enforced against the following assets:

- (1) Personal effects, ornaments, or keepsakes of the deceased.
- (2) Assets of an individual who purchases a long term care insurance policy that are disregarded pursuant to ~~IC 12-15-3-6~~ **IC 12-15-39.6-10**.
- (3) Nonprobate assets that were determined exempt or unavailable in the decedent's Medicaid eligibility determination, if the notice of eligibility was issued prior to May 1, 2002.**
- (4) Assets that the decedent transferred through a nonprobate transfer prior to May 1, 2002.**

(f) The office may waive the application of this section in cases of undue hardship pursuant to section 2 of this rule. (*Office of the Secretary of Family and Social Services; 405 IAC 2-8-1; filed May 1, 1995, 10:45 a.m.: 18 IR 2226; filed Feb 15, 1996, 11:20 a.m.: 19 IR 1563; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

SECTION 2. 405 IAC 2-8-1.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-8-1.1 Claims against estate; exemption

Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10

Affected: IC 12-15-3-6; IC 12-15-9

Sec. 1.1. (a) This section applies only to real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship.

(b) The office may enforce its claim against property described in subsection (a) only to the extent that the value of the recipient's combined total interest in all real property described in subsection (a) subject to the claim exceeds one hundred twenty-five thousand dollars (\$125,000).

(c) This section expires January 1, 2008. (*Office of the Secretary of Family and Social Services; 405 IAC 2-8-1.1*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 2, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to 405 IAC 2-8-1 to add certain nonprobate assets to the definition of estate for Medicaid estate recovery purposes, and to add 405 IAC 2-8-1.1 to provide an exception for certain nonprobate assets valued at less than \$125,000. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services