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

Proposed Rule
LSA Document #02-145

DIGEST

Adds 405 IAC 2-10 to provide for the placement of liens on the real property of certain Medicaid recipients. This rule implements IC 12-15-8.5 as added by P.L.178-2002 (HEA 1196). Effective 30 days after filing with the secretary of state.

405 IAC 2-10

SECTION 1. 405 IAC 2-10 IS ADDED TO READ AS FOLLOWS:

Rule 10. Lien Attachment and Enforcement

405 IAC 2-10-1 Definitions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 1. The following definitions apply throughout this rule:

(1) “Disabled” is defined according to the criteria established under 42 U.S.C. 1382c.

(2) “Interest” means any equitable right, title, or interest in real property.

(3) “Lawfully residing in the home” means residing in the recipient’s place of residence with the permission of the owners, or if under guardianship, the owner’s legal guardian.

(4) “Medical institution” means a long term care facility, an intermediate care facility for the mentally retarded (ICF/MR), or other residential medical facility.

(5) “Permanently institutionalized” means an individual of any age who:

(A) is an inpatient in a nursing facility, ICF/MR facility, or other medical institution;

(B) is required, as a condition of receiving services in such institution under the state plan, to spend for costs of medical care all but a minimum amount of his income required for personal needs; and

(C) after notice and opportunity for a hearing, has been determined to have a medical condition of such severity that he or she cannot reasonably be expected to be discharged from the medical institution and returned to the noninstitutional home environment prior to death.

(6) “Real property” means land, including houses or immovable structures or objects attached permanently to the land in which a recipient has ownership rights and interests, including, but not limited to, the recipient’s home.

(7) “Recipient’s home” means the recipient’s place of residence prior to institutionalization.

(8) “Residing in recipient’s home on a continuous basis” means using the home as the principal place of residence.

(9) “TEFRA” means Tax Equity Fiscal Responsibility Act.

(Office of the Secretary of Family and Social Services; 405 IAC 2-10-1)

405 IAC 2-10-2 Recovery

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 2. The office shall seek reimbursement for Medicaid benefits paid on behalf of a recipient by either or both of the following methods:

- (1) Filing and enforcing a lien in accordance with this rule.**
- (2) Filing and enforcing a claim against the estate of a deceased recipient in accordance with 405 IAC 2-8.**
(Office of the Secretary of Family and Social Services; 405 IAC 2-10-2)

405 IAC 2-10-3 Criteria for instituting a TEFRA lien

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 3. (a) When the office in accordance with 42 U.S.C. 1396p determines that a Medicaid recipient who resides in a medical institution cannot reasonably be expected to be discharged and return home, the office may attach a lien on the Medicaid recipient's real property subject to the provisions of this rule and IC 12-15-8.5.

(b) The office may not obtain a lien on the recipient's home if any of the following people lawfully reside in the home of the institutionalized recipient:

- (1) The recipient's spouse.**
- (2) The recipient's child who is less than twenty-one (21) years of age, blind, or disabled as defined in 42 U.S.C. 1382c.**
- (3) The recipient's sibling who:**
 - (A) was residing in the recipient's home for a period of at least one (1) year immediately before the recipient's institutionalization; and**
 - (B) has an ownership interest in the home.**
- (4) The recipient's parent.**
- (5) An individual, other than a paid caregiver, who:**
 - (A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's institutionalization; and**
 - (B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in his or her home, delaying institutionalization.**

(Office of the Secretary of Family and Social Services; 405 IAC 2-10-3)

405 IAC 2-10-4 Notice and opportunity for hearing

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 4. (a) The office shall notify the recipient or the recipient's authorized representative, if applicable, of its determination that the recipient is permanently institutionalized and not reasonably expected to return home and its intent to file a lien on recipient's real property. Notice must include an explanation of liens and their effect on an individual's ownership of real property.

(b) The office may file a lien not less than thirty-one (31) days following notice to recipient and after any hearing process has been completed, if a hearing is requested. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-4)*

405 IAC 2-10-5 Appeal

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 5. (a) A recipient or his or her designee may, within thirty (30) days after receipt of notice described in this rule, request an administrative hearing under this rule.

(b) Administrative hearings and appeals by Medicaid recipients are governed by the procedures and time limits set out in 405 IAC 1.1.

(c) Only one (1) appeal shall be afforded to a recipient, for each notice received in accordance with section 4

of this rule, notwithstanding the number of parcels owned by the recipient and identified in the notice. (*Office of the Secretary of Family and Social Services; 405 IAC 2-10-5*)

405 IAC 2-10-6 Lien attachment

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 6. (a) The office or its designee shall file a notice of lien with the recorder of the county in which the real property subject to the lien is located. The notice shall be filed prior to the recipient's death and shall include the following:

- (1) Name and place of residence of the recipient against whom the lien is asserted.
- (2) Legal description of the real property subject to the lien.

(b) The office shall file one (1) copy of the notice of lien with the county office of family and children in the county in which the real property is located. The county office shall retain a copy of the notice with the county office's records.

(c) The office shall provide one (1) copy of the notice of lien to the recipient or the recipient's authorized representative, if applicable, whose real property is affected. (*Office of the Secretary of Family and Social Services; 405 IAC 2-10-6*)

405 IAC 2-10-7 Effect of filing; duration

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 7. (a) From the date on which the notice of lien is recorded in the office of the county recorder, the notice of lien:

- (1) constitutes due notice of a lien against the recipient or recipient's estate for any amount then recoverable and any amounts that become recoverable under this article; and
- (2) gives a specific lien in favor of the office on the Medicaid recipient's interest in the real property.

(b) The lien continues from the date of filing until the lien:

- (1) is satisfied;
- (2) is released; or
- (3) expires.

The lien automatically expires unless the office commences a foreclosure action not later than nine (9) months after the Medicaid recipient's death. (*Office of the Secretary of Family and Social Services; 405 IAC 2-10-7*)

405 IAC 2-10-8 Enforcement; foreclosure

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 8. (a) The office may not enforce a lien on the recipient's home under this rule if the following individuals are lawfully residing in the recipient's home and have resided there on a continuous basis since the recipient's date of admission to the medical institution:

(1) The recipient's child of any age who:

- (A)** resided in the recipient's home for at least twenty-four (24) months before the recipient was institutionalized; and
- (B)** establishes to the satisfaction of the office that he or she provided care to the recipient that enabled the recipient to reside in his or her home, delaying institutionalization.

(2) The recipient's sibling, who has resided in the recipient's home for a period of at least one (1) year immediately before the date of the recipient's admission to the medical institution.

(b) The office may not enforce a lien on the real property of the recipient under this rule as long as the recipient is survived by any of the following:

- (1)** Recipient's spouse.

- (2) Recipient's child who is less than twenty-one (21) years of age, blind, or disabled as defined in this rule.
- (3) The recipient's parent.

(c) If there is no condition present in subsection (a) or (b), the office, or its designee, may bring a proceeding in foreclosure on the lien or to make arbitration of the amount due on the lien as follows:

- (1) If the real property or recipient's interest is sold during the lifetime of the recipient.
- (2) Upon the death of the recipient.

(Office of the Secretary of Family and Social Services; 405 IAC 2-10-8)

405 IAC 2-10-9 Release; subordination

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 9. (a) The office shall release a lien obtained under this rule within (10) business days after the county office of family and children receives notice that the recipient is no longer institutionalized and is living in his or her home.

(b) A lien obtained under this rule is subordinate to the subsequent security interest of a financial institution as defined in IC 12-15-8.5 that loans money to the recipient, provided that the recipient is able to establish to the satisfaction of the office that the funds were used for any of the following purposes:

- (1) The payment of taxes, insurance, maintenance, and repairs in order to preserve and maintain the recipient's real property.
- (2) Operating capital for the operation of the recipient's farm, the recipient's business, or the recipient's real property that is income-producing.
- (3) The payment of medical, dental, or optical expenses incurred by:
 - (A) the recipient;
 - (B) the recipient's spouse;
 - (C) the recipient's dependent parent; or
 - (D) a child less than twenty-one (21) years of age or who is blind or disabled.
- (4) The reasonable costs and expenses for the support, maintenance, comfort, and education of the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is blind or disabled.

(c) If the real property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-9)*

405 IAC 2-10-10 Exemption

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5

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

Sec. 10. A single exemption of one hundred twenty-five thousand dollars (\$125,000) is afforded to an institutionalized recipient and applies to single or combined total interests of the recipient in all real property subject to a lien. This section expires January 1, 2008. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-10)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 11, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Government Center Auditorium, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed rules to provide for the placement of liens on the real property of certain Medicaid recipients. Written comments may be directed to the Indiana Government Center-South, 402 West Washington Street, Room W451, MS-27 Office of General Counsel, Attention: Maureen Bartolo, Indianapolis, Indiana, 46204. Correspondence should be identified in the following manner: "COMMENTS RE: PROPOSED RULE LSA Document #02-145: Medicaid Lien". Written comments received will be made available for public display at the above listed address of the Office of General Counsel.

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