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1. Long Term Care Unit – Toll Free 866-255-1190

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1. Tamara Swanson – 208-332-7961

**APPENDIX 1
MEDICAID LIEN DIFFERENCES**

NURSING HOME (TEFRA) LIENS

ESTATE RECOVERY LIENS

Placed during life of Medicaid recipient upon determination of “permanent institutionalization”	Placed after death of Medicaid recipient
Notice and opportunity to be heard	No pre-lien notice or hearing
Permits recovery of Medicaid paid at any age	Permits recovery of Medicaid paid after age 55 (focus on long-term care)
Applies to real property only	Applies to both real and personal property
No lien placed if surviving spouse is living in home	Not applicable
No lien placed if minor child is living in home	Not applicable
No lien placed if blind or disabled child is living in home	Not applicable
No lien placed if sibling with an ownership interest is living in home	Not applicable
Not applicable	No recovery where Medicaid need resulted from crime
Collected from estate or upon voluntary sale or transfer of property	Collected after death through probate or foreclosure
Collection deferred if sibling with ownership interest living in home	Not applicable
Collection deferred if a son or daughter lived in the home and provided care for two years	Not applicable

**APPENDIX 2
IMPORTANT STATUTES**

IDAHO CODE § 56-218 (ESTATE RECOVERY)

56-218. RECOVERY OF CERTAIN MEDICAL ASSISTANCE. –

(1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, and the estate of the spouse, if any, for such aid paid to either or both:

(a) There shall be no adjustment or recovery until after the death of both the individual and the spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c.

(b) While one (1) spouse survives, except where joint probate will be authorized pursuant to section 15-3-111, Idaho Code, a claim for recovery under this section may be established in the estate of the deceased spouse.

(c) The claim against the estate of the first deceased spouse must be made within the time provided by section 15-3-801(b), Idaho Code, if the estate is administered and actual notice is given to the director as required by subsection (5) of this section. However, if there is no administration of the estate of the first

deceased spouse, or if no actual notice is given to the director as required by subsection (5) of this section, no claim shall be required until the time provided for creditor claims in the estate of the survivor.

(d) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(2) Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

(3) Except where there is a surviving spouse, or a surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c, the amount of any medical assistance paid under this chapter on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance is a claim against the estate in any guardianship or conservatorship proceedings and may be paid from the estate.

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property

and other assets included within the individual's estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(5) Claims made pursuant to this section shall be classified and paid as a debt with preference as defined in section 15-3-805(5), Idaho Code. Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court. The personal representative of every estate subject to a claim under this section must, within thirty (30) days of the appointment, give notice in writing to the director of his or her appointment to administer the estate. However, if an exempt property allowance claim is made in an estate subject to a claim under this section by one (1) or more persons not described in subsection (2) of this section, then, to the extent such exempt property allowance claim exceeds the fair market value of the actual personal property of the decedent held by the estate subject to a claim under this section (including, but not limited to, such items as household furniture, automobiles, furnishings, appliances, and personal effects), the persons making such exempt property allowance claim must file with the court, and with the

personal representative or administrator of the estate, and with the department, a written statement under oath containing the following:

(a) A statement that no personal property of the decedent has been transferred without adequate consideration to any person or entity, including any one (1) or more of the persons making the exempt property allowance claim, to the actual knowledge of any of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement; or

(b) A statement that personal property of the decedent has been transferred without adequate consideration to any person or entity, including one (1) or more of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement, to the actual knowledge of any of the persons making the exempt property allowance claim, and stating the fair market value of the personal property so transferred, and stating a reasonable description of such property, and stating the method of determining the fair market value of the personal property so transferred. If the written statement indicates that there has been such a transfer of personal property, then the fair market value of the personal property so transferred shall be subtracted from the remaining exempt property allowance claim, after subtraction of the personal property held by the estate, as described

above, and only any still remaining portion of the exempt property claim may be paid by the estate to the persons making the exempt property allowance claim. The statement submitted under paragraph (a) or (b) of this subsection, must be signed under oath by all persons making the exempt property claim.

(6) The department may file a notice of lien against the property of any estate subject to a claim under this section.

(a) In order to perfect a lien against real or personal property, the department shall, within ninety (90) days after the personal representative or successor makes a written request for prompt action to the director, or three (3) years from the death of the decedent, whichever is sooner, file a notice of lien in the same general form and manner as provided in section 56-218A(3)(a), Idaho Code, in the office of the secretary of state, pursuant to section 45-1904, Idaho Code. Failure to file a notice of lien does not affect the validity of claims made pursuant to this section.

(b) The department may release the lien in whole or in part to permit the estate property to be administered by a court-appointed personal representative.

(c) The department may foreclose its lien, without probate, in any of the following circumstances:

(i) Where no personal representative has been appointed after one (1) year from the date of death of the survivor of both the individual and spouse, if any;

(ii) Where the property has been abandoned by the decedent's heirs or

successors, if any;

(iii) Where the real property taxes that are due and payable have remained unpaid for two (2) years and, after demand by the department, the heirs or successors, if any, have failed to seek appointment or pay the property taxes; or

(iv) Where all parties interested in the estate consent to foreclosure of the lien.

(7) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers for the following circumstances:

(a) The estate subject to recovery is income-producing property that provides the primary source of support for other family members; or

(b) The estate has a value below an amount specified in the rules; or

(c) Recovery by the department will cause the heirs of the deceased individual to be eligible for public assistance.

(8) The cause of action to void a transfer without adequate consideration established in this section shall not be deemed to have accrued until the department discovers, or reasonably could have discovered, the facts constituting the transfer without adequate consideration.

IDAHO CODE § 56-218A (TEFRA LIENS)

56-218A. MEDICAL ASSISTANCE LIENS DURING LIFE OF RECIPIENT.

(1) The department may recover and may impose a lien against the real property of any individual prior to his death for medical assistance paid or about to be paid under this chapter on behalf of an individual:

(a) Who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual 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 minimal amount of his income required for personal needs; and

(b) With respect to whom the department has determined, after notice and opportunity for hearing, that he cannot reasonably be expected to be discharged from the medical institution and to return home.

(2) No lien may be imposed on the home of an individual under subsection (1) of this section if any of the following is lawfully residing in such home:

(a) The spouse of such individual;
(b) Such individual's child under age twenty-one (21) years;

(c) Such individual's child who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or

(d) A sibling of such individual who holds an equity interest in such home and who was residing in such

home for a period of at least one (1) year prior to the individual's admission to the medical institution.

(3)(a) The lien shall be perfected by filing in the office of the secretary of state a notice of lien pursuant to section 45-1904, Idaho Code. The notice of lien shall include, in addition to the information required by section 45-1904, Idaho Code, the amount paid or about to be paid by the department on behalf of the individual, and, if applicable, the fact that the amount of the lien may increase over time.

(b) The department shall file any notice of lien under this section within ninety (90) days of the final determination of the department, after hearing if any, required in subsection (1)(b) of this section, with the exception of property against which the department is prevented from filing a lien pursuant to subsection (2) of this section. With respect to the property described in subsection (2) of this section, the department shall file a notice of lien within ninety (90) days after the department is notified in writing that subsection (2) of this section ceases to apply to the property.

(4) Any lien imposed in accordance with subsection (1) of this section shall dissolve upon the individual's discharge from the medical institution and return home.

(5) No recovery shall be made under this section for medical assistance correctly paid except from such

individual's estate as defined in subsection (4) of section 56-218, Idaho Code, and subject to subsections (1)(d), (5) and (6) of section 56-218, Idaho Code, or upon sale of the property subject to a lien and may be made only after the death of such individual's surviving spouse, if any, and only at a time:

(a) When he has no surviving child who is under age twenty-one (21) years, or who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or

(b) In the case of a lien on an individual's home under subsection (1) of this section, when none of the following is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution:

(i) A sibling of the individual, who was residing in the individual's home for a period of at least one (1) year immediately before the date of the individual's admission to the medical institution; or

(ii) A son or daughter of the individual, who was residing in the individual's home for a period of at least two (2) years immediately before the date of the individual's admission to the medical institution and who establishes to the satisfaction of the state that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution.

(6) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to,

rules establishing undue hardship waivers, as provided in section 56-218(7), Idaho Code, and a procedure for notice and opportunity for hearing on the department's determination that an individual cannot reasonably be expected to be discharged from a medical institution and to return home.

IDAHO CODE § 15-3-1201 (SMALL ESTATE AFFIDAVIT)

15-3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person or entity claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) The fair market value of the entire estate of the decedent which is subject to probate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars (\$100,000);

(2) Thirty (30) days have elapsed since the death of the decedent;

(3) No application or petition for the appointment of a personal representative or for summary administration is pending or has been granted in any jurisdiction; and

(4) The claiming successor is entitled to payment or delivery of the property, including entitlement as a trust pursuant to a will of the decedent.

(b) A transfer agent of any security shall change the registered

ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a) of this section.

(c) For the purposes of this section, for the recovery of medical assistance, the department of health and welfare shall be deemed a successor to the estate provided:

(1) Prior to the presentation of the affidavit, the department shall give notice, by regular mail, to any person known to the department to be an heir, successor or creditor of the estate, and the department shall certify such notice in writing to the person described in subsection (a) of this section.

(2) Within sixty (60) days of mailing the notice, any person who claims the right to reimbursement for priority estate expenses, as permitted by section 15-3-805(a)(1) through (4), Idaho Code, may submit a written demand for payment of such expenses, together with any documentation of the expenses, to the department. Upon receipt of the funds, and up to the amount received, the department shall pay priority claims which it determines would be allowed in a probate proceeding, if any. The department shall notify each claimant of the disposition of his claim. The provisions of chapter 52, title 67, Idaho Code, shall apply to determinations made by the department under this section.

IDAHO CODE § 15-3-805 (PROBATE CLAIMS PRIORITY)

15-3-805. CLASSIFICATION OF CLAIMS.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts and taxes with preference under federal law;
- (4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (5) debts and taxes with preference under other laws of this state;
- (6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.