

# Liens, Estate Recovery and the Special Recovery Unit

Minnesota Department of Human Services  
Benefit Recovery Section  
Special Recovery Unit  
Saint Paul, Minnesota  
September 30, 2014

Greg Lulic & Denise Meyer  
Lien Specialists



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## OVERVIEW

- Introduction
- Special Recovery Unit – Newest Team Members
- New Lien Worksheet
- Lien Process
- NPC's
- Special Needs Trusts
- Annuities
- Questions



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## LIENS

- Two types of liens are used in MN
  - TEFRA/pre-death liens: Known in MN as MA liens. Allowed to encumber real property while the recipient is alive and in a LTC facility. Certain restrictions apply
  - Post-death lien: In MN known as NPCs. Created to recover against real estate that would be outside of probate (life estate, joint tenancy). Can be filed post death, up to one year for claims of MA received after age 55, if the individual was in a LTC facility, or GAMC. (Cannot file NPCs to recover Alternative Care)
- Send in worksheet (DHS-3203)



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## MA Liens

- Covered under Minnesota Statute §514.980-§514.985.
  - Filed by DHS Special Recovery Unit after a request is sent by the County
- Allowed when a person received MA and owns property in Minnesota on or after the time when recipient was:
  - Institutionalized in an LTCF for longer than 6 months
  - Inpatient in a hospital
  - In an ICF-MR




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## New MA Lien / Notice of Potential Claim (NPC) Worksheet

- Revised MA Lien worksheet (DHS-3203)
- Can be used to request a Lien or an NPC
- Now contains the proper fields that are needed when an NPC is requested
- Is in edocs or get a copy from the financial worker




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**Medical Assistance Lien and Notice of Potential Claim (NPC) Worksheet**

**PART I. Recipient Information/Attending Physician Information**

Full Name	DOB	Sex	State	City	County	Zip	Phone	Address

**PART II. Homestead Property** (submit even if homestead is excluded for eligibility)  
 Is the property Homesteaded or was homesteaded immediately prior to entering an LTC facility?  
 Yes  No (Do not skip to Part IV)  
 If yes, is ownership limited to  Life Estate  Life Tenancy  Tenants in Common  Sole Ownership  
 Does homestead exemption apply?  No  Yes  Yes  No (Do not skip to Part IV)  
 If yes, mark all applicable exemptions below:  
 Exemption - Property occupied by:  
 Spouse  
 Child under 21 years of age OR child of any age who is blind or permanently disabled according to the Supplemental Security Income (SSI) Program or State Medical Reserve Trust (SMRT)  
 Child who resided in the homestead for at least one year before the date the recipient received MA medical assistance services, provided care that prevented the recipient to live without medical assistance services AND said child continues to reside in home  
 sibling who has ownership interest

**PART III. Non-Homestead Property** (No MA (Lien/NPC) exemption for non-homestead)  
 Does the recipient have ownership interest in non-homestead property?  Yes  No (Do not skip to Part IV)  
 If yes, is ownership limited to  Life Estate  Life Tenancy  Tenants in Common  Sole Ownership

**PART IV. Protected Asset Under LTC Partnership**  
 Has the recipient designated this property as a protected asset under LTC Partnership?  Yes  No  
 If yes, value of asset protection is \$ \_\_\_\_\_

Send a copy of this worksheet AND required attachments to:  
 Minnesota Department of Human Services  
 Special Recovery Unit, MA Liens  
 P.O. Box 649997  
 St. Paul, MN 55164-0997  
 Phone: 651-431-3294  
 Fax: 651-431-7431

**REQUIRED ATTACHMENTS:** Attach a copy of at least one of the following: deed, current tax statement, general warranty deed description or address with name of county. Required for both homestead and non-homestead property.

**New  
MA Lien / NPC  
Worksheet**

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Form No. 27-04  
No delinquent taxes and transfer certificate Certificate of Real Estate Value ( ) filed ( ) not required  
Certificate of Real Estate Value No. February 13, 2003  
Date  
County Auditor  
by Kerdy S. Johnson  
Deputy  
DIRECT TAX DUE \$ 1.45  
Date: February 6, 2003

**A 142569** Stamped  
COUNTY RECORDER  
DODGE COUNTY, MN  
Certified. Book and/or recorded on 02/13/2003 at 3:45 pm  
Return to: OULICKSON PETERSON ZIEHL  
Receipt # 1197  
Sen A. Abbott  
Dodge County Recorder  
by [Signature] Deputy

**QUIT CLAIM DEED**  
(Reserved for recording date)  
FOR VALUABLE CONSIDERATION: LESLIE and CIRCLE husband and wife  
Grantor(s), hereby conveys and quitclaims to LESLIE LINDA CHRISTINE ROONEY and  
GRANT  
GRANTEE(s), and property in DODGE County, Minnesota, described as follows:  
The North 799.00 feet of the West 527.00 feet of the Northeast Quarter of the North 1/4 of Section Twenty-Four (24), Township One Hundred Five (105) North, Range Sixteen (16) West, Dodge County, Minnesota.  
**EXCEPT RESERVING UNTO GRANITOR A LIFE ESTATE FOR AND DURING HER/HER NATURAL LIFE**



**Ownership Interest**

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County Auditor  
by Sara Maddezza  
Deputy  
40-375-0150  
STATE DEED TAX DUE HERSON: \$ 72.60  
Date: May 22, 1998

**APR 14 2004**  
COMPLETION  
(reserved for recording date)

**FOR VALUABLE CONSIDERATION**, Mabel, a single person, Grantor, hereby conveys and warrants to Katie, Grantee, real property in Kandiyohi County, Minnesota, described as follows:  
The 1/8 of Lots 7, 8, 9, 10 and 11 in Block 3, Palm's Addition to the City of Atwater, **reserving unto Grantor a life estate** in and to said premises during the life of the Grantor  
together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:  
THE SELLER CERTIFIES THAT THE SELLER DOES NOT KNOW OF ANY WELLS ON THE DESCRIBED REAL PROPERTY.  
on June 1, 1998



**Ownership Interest**

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NO DELINQUENT TAXES AND TRANSFER DUTIES THIS DAY OF May, 1999  
COUNTY RECORDER  
STATE OF MINNESOTA  
COUNTY OF DODGE  
This is to certify that this instrument was filed in my office on the 29th day of May 1999 at 10:52 o'clock AM and was recorded in Document No. 1264082  
COUNTY AUDITOR  
by [Signature] Deputy  
STATE DEED TAX DUE HERSON: \$ 1.65  
Date: May 29<sup>th</sup>, 1999

**QUIT CLAIM DEED**  
Individual(s) to Individual(s)  
FOR VALUABLE CONSIDERATION, Lorena, as Attorney-in-Fact for Ruby, single Grantor, hereby conveys and quitclaims unto Lorena Robert Kenneth Arnold A. and Leland as Tenant-in-Common, Grantees, real property in ISANTI County, Minnesota, described on Exhibit A attached hereto.  
Reserving, however unto Ruby M. Johnson, a life estate interest in and to the above-described property.



**Ownership Interest**

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## MA Lien Process (continued)

### Exceptions:

- It is a homestead of the recipient's spouse;
- It was the homestead of the recipient and the following people reside in the property:
  - Recipient's child who is under 21;
  - Recipient's child who is permanently disabled, regardless of age;
  - Recipient's child who is blind, regardless of age



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## MA Lien Process (continued)

### Exceptions (continued):

It was the homestead of the recipient and the following people reside in the property:

- A sibling who lived in the decedent MA recipient's home at least one year before the decedent's was institutionalized and continuously since; or
- A child who lived in the recipient's home for at least two years immediately before the recipient's was institutionalized and continuously since and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and permitted the recipient to remain in the home rather than the institution.



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## MA Lien Process (continued)

### ■ If it is an MA lien:

- A letter and DHS physician verification form must be sent to the recipient's attending physician to verify that the recipient is not expected to return home. Once that verification is returned to DHS a lien is created and 1<sup>st</sup> notice of lien imposition is sent out by certified mail to the recipient and/or authorized representative. A copy is sent to the county case manager.
  - If the form is returned "might go home" the Department continues to follow up with the physician. No lien can be created until DHS has verification the recipient is not expected to return home.



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## MA Lien Process (continued)

- If it is an MA lien (continued):
  - If the form is returned “might go home” DHS continues to follow up with the physician. No lien can be created until DHS has verification the recipient is not expected to return home.




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Minnesota Department of Human Services

**To Whom It May Concern:**

This letter summarizes how Medical Assistance (MA) Lien recoveries may or may not be made on certain types of property for recipients of paid MA benefits. The Department of Human Services (DHS) is permitted to file a lien against real property located within the State of Minnesota when interest is held by a recipient who is institutionalized and receives MA benefits. The purpose of the lien is to recover the State's cost of these MA benefits provided for the recipient. The State's Special Recovery Unit handles these recoveries.

**Life Estates**  
DHS may make a recovery if there is a real estate transaction during the life estate holder's lifetime over an MA Lien is recorded against a life estate interest. The recovery is limited to the lesser of MA benefits paid or the value of the life estate interest. Life Estate interest is calculated based on the age of the recipient using the Social Security Administration's Life Estate Mortality Table.

**Joint Ownership**  
DHS may make a recovery if there is a real estate transaction during the lifetime of the joint interest holder named on the MA Lien once an MA Lien is recorded against the jointly owned interest. The recovery is based on MA benefits paid against the value of the joint interest (E.G. 2 equal joint interests = 50% interest, 3 equal joint interests = 33.33% interest). DHS may recover the lesser of the amounts.


**Prior to August 1, 2003**  
MA Liens of record, against life estates and jointly owned interests in property established prior to August 1, 2003, ~~remain enforceable and are no longer liens~~ on these interests when the recipient named on the recorded lien dies.

**After August 1, 2003**  
MA Lien Laws from the 2005 legislative session continue life estates and jointly owned interests after the death of the interest holder if that interest was established after August 1, 2003. In those situations, DHS will make its recovery.

If you have any questions regarding the enclosed information, please contact me at the number below:

**Dewezir**  
Dewezir M. Mayer  
MA Lien Administrator Sr.  
Special Recovery Unit  
651-431-3128  
dewezir.mayer@state.mn.us

### General Letter of Explanation



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**MINNESOTA MEDICAL ASSISTANCE PROGRAM**  
**NOTICE OF LIEN IMPOSITION**  
*Minnesota Statutes 1993, sections 514.980 to 514.985*

**John Johnson** *Date: June 29, 2012*  
**Country Manor** *Lien No. 1564\**  
**520 - 1<sup>st</sup> St. NE** *Social Security: 5792*  
**Sartell, MN 56377**

**Dear Mr. Johnson:**

This is to notify you that the Minnesota Department of Human Services will place a lien on your real property. This is based on your receipt of medical assistance payments made for your benefit by the Minnesota Medical Assistance Program beginning November 1, 2011. It is also based on medical verification from your attending physician that you are not reasonably expected to be discharged from the medical institution you are in.


Your interest in the real property you own, and that of your spouse, if still living, is subject to or affected by the rights of this agency to be reimbursed for medical assistance benefits.

The Medical Assistance lien will be filed against your real property 30 days from receipt of this notice. Following is an legal description (s) of your real property subject to a lien:

COUNTY: Hennepin    ABSTRACT: X    TORRENS:     Crt. No.

All of your right, title and interest in and to:

### MA Lien (front)



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## NPC Process

- If the lien specialist determines that an NPC is required instead of a MA lien OR an NPC is requested then the following process is completed:
  - The NPC is created and a copy of the NPC along with a cover letter is mailed to the recipient, the authorized representative and county case manager. The original is sent to the county recorders office for recording. (There is not a 30 day wait period.)




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## NPC Process (continued)

- The NPC becomes a lien only upon the death of the recipient and can be filed up to one year from the recipient's death.
- The NPC is governed by Statute 256B.15 and has a much greater potential for exceptions than the MA Lien, including being subordinate to a county claim.

*(stay tuned, more to come)*




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**Claim Form**  
**HS**  
 Home Services  
 Home Services of Illinois, Inc.  
 Attention: Medicaid Care Program (MCP)  
**Medical Assistance Lien and Notice of Potential Claim (NPC) Worksheet**

**PART I. Recipient Information/Attending Physician Information**

NAME	ADDRESS	CITY	STATE	ZIP
NAME (last, first, middle)				
ADDRESS (street name)				
CITY (city name)				
STATE (state name)				
ZIP (zip code)				

**PART II. Homestead Property** (check one if Homestead is included for eligibility)  
 Is the property Homesteaded or non-homesteaded (check all that apply to receiving an LDC benefit)?  
 Yes  No (if no, skip to Part III)  
 If yes, check all that apply:  Spouse  Child  Parent  Sibling  Trustee of Trust  Life Ownership  
**Non-homesteaded exceptions apply:**  Yes  No  If yes, check all applicable exceptions below:  
 Examples - Property exempt for:  
 Spouse  Child under 21 years of age OR child of any age who is blind or permanently disabled according to the Supplemental Security Income (SSI) Program or State Medical Assistance (SMA) rules.  
 Child who resided in the homestead for at least two years before the date the recipient received SMA medical assistance services, provided one that provided the recipient or his or her spouse medical assistance services AND said child continues to reside in home.  
 Sibling who has residency interest.  
 Comment: \_\_\_\_\_

**PART III. Non-Homestead Property** (no NPC exemption for non-homestead)  
 Does the recipient have ownership interest in non-homesteaded property?  Yes  No (if no, skip to Part IV)  
 If yes, is ownership interest in:  Life Estate  Joint Tenancy  Trust or Co-trust  Life Ownership  
 Comment: \_\_\_\_\_

**PART IV. Protected Asset Under LTC Partnership**  
 Has the recipient designated this property as a protected asset under LTC Partnership?  Yes  No  
 If yes, enter value of asset protection: \_\_\_\_\_  
 Send a copy of this worksheet AND required attachments to:  
 Missouri Department of Human Services  
 Special Recovery Unit, Mail Room  
 411 East 12th Street  
 St. Louis, MO 63102-0001  
 Phone: (314) 433-3200  
 Fax: (314) 433-7420  
**REQUIRED ATTACHMENTS:** Attach a copy of at least one of the following: deed, contract for deed, general contract, legal description, or address with name of county. Required for both homesteaded and non-homesteaded property.

When requesting an NPC, usually some or all of these fields are completed




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**The Basic Recovery Process when there is an MA lien (continued)**

- The HUD is received by email or fax.
- The Unit reviews the HUD (all normal and usual closing costs are allowed).
  - Realtors fees
  - Title / Abstract search
  - Taxes / HOA fees
  - Recording fees / closing fees
  - Mortgage (if recorded before lien)
  - Certain repairs or reimbursements upon review and approval



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**The Basic Recovery Process when there is an MA Lien (continued)**

- Upon approval SRU compares the recipients interest in the net proceeds with the amount paid by MA for the recipient's care and recovers the lesser of the amounts.
- A payoff letter is sent to the realtor, title co., family or attorney. The letter states:
  - To whom to make the check payable
  - Where to mail the check
  - How much the department will accept for a release of lien, and
  - How the release of lien is handled.



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**The Basic Recovery Process when there is an MA Lien (continued)**

- The Department receives the check and verifies that it is correct.
- The SRU generates a release of lien
  - Send a copy of the release to the entity that issued the check
  - Send the original release to the county recorders office



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### The Basic Recovery Process when there is an MA Lien (continued)

- The SRU notifies the county case manager of the recovery. We send a:
  - Cover letter as to what type of recovery: Total claim, life estate interest, net proceeds, etc.
  - Copy of signed HUD
  - Copy of payoff letter
  - Copy of check
- If no other property, we close our file.



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### The Notice of Potential Claim (NPC)

- An NPC lien arises when DHS makes MA payments on behalf of the MA recipient.
  - Authority comes from the expanded definition of estate under title 42 USC 1396p(b)(4)(B).
- The NPC may be filed anytime before or up to one year after the MA recipient dies.
  - NPC filed before the recipient's death shall not take effect and shall not be effective as lien until the recipient dies.
  - NPC filed after the recipient dies shall be effective as a lien from the time of filing.



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### The NPC (continued)

- An NPC applies to all real property the recipient holds interest in; this includes life estate and jointly held interest in land
  - collection after recipient death is only allowed on life estate and jointly owned interest created on or after August 1, 2003
- The NPC constitutes a lien in favor of DHS against the recipient's interests in the real estate it describes for 20 years from the date of filing or the date of the recipient's death, whichever is later.



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### The NPC (continued)

- **Property Subject to the NPC:**
  - Real property owned by the recipient and the recipient dies single and a claim could be filed under Minn. Stat. §256B.15
- **An NPC may be filed on interest in real property of a deceased recipient survived by:**
  1. a spouse; or
  2. minor child; or
  3. a child of any age who is totally and permanently disabled; or



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### The NPC (continued)

- **An NPC may be filed on interest in real property of a deceased recipient who has:**
  4. A sibling who lived in the decedent MA recipient's home at least one year before the decedent's was institutionalized and continuously since the date of institutionalization; or
  5. A child or grandchild who lived in the recipient's home for at least 2 years immediately before the date of institutionalization of the recipient and who established they provided care which permitted the recipient to reside at home rather than the institution.



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### The NPC (continued)

- The NPC may not be enforced or collected upon until after the previously mentioned 5 exemption(s) no longer apply.



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**The Basic Recovery Process  
when there is an NPC**

- The SRU is contacted in a couple of ways when an NPC is recorded and is now in question.
  - The county calls and states they have a claim.
  - The title company, attorney, realtor calls and they want to know how to get it released
- Here's where the imperfect world of liens, claims and NPC's begins.



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**The Basic Recovery Process  
when there is an NPC**

- When DHS has an NPC there can also be a County claim.
- The Personal Representative (PR) or attorney handling the estate are *usually* most interested in satisfying the County claim.
- The Title company is interested in satisfying the NPC or getting a release thereof.



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**The Basic Recovery Process  
when there is an NPC**

- This is when clear and constant communication between DHS and the county needs to take place.
- Under normal circumstances, if DHS knows this is a probate estate we will contact county collections to find out if there is a claim in the estate.



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### The Basic Recovery Process when there is an NPC & County Claim

- If the county has a claim, the SRU requires you to fax or email your written statement of claim.
- The Unit will not release its NPC until the county's claim is satisfied.
  - An exception is if **the county** requests it to be released before the claim is satisfied.



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### MA Claims

- A claim for MA includes all MA provided for under the MA program 256B, all GAMC under 256D, and AC under 256B.0913
  - » (AC benefits paid after July 1, 2003)
  - » Effective January 1, 2010, exclude QMB, SLMB, QI, QDWI, QMB Plus and SLMB Plus.

- Paid after 55;
- Without regard to age, paid during any stay of 6 months or longer in an institution; or
- Paid GAMC

[Minn. Stat. §256B.15, Subd 1a](#)



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### MA Claims

- **Priority:** An MA claim is considered an expense of last illness and has a fourth priority of payment. [Minn. Stat. §524.3-805](#)
- **Assets subject to Claims:**
  - Homestead
  - All probated assets
  - Selected non-probate assets



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**The Basic Recovery Process  
when there is an NPC**

- If this is not probate property and DHS can make a recovery we ask:
  - When is it closing?
  - Please send us a preliminary HUD or settlement statement for review.
  - It is the Departments understanding that the recipient has a "life estate interest," "joint tenancy interest," or "tenant-in-common interest". Is that your understanding?



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**The Basic Recovery Process  
when there is an NPC**

- The HUD is received by email or fax.
- The Unit reviews the HUD (all normal and usual closing costs are allowed).
  - Realtors fees
  - Title / Abstract search
  - Taxes / HOA fees
  - Recording fees / closing fees
  - Mortgage (if recorded before lien)
  - Certain repairs or reimbursements upon review and approval



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**The Basic Recovery Process  
when there is an NPC**

- Upon approval the unit compares the recipients interest in the net proceeds with the amount that has been paid by MA for the recipients care and recovers the lesser of the amounts.
- A payoff letter is sent to the realtor, title co., family or attorney. It states:
  - To whom to make the check payable
  - Where to mail the check
  - How much the department will accept for a release of lien, and
  - How the release of lien is handled.



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**The Basic Recovery Process  
when there is an NPC**

- The Department receives the check and verifies that it is correct.
- The Unit generates a release of lien and sends:
  - A copy of the release to the entity that issued the check
  - The original release to the county recorders office



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**The Basic Recovery Process  
when there is an NPC**

- The Unit then notifies county collections of the recovery.
- If no other property, we close our file.



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**Life Estates and Joint Tenancy**

- 2005: Legislature amended MA Lien and NPC laws to limit continuation of a life estate or joint tenancy owned interest in land after a recipient's death to life estate and jointly owned interest established on or after August 1, 2003.
- However, recovery is still allowed against life estate or jointly owned interests in land established before August 1, 2003, if it is done during the lifetime of the recipient.



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## Medicare Improvements for Patients and Providers Act (MIPPA)

- Medicare Cost Sharing: Effective January 1, 2010
    - Claims will no longer include QMB, SLMB, QI
- History:* Estate recovery and pre-death liens have included recovery for the cost of services or benefits received by MA recipients who are also enrolled in Qualified Medicare Beneficiaries (QMB), Service Limited Medicare Beneficiaries (SLMB) and Qualified Individuals (QI), or who only receive the QMB, SLMB or QI benefit.



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## MIPPA

- Medicare Cost Sharing (requirements from the federal agency)
  - Effective January 1, 2010: States must exempt Medicare cost-sharing benefits (i.e., Part A and Part B premiums, deductibles, coinsurance, and co-payments) from estate recovery. Exemption applies to these groups of dual eligibles: QMB, SLMB, QI, QDWI, QMB Plus (QMB with full Medicaid benefits), and SLMB Plus (SLMB with full Medicaid benefits).



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## MIPPA

- Medicare Cost Sharing
  - MA Liens and SNTs: This new exclusion does not apply to MA liens and Special Needs Trust.
  - Date of death: This new exclusion does not apply to estate recovery for deaths before January 1, 2010.
    - For any person dying on or after January 1, 2010, a claim still can be made against their estate for Medicare cost-sharing benefits received before the effective date.



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## MIPPA

- Medicare Cost Sharing
  - **Claims for enrollees described below with dates of service on or after January 1, 2010 must be excluded from a probate claim.**
    - Qualified Dual Eligibility—QMB, SLMB, QI, QDWI, QMB+, SLMB+; and (Identified with Major Program = QM, SL, or WD)
    - Age 55 or older at the date of service of the MA benefit;



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## MIPPA

- Use the following guide when preparing a claim for recovery of MA filed in the probate estate of the above recipients:
    - A. Medicare Cost Sharing benefits —  
Paid Under Major Program QM, SL or WD only
      - Dates of service\* before 01/01/2010 → Subject to recovery;
      - Dates of service\* on or after 01/01/2010 → Exempt from recovery;
    - B. Medicare Premiums--
      - \*DOS for premiums defined as "date Medicaid paid the premium"—Warrant Date: Identified with "Warrant Date on or after 01/01/2010" and Provider Name is "Fed SMI Trustee (Buy-In)"
    - C. Medicare Co-pays, deductibles, co-insurance--
      - \*DOS for co-pays, etc. defined as "date the request for payment is received by the Medicaid State agency" = Billed Date Identified with "Billed Date" on or after 01/01/2010 and "Claim Type" = T, U, V, or W
- See Bulletin #09-21-11



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## Other Means of Recoveries

- Transfer on Death Deeds ("TODD")
- Revocable Living Trusts



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## What is a TODD?

- A way to convey real property to one or more grantee beneficiaries upon the death of the grantor(s) without the cost of probate or granting interest prior to death.
  - No interest is transferred until after the death of the grantor.
  - The TODD may be revoked at any time by the grantor owner as long as revocation is recorded prior to death.



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## Definitions

- Beneficiary or Grantee Beneficiary: Party to whom an owner grants future interest in Minnesota real property.
- Owner: person having an ownership interest in all or part of the real property to be conveyed or transferred by a TODD.
  - Does not include a spouse who joins the deed for the sole purpose of releasing statutory or marital interest.



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## Who can be a Grantee Beneficiary?

- Spouse
- Children
- Relatives
- Friends
- Charitable Organizations
- Trustee of a Trust
- Corporations



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## Grantee Beneficiary

- Owner not required to have grantee beneficiary's :
  - Consent
  - Signature
  - Agreement
- The grantee may disclaim his/her interest in the property as provided by Minn. Stat. §501B.86
- Grantor may designate multiple grantees to take title as j/t, t/c, etc....



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## Rights of Creditors

- The interest transferred to the grantee after the death of the grantor is subject to all encumbrances the property was subject to during the grantor's lifetime.
  - This includes any claim for MA not already satisfied by the grantor's estate.



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## Certificate of Clearance

- Any person claiming an interest in real property conveyed by a TODD must apply to a county agency in the county where the real estate is located for a clearance certificate to release public assistance claims and liens on real property.
  - County can force the sale by petitioning probate court where the property is located or in the county where a probate is pending for an order allowing sale of real property substituting net sale proceeds so they can pay the MA claim.



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## Certificate of Clearance

- DHS HCPM has links to forms that have copies of the affidavit for certificate of clearance and the actual certificate of clearance to process the TODD clearance request. (HCPM 19.50.05)
- A certified death certificate, affidavit of identity and survivorship and the Certificate of Clearance need to be recorded in the county recorders office.



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## Filing and Collection of Claim

- The grantee beneficiary must record the certified death certificate, affidavit of identity and survivorship and the Certificate of Clearance at the county recorders office.
- If a claim appears on the certificate, recording of the certificate in the county in which the real property is located constitutes a filing of claim.

For detailed reference see Bulletin #09-21-11



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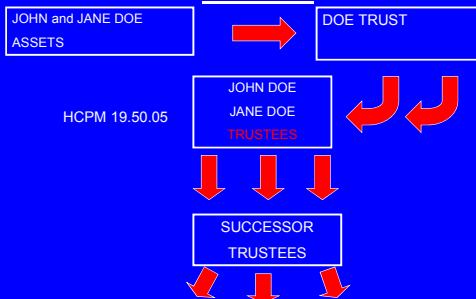
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## HOW A REVOCABLE LIVING TRUST WORKS



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## Revocable Trust

- Can a Revocable or living trust avoid an MA claim?
  - Restatement (Second) of Trusts, §156 allows creditors to reach these sort of trusts.
  - Minn. Stat. §502.76: When the grantor in a conveyance personally reserves, for the grantor's own benefit, an absolute power of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.
  - Minn. Stat. 256B.15, Subd 1a(b), the person's estate must consist of:
    - (5) assets conveyed to a survivor, heir, or assign of the person through survivorship, **living trust**, or other arrangements.
  - The venue for such a claim can either be made in probate proceeding (which the county would initiate) or to petition the court for the successor trustee to pay a valid claim against the grantor(s). See Minn. Stat. 501B.16 and 501B.17
- See MN HCPM 19.50 ----- Added section 19.50.05



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## Special Needs Trusts Pooled Trusts Annuities

- Only MN Department of Human Services can be the beneficiary with the right to recover.
- These do not become part of a probate estate.



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## Other Useful Information

- Newly issued Bulletin #14-21-03
  - MA Estate Claim Recovery and Undue Hardship Waivers
- Bulletin #09-21-11
  - Change to Claims in the Estate of the Surviving Spouse (Barg decision)



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## Contacts

Property Liens / NPC's / Trusts / Annuities:

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<b>H-M</b>	Denise Meyer	651-431-3158
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<b>S-Z</b>	Kelly Buckley	651-431-3115

Policy Questions:

Dale Klitzke	651-431-3108
Kendel Waterkamp-Vomastek	651-431-5805



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## Questions



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