

## County Check-Up: Medical Assistance Estate Recovery

October 2, 2017

There have been several changes to Medical Assistance (MA) estate recovery in the past two years. Here's a checklist from the DHS Special Recovery Unit (SRU) that you can use to ensure your agency is up-to-date and compliant with MA estate recovery practices:

### **Bookmark the MA Estate Recovery Manual in your web browser**

On the DHS CountyLink home page, click the Manuals menu near the top-center of the screen. On the Manuals page, click on the MA Estate Recovery Manual link on the left-hand side of the screen.

When you reach the "Estate recovery procedures" page, bookmark the web page for quick access in the future. (If you're using Internet Explorer, click the star in upper right-hand corner of the screen and then click "Add to favorites" from the dropdown menu.)

### **Adopt county procedures according to the MA Estate Recovery Manual**

Your agency must either (1) adopt the MA Estate Recovery Manual's procedures as its own county procedures for MA estate recovery or (2) develop its own procedures in accordance with the manual. The manual is the most current and authoritative state guidance on MA estate recovery in Minnesota.

### **Submit all required documentation when submitting a Referral for an MA Lien or Notice of Potential Claim (DHS-3203)**

When sending in the DHS-3203 form to SRU, remember that required documentation accompanying the form may include more than just a description of the real property.

If an MA member meets one of the lien filing exemptions under Step 5 of the form, you must send in documentation showing that the exemption is true. You cannot rely on the word of an MA member, authorized representative, or a personal representative of the estate.

Finally, the email address to send the form to has changed. It is now: [dhs.srulien@state.mn.us](mailto:dhs.srulien@state.mn.us)

### **Keep SRU updated on who performs MA estate recovery at your county**

If the staffing for MA estate recovery at your agency changes, please email the DHS County Liaison for MA estate recovery, Greg Lulic, and let him know: [greg.lulic@state.mn.us](mailto:greg.lulic@state.mn.us)

### **Send policy questions to [dhs.srupolicy@state.mn.us](mailto:dhs.srupolicy@state.mn.us)**

SRU has a new email address for MA estate recovery policy questions: [dhs.srupolicy@state.mn.us](mailto:dhs.srupolicy@state.mn.us)

Federal and state law require the Minnesota Department of Human Services (DHS) and local agencies to recover costs that Medical Assistance (MA) and General Assistance Medical Care (GAMC) paid for members under certain circumstances through estate recovery and liens on real property.

### Estate Recovery

#### What is an estate?

An estate is the property that a person leaves behind after dying.

#### What is estate recovery?

Estate recovery is a process in which local agencies claim against the estates of some deceased MA members and all deceased GAMC members, or the estates of the deceased members' surviving spouses, to collect the amount MA, GAMC or both, paid for certain health care services.

#### Who recovers MA and GAMC costs using estate recovery?

County agencies file claims against estates to collect MA costs. DHS does not do estate recovery.

### Whom Do Estate Recovery and Liens Apply to?

Estate recovery and liens apply to the following people:

- MA members who at 55 years old or older receive a subset of MA services called long-term services and supports (LTSS)
- MA members who at any age permanently reside in a medical institution and whose attending physician, advanced practice registered nurse (APRN), or physician assistant certifies in writing that the member is never expected to be discharged and return home
- GAMC members who received GAMC services at any age

Situation	Age when costs of services can be recovered later by estate claim or lien	Services for which costs can be recovered
Received MA services	55 years old or older	MA LTSS
Received MA services while permanently residing in a medical institution	Any age	All MA services received during the period of institutionalization
Received GAMC services	Any age	All GAMC services

### Liens

#### What is a lien?

A lien is a legal right or interest that a person or entity has in another person's property until the claim has been repaid or the lien expires.

#### What is real property?

Real property is a specific type of property that includes land and buildings on land.

#### Who recovers MA and GAMC costs using liens on real property?

DHS files liens against real property interests to collect MA and GAMC costs. Unlike estate recovery, lien recovery is limited to collecting MA and GAMC costs from real property only. Local agencies do not file liens for MA or GAMC repayment.

# Frequently Asked Questions (FAQs)

## Purpose

---

### Why do DHS and local agencies pursue estate recovery and liens?

DHS and local agencies are required by law to pursue estate recovery and liens so that there are funds to support future MA members. As stated by the Minnesota Supreme Court, estate recovery serves “a very important purpose . . . whereby money paid to qualified individuals for health care purposes may be recovered and reused to help other similarly situated persons.” *In re Estate of Turner*, 391 N.W.2d 767, 770 (Minn. 1986).

## Services for Which Costs Can Be Recovered

---

### What are MA long-term services and supports (LTSS)?

For the purpose of MA recovery, LTSS are the following:

- Nursing facility services (NFS)
- Home and community-based services (HCBS)
  - Alternative Care (AC) services
  - Brain Injury (BI) services
  - Community Alternative Care (CAC) services
  - Community Access for Disability Inclusion (CADI) services
  - Developmental Disabilities (DD) services
  - Elderly Waiver (EW) services
  - Home health services
    - Home care nursing
    - Home health aide
    - Medical supplies and equipment
    - These services when provided by a home health agency:
      - Physical therapy
      - Occupational therapy
      - Speech therapy
  - Personal care assistance (PCA)
- Hospital and prescription drug services received during the period the MA member received NFS or HCBS

### What are GAMC services?

General Assistance Medical Care (GAMC) was a public health care program in Minnesota that ended in 2011. People for whom GAMC paid health care costs received “GAMC services.”

## Estate Recovery

---

### What is a local agency and why do local agencies perform estate recovery instead of DHS?

A local agency is a Minnesota county agency or a tribal agency. Local agencies are responsible for estate recovery under law.

### Can estate recovery happen before an MA or GAMC member dies?

No. Estate recovery happens after an MA or GAMC member dies.

### Are there protections against estate recovery?

Yes. Local agencies delay recovery if the deceased MA or GAMC member is survived by a spouse or has a child who is under 21 years old, blind or permanently disabled. There are additional protections in certain circumstances. See “More Information” on the next page.

### Can a local agency recover MA and GAMC costs from the estate of a spouse who survives an MA or GAMC member?

Yes. Local agencies must try to collect from the estate of a spouse of an MA or GAMC member who continued living after the member died, but only after the spouse has died. This delay is a safeguard for the spouse. Local agencies cannot recover on an MA or GAMC claim if a spouse survives the deceased MA or GAMC member.

If the surviving spouse receives assets from the deceased MA or GAMC member’s estate, the surviving spouse can use the assets without having to repay. But, once the surviving spouse dies, the local agency can claim against the surviving spouse’s estate.

### Do children of an MA or GAMC member have to pay estate claims?

No. An MA member’s children do not have to use their own assets to reimburse local agencies for any services the member received.

## FAQs Continued

### **Do estate claims recover the costs of MinnesotaCare?**

No. Estate recovery is limited to the MA and GAMC programs.

## **Liens**

---

### **Can DHS recover on a lien before an MA or GAMC member dies?**

DHS can recover on a lien filed on an MA member's real property before an MA member dies, but recovery is limited to the costs of MA services the member received during a permanent stay in a medical institution.

However, a lien cannot recover the costs of MA LTSS received at 55 years old or older (outside of permanent institutionalization), nor the costs of GAMC services, until after the MA or GAMC member dies.

### **What has to happen before DHS can recover on a lien while an MA member is still alive?**

There are a number of steps that occur before DHS can recover on a lien that is filed against real property owned by an MA member who is permanently institutionalized:

- DHS receives written verification from the MA member's treating physician, APRN or physician assistant that the member is never expected to be discharged and return home.
- DHS sends written notice about the lien to the MA member or the member's legal representative informing the member that he or she has an opportunity to have a hearing about the lien.
- DHS files the lien in the office of the county recorder or registrar of titles in the county where the property is located.
- All protections against lien recovery cease to apply.
- The MA member has resided in the institution for six months.
- A party other than DHS transfers or sells the property. DHS does not compel transfer or sale of real property to recover on a lien.

This process is in place to ensure proper lien filing and ensure the MA member, or the member's legal representative or both, are informed of the lien before recovery and have the opportunity to be heard.

### **Are there any protections against liens when the MA member is permanently living in an institution?**

Yes. DHS cannot file a lien against the member's real property if the property is the home of the member's spouse. Also, DHS cannot file a lien if a child who is under 21 years old, blind or permanently disabled lives in the home. There are additional protections in certain circumstances. See "More Information" below.

### **Does DHS file liens against estates?**

No. Because a deceased person's estate can include many assets that are not real property, DHS does not file liens against a person's "estate." DHS files liens only against real property that may or may not be included in a person's estate.

### **Does DHS file liens to recover the costs of MinnesotaCare?**

No. Liens are limited to the MA and GAMC programs.

## **Planning for Estate Recovery and Liens**

---

### **Can DHS or local agencies help me plan my estate?**

No. DHS and local agencies cannot answer "What if...?" questions about estate recovery or liens. DHS and local agencies are government entities whose role prohibits them from giving legal advice to the public.

### **Who can answer my questions about estate planning?**

Private attorneys and legal aid can answer your questions.

## **More Information**

---

### **Where can I find more basic information?**

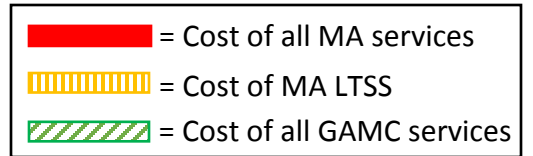
Go to <https://mn.gov/dhs/ma-estate-recovery/>

### **Where can I find more detailed information?**

Visit the Eligibility Policy Manual for Minnesota Health Care Programs at [https://hcopub.dhs.state.mn.us/epm/index\\_1.htm](https://hcopub.dhs.state.mn.us/epm/index_1.htm) and read the entries for MA Estate Recovery (2.1.1.2.1.1) and MA Liens (2.1.1.2.1.2).

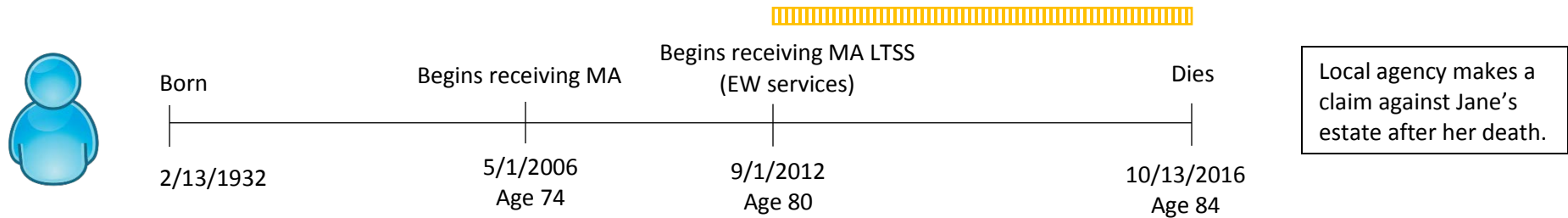
## Examples and Explanations

The following examples and explanations demonstrate how estate recovery and liens are affected by an MA or GAMC member's age and the services the member receives. The colored bars show periods of time when costs of MA or GAMC services are counted for recovery.



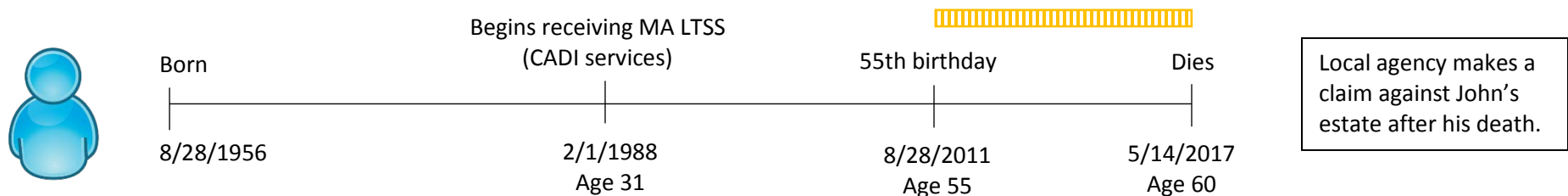
### Estate Recovery

**Example: Jane receives MA services other than LTSS when is 74 years old but later receives MA LTSS.**



**Explanation:** Jane began receiving MA services other than LTSS after the age of 55. When she was 80 years old, she applied for and began receiving Elderly Waiver (EW) services, which is an MA program for people 65 years old and older who need the level of care provided in a nursing home but who choose to live in the community. Because EW services are home and community-based services, which are MA LTSS, the local agency can recover the cost of EW services Jane received from September 1, 2012, until death in an estate claim. The local agency can also recover the costs of any hospital services and prescription drugs that MA paid for while she received EW services. No recovery can be attempted during her lifetime.

**Example: John receives MA LTSS before 55 years old and continues to receive MA LTSS until his death.**

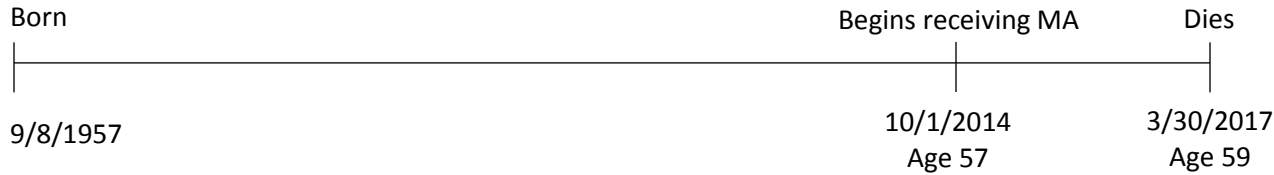


**Explanation:** At the age of 31, the sudden onset of a disability and lacking income and assets results in John applying for and receiving Community Access for Disability Inclusion (CADI) services. CADI services are home and community-based services, which are MA LTSS. Though John receives CADI services for 24 years before he turns 55 years old, the only period in his lifetime for which the costs of CADI services can be recovered in an estate claim are from his 55th birthday until his death at age 60. The local agency can also recover the costs of hospital services and prescription drugs that MA paid for while he received CADI services. No recovery can be attempted during his lifetime.

## Estate Recovery Continued

- = Cost of all MA services
- = Cost of MA LTSS
- = Cost of all GAMC services

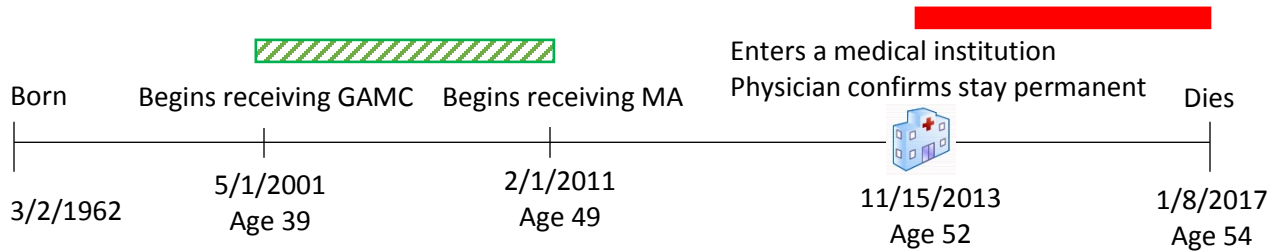
**Example: Linda only receives MA services other than LTSS.**



Local agency does **not** make a claim against Linda's estate after her death.

**Explanation:** Linda began receiving MA services other than LTSS and does not receive LTSS before her death. There is no claim against her estate.

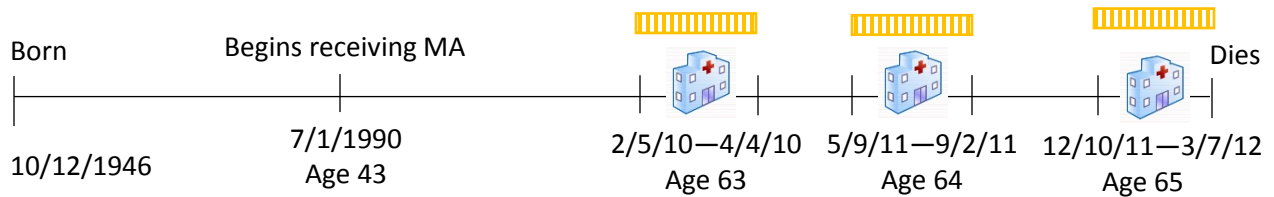
**Example: Raul receives GAMC services, MA services other than LTSS, and later dies in a medical institution he permanently resided in.**



Local agency makes a claim against Raul's estate after his death.

**Explanation:** Raul began receiving GAMC services when he was 39 years old and continued to until the program ended in 2011. At that time, he applied for and began receiving MA services other than LTSS. When he was 52 years old, Raul's health required him to enter a medical institution and stay there permanently. His treating physician at the institution certified in writing that Raul could not have reasonably been expected to be discharged and return home. Raul dies at 54 years old in the institution. The local agency can claim against Raul's estate for the cost of all GAMC services he received and the cost of all MA services he received during his permanent stay in the institution. If Raul had owned real property at the time of institutionalization, DHS recorded a lien against it, and the property sold before Raul died, then DHS (not the local agency) could recover during his lifetime for the cost of MA services during his institutionalization (see next page). Otherwise, no recovery can occur during his lifetime.

**Example: Beatrice receives MA services other than LTSS and later goes into and out of a nursing facility several times before her death.**

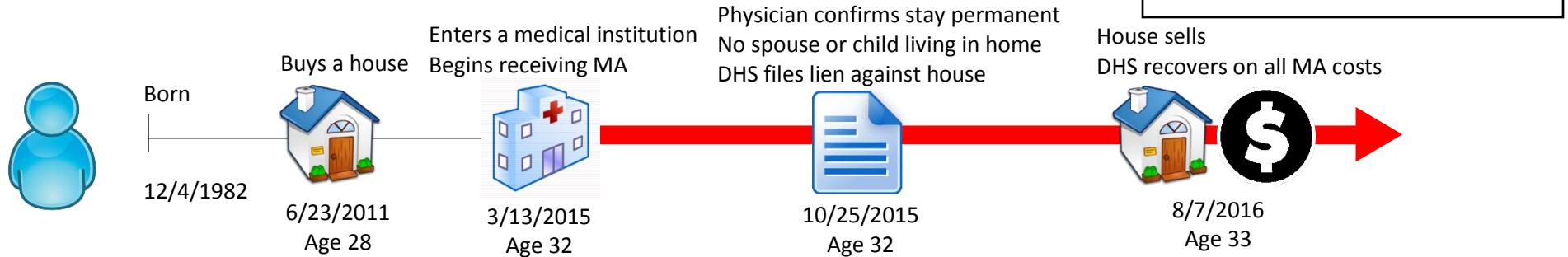


Local agency makes a claim against Beatrice's estate after her death.

**Explanation:** Beatrice received MA services other than LTSS up until she entered a nursing facility for a short-term stay at 63 years old. Nursing facility services (NFS) are LTSS. She stayed twice more at a nursing facility and she died during her final stay. The local agency can recover the costs of NFS she received and also costs of hospital and prescription drugs MA paid for while she received NFS. No recovery can occur during her lifetime.

# Liens

**Example: Frank has an accident and receives MA while permanently residing in a medical institution.**

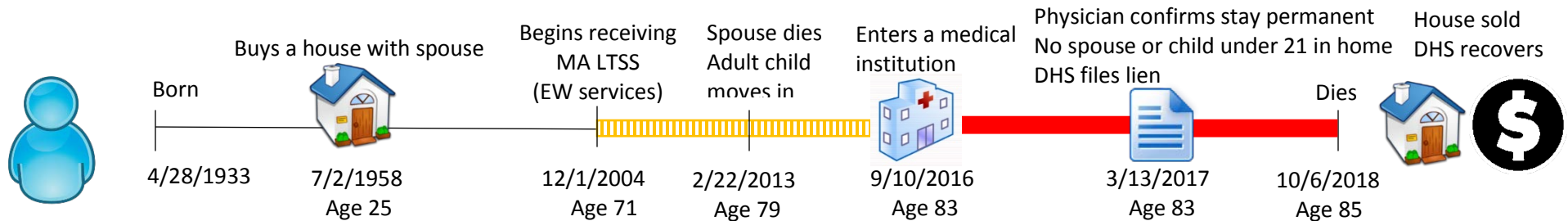


**Explanation:** Frank buys a house years before he suffers an accident that requires him to live in a medical institution for the rest of his life. Upon entering the medical institution in March 2015, he applies for and begins receiving MA services. In October 2015, DHS records a lien against Frank's house because all of the following statements are true:

- He has resided in a medical institution for at least six months.
- His physician certified that Frank could not reasonably be expected to leave the medical institution.
- He does not have: a spouse that lives in his house; any children who are under 21 years old, blind or permanently disabled who live in his house; a child who lived in his house for two years immediately before institutionalization who cared for him; or a sibling with an equity interest in Frank's house who lived there one year immediately before his institutionalization.

In August 2016, Frank's parents choose to sell his house. (DHS never compels the sale of a house to recover on a lien.) DHS collects the amount paid for all MA services Frank received up until the date the house is sold. Frank continues to live in the medical institution.

**Example: Florence receives MA LTSS and later dies in a medical institution while permanently residing there.**



**Explanation:** Florence and her spouse buy a house in 1958 and continue to live there after they retire. At 71 years old, Florence applies for and begins receiving EW services, which are MA LTSS. Eight years later, her spouse dies and her adult child moves in but does not attend to Florence's medical needs because she receives EW services. Then, at 83 years old, Florence needs the care of a nursing home, which is a medical institution, and permanently resides there. DHS properly files a lien (the child is over 21 years old). Florence dies and her child probates her estate and sells the house. DHS recovers the cost of MA LTSS she received up until her date of institutionalization and the cost of all MA services since that date.



**651-431-2670 or 800-657-3739**

Attention. If you need free help interpreting this document, call the above number.

ያስተውሉ፡ ካለምንም ክፍያ ይህንን ደብ-መንት የሚተረጎም ለአስተርጓሚ ከፈለጉ ከላይ ወደተጻፈው የስልክ ቁጥር ይደውሉ።

ملاحظة: إذا أردت مساعدة مجانية لترجمة هذه الوثيقة، اتصل على الرقم أعلاه.

သတိ။ ဤစာရွက်စာတမ်းအားအခမဲ့ဘာသာပြန်ပေးခြင်း အကူအညီလိုအပ်ပါက၊ အထက်ပါဖုန်းနံပါတ်ကိုခေါ်ဆိုပါ။

අំណတ်အား ၂ ပေါ်ရှိအကူအညီပေးမှုအတွက်အခမဲ့အကူအညီပေးမှုကိုအသုံးပြုနိုင်ရန်အတွက် အထက်ဖော်ပြပါဖုန်းနံပါတ်ကိုခေါ်ဆိုပါ။

請注意，如果您需要免費協助傳譯這份文件，請撥打上面的電話號碼。

Attention. Si vous avez besoin d'une aide gratuite pour interpréter le présent document, veuillez appeler au numéro ci-dessus.

Thov ua twb zoo nyeem. Yog hais tias koj xav tau kev pab txhais lus rau tsab ntaub ntawv no pub dawb, ces hu rau tus najnpawb xov tooj saum toj no.

တစ်ချက်တစ်ချက်အားဖြင့် အကူအညီပေးမှုအတွက်အခမဲ့အကူအညီပေးမှုကိုအသုံးပြုနိုင်ရန်အတွက် အထက်ဖော်ပြပါဖုန်းနံပါတ်ကိုခေါ်ဆိုပါ။

알려드립니다. 이 문서에 대한 이해를 돕기 위해 무료로 제공되는 도움을 받으시려면 위의 전화번호로 연락하십시오.

ໂປຣດຊາບ. ຖ້າທ່ານ ທ່ານຕ້ອງການການຊ່ວຍເຫຼືອໃນການແປເອກະສານນີ້ພໍ, ຈົ່ງໂທໂປຣດຊາບເລກຂ້າງເທິງນີ້.

Hubachiisa. Dokumentiin kun bilisa akka siif hiikamu gargaarsa hoo feete, lakkoobsa gubbatti kenname bibili.

Внимание: если вам нужна бесплатная помощь в устном переводе данного документа, позвоните по указанному выше телефону.

Digniin. Haddii aad u baahantahay caawimaad lacag-la' aan ah ee tarjumaadda qoraalkan, lambarka kore wac.

Atención. Si desea recibir asistencia gratuita para interpretar este documento, llame al número indicado arriba.

Chú ý. Nếu quý vị cần được giúp đỡ dịch tài liệu này miễn phí, xin gọi số bên trên.

LB2 (8-16)

ADA1 (9-15)



For accessible formats of this publication or assistance with additional equal access to human services, write to DHS.info@state.mn.us, call 800-657-3739, or use your preferred relay service.