

**MAGI Medicaid and Estate Recovery:
CMS Issues State Medicaid Director Letter**

In a letter to State Medicaid Directors, the Centers for Medicare and Medicaid Services (CMS) addressed questions on the application of estate recovery rules to MAGI Medicaid individuals who are eligible for LTSS.

The agency noted the chilling effect estate recovery may have on MAGI Medicaid enrollment, and stated that the agency is exploring options to eliminate estate recovery for instances other than receipt of LTSS.

However, CMS clarified that in general, most of the estate recovery rules, found in Section 1917 of the Social Security Act and at 43 C.F.R. 435.700, will apply to MAGI Medicaid individuals who receive coverage for LTSS.  The guidance addresses each provision of Section 1917 as applied to MAGI Medicaid individuals receiving LTSS:

* **Liens -§ 1917(a):** States may not place liens on real property owned by MAGI-Medicaid beneficiaries.
* **Estate Recovery - § 1917(b):** States may not seek estate recovery from individuals under 55 years of age for LTSS costs.States must seek estate recovery from individuals 55 years of age or older for LTSS and related costs and may seek estate recovery for non-LTSS costs. All existing statutory exceptions apply, including exception for situations of undue hardship. States that have policies to recover Medicaid costs beyond LTSS from Medicaid beneficiaries may choose to exempt MAGI Medicaid enrollees from those policies.
* **Transfer of Assets (“look back”) -§ 1917(c) :** Transfer of asset rules do apply to individuals who meet the definition of “institutionalized individuals” and to “non-institutionalized individuals” in states that have opted to apply the transfer rules to non-institutionalized individuals who receive MAGI Medicaid funding for LTSS. All limitations and exceptions to the transfer rules found in the statute apply.
* **Assets, promissory notes, and life estate interests - § 1917(c)**: States should apply rules relating to these transactions to MAGI individuals the same way the rules are applied to non-MAGI individuals.
* **Trusts -§ 1917(d):** States must confirm whether a MAGI individual who requested coverage for LTSS established a trust using assets. States also must waive application of trust rules for MAGI individuals if the application of the rule will result in undue hardship.
* **Home Equity Rule - § 1917(f):** States must deny LTSS coverage to MAGI individuals if the individual’s home equity exceeds the limit identified in the Medicaid state plan. All statutory exemptions apply.

In addition, CMS noted that, although current post-eligibility regulations do not cover MAGI Medicaid, the agency has the authority to expand the reach of post-eligibility treatment of income regulations to include MAGI individuals who receive coverage for LTSS.  For reasons of equity, the agency is considering additional regulations in this area.

The letter, which provides the statutory analysis behind each conclusion, is [available here.](http://salsa4.salsalabs.com/dia/track.jsp?v=2&c=a3DLgyjyN4ZPlJScQXuG%2BVpfNQ%2FPDm9x)

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