

## **IC 12-15-8.5**

### **Chapter 8.5. Liens on Real Property of Medicaid Recipients**

#### **IC 12-15-8.5-1**

##### **"Medical institution"**

Sec. 1. As used in this chapter, "medical institution" means any of the following:

- (1) A hospital.
- (2) A nursing facility.
- (3) An intermediate care facility for the mentally retarded.

*As added by P.L.178-2002, SEC.81.*

#### **IC 12-15-8.5-2**

##### **Lien for Medicaid expenditures**

Sec. 2. (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 from a medical institution and return home, the office may obtain a lien on the Medicaid recipient's real property for the cost of all Medicaid expenditures made on behalf of the recipient.

(b) The office shall conduct a look back (as described in 42 U.S.C. 1396p(c)) of a Medicaid recipient's property of at least three (3) years.

(c) A lien obtained under this chapter is subordinate to the security interest of a financial institution that loans money to be used as operating capital for the operation of a farm, a business, or income producing real property.

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.71; P.L.1-2007, SEC.122.*

#### **IC 12-15-8.5-3**

##### **Limitations on lien**

Sec. 3. The office may not obtain a lien under this chapter if any of the following persons lawfully reside in the home of the Medicaid recipient who resides in the medical institution:

- (1) The Medicaid recipient's spouse.
- (2) The Medicaid recipient's child who is:
  - (A) less than twenty-one (21) years of age; or
  - (B) disabled as defined by the federal Supplemental Security Income program.
- (3) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the recipient was admitted to the medical institution.
- (4) The Medicaid recipient's parent.

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.72.*

#### **IC 12-15-8.5-4**

##### **Notice required before lien obtained**

Sec. 4. Before obtaining a lien on a Medicaid recipient's interest in real property under this chapter, the office shall notify in writing the Medicaid recipient and the Medicaid recipient's authorized representative, if applicable, of the following:

- (1) The office's determination that the Medicaid recipient cannot reasonably be expected to be discharged from the medical institution.
- (2) The office's intent to impose a lien on the Medicaid recipient's home.
- (3) The Medicaid recipient's right to a hearing under IC 12-15-28 upon the Medicaid recipient's request regarding whether the requirements for the imposition of a lien are satisfied. A lien may not be filed for at least thirty (30) days after the notice is given and until the hearing process is completed if a hearing is requested.

*As added by P.L.178-2002, SEC.81.*

#### **IC 12-15-8.5-5**

##### **Notice required to obtain lien; filing and distribution of notice**

Sec. 5. (a) The office shall obtain a lien under this chapter by filing 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) The name and place of residence of the individual against whose property the lien is asserted.
- (2) A legal description of the real property subject to the lien.

(b) Upon the office's request, the county auditor or assessor of a county shall furnish the office with the legal description of any property in the county registered to the recipient.

(c) 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 of family and children shall retain a copy of the notice with the county office's records.

(d) The office shall provide one (1) copy of the notice of lien to the recipient or the Medicaid recipient's authorized representative, if applicable, whose real property is affected.

*As added by P.L.178-2002, SEC.81.*

#### **IC 12-15-8.5-6**

##### **Effect of notice of lien; duration of lien**

Sec. 6. (a) Beginning on the date on which a notice of lien is recorded in the office of the county recorder under section 5 of this chapter, the notice of lien:

- (1) constitutes due notice of a lien against the Medicaid recipient's real property for any amount then recoverable and any amount that becomes 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 the lien until the lien:

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

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.73.*

#### **IC 12-15-8.5-7**

##### **Lien foreclosure; automatic expiration of lien**

Sec. 7. The office may bring proceedings in foreclosure on a lien arising under this chapter:

- (1) during the lifetime of the Medicaid recipient if the Medicaid recipient or a person acting on behalf of the Medicaid recipient sells the property; or
- (2) upon the death of the Medicaid recipient.

The lien automatically expires unless the office commences a foreclosure action not later than two (2) years after the Medicaid recipient's death.

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.74.*

#### **IC 12-15-8.5-8**

##### **Limitations on enforcement of lien**

Sec. 8. The office may not enforce a lien against a Medicaid recipient's home under this chapter as long as any of the following individuals reside in the home:

- (1) The recipient's child of any age if the child:
  - (A) resided in the home for at least twenty-four (24) months before the Medicaid recipient was admitted to the medical institution;
  - (B) provided care to the Medicaid recipient that delayed the Medicaid recipient's admission to the medical institution;
  - and
  - (C) has resided in the home on a continuous basis since the date of the individual's admission to the medical institution.
- (2) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the Medicaid recipient was admitted to the medical institution.

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.75.*

#### **IC 12-15-8.5-9**

##### **Release of lien; waiver of filing fee**

Sec. 9. (a) The office shall release a lien imposed under this chapter within ten (10) business days after the county office of family and children receives notice that the Medicaid recipient:

- (1) is no longer living in the medical institution; and
- (2) has returned home to live.

(b) The county recorder shall waive the filing fee for the filing of a release made under this section.

(c) If the 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.

*As added by P.L.178-2002, SEC.81. Amended by P.L.224-2003, SEC.76.*

#### **IC 12-15-8.5-10**

##### **Repealed**

*(Repealed by P.L.224-2003, SEC.80.)*

#### **IC 12-15-8.5-11**

##### **Repealed**

*(Repealed by P.L.224-2003, SEC.80.)*

#### **IC 12-15-8.5-12**

##### **Conditions under which lien is void**

Sec. 12. (a) This section applies:

- (1) after the death of a Medicaid recipient whose property; or
- (2) upon the sale of property that;

is subject to a lien under this chapter.

(b) A lien under this chapter is void if both of the following occur:

- (1) The owner of property subject to a lien under this chapter or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the office to file an action to foreclose the lien.
- (2) The office fails to file an action to foreclose the lien in the county where the property is located not later than sixty (60) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(c) A person who gives notice under subsection (b)(1) by registered or certified mail to the office at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than sixty (60) days have passed since the notice was received by the office.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(d) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and
- (2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

*As added by P.L.224-2003, SEC.77. Amended by P.L.246-2005, SEC.106.*

**IC 12-15-8.5-13**

**Contracting with attorney; attorney's fees**

Sec. 13. (a) The office may contract with an attorney to obtain or enforce a lien under this chapter.

(b) If the office contracts with an attorney under this section, the attorney's fees may not exceed:

(1) seven and five-tenths percent (7.5%) of the office's recovery under the lien if the proceeding to obtain and enforce the lien is not contested; or

(2) ten percent (10%) of the office's recovery under the lien if the proceeding to obtain and enforce the lien is contested.

*As added by P.L.236-2007, SEC.2.*