**ALABAMA MEDICAID AGENCY**
**ADMINISTRATIVE CODE**

# CHAPTER 560-X-33
# RECOUPMENTS, ESTATE RECOVERIES AND LIENS

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## 560-X-33-.01 General.

Federal regulations require that the state make provisions for handling of recoupments, estate recoveries and liens. The Alabama Medicaid Agency will actively seek recovery of all misspent Medicaid funds and correctly paid benefits recoverable under federal law.
**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act; State Plan; U.S.C. §1396p; 42 C.F.R. Parts 431, 433, and 455; Code of Ala. 1975, §§22-1-11, 22-6-8.
**History:** Rule effective October 1, 1982. **Amended:** Filed December 11, 2015; effective January 25, 2016.

## 560-X-33-.02 Purpose.

The purpose of the recoupments, estate recoveries and liens effort is to assure that the state and federal dollars allocated for medical assistance are spent only on those individuals/recipients (hereinafter "recipients") who meet all eligibility criteria; to correct erroneous payments to providers; and to recover benefits correctly paid, but recoverable by law. This mission will be fulfilled through solicitation of voluntary reimbursement and administrative and legal remedies in keeping with limitations set by federal guidelines.
**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act; State Plan; U.S.C. §1396p; 42 C.F.R. Parts 431, 433, and 455; Code of Ala. 1975, §§22-1-11, 22-6-8.
**History:** Rule effective October 1, 1982. **Amended:** Filed December 11, 2015; effective January 25, 2016.

**560-X-33-.03 Reserved (Repealed 1/25/16).**

**(REPEALED)**
**Author:**
**Statutory Authority:** Social Security Act, Title XIX; State Plan; 42 C.F.R. Parts 450, 455; Code of Ala. 1975, §§ 22-1-11, 22-6-8, 35-1-2; 45 C.F.R. Parts 233, 302.
**History:** Rule effective October 1, 1982. **Repealed:** Filed December 11, 2015; effective January 25, 2016.

**560-X-33-.04 Recoupments.**

(1) Direct Reimbursement - At the time of original identification of the expected amount of recoupment, a letter will be sent to the recipient/authorized representative or provider outlining the allegations and stating the amount of reimbursement and the specific dates when overpayment or recoverable benefits occurred. The recipient/authorized representative or provider will be offered the opportunity to present evidence to rebut the requirement for recoupment or to submit the reimbursement. If no rebuttal is offered, the original assessment will be presumed correct. The Alabama Medicaid Agency will accept direct reimbursement from the recipient/authorized representative or provider to satisfy the recoupment.

(2) Time Payment Plan

(a) Recipient Recoupment-Upon sufficient justification, the Alabama Medicaid Agency may allow a time payment plan. The recipient will be required to sign a promissory note not to exceed two years.

(b) Provider Recoupment-Upon sufficient justification, the Alabama Medicaid Agency may allow a time payment plan. The provider will be required to sign a promissory note not to exceed one year.

(3) Fiscal Agent Recoupment

(a) Recipient Recoupment-In the event the provider is the payee for the recipient and has received the monies to be recouped, the Agency's fiscal agent will recoup the excess payment from a future adjustment payroll.

(b) Provider Recoupment-Upon receipt of a recoupment letter, if the provider does not submit direct reimbursement or agree to a time payment plan or if the provider fails to submit a timely payment pursuant to a promissory note, the Agency's

fiscal agent will recoup the amount from a future adjustment payroll.

(4) Civil Actions - Civil actions through the courts may be initiated on cases where the above procedures have not resulted in a satisfactory resolution.
**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act; State Plan; U.S.C. §1396p; 42 C.F.R. Parts 431, 433, and 455; Code of Ala. 1975, §§22-1-11, 22-6-8.
**History:** Rule effective October 1, 1982. Amended effective April 15, 1983. **Amended:** Filed December 11, 2015; effective January 25, 2016.

**560-X-33-.05 Estate Recovery.**

(1) Under the estate recoveries provisions in §1917(b) of the Act, the Alabama Medicaid Agency ("Agency") shall seek adjustment or recovery of any medical assistance correctly paid on behalf of the following categories of recipients:

(a) Permanently Institutionalized Recipients of any age who are inpatients in a nursing facility, ICF/IID, or other medical institution, and who must, as a condition of receiving services in the institution under the State plan, apply their income (all but a minimal amount allowed for personal needs) to the cost of care, the Agency shall seek adjustment or recovery from the recipient's estate or upon the sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the recipient.

(b) In the case of a recipient who was 55 or older when the recipient received such medical assistance, the Agency shall seek adjustment or recovery from the recipient's estate for all approved medical assistance in accordance with federal law and the approved State Plan, except for Medicare Cost Sharing as described in 42 U.S.C. §1396a(a)(10(E)).

(c) Recipients with Long Term Care Insurance Policies - If a recipient covered under a long-term care insurance policy received benefits for which assets or resources were disregarded in accordance with the Agency's State plan (State Long-Term Care Insurance Partnership), the Agency will not seek adjustment or recovery from the recipient's estate for the amount of assets or resources disregarded.

(2) Delayed Recovery/Exemptions

(a) Adjustment or recovery may be made only after the death of the recipient's surviving spouse, if any, and when the recipient has no surviving child under age 21, or a blind or

permanently or totally disabled child as defined in 42 U.S.C. §1382c.

(b) If, after the reported death of the recipient, the Agency is prohibited because of exemption conditions, the Agency shall postpone recovery until all exemption conditions are no longer present.

(c) Undue Hardship

(i) The Agency will waive or delay recovery upon a showing that an undue hardship exists. For purposes of this Rule, "Undue Hardship" is defined as the existence of a situation, established by convincing evidence, that the estate subject to recovery is an asset such as a family farm or family business which produces "limited income" (defined as equal to or less than the income limit established in Rule 560-X-25-.14) and is the sole income-producing asset of one or more heirs to the estate.

(ii) An undue hardship is not available in the following circumstances:

(I) For recipients with long term care insurance policies who became Medicaid eligible by virtue of disregarding assets because of payments made by a long term care insurance policy or because of entitlement to receive benefits under a long term care insurance policy;

(II) If the Agency determines the hardship was created by the recipient by resorting to estate planning methods under which the recipient illegally divested assets in order to avoid estate recovery.

(iii) Each heir with an interest in the recipient's estate must apply for a separate undue hardship. If approved, that heir's interest in the estate will be exempt from recovery while any of the remaining heirs that did not apply for an undue hardship or were denied will still be subject to recovery.

(3) Procedures

(a) The Agency may file claims against the estate of a deceased recipient who received benefits incorrectly, in accordance with existing law.

(b) The Agency may file a claim against the estate of a deceased recipient as defined in paragraph (1) above.

(c) In order to protect its right to recover from a deceased recipient's estate, the Agency, after obtaining the concurrence of the Attorney General, may file a petition for letters of administration in situations where the Agency's claim warrants the expense of administering the estate.

**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act; State Plan; U.S.C. §1396p; 42 C.F.R. Parts 431, 433, and 455; Code of Ala. 1975, §§22-1-11, 22-6-8.
**History:** Rule effective October 1, 1982. **New Rule:** Filed December 11, 2015; effective January 25, 2016.

**560-X-33-.06 Liens.**

(1) The Alabama Medicaid Agency ("Agency") will place a lien and may foreclose upon real property of the following recipients to the extent allowed by 42 U.S.C. §1396p:

(a) Permanently Institutionalized Recipients of any age who are inpatients in a nursing facility, ICF/IID, or other medical institution, and who must, as a condition of receiving services in the institution under the State plan, apply their income (all but a minimal amount allowed for personal needs) to the cost of care. (See Chapter 28 for a copy of the form to be used.)

(b) The Agency may not impose a lien on such recipient's home if:

1. The recipient's spouse is residing in the home;

2. The recipient's child under age 21 is residing in the home;

3. A child who is blind or permanently and totally disabled, as defined in 42 U.S.C. §1382c, of the recipient is residing in the home; or

4. A sibling of the recipient who has an equity interest in the home is currently living in the home and has been residing continuously in the home for at least one year immediately before the date of the recipient's admission to the institution.

(2) Delayed Recovery/Exemptions

(a) Adjustment or recovery of a lien on a recipient's home can only be made after the death of the recipient's surviving spouse, if any, and:

1. there is no sibling of the recipient residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the institution, and has resided there on a continuous basis since that time; OR

2. there is no son or daughter of the recipient residing in the home, who has resided there for at least two years immediately before the date of the recipient's admission to the institution, has resided there on a continuous basis since that time, and can establish to the Agency's satisfaction that he/she has been providing care which permitted the recipient to reside at home rather than in an institution.

(3) Procedures - Unless otherwise specified in this rule, the lien will become due, payable, and enforceable in accordance with federal and state law upon sale or transfer of the property, or upon death of grantor.
**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act §1917b; 42 U.S.C. §1396p; State Plan; 42 C.F.R. §433.36; Code of Ala. 1975, §§22-1-11, 22-6-8, 33-11-1, et seq.
**History:** **New Rule:** Filed December 11, 2015; effective January 25, 2016.

**560-X-33-.07 Appeals.**

A person aggrieved by a proposed or actual Agency action may request a hearing in accordance with Chapter 3 of the Alabama Medicaid Administrative Code. A recoupment action will not be abated during the time for a requesting a hearing. The Agency may at its discretion suspend a recoupment action until after a hearing is held.

EXHIBIT A

STATE OF ALABAMA

COUNTY OF

LIEN FOR MEDICAL PAYMENTS UNDER

ALABAMA MEDICAID PROGRAM

WHEREAS,_____,

("Medicaid Recipient")

is justly indebted to the Alabama Medicaid Agency ("the Agency") to the extent that the Agency has paid medical benefits for

Medicaid Recipient under the Alabama Medicaid Program ("the Program"); and

WHEREAS, Medicaid Recipient may hereafter become indebted to the Agency to the extent that the Agency pays future medical benefits for Medicaid Recipient;

NOW, THEREFORE, in order to secure the repayment of said indebtedness and in order for Medicaid Recipient to obtain medical benefits under the Program, the Medicaid Recipient, joined by (his)(her) spouse does hereby GRANT, BARGAIN, SELL, ASSIGN and CONVEY unto the Agency, its successors and assigns, a lien for the full dollar value of said medical benefits paid and to be paid, on the following described real estate situated in _____County, Alabama, to-wit:

Subject, however, to all existing liens now on said property.

Notice of this lien will be recorded in said county and the dollar value of this lien as it may exist from time to time, may be obtained by writing to: Commissioner, Alabama Medicaid Agency, 2500 Fairlane Drive, Montgomery, AL 36130. This lien shall be due and payable upon the sale, transfer or lease of said property, or upon the death of Medicaid recipient, and shall otherwise be enforceable in accordance with the limitations of 42 USCA § 1396a(18) as the same may be amended.

IN WITNESS WHEREOF, the undersigned (has) (have) duly executed this instrument to voluntarily grant the aforesaid lien on this the_____day of_____, 19___.

_____ _____

Spouse Medicaid Recipient

Witness:_____

STATE OF ALABAMA

COUNTY OF

I, the undersigned, a notary public in and for said state and county, hereby certify that _____,

whose name as an Alabama Medicaid recipient, a (single) (married) person, is signed to the foregoing instrument, and

_____ (his)(her) spouse, whose name is also signed to said instrument, acknowledged before me on this day that being informed of the contents of said instrument (they)(he)(she) executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____

day of_____, 19____.

(SEAL) _____

Notary Public

**Author:** Keith Thompson, Director, Third Party Liability
**Statutory Authority:** Social Security Act; State Plan; 42 C.F.R. Parts 431, 433, 455; AAC Rule 560-X-3-.01, et seq..
**History:** Rule effective October 1, 1982. **Amended:** Filed December 11, 2015; effective January 25, 2016.

**Ed. Note:** Rule .05 was renumbered .07 as per certification filed December 11, 2015; effective January 25, 2016.