

111-3-8-.07 Imposition of Liens.

(1) The basis for authority to impose liens is based on the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The TEFRA lien law provides that the agency can place a lien on the available real estate of a member who enters a nursing home and is “permanently institutionalized.”

(2) The state may place a lien on the member’s home when there is not a reasonable expectation that the member will return home and when none of the following persons are living in the home:

- (a) The member’s spouse;
- (b) A child under twenty-one (21) years of age;
- (c) A disabled child of any age; or
- (d) A sibling with an equity interest in the home who has lived in the home for at least one (1) year before the member entered the nursing home.

(3) Liens may be imposed to protect recovery of benefits correctly paid to Medicaid members when permitted by federal and state law. However, the use of lien authority requires prior notification to the member or any known heirs.

(4) The Department shall notify the member and the personal representative, if applicable, of its determination that the member is permanently institutionalized and not reasonably expected to return home and its intent to file a lien on member’s real property. Notice must include an explanation of liens and their effect on an individual’s ownership of real property. A lien may not be filed less than thirty-one (31) days from the date of the notice to the member and after any hearing process has been completed, if a hearing is requested.

(5) A member or his or her designee may, within thirty (30) days after receipt of notice request an administrative hearing under this rule. A member is deemed to have received notice within five (5) days from the date of the notice. Administrative hearings and appeals by Medicaid members are governed by the procedures and time limits set forth in Georgia Administrative Comprehensive Compilation Chapter ~~§290-1-1-.01~~ 42 C.F.R. § 431.200 et seq. Only one (1) appeal shall be afforded on behalf of a member, for each notice received.

(6) The Department or its designee shall file 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 member's death and shall include the following:

- (a) Name and place of residence of the real property subject to the lien; and
- (b) Legal description of the real property subject to the lien.

(7) The Department shall file one (1) copy of the notice of lien with the local DFCS office in the county in which the real property is located. The county in which the real property is located shall retain a copy of the notice with the county office's records. The Department or its designee shall provide one (1) copy of the notice of lien to the member or the member's authorized representative, if applicable, whose real property is affected.

(8) The lien continues from the date of filing until the lien is satisfied, released or expires. From the date on which the notice of lien is recorded in the office of the county recorder, the notice of lien:

- (a) Constitutes due notice against the member or member's estate for any amount then recoverable under this article; and
- (b) Gives a specific lien in favor of the Department on the Medicaid member's interest in the real property.

(9) The state may not ~~enforce~~ place a lien on a member's home if any of the following individuals are living in the home under any of the following circumstances:

- (a) The member's spouse ~~is alive, even if not living in the home;~~
- (b) The member's child under twenty-one (21) years of age ~~is alive, even if not living in the home;~~
- (c) The member's blind or disabled child of any age, as defined in § 1614 of the Act ~~is alive, even if not living in the home; or~~
- (d) ~~An adult child of the member is living in the home, if that child lived in the home for at least two (2) years prior to the member's admission to the nursing home and provided care that kept a member from entering a nursing home.~~
- (d) The member's brother or sister, provided the brother or sister has an equity interest in the home and resided in the home for at least one (1) year immediately before ~~is living in the home, if he or she lived in the~~

~~home for at least two (2) years prior to the member's admission to a nursing home.~~

(10) The Department has the authority to release any lien placed upon the property of an individual deemed permanently institutionalized should that person be discharged and return to a non-institutional home environment. The Department shall release a lien obtained under this rule within thirty (30) days after the Department receives notice that the member is no longer institutionalized and is living in his or her home. If the real 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.

Authority O.C.G.A. §§ 49-4-147.1, R. 290-1-1-.01. **History.** Original Rule entitled "Imposition of Liens" adopted. F. July 16, 2004; eff. Aug. 5, 2004.

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

This regulation is amended to conform to guidance from the Centers for Medicare and Medicaid Services regarding when liens may not be placed by the Department.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

In paragraph (5), the reference to the controlling authority is modified to reference the federal regulation, rather than the state regulation that no longer contains the relevant timeframes.

In paragraph (9), former subparagraph (d) is deleted, and grammatical revisions are made to the remaining subparagraphs.