

Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)

What are TEFRA Liens?

The TEFRA recovery program is an option granted to states for the purpose of recovering MO HealthNet expenditures from the estates of deceased participants. The state would place a lien on the property of participants that are permanently institutionalized in a nursing facility. The lien would remain in place as long as the participant is receiving long-term care. The lien would be paid upon the death of the participant. It is not a federal mandate requiring states to have a TEFRA Lien Recovery program.

Statutory Authority

TEFRA recovery is an option states can choose to use in order to maximize the recovery of MO HealthNet expenditures from the estates of deceased participants.

- **Federal Authority**
 - Section 1917 (A) and (B) of the Social Security Act
 - 42 U.S.C. 1396p
 - 42 CFR 433, subpart D
 1. This mandates that states are required to have an Estate Recovery program. The state files a claim through Probate Court after the participant's death.

- **State Authority**
 - RSMo 208.215
 1. This mandates that MO HealthNet is to be the payer of last resort.
 2. The state is allowed to pursue recovery of MO HealthNet expenditures from personal injury settlements, malpractice settlements, wrongful death settlements and the estates of participants.
 3. The department shall have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and regulation.

TEFRA Identification Sources

The state would need to identify the participant receiving long-term care in a nursing facility on a permanent basis. Once this is established, the state would also need to determine if the nursing facility resident owned real estate.

- **Primary Identification Sources**
 - Data Match with the Department of Health and Senior Services (DHSS)
 1. The MO HealthNet eligibility files would be compared to DHSS Initial Assessment, Nursing Facility Pre-Admission Screening, and Minimum Data Set forms.
 - Miscellaneous leads
 1. This would include leads from family members of participants, estate attorneys, nursing facility administrators, Family Support eligibility specialists, etc.

TEFRA Lien Procedures

Once nursing facility participants are identified, the state will need to identify which individuals meet the minimum guidelines required for asserting a TEFRA lien. The state will also need to determine if the participant owns real estate.

- **Lien Procedures**

- A Minimum Data Set form would have to be completed by the nursing facility to verify the participant is institutionalized for long-term care on a permanent basis. The TEFRA lien would be released if the participant is discharged from the long-term care facility and resumes living in the facility.
- Property ownership would be verified with the county assessor's office.
- The state would file a lien with the Recorder of Deeds in the appropriate county.
- The Department of Social Services, MO HealthNet Division shall provide payment to the recorder of deeds the fees set for filing of TEFRA liens and releases. (rev. SB 577 effective August 28, 2007)

Potential Benefits of TEFRA Liens

A TEFRA Lien Recovery program could have a significant positive impact on maximizing the recovery of MO HealthNet expenditures from the estates of participants.

- **Potential Benefits**

- The increased recoveries would lessen the tax burden of Missouri citizens while ensuring that individuals who need long-term care could receive it without facing total financial devastation.
- Participants could not eliminate the property as an asset through the use of beneficiary deeds, living wills, annuities, etc.
- It would encourage individuals to use other methods to pay for long-term care. This could include purchasing long-term care insurance, use of reverse mortgages, etc.
- Families of participants could not sell the property and distribute the money between the heirs while the participant is a resident in a long-term care facility.
- It would not be necessary for an estate to be opened through the county Probate Court in order for the state to collect the MO HealthNet debt.

Potential Issues with TEFRA Liens

Many assume that MO HealthNet will pay for long-term care and believe their assets will remain intact for the heirs upon the death of the participant.

- **Potential Issues**

- The participant or family would remain responsible for property taxes until the death of the participant. Since the state has a lien on the property, the participant or their family could possibly refuse to pay the property tax and abandon the property.

Exemptions:

A lien may be placed on a person's home and other real property when **all** of the following conditions are met:

- When the person lives or is going to live in a long-term care facility.
- When the person owns a home or other real property.
- When there is no reasonable expectation that the person will be discharged from the long-term care facility and resume living in the home within one-hundred twenty days of admission. You have the right to appeal the decision that you are not expected to return home within one-hundred twenty days of admission. The procedures for a hearing are attached to this letter.
- When the person **does not** have a spouse, child under twenty-one years of age, or child who is blind or permanently disabled living in the home.