

**County of San Diego, Health and Human Services Agency (HHSA)
County Medical Services Program Guide (CMSPG) Letter**

Changes to County Medical Services (CMS) Third Party Liability (TPL), Reimbursement and Grant of Lien Process

Number

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Issue Date:

August 14, 2015

Effective Date:

Upon Receipt

Purpose:

To provide updated instructions to the CMS collection process and forms.

Background:

Effective 12/1/07, all CMS and CMS Hardship applicants are required to execute a lien naming the County of San Diego as grantee.

The County has set up repayment accounts for all claims paid on behalf of a CMS Hardship beneficiary. These accounts are currently managed by CMS Program.

A CMS beneficiary shall reimburse CMS from any settlement received for health care services provided by CMS, for which another party may be responsible.

Policy Change:

The office of Revenue Recovery (ORR) will take over the processing of all CMS reimbursement accounts; which includes CMS liens and TPL Collections. The completed forms are sent to ORR at Mail Stop O-60. Only the CMS Grant of lien forms (CMS-122) for approved CMS cases are forwarded to ORR.

Summary of Changes:

CMSPG 06.06 and 07.01: Revised instructions for the processing of all CMS collection forms.

Changes to the CMSPG are noted with highlighted text within each Article/Section.

Impacts:

Forms

Revisions to the distribution instructions on the CMS Grant of Lien (CMS-122), CMS Third Party Liability (TPL) (CMS-7), and the Agreement to Reimburse the County of San Diego (CMS-106) forms.

Automation

The revised forms have been uploaded into the CMS IT System (AuthMed).

Other Programs Affected:

None

Quality Control:

Quality Control will cite the appropriate error when the regulations cited in this material have not been followed.

References:

County Policy

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Sunset Date:

This policy will be reviewed for continuance by August 31, 2018.

Approval for Release:



Rick Wanne, Director
Eligibility Operations

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Background:

Effective 12/1/07, all CMS and CMS Hardship applicants are required to execute a lien naming the County of San Diego as grantee to secure any and all real property of the applicant as security for repayment of the cost of claims paid by CMS on the beneficiary's behalf. Liens are not initiated until the beneficiary is no longer active on CMS and CMS has paid claims in total of \$5,000 or more on the beneficiary's behalf.

Policy:

A: Welfare & Institutions Code/Deputized HHS A Staff

The Welfare & Institutions Code (W&IC) §17109 and Article V of the San Diego County Administrative Code, Section 92, authorizes the County to assert liens for any and all claims paid on behalf of a CMS or CMS Hardship beneficiary. The County Clerk has deputized Human Service Specialist (HSS) as Deputy County Clerks for the limited purpose of witnessing CMS applicant/beneficiary lien signatures. If no deputized worker is available at the site, the applicant can come back to the office when one is available, go to another CMS site, or get the lien form notarized at their own expense. Health Coverage Access (HCA) will maintain a log for all additions, deletions, and updates of all Deputy County Clerks. The updates are to be recorded on the CMS/GR Transmittal to Add/Delete Deputized Workers form. This form is to be forwarded to the County Clerk's office as personnel changes occur. HCA will also conduct annual reconciliations with the County Clerk's office to ensure the County Clerk has an accurate listing of all HHS A deputized staff.

Requirements:

B: Signed and witnessed

The CMS Grant of Lien must be signed and witnessed at initial application or **reapplication** by either a Deputy County Clerk or Notary Public.

Each applicant/beneficiary will also complete the CMS Lien Information and the CMS Lien Information Acknowledgement forms, or the CMS-107 in lieu of the CMS Lien Information and CMS Lien Information Acknowledgement forms. Failure of the applicant/beneficiary to cooperate will result in the denial of their application.

The CMS Lien Information form explains the repayment terms of the CMS Program. This form must be explained to the applicant/beneficiary prior to his/her signing and acknowledging that they understand the repayment terms.

The CMS Lien Information and the CMS Lien Information Acknowledgement forms are **not required** to be completed at recertification, as long as the forms obtained at initial application were:

- Signed;
- Are in the case record; and
- The applicant's/beneficiary's marital situation has **not** changed.

A Certificate of Acknowledgement is acceptable in lieu of a Notary Public signature on the CMS Grant of Lien, if the:

- Certificate is signed, dated and stamped by a Notary Public; and
- Contains the CMS Grant of Lien form title.

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Exception to the lien requirement:

If an applicant/beneficiary is confined to the hospital for active tuberculosis (TB), they are **not** required to sign the CMS Grant of Lien. If the applicant/beneficiary is in the hospital for other reasons, the fact that they have TB does not exempt them from signing the CMS Grant of Lien.

Exemptions

C. Sworn statement exemption:

This sworn statement exemption applies to:

- Applications dated July 1, 2009 and ongoing; or
- Applicants who applied on March 25, 2009 through June 30, 2009 who were denied solely for failure to submit the lien, and who:
 - a. Submitted a declaration in the Alford v. County of San Diego court case who were denied solely for failure to submit the lien; or
 - b. Timely requested either a First Level Administrative Review or an Administrative Hearing challenging the denial.
- Applicants/beneficiaries who state that they are unable to obtain the required spouse's signature on the CMS Grant of Lien, due to the following:
 - a. Legal documentation of their divorce, legal separation, nullity of marriage, deceased spouse, or
 - b. Represents that they are no longer residing with their spouse, and
 - c. Have completed the Resource Handout and federal tax return requirements, including credit check and property search. See processing guide for Sworn Statement Exemptions steps.

D. Applicant Unable to Complete the Lien Form:

Competency

When an applicant is incompetent s/he may **not** sign her/his own signature on the lien form. When this occurs, then her/his spouse or person with his/her power of attorney may sign for him/her. If there is no spouse or person with power of attorney available to sign the lien form, the case is denied.

To be incompetent of acting on one's behalf does not mean the applicant does not understand English, the application process, or that the applicant just prefers to have someone else act on his/her behalf. The term "incompetence" generally refers to an applicant's mental condition.

Physical Limitations

When an applicant/beneficiary is unable to sign the CMS Grant of Lien form because of a physical limitation **and** the applicant/beneficiary is competent, then s/he may sign the CMS Lien form with a mark of any kind. The mark shall be considered their full signature. The mark must be witnessed in accordance with CMS lien requirements.

Returned Grant of Lien Form:

A CMS Grant of Lien form not meeting the completion guidelines as outlined in the [CMS and GR Grant of Lien EPPG](#), will be returned to the worker to take the necessary corrective action to obtain a new CMS Grant of Lien from the beneficiary.

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Do **not** send the CMS Grant of Lien form for pending or denied cases to the Office of Revenue Recovery (ORR). The CMS Grant of Lien form for denied CMS cases may be properly destroyed after it is scanned into AuthMed.

Other Program Impacts

None

References:

None

Sunset Date:

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Other Coverage

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Background:

Applicants are required to report entitlement to and use other available health care coverage, if eligible. CMS is the payer of last resort. CMS does **not** pay insurance premiums, deductibles or co-payments. Veterans are encouraged to use all medical services available to them through the Veterans Administration.

A CMS recipient must reimburse CMS from any settlement received for health care services provided by CMS for which another party may be responsible.

Policy:

A: Other Health Coverage (OHC)

Applicants indicating that they have other health care coverage, which does **not** meet the MEC requirement under ACA, must complete the Health Insurance Questionnaire (CMS-69) at initial application, recertification, and reapplication as a condition of eligibility. Veterans must complete the CMS-69 if they have other health care coverage through private insurance.

Prior to the approval of CMS benefits:

- Have the applicant complete the CMS-69
- Check for completeness of the form and verify that a phone number for the insurance company is given, the policyholder's social security number is provided, and the form is signed and dated
- Scan the form into AuthMed
- Send the original CMS: 69 to the ASO at P.O. Box 927110 San Diego, CA 92192

B: Third Party Liability (TPL)

A CMS recipient must reimburse CMS from any settlement received (including a settlement from the recipient's own insurance) for health care services provided by CMS, for which another party may be responsible (e.g., vehicle accident, job injuries, injuries caused by a third party's action).

TPL Report (CMS-7)

The Third Party Liability Report (CMS-7) report is used to ensure that all necessary information is reported to CMS and acknowledges the recipient's responsibility to reimburse the CMS program. The CMS-7 is part of the permanent case record. It is not necessary to complete the report if the applicant received a settlement before applying for CMS, has spent the money, and now qualifies for CMS. The applicant must fill out the CMS-7 as fully as possible. The worker sends the completed form to ORR for processing. Refer to [Processing Guide 01](#) for instructions on how the recipient completes the report.

Other Program Impact:

None

Reference(s):

None

Sunset Date:

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The applicant must fill out the CMS-7 as fully as possible.

Section A: Injured Applicant Information

The following applicant information is required:

- Applicant's complete name.
- Birth date (month, date, year).
- Social Security Number.
- Full address and zip code.
- Phone number (including area code).
- The address and phone number of the applicant's representative, attorney and/or insurance agent.

Section B: Accident Report

This section gives the details about the accident and injury, and helps the County identify the claims that are related to a particular accident and injury.

The following information is required:

- The date of the accident (month, day, and year)
- The place where the accident occurred (if possible give the physical location of the accident (Example: Hwy 15 at the 163 off-ramp).
- Identify where initial treatment was given (name of hospital, paramedics, none, etc.).
- Indicate the type of accident (one or multiple care accident, pedestrian v. auto, a slip and fall, etc.).
- Indicate specifically the injured body part(s) (broken leg or arm, head injury, internal injuries, etc.).
- Indicate if a police report was filed.
- Indicate if injury occurred on the job.

Section C: Party who may be responsible for payment for accident/injury

This information is used to determine how to pursue collections. The responsible party may be:

- An individual (write the complete name, if possible)
- An agency (Example: police department)
- A company (indicate if it is a worker compensation case)

The worker must ensure that the CMS-7:

- Is complete and contains as much information as possible. If the applicant does not know the information, have them enter "unknown".
- Indicates the full name of the insurance company, and whenever possible, the policy number.
- Provides the insurance company's complete address including the suite number, and whenever possible, the name of a contact person.
- Provides information about the attorney representing the third party.
- Is signed by the applicant giving the County authorization to release information to the parties listed, and send the CMS-7 to ORR at Mail Stop O-60 via interoffice mail.

If the applicant refuses to complete and sign the CMS-7, the worker will:

- Deny the application for refusal to comply with program requirements; and
- Narrate the details surrounding the refusal in case comments.

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Complete and sign the Grant of Lien form (CMS-122)

Step	Action
1	<p>CMS applicant completes and signs the Grant of Lien (CMS-122), CMS Lien Information (CMS-123), and the CMS Lien Information Acknowledgement (CMS-123A) forms (if applicable) or the application will be denied. If an applicant/beneficiary is married, both the applicant/beneficiary and his/her spouse are required to sign the CMS-122 in front of either a Deputy County Clerk or Notary Public so that the form can be properly witnessed.</p> <p>a) Legal documentation is required if the applicant/beneficiary states s/he is divorced, legally separated, has a nullity of marriage, or their spouse is deceased.</p> <p>b) In circumstances where the applicant/beneficiary states documentation cannot be obtained, or represents that s/he is no longer residing with his/her spouse and are unable to obtain the spouse's signature, refer to Sworn Statement Exemptions below.</p> <p>c) If the applicant claims s/he is a victim of domestic violence and provides a restraining order against his/her spouse (expired restraining orders are acceptable), the spouse's signature is not required. If the applicant/beneficiary never obtained a restraining order, but provides a police report (regardless of how old the police report is) regarding the domestic violence, the spouse's signature is not required.</p>
2	Instruct the applicant to legibly complete the CMS-122 and the CMS-123 forms without signing them.
3	<p>All lien forms are available in Spanish to give to Spanish speaking applicants for information; however, all lien forms must be signed in English.</p> <p>The CMS-122 and CMS-123 Spanish forms will be given to Spanish speaking applicants along with the CMS-123A for the individual to acknowledge receipt of Lien forms in Spanish. The CMS-122 and CMS-123 Spanish forms do not need to be signed.</p> <p>The signed CMS-123A is verification that the Spanish speaking applicant/beneficiary acknowledges receiving the CMS-122 and CMS-123 forms in Spanish, and they have reviewed and understand the forms before signing them in English.</p>
4	Inform the applicant that the CMS-122 must be signed in front of a Deputy County Clerk or a Notary Public at their own expense. This is to acknowledge that the correct person has signed the forms. Only the English CMS-122 needs to have the signature(s) witnessed. The Deputy County Clerk or Notary Public will verify the identity of the signer before witnessing their signature.
5	If the applicant chooses to have the Deputy County Clerk witness the signature, the Deputy County Clerk will sign the CMS-122 in the appropriate section, and line through the words "Notary Public".
6	<p>Prior to the issuance of CMS benefits, the worker:</p> <ul style="list-style-type: none"> • Reviews the CMS-122 to ensure the form is legible and completed correctly

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	<p>according to the CMS and GR Grant of Lien EPPG;</p> <ul style="list-style-type: none"> Scans the forms (CMS 122, CMS 123/CMS 123A) in AuthMed; and Gives the applicant/beneficiary a copy of the forms. <p>Note: Do not send the CMS-122 for pending or denied cases to the Office of Revenue Recovery (ORR). The CMS-122 forms for the denied CMS cases may be properly destroyed after it is scanned into AuthMed.</p>
7	The original completed signed CMS-122 is sent to the ORR at Mail Stop O-60 where it will be held until the CMS case closes and total cumulative claims are identified to be \$5,000 or more.
8	<p>The CMS-122 must be completed as part of each application or reapplication, whether or not there is an active lien. Staff may waive the lien requirement for recertification after they verify the CMS-122 obtained during the application/reapplication process was correctly completed, signed, and witnessed by either a Deputy County Clerk or a Notary Public, and that the lien meets the completion requirements according to the CMS and GR Grant of Lien EPPG.</p> <p>If the lien form on file was not correctly completed, signed, and witnessed by either a Deputy County Clerk or a Notary Public, and/or does not meet the requirements outlined in the CMS and GR Grant of Lien EPPG, the worker shall obtain a new lien form.</p>

The worker must take the following actions to determine if a new CMS-122 is required or not required:

Step	Action											
1.	<p>Review all of the applicant's/beneficiary's prior CMS IT case record to determine:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">If the CMS-122 was...</th> <th style="width: 33%;">And if there is...</th> <th style="width: 33%;">Then...</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Appropriately signed and properly witnessed,</td> <td>NO change in the applicant's/beneficiary's marital status,</td> <td>a new CMS-122 is NOT required to be signed and witnessed at recertification.</td> </tr> <tr> <td>a change in the applicant's/beneficiary's marital status,</td> <td>proceed to Step 2.</td> </tr> <tr> <td>NOT appropriately signed and properly witnessed,</td> <td>N/A</td> <td>a new CMS-122 IS required to be signed and witnessed at recertification or reapplication.</td> </tr> </tbody> </table>	If the CMS-122 was...	And if there is...	Then...	Appropriately signed and properly witnessed,	NO change in the applicant's/beneficiary's marital status,	a new CMS-122 is NOT required to be signed and witnessed at recertification.	a change in the applicant's/beneficiary's marital status,	proceed to Step 2.	NOT appropriately signed and properly witnessed,	N/A	a new CMS-122 IS required to be signed and witnessed at recertification or reapplication.
If the CMS-122 was...	And if there is...	Then...										
Appropriately signed and properly witnessed,	NO change in the applicant's/beneficiary's marital status,	a new CMS-122 is NOT required to be signed and witnessed at recertification.										
	a change in the applicant's/beneficiary's marital status,	proceed to Step 2.										
NOT appropriately signed and properly witnessed,	N/A	a new CMS-122 IS required to be signed and witnessed at recertification or reapplication.										
2.	Obtain a new and signed CMS-122:											

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If the applicant/beneficiary has...	Then...
married, remarried, or reconciled with their absent spouse,	both the applicant/beneficiary and their spouse must sign a new CMS-122.
obtain a divorced, legal separation or has a nullity of marriage	only the applicant/beneficiary signs a new CMS-122.

Sworn Statement Exemption

In situations where the applicant/beneficiary states that they are unable to obtain legal documentation of their divorce, legal separation, nullity of marriage, deceased spouse, or represents that they are no longer residing with their spouse and are unable to obtain the spouse’s signature on the CMS-122, the worker will:

- Give the applicant/beneficiary the Resource Handout (CMS-008);
- Request a copy of the applicant’s/beneficiary’s federal tax return (“U.S. Individual Income Tax Return”) for the most recent tax year; and
- List these documents on the verification checklist as a required verification that must be returned.

The applicant/beneficiary must:

- Make reasonable attempts to obtain the required documentation utilizing the CMS-008;
- Complete a sworn statement (CMS-124), if the required documentation is still unavailable explaining all efforts made to obtain the required documentation and the circumstances surrounding why documentation or spouse’s signature cannot be obtained; and
- Provide a copy of their federal tax returns for the most recent tax year.

A tax year is defined by the Internal Revenue (IRS) as, “an annual accounting period for keeping records and reporting income and expenses”. The calendar year is the most common tax year.

Note: A copy of the applicant’s/beneficiary’s federal tax return for the most recent tax year is **not** required if the applicant/beneficiary:

- Produces legal documentation of divorce, nullity of marriage, legal separation, a deceased spouse or is not required by the IRS to file a federal tax return; and
- Provides verification for the reason they are not required to file.

A copy of the federal tax return is only required when the applicant/beneficiary submits a sworn Statement in lieu of legal documentation.

The following steps are to be followed by the worker before accepting a sworn statement:

Step	Action
1.	<ul style="list-style-type: none"> • Provide the applicant/beneficiary with the CMS-008. • List this form as a verification document on the Verification Checklist (CMS-16) to be returned for verification of reasonable attempts to obtain legal

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	documentation.								
2.	<ul style="list-style-type: none"> Request the applicant's/beneficiary's federal tax return (U.S. Individual Income Tax Return) for the most recent tax year by listing it as verification on the CMS-16. The tax return is only required when accepting a sworn statement (see item 7 below). Review the federal tax return to determine filing status (married, single, head of household, married filing separately) and determine whether the information on the tax return is consistent with the application information. 								
3.	<ul style="list-style-type: none"> Request a credit report. Review the report for conflicting information, paying special attention to any assets or debts the applicant/beneficiary may have jointly with their absent or former spouse within the past 12 months. 								
4.	<p>Clear the Assessor's Secured Property file located in MAINFRAME to verify if the applicant/beneficiary owns property in San Diego County.</p> <p>Note: Input the husband's name if no match is found. Run all names, including AKA's.</p>								
5.	Use the Assessor's Property screen and the credit report in conjunction with each other to locate property owned. If no property is listed on the credit report and none is found on the Assessor's Secured Property screen, then conclude that no property is owned in San Diego County.								
6.	After all verifications are received and the credit report is reviewed, complete the "County Use Only" section of the CMS-008 to identify which resources the applicant/beneficiary utilized in making the effort to gather the required documentation. If required documentation/signature is received, then the federal tax return is not required.								
7.	<p>If the applicant/beneficiary states they are still unable to obtain the required documentation, then the applicant/beneficiary will be required to:</p> <ul style="list-style-type: none"> Complete a sworn statement explaining all efforts made to obtain the required documentation; Explain the circumstances surrounding why documentation cannot be obtained; and Present a copy of their federal tax return for the most recent tax year. <p>Note: Good cause extension may be given to applicants/beneficiaries who need more time to provide their tax return or verification of non-filing.</p>								
8.	<table border="1"> <tr> <td colspan="2">Verify all information received and</td> </tr> <tr> <td>If...</td> <td>Then...</td> </tr> <tr> <td>all verifications are received and there is no conflicting information,</td> <td>approve the application, if the applicant or beneficiary is otherwise eligible.</td> </tr> <tr> <td>it appears there is conflicting information which cannot be resolved,</td> <td>DO NOT accept the sworn statement in lieu of the legal documentation and elevate the information to the supervisor.</td> </tr> </table>	Verify all information received and		If...	Then...	all verifications are received and there is no conflicting information,	approve the application, if the applicant or beneficiary is otherwise eligible.	it appears there is conflicting information which cannot be resolved,	DO NOT accept the sworn statement in lieu of the legal documentation and elevate the information to the supervisor.
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How to view the Assessor's Secured Property Screens

The Assessor's Secured Property Master file stores selected public information. The assessor secured property inquiry for property in question is accessed through a local session in the MAINFRAME. These screens are part of the SS System Index.

Step	Action							
1.	Sign to the SS system index by.....							
2.	Type PRD on the COMMAND Line; Hit enter							
3.	Hit the PAUSE.BREAK key to clear CICS-ESA a blank screen will appear							
4.	<table border="1"> <thead> <tr> <th>If...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>Only the name is known</td> <td>Type ST1N (space) Last name (space) First name and "enter" Note: Joint property will only show under husbands name, wife's name will indicate "No Records on File"</td> </tr> <tr> <td>Property address is known</td> <td>Type ST1S (space) Street name (space) Street number and "enter"</td> </tr> </tbody> </table>		If...	Then...	Only the name is known	Type ST1N (space) Last name (space) First name and "enter" Note: Joint property will only show under husbands name, wife's name will indicate "No Records on File"	Property address is known	Type ST1S (space) Street name (space) Street number and "enter"
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How to request a copy of a tax return transcript and verification of non-filing

Required to File

A copy of a federal tax return (tax return transcripts) may be obtained by telephone or by mail. Request transcripts by calling 1-800-829-1040, or by mail using IRS Form 4506T (Request for Transcript of Tax Return). To obtain IRS Form 4506-T go to www.irs.gov.

Not Required to File

The applicant/beneficiary must provide verification of non-filing. The request for the non-filing requirement must be submitted by mail. The applicant/beneficiary must complete IRS 4506-T by checking the non-filing box #7 and mailing it to the IRS. To obtain IRS Form 4506T go to www.irs.gov.

There is no fee for transcripts. Allow two weeks for delivery.

Determining Competency for LTC Applicant

When the applicant is in LTC, the worker may reach an incompetency decision by one of the following methods:

Method	Action
1.	Calling the LTC facility and inquiring as to the patient's ability to handle his/her own affairs.
2.	Obtaining a statement from the patient's physician.
3.	Making a "home visit" to the facility to communicate with the individual.
4.	Obtaining satisfactory evidence from family members which would provide the worker with sufficient reason to believe that the LTC individual is incapable of handling his/her own affairs. Such evidence may include conservatorship documents or a written statement from a family member stating that the individual is unable to complete the application process.

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