

**County of San Diego, Health and Human Services Agency (HHS A)  
County Medical Services (CMS) Program Guide**

**Grant of Lien**

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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 Liens are not initiated until the beneficiary is no longer active on CMS and CMS has paid claims in total of \$5,000 or more on the beneficiary's behalf.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 by the applicant/beneficiary and witnessed by either a Deputy County Clerk or Notary Public at initial application or reapplication. If the applicant/beneficiary is married **both** are required to sign in front of a Deputy County Clerk or Notary Public. Failure to complete the CMS Grant of Lien process will result in the denial of their application.

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

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- Contains the CMS Grant of Lien form title.

Note: All CMS lien forms are available in Spanish to give to Spanish speaking applicants for information; however, **all** lien forms must be signed in English.

**Exception to the lien requirement:**

An applicant/beneficiary confined to the hospital for active tuberculosis (TB), is **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.

**Victim of domestic violence**

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.

**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.

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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.

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

Other Program Impacts

None

References:

None

Sunset Date:

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

Release Date:

August 14, 2015