

MEMORANDUM

TO: Representative Trevor Squirrel, Chair, Legislative Committee on Administrative Rules (LCAR)

FROM: Beth Quill, Senior Staff Attorney, Department of Vermont Health Access

Cc: Lindsey Schreier, Committee Assistant, LCAR
Jennifer Carbee, Deputy Chief Counsel, Office of Legislative Counsel

DATE: July 9, 2026

RE: Updates to Estate Recovery Rule for LCAR

The Office of Legislative Counsel submitted comments and questions for consideration to AHS after AHS submitted the Estate Recovery Rule (26P006) to LCAR. As a result, AHS has made some edits to the rule. These changes are addressed below and are tracked in blue in the annotated rule accompanying this memorandum. The following updates are included:

- 4.108.1(a) - Updated “designated burial account” to “prepaid burial account”
- 4.108.2.2(a) - Included “cost effectiveness exception” as one of the possible exceptions
- 4.108.2.2(b) – Updated undue burden threshold to “cost effectiveness exception.” Included updated description as “When an estate with assets is valued under \$7,500, Vermont Medicaid has determined that it is not cost effective to pursue recovery. In such estates, Vermont Medicaid will not file a claim or otherwise pursue recovery.”
- 4.108.2.2(c) – Updated numbering after adding exception as described above.
- 4.108.2.3(a) – Updated to include the word “formally.”
- 4.108.2.3(b)(3) – Updated to include the word “need.”
- 4.108.2.3(b)(4) – Updated this provision to (c).

The following comments were reviewed but no action was taken. The comments and responses are as follows:

- 4.108.2.2(b)(3)(C) –it doesn’t make sense to say that it is an “an undue hardship to recover the first \$250,000 in fair market value of a home.” It seems like “undue hardship” might not be the right phrasing for the intent.
 - This is accordance with the federal undue hardship language under federal law. [42 USC 1396p: Liens, adjustments and recoveries, and transfers of assets.](#)

- 4.108.2.2(b)(3)(C)(i) – what is meant by “may inherit” here? “may” as in “are allowed to” under this rule and/or probate law?
 - May is meant to limit who can inherit the home under this rule and probate law.