

A grayscale photograph of the Philadelphia skyline, featuring the One Liberty Place and Two Liberty Place towers, set against a background that transitions from light blue on the left to yellow on the right.

Philadelphia **VIP**

DHS Estate Recovery Guide

A VIP Resource for Volunteer Attorneys

October 2020

About This Guide

This guide helps explain Estate Recovery to volunteer attorneys whose clients must go through the process. Inside this guide, you will find:

- A step-by-step explanation of the process
- Definitions of important terms
- Contact information for the agencies involved
- Sample forms and template letters

For information on related topics, such as probating an estate, or filling out an inheritance tax return, refer to the Philly VIP Probate Training Guide available on our website: <https://www.phillyvip.org/probate-training-guide>.

Important Notes

Philadelphia VIP prepared this guide to help distribute basic legal information to the legal community at large. While the information contained in this guide concerns legal issues, it is intended solely to provide general information. THIS GUIDE IS CURRENT AS OF OCTOBER 2020. COSTS AND FEES ARE SUBJECT TO CHANGE. This guide is not intended to constitute legal advice or substitute for the advice of an attorney. It is understood that Philadelphia VIP's provision of this guide and your review of this information does not establish an attorney-client relationship. No action should be taken in reliance on the information provided in this guide, except after prior consultation with a lawyer.

*The most up-to-date version of this guide can be found in
the Philadelphia VIP Resource Library at
www.PhillyVIP.org/estate-recovery-guide*

Overview

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Background

What is Estate Recovery?

Estate Recovery: If a person above the age of 55 was receiving Medical Assistance (MA), also known as Medicaid, to pay for nursing care, this person may face an **Estate Recovery Claim**. The Pennsylvania Department of Human Services (DHS) is required by state and federal law to recover nursing care costs from that person's estate after they die. This means the Pennsylvania DHS can claim that person's property, including his/her home, in order to pay for these outstanding costs.

Will My Client Be Affected?

Your client might face an Estate Recovery claim if the homeowner who died received Medical Assistance (MA) to pay for long-term care and was 55 years or older at the time he/she received any of the following services:

- Community HealthChoices (CHC)
- Nursing facility care
- Home and community-based services
- Any related hospital care and prescription drug services provided while receiving nursing facility care or care at home or in a community setting.

Your client will **NOT** be subject to an estate recovery claim if the following apply:

- They qualify for a waiver (see Frequently Asked Questions)
- The homeowner died before August 5, 1994
- The homeowner never used Medical Assistance (Medicaid) to pay for his/her nursing care. This could mean he/she only used private insurance or Medicare.
- The homeowner only received short-term end-of-life care, such as hospice.

Contact the Department of Human Services and request a statement of claim if you are not sure if the homeowner received qualifying nursing care using Medicaid.

Frequently Asked Questions

Q: Can DHS Really Take Away My Client's Home? Are There Exceptions?

A: When a long-term Medical Assistance recipient dies, any property that he/she owned at the time of death is subject to Estate Recovery, including his/her home. However, this does not necessarily mean that DHS will try to claim the home. Some exceptions include:

- If your client was married to the decedent, and they owned the property together (e.g. the deeds states “tenancy by the entireties” or “joint tenancy with the right of survivorship”), DHS will not consider the property as part of its claim. You will still have to send a notice to DHS that this person died. See page 6 for more information.
- If the homeowner’s dependent child is living in the home, the property is not subject to estate recovery until the child reaches the age of 21.
- If an adult child living in the home has a permanent disability, DHS will postpone its claim until the adult child sells the property, moves out, or dies.
- In some other circumstances, especially if your client is low-income and has no other home, the state may grant a waiver and discontinue its estate recovery claim. See page 9 for more information.

Q: Should I Notify DHS if the Homeowner Received Medical Assistance Before He/She Died?

A: Yes. If the person who has died received Medical Assistance for nursing care in the last five years of his/her life, the state **MUST** be notified. However, VIP strongly recommends sending a notice to DHS in **all cases**. This is because DHS can still try to make a claim on the estate, even if they are not notified.

Important Definitions

Estate: The property left by a person at death, i.e. home, land, insurance policies, stocks, bonds and bank accounts.

Decedent: The person who has died.

Department of Human Services (DHS): The Pennsylvania Department of Human Services (DHS), is a cabinet-level agency in Pennsylvania that seeks to provide care and support to Pennsylvania's most vulnerable individuals and families. Its priorities range from adoption, child protection services, long-term living facilities, and individuals with disabilities. DHS was known as the Department of Public Welfare (DPW) before 2014.

Medical Assistance (Medicaid): A jointly funded, federal-state health insurance program for eligible low-income people.

Estate Recovery: If an individual above the age of 55 was receiving Medical Assistance (Medicaid) from the Pennsylvania government to pay for nursing care, or other long-term home and community-based services, DHS is required by federal law to recover these costs from a person's estate after they die.

Home and Community Based Services: Care provided in the home to individuals who would otherwise require nursing facility services.

Statement of Claim: DHS keeps a record of all Medical Assistance payments made after 1994 to the person who has died. This includes nursing home services, home and community-based services, and hospital and prescription drug services. The statement of claim adds together all of these costs in an itemized list, similar to a bank statement.

Step 1:

Send a Notice to DHS

If your client has not already received a statement of claim from DHS, you must send them a notice as soon as possible. **This must be done** if your client is the personal representative of the estate.

Before sending a letter, you may first try calling DHS (800-528-3708) and request a statement of claim over the phone. However, they may still ask you to mail or fax a notice. If you are required to do so, the letter should contain the following information about the person who died:

- Name and last known address
- Social security number
- Date of birth and date of death
- Written documentation of the value of the estate

A template and an example letter are available on pages 7 and 8.

How to Calculate the Value of the Estate

1. Go to <https://property.phila.gov/> and search using the property address.
2. Under “Valuation History,” find the “Market Value” of the property for the current year. If you are having trouble finding the market value of the property, you may call the Office of Property Assessment at (215) 686-4334.
3. Estimate the value of anything else the person may have left when they died (“assets”), such as money in bank accounts, stocks, or insurance policies.
4. The estate value is the “Market Value” of the property plus the value of all of these other assets.

Notice to DHS: Template

[TODAY'S DATE]

Department of Human Services
Third Party Liability Section
Estate Recovery Program
Post Office Box 8486
Harrisburg, PA 17105-8486

RE: Estate of [DECEDENT]
Date of Birth: [DATE]
Date of Death: [DATE]
Social Security Number: [NUMBER]

Dear Sir/Madam:

I represent the [PERSONAL REPRESENTATIVE/HEIR] of the Estate of [DECEDENT], who died a resident of Philadelphia, Pennsylvania on [DATE]. This notice is being sent to you in compliance with Section 1412 of Title 62 of Pennsylvania Statutes Annotated.

[DECEDENT]'s residence at the time of [HIS/HER] death was [ADDRESS], and [HE/SHE] actually died at [LOCATION]. The estimated gross value of the Estate of [DECEDENT] is [AMOUNT].

[DECEDENT] was age [AGE] at the time of [HIS/HER] death, and, to the best of my knowledge, [HE/SHE] received no medical assistance during the five years preceding [HIS/HER] death. Notwithstanding this, we are sending you this notice in the event that the Department has a claim under the statutory provision. As I understand it, if no claim is submitted within forty-five (45) days of your receipt of this letter, any claim that the Department might have will be forfeited.

If the Department does submit a claim, it should be sent to my attention. Should you have any questions regarding this matter, I can be reached at [PHONE NUMBER].

Sincerely,

[ATTORNEY], Esquire
cc: [CLIENT]



Notice to DHS: Example

January 21, 2019

Department of Human Services
Third Party Liability Section
Estate Recovery Program
Post Office Box 8486
Harrisburg, PA 17105-8486

RE: Estate of John Doe
Date of Birth: 01/01/1925
Date of Death: 12/31/2018
Social Security Number: 012-345-6789

Dear Sir/Madam:

I represent the heir of the Estate of John Doe, who died a resident of Philadelphia, Pennsylvania on 01/01/2018. This notice is being sent to you in compliance with Section 1412 of Title 62 of Pennsylvania Statutes Annotated.

John Doe's residence at the time of his death was 1400 JFK Blvd, Philadelphia, PA 19102, and he actually died at Philadelphia Hospital, 1234 Main St, Philadelphia, PA 19102. The estimated gross value of the Estate of John Doe is \$50,000.

John Doe was age 93 at the time of his death, and, to the best of my knowledge, he received no medical assistance during the five years preceding his death. Notwithstanding this, we are sending you this notice in the event that the Department has a claim under the statutory provision. As I understand it, if no claim is submitted within forty-five (45) days of your receipt of this letter, any claim that the Department might have will be forfeited.

If the Department does submit a claim, it should be sent to my attention. Should you have any questions regarding this matter, I can be reached at 555-555-5555.

Sincerely,

Sawyer Lawyer, esquire

cc: Jane Doe



Step 2:

Apply for a Hardship Waiver

After your client receives a statement of claim from DHS, you should consider applying for a **hardship waiver**. If your client qualifies for a waiver, they may be able to permanently or temporarily waive the claim from DHS.

Waiver Requirements

If the estate is worth **less** than \$2400, and the estate has already been administered, your client automatically qualifies for an **undue hardship waiver**. However, most people do not fall into this category, especially when the estate includes a home. Refer to page 6 if you are not sure how to calculate the value of the estate. If the estate is worth more than \$2400, your client must meet **ALL THREE** of the following requirements:

1. They provided care for the person who owns the property for at least two years before receiving nursing care, or for two years WHILE they were receiving nursing care at home.
2. They lived in the property for the entire two years and have proof of residency, such as a driver's license or mail directed to them during that time.
3. They have no other permanent home to live in.

Example: Jane Doe's father entered nursing care in 2015, paid by PA Medical Assistance. From 2012-2015, Jane Doe lived **full-time** with her father and took care of him in the property, which he owns. Jane has no other home and wants to keep living there.

Even if your client does not meet the requirements above, you should still apply for an **informal undue hardship waiver**. Your client may still be able to waive the claim. Follow all of the instructions on page 11 and carefully read the example letter on page 16 for special language you should use.

How to Apply for a Waiver

To apply for an **undue hardship waiver**, you will need to collect and send all of the following forms and documents to DHS by mail. You should address the letter to:

**Estate Recovery Program
P.O. Box 8486
Harrisburg, PA 17105-8486**

- A completed Undue Hardship Waiver request form**
Fill out this form as best as you can. An example is located on page 13. You can find and print this form on the PA website: tinyurl.com/dhs-waiver
- Proof of the fair market value of the home**
If your client cannot afford an appraisal, you may try to do an online search for the value of the house by entering their address into a real estate website. You should print out what you find and include it as proof.
- Residency proof**
This document should prove that your client lived in the property with their loved one for at least two years (either before he/she received nursing care at a facility, or while he/she received at-home nursing care). Acceptable documents include a photo ID, pay stubs, utility bills, or a W-2 form.
- A completed and notarized “No Alternative Permanent Residence Affidavit”**
An example with more information can be found on page 15. This affidavit must be notarized. Notary fees often range from \$2-12, but certain companies, such as TD Bank, offer free notarizations.
- A letter explaining why your client qualifies for a waiver.**
An example letter can be found on page 17
- A letter from a doctor or “a person with knowledge”**
The DHS requires a letter from either a doctor who treated the homeowner while they were receiving nursing care, or from “a

person with knowledge...that applicant provided care for the recipient between the necessary dates." The "person with knowledge" can be a family member or neighbor, but not someone with interest in the case, such as the attorney or the applicant. A template and example letter you can give to a doctor to request his/her help can be found on page 18 and 19.

Undue Hardship Waiver Request Form: Template (Page 1)

UNDUE HARDSHIP WAIVER REQUEST FORM

Do not leave any blank spaces. If the question does not apply, write not applicable (n/a). If we do not have the documentation to review this waiver request within sixty (60) days from receipt of this waiver form, we will submit this recovery to an attorney in the county where the client resided to handle as an unadministered estate.

DECEDENT'S NAME:	John Doe	Decedent = Person who died and owned the home.
DECEDENT'S SOCIAL SECURITY NUMBER:	123-45-6789	
DECEDENT'S DATE OF BIRTH:	11-14-1935	
CLIENT INFORMATION SYSTEM (CIS) NUMBER: (if known)	Unknown	
DECEDENT'S PROPERTY ADDRESS:	4564 Locust Street	
	(CITY, STATE, ZIP CODE) Philadelphia, PA 19104	
COUNTY WHERE DECEDENT'S PROPERTY IS LOCATED:	Philadelphia	
FORM COMPLETED BY: NAME:	Jane Doe	Put your client's information here.
RELATIONSHIP TO DECEDENT:	Daughter	
ADDRESS:	4564 Locust Street	
	(CITY, STATE, ZIP CODE) Philadelphia, PA 19104	
TELEPHONE NUMBER:	(215) 555-5555	
FAIR MARKET VALUE OF DECEDENT'S PROPERTY: (include a copy of certified appraisal)	\$75,000	Based on your online search or appraisal
INDIVIDUAL REQUESTING WAIVER: (if same as above, do not complete)		
RELATIONSHIP TO DECEDENT:		
ADDRESS:		
	(CITY, STATE, ZIP CODE)	
TELEPHONE NUMBER:	()	

Undue Hardship Waiver Request Form: Template (Page 2)

THE DEPARTMENT WILL MAKE THE DECISION WHETHER TO GRANT THE WAIVER
AFTER ALL OF THE FOLLOWING CONDITIONS ARE MET:

DECEDENT'S PRIMARY RESIDENCE

1. Date the individual requesting the waiver moved into the residence: Date your client moved into property
2. Date the individual requesting the waiver began providing care for the decedent: Date your client started taking care of owner
3. Has the individual requesting the waiver lived there or immediately prior to the decedent's
receipt of nursing home care or for two years due to If your client meets
community based services were received?

IF YES: Provide documentation indicating license, pay stubs, W-2 form, etc.

4. Did the individual requesting the waiver provide the decedent's receipt of nursing home care or services were received?

IF YES: For the estate of a decedent who resided in a long term care facility, we need a statement containing the following information from the physician who treated the decedent during the two year time noted above:

- A. Decedent's primary diagnosis; and
- B. A statement that the decedent would have needed, at a minimum, intermediate care in a nursing facility if the person requesting the waiver had not provided care to the decedent in the home of the decedent for at least two years immediately prior to admission to the nursing facility.

For the estate of a decedent who received Medicaid funded home and community based waiver services, we need a statement containing the following information from the physician who treated the decedent during the two year time noted above: If your client meets

- A. Decedent's primary diagnosis;
- B. A statement that the decedent was the person requesting the waiver at least two years while the decedent was alive.

15. Does the individual requesting the waiver have a

IF NO: Complete and return the attached notarized No Alternative Permanent Residence Affidavit which must be notarized.

INCOME PRODUCING ASSET (Examples would be a family farm or family business, etc.)

1. Is the income producing asset the primary source of income for the household? Yes _____ No **X**

2. What was the family's gross income generated by the income producing asset? Please provide two documents. Please provide documentation for the income producing asset. For example: W-2 forms, 1099 forms, etc.

3. Excluding the income producing asset, what was the family's gross income generated by the family's income producing asset? Please provide documentation for the income producing asset. For example: W-2 forms, 1099 forms, etc.

Check yes and attach documents ONLY if the home produces income for your client

set in the year preceding the death of the decedent? Please provide documentation for the income generated by the family's income producing asset. For example: W-2 forms, 1099 forms, etc.

set in the year preceding the death of the decedent? Please provide documentation for the income generated by the family's income producing asset. For example: W-2 forms, 1099 forms, etc.

OTHER INFORMATION

Please provide any other information you feel may be important to the department in order to make its decision.

ACKNOWLEDGEMENT:

I ACKNOWLEDGE THAT THE INFORMATION I HAVE SUPPLIED ON THIS FORM IS SUBJECT TO THE PENALTIES SET FORTH IN 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Client Signature and Date on This Line

SIGNATURE

DATE

SEND ALL CORRESPONDENCE TO:

DEPARTMENT OF HUMAN SERVICES
DIVISION OF THIRD PARTY LIABILITY
ESTATE RECOVERY PROGRAM
P.O. BOX 8486
HARRISBURG, PA 17105-8486

FACSIMILE#: (717) 772-6553

ESTATE RECOVERY HOTLINE: 1-800-528-3708



No Alternative Permanent Residence Affidavit: Template



No Alternative Permanent Residence Affidavit

BUREAU OF PROGRAM INTEGRITY
DIVISION OF THIRD PARTY LIABILITY
PO BOX 8486
HARRISBURG, PA 17105-84

I, Jane Doe [Client Name], am the individual requesting that the department find undue hardship and permanently waive its estate recovery claim with respect to the real property of the decedent John Doe [Decedent's Name] located at 4564 Locust St., Philadelphia, PA 19104 [Property Address].

I, Jane Doe [Client Name], do solemnly swear that I have no permanent residence other than the real property of the decedent described above, that I currently reside solely in that property, that I use the address of the property as my permanent address for tax and legal purposes, and I have resided in that property for at least two years.

Jane Doe [Client Name]
Printed Name
Jane Doe [Client Signature]
Signature

REMEMBER: Your client
MUST sign in front of a
notary

4/3/20 [Date Signed]
Date

Commonwealth of Pennsylvania) : SS
County of _____)

The notary will fill
out the rest and add
his/her stamp

On this, the _____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me, (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained. In witness thereof, I hereunto set my hand and official seal.

Notary Public
Seal
Stamp



Letter Explaining Why Your Client Qualifies for a Waiver: Template

[TODAY'S DATE]

Department of Human Services
Third Party Liability Section
Estate Recovery Program
Post Office Box 8486
Harrisburg, PA 17105-8486

Dear Sir/Madam:

I represent the [PERSONAL REPRESENTATIVE/HEIR] of the Estate of [DECEDENT]. I am including this letter to further explain the special circumstances that qualify my client for an undue hardship waiver.

[Include any of the below, ONLY if they apply to your client]:

- My client maintained the home of [DECEDENT] while [DECEDENT] was receiving home and community-based services OR maintained [DECEDENT] vacant home while [SHE/HE] was in a nursing home. To maintain the home, my client [PAID REAL ESTATE TAXES, UTILITY BILLS, MADE HOME REPAIRS AND MAINTENANCE SUCH AS LAWN CARE AND SNOW REMOVAL, etc.] necessary to keep the property in condition for the decedent to return home or to sell at fair market value.
- My client was unable to care for [DECEDENT] because... (If your client did not take care of the owner of the home before he/she died, explain why. Was your client taking care of another family member, such as their children, at the time? Was your client unemployed and unable to help?)
- My client did not provide care for [DECEDENT] two years before [HIS/HER] death, but [HE/SHE] did take care of [HIM/HER] for several years earlier in [HIS/HER] life, from [DATE] to [DATE].
- My client is the [PARENT/CARETAKER/GUARDIAN] of several young children who live in this property. For this reason, they cannot afford to lose this home, which is their only residence, without risking the health of my client's children.
- My client [OR ANOTHER FAMILY MEMBER] has a disability, and it would be a significant hardship to lose this property.
- My client has no other place to live and will become homeless if DHS asserts its claim against the property.
- This property has very little or no value due to various liens, including...
- Any other special situation that you believe DHS should consider when they review the application.

If you have any further questions, I can be reached at [PHONE NUMBER].

Sincerely,

[ATTORNEY SIGNATURE]

[ATTORNEY NAME]

cc: [CLIENT NAME]

Letter Explaining Why Your Client Qualifies for a Waiver: Example

January 21, 2019

Department of Human Services
Third Party Liability Section
Estate Recovery Program
Post Office Box 8486
Harrisburg, PA 17105-8486

Dear Sir/Madam:

I represent the heir of the Estate of John Doe. I am including this letter to further explain the special circumstances that qualify my client for an undue hardship waiver.

My client is a single mother of 3 young children who live in this property with her. For this reason, she cannot afford to lose this home without risking her family's health. Both my client and my client's 12-year-old son have disabilities, and it would be a significant hardship to lose this home. My client has no other place to live and her family will become homeless if DHS asserts its claim against the property.

Please note that my client was unable to care for John Doe for the two years before his death because her daughter came down with a sudden illness around that time. My client needed to work extra shifts to cover medical expenses and needed to spend the rest of her time taking care of her daughter at home. As a result, my client did not have the resources to move in with John Doe and take care of him full-time; however, she still visited him multiple times a week to tend to his health. After John Doe died, my client's family moved into the property because this was his wish and it allowed her to save money on rent.

Finally, this property has very little to no value due to numerous liens and debts on the home. John Doe died with many unpaid water bills and federal taxes. The DHS will not recover much money from the property. My client is on a fixed income. She and her family will be left without a place to live if it is taken from them.

If you have any further questions, I can be reached at 215-555-5555.

Sincerely,

Bernie Attorney

Bernie Attorney, esquire

cc: Jane Doe

Doctor Letter: Template

[DATE]

[DOCTOR'S NAME]
[NAME OF MEDICAL OFFICE]
[ADDRESS]

Dear Dr. [DOCTOR LAST NAME],

I am currently representing [CLIENT] in working with the Pennsylvania Department of Human Services (DHS) regarding a claim they hold against the estate of [HER/HIS] [MOTHER, PARTNER, AUNT, ETC.], [DECEDENT], for services paid through the Medical Assistance program.

Per DHS's regulations, we need a statement from you that addresses:

- 1) [DECEDENT]'s primary diagnosis, *and*
- 2) that [DECEDENT] would have needed, at a minimum, intermediate care in a nursing facility if I had not provided care to her in her home for at least two (2) years while she received home- and community-based services.

I understand that the following documents should provide sufficient documentation to allow you to issue a statement regarding the above:

- 1) a Release signed by [CLIENT], stating her authority to access the medical records and related information for [DECEDENT], as administrator of [DECEDENT]'s estate, and giving me permission to access the same; *and*
- 2) a copy of the Letters [OF ADMINISTRATION/ TESTAMENTARY] that the Philadelphia Register of Wills issues on the estate of [DECEDENT], to [CLIENT] on [DATE LETTERS WERE ISSUED] naming [HER/HIM] administrator of the estate.

Please let me know if you require any further documentation. Once I receive this statement from you, I intend to send it to DHS in regarding the claim they hold against [DECEDENT].

Should you have any questions or concerns regarding the content of this statement, please do not hesitate to contact me at [PHONE NUMBER]. Thank you for your assistance and cooperation in this matter.

Sincerely,

[ATTORNEY SIGNATURE]
[ATTORNEY NAME]

If your client is the administrator or executor of the estate, attach a copy of their Letters of Administration from the Register of Wills

Doctor Letter: Example

January 21, 2019

Dr. Ima Dock
Dock Family Medical Practice
1234 Walnut Street
Suite 102
Philadelphia, PA 19107

Dear Dr. Dock,

I am currently representing Jane Doe in working with the Pennsylvania Department of Human Services (DHS) regarding a claim they hold against the estate of her father, John Doe, for services paid through the Medical Assistance program.

Per DHS's regulations, we need a statement from you that addresses:

- 1) John Doe's primary diagnosis, *and*
- 2) that John Doe would have needed, at a minimum, intermediate care in a nursing facility if I had not provided care to her in her home for at least two (2) years while she received home- and community-based services.

I understand that the following documents should provide sufficient documentation to allow you to issue a statement regarding the above:

- 1) a Release signed by Jane Doe, stating her authority to access the medical records and related information of John Doe, as administrator of John Doe's estate, and giving me permission to access the same; and
- 2) a copy of the Letters of Administration that the Philadelphia Register of Wills issues on the estate of John Doe, to Jane Doe on 05/14/2018 naming her administrator of the estate.

Please let me know if you require any further documentation. Once I receive this statement from you, I intend to send it to DHS in regarding the claim they hold against John Doe.

Should you have any questions or concerns regarding the content of this statement, please do not hesitate to contact me at 215-555-5555. Thank you for your assistance and cooperation in this matter.

Sincerely,

Saul Goodman
Saul Goodman, esquire

Enclosed: Release from Jane Doe, Administrator of Estate of John Doe
Letters of Administration for the Estate of John Doe

Medical Records Release: Template

Release Granting Permission to Access Medical Records and Related Information

I, [CLIENT], hereby declare that I have the authority to access the medical records and related information for my deceased [MOTHER, PARTNER, AUNT, ETC], [DECEDENT]. The Philadelphia Register of Wills issued Letters [TESTAMENTARY/OF ADMINISTRATION] to me on [DATE], naming me as the [EXECUTOR/ADMINISTRATOR] of [HIS/HER] estate. I have attached a copy of the Letters for your records.

I also hereby give my attorney, [ATTORNEY], permission to access the medical records and related information for my deceased [MOTHER, PARTNER, AUNT, ETC], [DECEDENT]. The purpose of this permission is for [ATTORNEY] to be able to gather information on my behalf related to:

- 1) [DECEDENT]'s primary diagnosis, *and*
- 2) whether [DECEDENT] would have needed, at a minimum, intermediate care in a nursing facility if I had not provided care to [HIM/HER] in [HIS/HER] for at least two (2) years while she received home- and community-based services.

Once [ATTORNEY] receives this information, [HE/SHE] intends to transmit it on my behalf to the Pennsylvania Department of Human Services in regards to a claim they hold against my [MOTHER, PARTNER, AUNT, ETC] estate for services rendered to [HIM/HER] under the Medical Assistance program.

Should you have any questions or concerns regarding this release, you can contact me at [CLIENT NUMBER], or my attorney [ATTORNEY], at [ATTORNEY NUMBER]. Thank you for your assistance and cooperation in this matter.

[CLIENT SIGNATURE]
[CLIENT NAME]

Date

Medical Records Release: Example

Release Granting Permission to Access Medical Records and Related Information

I, Jane Doe, hereby declare that I have the authority to access the medical records and related information for my deceased father, John Doe. The Philadelphia Register of Wills issued Letters of Administration to me on May 14, 2018, naming me as the Administrator of his estate. I have attached a copy of the Letters for your records.

I also hereby give my attorney, Saul Goodman, permission to access the medical records and related information for my deceased father, John Doe. The purpose of this permission is for Saul Goodman to be able to gather information on my behalf related to:

- 1) John Doe's primary diagnosis, *and*
- 2) whether John Doe would have needed, at a minimum, intermediate care in a nursing facility if I had not provided care to him in his home for at least two (2) years while he received home- and community-based services.

Once Saul Goodman receives this information, he intends to transmit it on my behalf to the Pennsylvania Department of Human Services in regards to a claim they hold against my father's estate for services rendered to him under the Medical Assistance program.

Should you have any questions or concerns regarding this release, you can contact me at (123) 456-7890, or my attorney Saul Goodman, at (215) 555-5555. Thank you for your assistance and cooperation in this matter.

Jane Doe

Jane Doe

Date

Step 3:

What to Do After Receiving a Decision on Your Client's Waiver Request

After sending a request for a waiver, you should receive a response by mail or e-mail from DHS. If you are still waiting for a response, you may call the DHS Estate Recovery Hotline (1-800-528-3708) to check on the status of your waiver.

If the Request for a Waiver Was Approved:

Congratulations! There is no further action needed regarding DHS, unless otherwise noted in the letter from DHS. Please have your client read this letter very carefully to make sure they fully understand the conditions of their waiver.

If the Request for a Waiver Was Denied:

If your client's request was denied, you are still able to apply for an appeal. Sending an appeal is a way of asking DHS to reconsider the request. You should carefully read the letter you received on behalf of your client to explain why the request was denied. Then, you may send a letter explaining why you still believe your client should qualify for an appeal. You should send your appeal letter to the following address:

Bureau of Hearings and Appeals
Department of Human Services
P.O. Box 2675
Harrisburg, PA 17105.

If the Appeal is Denied or You Do Not Send an Appeal:

Unfortunately, this likely means that your client is unable to qualify for a waiver. However, they may still be able to stay in the property. To do so, you will have to request a **postponement**. Please see page 23 on more information on how to request a postponement.

How to Request a Postponement or Payment Plan

If your client does not qualify for a waiver or the appeal is denied, you may request a postponement. This will allow your client to stay in the property for a set period of time, usually until they move out, sell the property, or die. However, **this does not remove DHS's claim against the property**. Before requesting a postponement, have your client seriously consider if a postponement will benefit them to do so. After getting a postponement, if your client tries to sell the property, transfer the property to anyone else, or move out of the property, DHS will come back to collect what it is owed. Additionally, even if your client never moves out of the home, their heirs will become responsible for the claim upon your client's death.

If you and your client decide to move forward requesting a postponement, you need to make sure your client meets **ONE** of the following requirements:

1. They are the spouse of the person who died owning the property;
2. They are the child of the person who died owning the property, and they are under the age of 21 (Note: DHS will continue with its claim when your client turns 21);
3. They are blind or totally and permanently disabled such that it prevents them from working (If your client receives Social Security Disability, this likely applies to them);
4. They already own a piece of the property at issue (for example, your client was on the deed with the person who died).

If any of the above apply to your client, you should call the number of the DHS employee who signed the estate recovery claim letter and tell them your client would like to request a postponement. Calling your client's assigned DHS representative directly may be quicker than sending a request by mail.

If you request a postponement and your client is denied, the final option is to enter into a payment plan with DHS. This will allow your client to stay in the property; however, DHS will put a lien on the house and your client will have to make regular payments to DHS. Have your client take time to consider if it makes more sense to sell the property. If your client decides they would like to enter into a payment plan, you should again contact the DHS employee who sent your client the statement of claim.

Step 4:

Wrapping Up

After completing all of the steps in this guide, your client should have received a letter from DHS outlining its final decision and the status of its claim. Review this letter carefully with your client to make sure there is nothing else they are required to do. You should call your client's DHS representative if you are not sure. Your client should keep this letter in a safe place in case they ever need to refer to it again; it is important proof of the final status of DHS's claim.

Now that you have addressed the property's DHS estate recovery claim, think about whether you need to take any more action regarding the property or estate of the decedent:

- 1. If your client is the administrator of the decedent's estate, is the entire probate process finished? Did your client distribute all of the property in the decedent's estate to the people who are entitled to a share?** There may be more steps you need to complete to wrap things up. Refer to the Philly VIP Probate Training Guide for more information. You may find a copy of this guide online in our Resource Library:
<https://www.phillyvip.org/volunteer/resources/>.
- 2. If your client qualified for a waiver, did you make sure to have a deed drafted to transfer ownership of the property?** This is an important step that protects your client's ownership of the property. For more information on drafting a deed, refer to the Philly VIP Probate Training Guide, which can be found online in our Resource Library.
- 3. If your client already properly transferred the property to themselves and any other heirs, did they pay all of the necessary taxes?** If your client inherited the home, you should fill out and complete a Pennsylvania inheritance tax return, even if your client does not owe anything. For more information on inheritance taxes, we recommend you refer to the Philly VIP Probate Training Guide, which can be found online at:
<https://www.phillyvip.org/probate-training-guide>.