

# 2015 MEDICAID ESTATE RECOVERY A 50 - STATE GUIDE

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by Michael Anthony, JD, CMP™

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A white outline map of the state of Alabama is centered on a dark blue background. The word "Alabama" is written in a white serif font across the middle of the state's outline.

# Alabama



# Alabama (AL)

<b>Governing Law:</b>	Alabama relies upon the federal statute for authority to conduct its estate-recovery program. The Alabama Medicaid Agency conducts its estate recovery pursuant to amendments made to its State Medicaid Plan. <sup>1</sup>
<b>Estate Scope:</b>	Alabama's estate recovery is limited to the assets in a patient's probate estate. However, the estate-recovery office also pursues recovery from the mandatory payback provisions contained in (d)(4)(A) special needs trust and (d)(4)(C) pooled trusts. <sup>2</sup> The state Medicaid agency must be notified within 30 days of the death of any Medicaid recipient that was in a nursing facility, intermediate care facility for people with intellectual disabilities or other medical institution, was were 55 years of age or older when the person received medical services covered by Medicaid, or was the disabled beneficiary of a special needs trust. If the personal representative of a probate estate makes a distribution – either in whole or in part – of the property of an estate before reimbursing Medicaid the personal representative may be held personally liable.
<b>Spousal Recovery:</b>	Recovery in Alabama is solely limited to the patient's probate assets and the state delays recovery if there is an exempt heir, nor does the state pursue recovery from any exempt heir's subsequent estate. <sup>3</sup>
<b>Liens:</b>	Alabama uses TEFRA liens to secure estate-recovery claims against the real property of the patient but not if any exempt person under federal law (e.g., spouse, minor child, etc.) is residing in the property. <sup>4</sup> A lien may be placed on the home, but the recovery will be delayed while the following persons are still living in the home: a sibling of the recipient who has an equity interest in the home and who was residing in the recipient's home for at least one year on a continuous basis immediately before the date that the recipient was institutionalized; or an adult child of the recipient who was residing in the recipient's home for at least two years on a continuous basis before the date that the recipient was institutionalized and who has established to the satisfaction of the Agency that he or she provided care that allowed the recipient to stay at home rather than to be institutionalized.

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<sup>1</sup> Alabama State Medicaid Plan.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> ALABAMA MEDICAID AGENCY ADMINISTRATIVE CODE, CHAPTER 560-X-33 RECOUPMENTS AND LIENS, .04(4).

<b>Partnership Program:</b>	<p>Alabama instituted a partnership program effective on March 1, 2009, called the “Qualified State Long-Term Care Insurance Partnership.” The partnership program was also incorporated by amendment in the State Medicaid Plan<sup>5</sup> and administrative code.<sup>6</sup> The Alabama Long-Term Care Insurance Partnership Program recognizes plans, called Partnership Plans, which provide asset protection in the event the policy owner uses up the policy benefits and needs to seek continued benefits through Medicaid. Partnership Policies must include annual compound inflation protection for individuals under age 61 and some form of inflation protection for individuals ages 61-76. An amount of the policyholder’s assets equal to the dollar amount of long-term care insurance benefits paid under a qualified Partnership Policy are disregarded on a dollar-for-dollar basis for the purpose of determining eligibility and estate recovery for Medicaid. In order for a policy to qualify as a Partnership Policy, it must, among other requirements: be issued to an individual on or after March 1, 2009 (however, pre-existing policies were allowed to be exchanged for partnership policies); cover an individual who was an Alabama resident when coverage first becomes effective under the policy; be a tax-qualified policy under Section 7702(B)(b) of the Internal Revenue Code of 1986; meet stringent consumer protection standards; and meet the inflation requirements detailed above. The Alabama Partnership Program recognizes policies from other states Long-Term Care Partnership Programs.<sup>7</sup></p>
<b>Hardship Waiver:</b>	<p>Alabama provides a hardship waiver consistent with the federal statute and HHS guidelines. The Alabama Medicaid Recovery agency will allow a hardship exemption (called a waiver) if either of the following is true: an inheritor’s household assets do not exceed \$10,000, and the inheritor’s annual household income is less than twice the federal poverty level (FPL). (In 2014, the FPL is \$11,670 for a single person or \$23,850 for a family of four. You can find current FPL amounts on the federal Health and Human Services website.); or the estate property has been the site of a family ranch, farm, or other family business for at least a year before your death, and that business is the primary source of an inheritor’s income. To procure a waiver, any affected heir or devisee must apply with the Alabama State Medicaid Agency’s Office of Estate Recovery at P.O. Box 166709, Irving, TX 75016, 855-543-8395.</p>

<sup>5</sup> Ibid.

<sup>6</sup> ALABAMA MEDICAID AGENCY ADMINISTRATIVE CODE CHAPTER 560-X-25

<sup>7</sup> State of Alabama Department of Insurance, Alabama Long-Term Care Partnership Program Bulletin No. 2009-01, dated February 12, 2009.





# *Estate Recovery*

***Estate Recovery in all state Medicaid programs became mandatory under the federal government Omnibus Budget Reconciliation Act of 1993.***

## **Estate Recovery applies to Alabama Medicaid recipients who at the time of death:**

- ◆ were in a nursing facility, intermediate care facility for people with intellectual disabilities or other medical institution
- ◆ were 55 years of age or older when the person received medical services covered by Medicaid
- ◆ had a special needs trust



## **What makes up an “estate” in estate recovery?**

The definition of an estate is “all real and personal property and other assets as defined by Alabama probate law.” Assets can include: real property (homes and land), bank accounts (checking, savings and Certificates of Deposit), vehicles (cars, trucks and boats), cash, and personal property.

## **How much can be recovered by the Alabama Medicaid Agency?**

Unless a federal exemption or undue hardship exists, the Estate Recovery Program can recover up to the total amount spent by Medicaid on the recipient’s behalf.

## **When must Alabama Medicaid be notified?**

The Agency must be notified within 30 days of the death of the Medicaid recipient. If the personal representative of an estate makes a distribution either in whole or in part of the property of an estate before reimbursing Medicaid the personal representative may be held personally liable.

### **Hardship Criteria**

The following criteria determine if an undue hardship exists:

- ◆ The household assets of the heir do not exceed \$10,000 and the total household income of the heir is less than 200% of the poverty level.
- ◆ The estate property has been the site of a family business, farm, or ranch for at least 12 months before the death of the recipient; is the primary income-producing asset of the heirs; produces 50% or more of their livelihood; and recovery by the state would result in the heirs losing their primary source of income.



## Estate Recovery (continued)

### Delayed Recovery

Under certain conditions the Alabama Medicaid Agency will postpone the recovery process.

#### Recovery is delayed if:

- ◆ The deceased recipient's spouse is still living
- ◆ The deceased recipient has a living child under the age of 21
- ◆ The deceased recipient has a living child of any age who is blind or permanently and totally disabled pursuant to Title XIX of the Social Security Act

A lien may be placed on the home, but the recovery will be delayed while the following persons are still living in the home:

- ◆ A sibling of the recipient who has an equity interest in the home and who was residing in the recipient's home for at least one year on a continuous basis immediately before the date that the recipient was institutionalized
- ◆ An adult child of the recipient who was residing in the recipient's home for at least two years on a continuous basis before the date that the recipient was institutionalized and who has established to the satisfaction of the Agency that he or she provided care that allowed the recipient to stay at home rather than to be institutionalized

### Have questions or need to know more about Medicaid Estate Recovery?



**Call:** 1-855-543-8395



**Email:** [ala\\_estaterecovery@hms.com](mailto:ala_estaterecovery@hms.com)



**Write:** Alabama Medicaid Agency  
Estate Recovery Unit  
PO Box 166709  
Irving, TX 75016





<<Project Address>> | <<Project City, State ZIP>> | Telephone <<Project Phone>> | Fax <<Project Fax>>

<<Date>>

<<Contact\_First\_Name>> <<Contact\_Last\_Name>>  
<<Org\_Name\_1>>  
<<Contact\_Address\_1>>  
<<Contact\_Address\_2>>  
<<Contact\_City>> <<Contact\_State>> <<Contact\_ZIP>>

RE: Estate of: << Recipient Name>>  
Date of Death: <<DOD>>  
MERP Case #: <<CaseID>>

<<Contact\_First\_Name>> <<Contact\_Last\_Name>>:

On behalf of the Alabama Medicaid Agency, we would like to express our sincere condolences for your recent loss. We recognize that this is a difficult time for you. We are required by law, however, to ask you for some information at this time.

### Medicaid Estate Recovery

Alabama Medicaid is required by federal and state law to recover, or be repaid, from the estates of certain Medicaid recipients for services or care that Medicaid paid for. Alabama Medicaid has contracted with Health Management Systems, Inc., to recover these funds.

Our records show the person named above received Medicaid services, the cost of which is due to Medicaid. As of the date of this letter, the total amount that Medicaid paid is \$<<Total Lien>>. These costs may only be recovered from the estate of the person named above. Also, the amount paid to Medicaid cannot be more than the total value of the estate's assets. This amount is not final and may change.

**Please note the State's claim is against the estate of the decedent and not the personal representative, family members, or heirs.**

### Exemptions

In some cases, the law allows Alabama Medicaid to postpone or release its claim on the estate if there is a surviving spouse or an exempt child. To find out if this applies to this estate, please fill out and return the attached form within two weeks from the date on this letter. **The form must be completely filled out and sent to the address or fax number above.**

### Hardship Waiver

If an heir can show that collection of the state's claim would result in an undue hardship, Alabama Medicaid may waive or release the claim. To apply for a hardship waiver, please call our office for an application. Applications must be turned in to our office **no later than 60 days** from the date of this notice. Applications received after the 60-day period will not be reviewed. If no exemptions or approved hardship conditions exist, the State will pursue collection.

Undue hardship does not include the inability of any of the beneficiaries to maintain a pre-existing lifestyle, or if the alleged hardship is the result of Medicaid or estate planning methods involving disposal of assets.

Please know that you received this notice because our records show you as the primary, and perhaps only, contact for the person listed above. If this is not correct, please contact our office to give us the name and contact information of the person(s) in charge of the estate. We would appreciate you telling any family members or heirs who may be affected by this claim.

Please call us if you have any questions regarding this claim.

Sincerely,

HMS - Recovery Unit  
Contractor for Alabama Medicaid Agency

Enclosure

For more information about Alabama Medicaid Estate Recovery, go to  
[http://medicaid.alabama.gov/CONTENT/6.0\\_Providers/6.1\\_Benefit\\_Coordination.aspx](http://medicaid.alabama.gov/CONTENT/6.0_Providers/6.1_Benefit_Coordination.aspx)



**MEDICAID ESTATE RECOVERY PROGRAM**  
**QUESTIONNAIRE**

**1. MEDICAID MEMBER'S INFORMATION:**

Name: «Recipient\_First\_Name» «Recipient\_Last\_Name»  
Date of Death: «DOD»  
MERP Case #: <<HMS Case Number>>

**2. CLAIM EXEMPTIONS:**

**If any of the following apply, please check the corresponding box and provide the requested information.**

**Is there a surviving spouse?** If yes, please provide the below information along with a copy of the Deceased Member's Death Certificate. ☐ YES ☐ NO

Surviving Spouse Name: \_\_\_\_\_  
Surviving Spouse Address: \_\_\_\_\_  
Surviving Spouse City, State, Zip \_\_\_\_\_  
Surviving Spouse SSN: \_\_\_\_\_

**Is there a child under the age of 21, or surviving child of any age who became blind or permanently and totally disabled?** If yes, please provide the below information along with proof of age, relationship, and disability (Birth Certificate and Benefit Award Letter). ☐ YES ☐ NO

Individual's Name: \_\_\_\_\_  
Individual's Address: \_\_\_\_\_  
Individual's SSN: \_\_\_\_\_ Individual's DOB: \_\_\_\_\_

**3. ASSET INFORMATION:**

Did the decedent own a home or other real property at the time of death? If yes, please complete the asset information questions. You should attach additional pages if needed. ☐ YES ☐ NO

Property Address	Approximate Fair Market Value
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

Did the deceased have a bank account or other financial account? If yes, please complete the below and send a copy of a recent account statement. ☐ YES ☐ NO

Bank/Financial Institution Name	Account Number	Balance/Value if known
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

#### 4. ESTATE ADMINISTRATION

Did the decedent have a will? If yes and no statutory exemptions exist, please enclose a **COPY** of the will when you return this questionnaire. ☐ YES ☐ NO

Has there been or do you anticipate any third party lawsuits filed on behalf of this Estate? ☐ YES ☐ NO

Has there been (or will there be) a petition for probate of the estate filed? ☐ YES ☐ NO

Has there been or do you anticipate any filings affecting the decedent's estate by affidavit or other estate proceedings? ☐ YES ☐ NO

If yes to any of the above, please complete the following information:

Case Number \_\_\_\_\_ Date filed: \_\_\_\_\_ County Court: \_\_\_\_\_

#### 5. OTHER INFORMATION

If there are additional circumstances and/or information related to this claim, please include this information in the following section or provide attachments:

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#### 6. CONTACT INFORMATION: ☐ Attorney ☐ Personal Representative ☐ Guardian ☐ Other

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

#### 7. PREPARER'S INFORMATION (If different than question 6):

Preparer Name: \_\_\_\_\_

Preparer Signature: \_\_\_\_\_

Date Prepared: \_\_\_\_\_ Phone: \_\_\_\_\_

Please complete and return this form to:

**HMS AL MERP Recovery Unit**

<<Project Address1>>

<<Project Address2>>

<<Project City, State ZIP>>

Telephone <<Project Phone>> Fax <<Project Fax>>

Section 1917 of the Social Security Act, 42 U.S.C. 1396p, authorizes Medicaid to take liens on properties of Medicaid applicants/recipients when eligibility criteria, policies and regulations permit.

Liens are taken by the Agency's District Office staff at the time of application or when a change occurs requiring a lien to be taken. The original liens are sent, with supporting documentation, to the Liens Office in Montgomery. The Liens staff is responsible for filing, executing, and releasing the liens held by the Alabama Medicaid Agency.

#### THE LIEN IS AN OPTION

The signing of the lien enables an applicant/recipient to become eligible for Nursing Home Medicaid, Hospital Medicaid or in an Intermediate Care Facility for the Mentally Retarded, even if the value of the property exceeds the resource limits for the program; and as long as the property can be excluded as a resource due to: a dependent relative living in the homestead property, the applicant/recipient intends to return home, there is a bona fide effort to sell the property, or one of the other property exclusions. Without the lien, the applicant or his family would have to pay for his/her medical assistance OR he would have to sell the property, spend down the money, and reapply.

Signing a Lien to Medicaid does not necessarily mean that an applicant will lose his property.

A recipient can stay in the nursing home for 2 months or 2 years, go back home, stay there for the requisite amount of time, and Medicaid will release its lien.

Medicaid does not always take a lien against the property. We do not take a lien if:

- A spouse is living in the home;
- If a child under 21 or one who is blind or totally, medically disabled lives in the home;
- If a sibling, with an equity interest in the home, was residing there for one year before the person was admitted to a nursing home; OR
- If the applicant/recipient owns a life estate interest in the property.

When the lien is recorded, it appears in the chain of title like any other lien, mortgage or judgment filed against the property. Liens remain active until further action is taken. When a lien is held by Medicaid, the Agency becomes a creditor, not an owner of the property. Responsibility for the property remains with the owner or the heirs.

#### DETERMINING LIEN AMOUNTS AND NOTIFICATION

- Medicaid notifies the appropriate individual in writing regarding the amount needed to satisfy the lien by calculating total medical charges expended by Medicaid during the eligibility period, and determining current property value.
- Medicaid must be reimbursed the amount expended on behalf of the recipient or the current tax appraised value of the property, whichever is less.
- If the property sells for more than the tax appraised value, Medicaid is entitled to all proceeds (minus reasonable closing costs) up to the amount paid in benefits for the recipient.
- If property cannot be sold at the tax appraised value, families can appeal the figure to the County Board of Equalization for the TAV to be lowered, or hire a licensed appraiser for a new appraisal of the property.

#### OPTIONS FOR SATISFYING MEDICAID'S LIEN

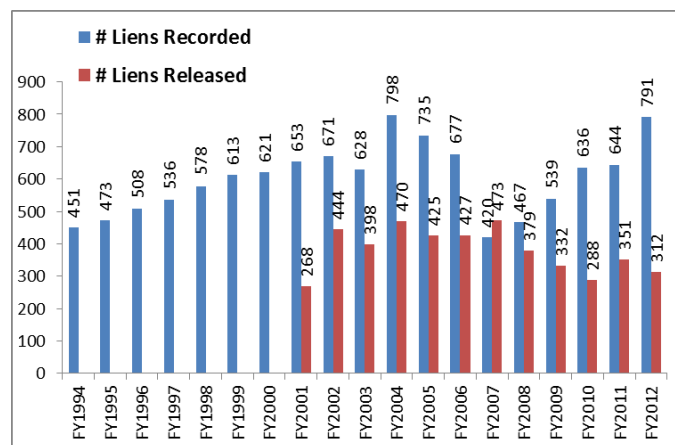
- Pay amount in full
- Sell property and pay amount due
- Sign Promissory Note and make payments (24 months at 12 % interest)
- Risk foreclosure (historically not done because the process is expensive and time-consuming)

When Medicaid receives the amount necessary to satisfy the lien, the Agency executes a Lien Release and forwards it to the individual who remits the funds to Medicaid.

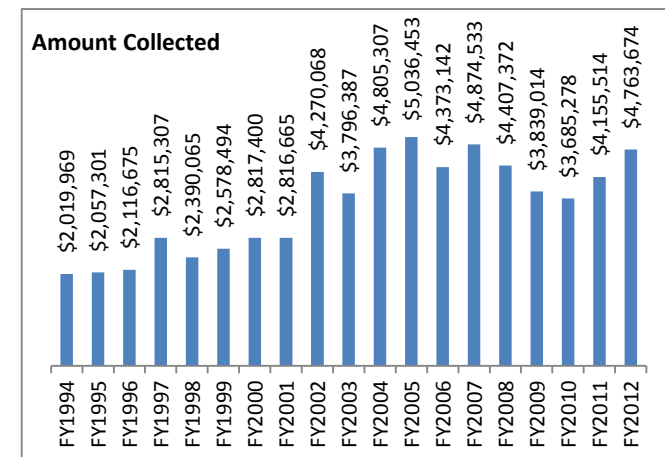
#### PROGRESS OF LIENS PROGRAM FY 1994 –2012

The chart below shows liens recorded from FY 1994 – FY 2012. Liens recorded have increased from 451 in 1994 to 791 in 2012.

The collections chart below reflects revenue recovered through Medicaid's property liens from 1994 through 2012 (\$2,019,969 - \$4,763,674).



\* No "Liens Released" data available for FY 1994 – FY2000





## **Liens and the Alabama Medicaid Program**

**When an applicant (or recipient) has excess resources or property, liens are an option that makes it possible for an applicant to qualify** for Medicaid's Nursing Home, Hospital or ICF/MR (Intermediate Care Facility for the Mentally Retarded) programs with minimal delay. Without the lien, the applicant or his/her family would have to pay for the applicant's medical care or sell the property and spend the money for the applicant's care until funds are exhausted and then reapply for Medicaid.

Medicaid must be reimbursed the amount expended in benefits on behalf of the recipient or the current taxed appraised value of the property, whichever is less. However, if the property sells for more than the tax appraised value, Medicaid is entitled to the entire proceeds (minus reasonable closing costs) up to the amount paid in benefits for the recipient.

**When applying for Medicaid in the Nursing Home, Hospital or Intermediate Care Facility for the Mentally Retarded, an applicant may not have more than \$2,000 in resources (assets) on the first day of the month.** Resources include cash, savings accounts, mineral and timber rights, mortgages, mutual funds, stocks and bonds, CDs and annuities, real estate, promissory notes or loans.

**Some resources are not counted.** These include: household goods and personal effects, life insurance with total combined face value of \$5,000 or less, or a burial fund or contract valued no more than \$5,000, burial space items (e.g. casket, vault, plot, marker and opening/closing fees excluded from total), one automobile, if used by the household member, and certain excluded property.

Property is not counted as a resource when the applicant intends to return home from the medical institution, when a bona fide effort is being made to sell the property, if a spouse, other dependent relative, or joint owner is living on the property, if the property (valued at less than \$6,000) is income producing, or if the property interest is a life estate.

**Signing a lien in favor of Medicaid does not necessarily mean that an applicant will lose his property.** A person can reside in a long-term care facility for two months or two years, return home and live there for the requisite amount of time, and Medicaid will release its lien. However, if the recipient (or applicant) returns to a nursing facility, Medicaid would have to take another lien.

**When a lien is held by Medicaid, Medicaid becomes a creditor, not an owner of the property.** This means that the property is still under the control of the owner (or his/her heirs) who is responsible for its upkeep, taxes and other responsibilities of ownership.

**Medicaid does not always take a lien against a property.** A lien is not taken if a spouse is living in the home, a child under 21 or one who is blind or medically disabled lives in the home, a sibling with an equity interest in the property was residing in the home for at least one year before the person was admitted to a nursing home, or if the applicant/recipient owns a life estate in the property.

**When attempting to recover a portion (or all, in some cases) of Medicaid's expenditures, the Agency's policies require the lesser of the amount Medicaid spent on the recipient or the tax appraised value of the property less reasonable closing costs.** If the sponsor feels that the property is overpriced, generally based on the condition of the structure, he/she can

appeal the figure to the County Board of Equalization or hire a licensed appraiser to reappraise the property. Once Medicaid receives a copy of the new appraisal, an acceptable and more accurate amount may be negotiated.

**Properties on which Medicaid holds liens**

Medicaid does not maintain a list of homes or properties that are offered for sale nor does the Agency seize properties and put them up for sale. Properties encumbered by Medicaid liens are not always available for sale. Medicaid policies and individual circumstances determine whether or not a parcel of property will be marketed for sale. For example, a qualified family member may reside in the home or the Medicaid beneficiary may intend to return home after a period of rehabilitation.

**At the point in time that a lien becomes due and payable, which occurs upon the death of the recipient (and spouse, if there is one) or the sale/disposition of the property, Medicaid has the authority to force a sale of the property.** However, since Medicaid is not a mortgage company and foreclosure transactions are lengthy and time-consuming, Agency staff prefer to work with the families of recipients and allow ample time for them to satisfy the lien or sell the property and pay the amount due.

The Agency often receives inquiries regarding the sale of specific parcels of property that would qualify for foreclosure. Some individuals are interested in obtaining property through the purchase of Medicaid's lien. In such cases, Medicaid reduces the amount of the lien to cover the cost of foreclosure expenses. The Agency advises interested parties to consult an attorney before making a decision to purchase our lien.

Liens are managed by the Agency's Third Party Division. In FY12, a total of 8,423 liens were in force.

**For more information about Medicaid's Liens Program:** Go to [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov) to view Chapter 33 - Recoupments and Liens; also access to Social Security Act §1917 [42 U.S.C. 1396P] (a)(1).

## **The Alabama Long-Term Care Insurance Partnership Program**

### **What is the Alabama Long-Term Care Insurance Partnership Program (“Partnership Program”)?**

The Partnership Program has been set up by the Alabama Department of Insurance and the Alabama Medicaid Agency to help you protect your assets if you need to apply for nursing home benefits through Medicaid.

When you purchase a Partnership Program policy, certain assets are protected. This means Medicaid will not have to count them if you need to apply for Medicaid in the nursing home.

### **What is Long-Term Care (LTC)?**

Long-term care is care needed by people of any age who cannot care for themselves. This could be due to an illness such as Alzheimer’s disease, or because you cannot do things on your own such as dressing, eating and bathing. In some cases, long term care is needed because of a serious illness or injury. Most of the time, long-term care means nursing home care. Long term care can also be provided in an assisted living facility, in the community or even at home.

Many people believe that Medicaid and Medicare will pay for long-term care. This is not always true. Medicare and Medicaid may provide some limited long-term care benefits if you qualify for one or both. However, you are responsible for your long-term care costs. You do this by buying a long-term care insurance policy to cover some or all of the cost, by paying for care out of your pocket with your assets, or by depending on a family member to provide your long-term care.

### **What is a Partnership Policy?**

Partnership Policies look like regular long-term care insurance policies except they must include inflation protection to keep up with the rising cost of long-term care services, and asset protection, also known as asset disregard.

This means that when you apply for Medicaid in the nursing home, Medicaid will not count the amount paid for a qualified partnership policy as an asset. All other Medicaid eligibility requirements will apply.

Only these policies which have been certified by the Alabama Department of Insurance as Partnership Policies qualify as a Partnership Policy.



### **If I get a Partnership Policy, does that mean I am qualified for Medicaid?**

No, the purchase of a Partnership Policy does not automatically qualify you for Medicaid.

### **What are the Requirements for a Partnership Policy?**

In order for a policy to qualify as a Partnership Policy, it must, among other requirements:

- be issued to an individual on or after March 1, 2009;
- cover an individual who was an Alabama resident when coverage first becomes effective under the policy;
- be a tax-qualified policy under Section 7702(B)(b) of the Internal Revenue Code of 1986;
- meet stringent consumer protection standards; and
- meet the following inflation requirements:
  - For ages 60 or younger – provides compound annual inflation protection
  - For ages 61 thru 75 - provides some level of inflation protection
  - For ages 76 and older – no purchase of inflation protection is required

### **What Could Disqualify a Policy as a Partnership Policy?**

If you buy a Partnership Policy and later decide to make any changes, you should first check with your insurance company to determine what the change will do to your Partnership Policy.

### **What happens to my Partnership Policy if I move to another state?**

If you move to a state that **does not** have a Partnership Program or does not recognize your policy as a Partnership Policy, you would not receive beneficial treatment of your policy under the Medicaid program of that state. If you move to a state that **does** have a Partnership Program, you should check with that state's Medicaid Agency to be sure that your Alabama LTC Partnership Policy will be accepted and what the asset disregard will be.

### **Will Partnership Policies issued in other states with Partnership Policies be accepted in Alabama?**

Yes, the Alabama Partnership Program will recognize policies from other states' Long-Term Care Partnership Programs. You will need to check with the Alabama Medicaid Agency to be sure that your asset disregard will be the same.

**I have a Long Term Care Policy that is not a Partnership Policy. Can I exchange my current policy for a Partnership Policy?**

A Partnership Policy cannot be issued in Alabama until March 1, 2009 or later. The issue date is the effective date of coverage under the policy. A non-partnership long-term care policy may be exchanged for a Partnership Policy. Before doing this, you should contact your insurance company to find out what needs to be done to exchange the policies.

Remember that if you decide to exchange your current policy for a Partnership Policy, you may be subject to new requirements to get the policy and the premium for the new policy may be higher than what you pay now.

**For Information regarding Medicaid eligibility and other questions contact:**

Alabama Medicaid Agency  
501 Dexter Avenue  
Montgomery, Alabama 36104  
Telephone: 1-800-362-1504  
Web site: [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov)



BOB RILEY  
GOVERNOR

STATE OF ALABAMA  
DEPARTMENT OF INSURANCE  
201 MONROE STREET, SUITE 1700  
POST OFFICE BOX 303351  
MONTGOMERY, ALABAMA 36130-3351  
TELEPHONE: (334) 269-3550  
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GENERAL COUNSEL  
REYN NORMAN  
RECEIVER  
DENISE B. AZAR  
LICENSING MANAGER  
JIMMY W. GUNN

**BULLETIN**

TO: All Life and Health Insurance Companies and  
Continuing Education Providers

FROM: Jim L. Ridling *JLR*  
Commissioner of Insurance

DATE: February 12, 2009

RE: Guidance on the Implementation of the  
Alabama Long-Term Care Partnership Program  
Bulletin No. 2009-01

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**Background and Purpose**

The purpose of this bulletin is to provide guidance regarding the implementation of the Alabama Long-Term Care Insurance Partnership Program.

The Partnership program operates under the direction of the Alabama Medicaid Agency in consultation with the Alabama Department of Insurance and these guidelines have been jointly issued by these departments. Federal enabling legislation pertaining to Long-Term Care Insurance Partnership Program is set forth in the Deficit Reduction Act of 2005, Pub. L. 109-171 (the "DRA"), and implementing procedures are described in guidance issued by the Centers for Medicare and Medicaid Services ("CMS"). See State Medicaid Director's Letter (SMDL #06-019) dated July 27, 2006, issued by CMS.

Under the Alabama Long-Term Care Partnership Program, individuals who purchase long-term care insurance policies that meet certain requirements specified by the DRA ("Partnership Policies") can apply for Medicaid under special rules for determining financial eligibility and estate recoveries. (In the case of group insurance, each certificate that meets the DRA's requirements constitutes a Partnership Policy.) These special rules generally allow the individual to protect assets equal to the insurance benefits received from a Partnership Policy so that such assets will not be taken into account in determining financial eligibility for Medicaid and will not subsequently be subject to Medicaid liens and recoveries.

The Alabama Long-Term Care Partnership Program is effective on March 1, 2009.

- A. Asset Protection Provided.** Under the Alabama Long-Term Care Partnership Program, the asset eligibility, adjustment, and recovery provisions of the Alabama Medicaid plan are applied by disregarding an amount of assets, above and beyond the asset disregard or allowance otherwise provided under the Medicaid plan, equal to the amount of insurance benefits received from a Partnership Policy. (This disregard of assets is referred to herein as the "Asset Disregard.")

The Asset Disregard applies to all insurance benefits received from a Partnership Policy. Thus, for example, the Asset Disregard applies to insurance benefits paid on a reimbursement of LTC expenses basis, as well as benefits paid on a "per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate" (within the meaning of section 7702B(b)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)(2)(A))). Similarly, the Asset Disregard applies to all insurance benefits received from a Partnership Policy regardless of whether such insurance benefits are in respect of costs for long-term care that would not be covered by Medicaid. The Asset Disregard as of the month of Medicaid application equals the insurance benefits that have been received to that date from a Partnership Policy, even if additional insurance benefits may be received in the future from such Partnership Policy.

If a policy is received after the effective date of the Alabama Long-Term Care Partnership Program in exchange for a policy issued before such date, and the new policy qualifies as a Partnership Policy, the Asset Disregard will apply only with respect to insurance benefits received under such new Partnership Policy and thus will not include insurance benefits, if any, received under the predecessor policy.

Partnership Policies that cover more than one insured are treated as separate Partnership Policies, each of which covers a single insured. With respect to each such insured, the Asset Disregard equals the insurance benefits received from the Partnership Policy on account of such insured having become a chronically ill individual (within the meaning of section 7702B(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(c)(2))).

The Asset Disregard does not include return of premium payments made upon the termination of a Partnership Policy (due to cancellation or death) since such payments do not represent insurance benefits.

Eligibility for benefits under Medicaid is subject to other eligibility requirements, such as applicable income limitations, home equity limitations and other applicable resource limitations.



**B. Partnership Policies.** A Partnership Policy is a long-term care insurance policy (including a certificate issued under a group insurance contract) that satisfies all of the following requirements:

- 1. Qualified under Federal tax law.** The policy must be a qualified long-term care Insurance contract, as defined in section 7702B(b) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)). Thus, a qualified long-term care insurance contract that provides insurance benefits on a reimbursement, cash benefit basis, indemnity insurance basis, or on a “per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate,” within the meaning of section 7702B(b)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)(2)(A)), will be a Partnership Policy if it satisfies the DRA’s other requirements applicable to Partnership Policies, as described herein. Similarly, a long-term care insurance rider or other provision of an insurance contract (such as a rider to a life insurance contract or, after December 31, 2009, a rider to an annuity contract) that constitutes a qualified long-term care insurance contract under section 7702B(e) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(e)) will be a Partnership Policy if it satisfies the DRA’s other requirements applicable to Partnership Policies as described herein.
- 2. Issue date.** The policy must be issued not earlier than the effective date of the Alabama Long-Term Care Partnership Program. The issue date is the effective date of coverage under the policy. Thus, for example, in the case of a certificate issued under a group insurance contract, the effective date of coverage with respect to such certificate is the issue date of the certificate.

A non-partnership long-term care policy may be exchanged for a Partnership Policy. The Partnership Policy is treated as newly issued and thus is eligible for Partnership Policy status. Be advised that if an exchange occurs, the new Partnership Policy may be subject to underwriting criteria and the premium for the policy may be increased as opposed to the previously issued long-term care policy. The addition of a rider, endorsement, or change in schedule page, for the purpose of meeting Long-Term Care Partnership requirements, for a policy issued prior to the effective date of the Alabama Long-Term Care Partnership Program, may be treated as giving rise to an exchange. The policy is then treated as newly issued and thus is eligible for Partnership Policy status.

- 3. State of residence.** The policy must cover an insured who was a resident of Alabama when coverage first became effective under the policy. In the case of an exchange, this requirement shall be applied based on the coverage of the first long-term care insurance policy that was exchanged.

A certificate covering an insured who is a resident of Alabama may qualify as a Partnership Policy even if the situs of the group insurance contract under which such certificate is issued is in another State.

4. **Consumer protection requirements.** The Federal consumer protection requirements of section 1917(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)) must be met with respect to the policy. (*See also* the certification process with respect to this requirement described in C below.)
5. **Inflation protection.** With respect to inflation protection: (a) if the policy is sold to an individual who has not attained age 61 as of the date of purchase, the policy must provide compound annual inflation protection; (b) if the policy is sold to an individual who has attained age 61 but has not attained age 76 as of the date of purchase, the policy must provide some level of inflation protection; and (c) if the policy is sold to an individual who has attained age 76 as of the date of purchase, the policy may (but is not required to) provide some level of inflation protection.

In order for coverage to meet the requirements of (a) above, the required inflation protection shall:

- provide automatic annual compounded inflation increases at a rate not less than three percent (3%); or
- provide automatic annual compounded inflation increases at a rate based on changes in the consumer price index. "Consumer price index" means consumer price index for all urban consumers, U.S. city average, all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

Future purchase offers do not meet the inflation requirements for under age 76.

The following inflation features meet the requirements of (b) above:

- an inflation feature that meets the requirements of (a); or
- an automatic inflation feature that provides annual simple inflation increases (not compounded) at a rate not less than three percent (3%).

The Alabama Insurance Commissioner may also approve an alternative inflation method (including an alternative index) so long as such method is submitted to the Department with an explanation and demonstration as to how the alternative method provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. No alternative method may be used until the Commissioner has approved such method.

For purposes of applying this inflation requirement, the date of purchase means the effective date of coverage under the policy. Thus, for example, the date of

purchase of a certificate issued under a group insurance contract means the effective date of coverage under such certificate. In the case of an exchange, the date of purchase is the effective date of coverage under the new policy, *i.e.*, the determination is made without regard to any predecessor policy. If the insured and the policyholder or certificateholder under a policy are different, the insured should be considered the individual to whom a policy is sold for purposes of applying the inflation protection requirements.

- C. Certification Process.** Pursuant to section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), a long-term care insurance policy shall be deemed to meet the consumer protection requirements of section 1917(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)) if the plan amendment provides that the Alabama Insurance Commissioner certifies, in a manner satisfactory to the Secretary of the U.S. Department of Health & Human Services (the “Secretary”), that the policy meets such requirements. In addition, the State Medicaid Director’s Letter (SMDL #06-019) dated July 27, 2006, issued by CMS, provides that the Alabama Insurance Commissioner must certify that a policy meets these consumer protection requirements in order for a policy to be a Partnership Policy.

In accordance with the safe harbor procedure specified in section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)) and subject to any guidance from the Secretary that may be issued providing otherwise, policies shall be considered certified pursuant to section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)) and therefore will be deemed to meet such consumer protection requirements if the issuer: (i) identifies the policy forms on which such policies are issued, and (ii) certifies that the consumer protection requirements of section 1917(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)) are met by such policies. An issuer’s identification and certification of policies must be made to the Alabama Insurance Commissioner using the “Issuer Certification Form” attached as Attachment B. As appropriate, the Alabama Insurance Commissioner shall, in turn, certify to the Secretary the compliance of such policies with such consumer protection requirements using the “Alabama Certification Form” attached as Attachment A.

Issuers requesting to make use of a previously approved policy form as a Partnership Policy shall submit to the Commissioner the “Issuer Certification Form” referenced directly above. This form shall be required for each policy form submitted for partnership qualification.

An issuer and the Alabama Insurance Commissioner may submit supplemental Issuer Certification Forms and State Certification Forms, respectively, that identify additional policy forms on which policies are issued that satisfy the consumer protection requirements of section 1917(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)). Copies of the Alabama Insurance Commissioner’s certifications to the Secretary shall be provided to the Alabama Medicaid Agency and the issuer of the policies subject to such certification.

If there is a change made by the Secretary, pursuant to section 1917(b)(5)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5)(C)), in the provisions of the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Regulation that apply to new policies covered by Partnerships, appropriate modifications will be made to the Issuer Certification Form to reflect the new requirements.

**D. Partnership Disclosure Requirements:**

- **Notice of Partnership Program.** An issuer or its producer, soliciting or offering to sell a policy that is intended to qualify as a Partnership Policy, shall provide to each prospective applicant a "Partnership Program Notice", attached as Attachment C, outlining the requirements and benefits of a Partnership Policy. A similar notice may be used for this purpose if filed and approved by the Alabama Insurance Commissioner. The Partnership Program Notice shall be provided with the required Outline of Coverage.
- **Notice of Partnership Policy Status.** A Partnership Policy issued or issued for delivery in Alabama shall be accompanied by the "Partnership Status Disclosure Notice," attached as Attachment D, explaining the benefits associated with a Partnership Policy and indicating that at the time issued, the policy is a Partnership Policy. A similar notice may be used if filed and approved by the Alabama Insurance Commissioner. In the case of a group insurance contract, such Notice must be provided to the insured under a certificate upon the issuance of the certificate. In determining whether to provide this Notice with respect to a policy, the issuer of the policy may rely upon a statement by the policyholder, certificateholder or insured that the insured is a resident of Alabama.

**E. Limitation on Partnership Policy Specific Rules.** In accordance with section 1917(b)(1)(C)(iii)(VII) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VII)), apart from the requirements described in B above that are specified by the DRA, no requirement affecting the terms or benefits of a Partnership Policy may be imposed unless such requirement is imposed on long-term care insurance policies without regard to whether the policy is a Partnership Policy. This limitation does not affect Alabama's ability to generally regulate the terms and sale of long-term care insurance policies where Alabama imposes requirements without regard to whether policies are Partnership Policies.

**F. Interim Reporting Requirements.** Pursuant to section 1917(b)(1)(C)(iii)(VI) and (v) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI) and (v), respectively, issuers of Partnership Policies must provide regular reports to the Secretary in accordance with any regulations of the Secretary. Until the effective date of final regulations or other applicable guidance from the Secretary, issuers of policies must provide (a) notification



regarding when insurance benefits provided under Partnership Policies have been paid and the amount of such benefits paid, and (b) notification regarding when such policies terminate. Such notifications must be provided within 60 days of the end of each calendar year with respect to benefits paid and terminations during such year (or, in the case of terminations resulting from death, within the later of 60 days after the end of the calendar year of death or 120 days after notification of death has been received by the issuer of the policy). Reports should be sent to the Secretary and in particular to Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244. Pursuant to section 1917(b)(1)(C)(v) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(v)), the Secretary, as appropriate, will provide copies of the reports to Alabama.

Upon the issuance of guidance by the Secretary (including upon the issuance of guidance specifying a Federal uniform minimum data set) pursuant to section 1917(b)(1)(C)(iii)(VI), (v) and (vi)) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI), (v) and (vi)), appropriate modifications shall be made to these interim reporting requirements to reflect the availability of information from the Secretary.

As described above, Partnership Policies that cover more than one insured are treated as separate Partnership Policies, each of which covers a single insured. Thus, the reporting requirements described herein apply with respect to each such separate Partnership Policy.

- G. **Coordination Between Departments.** The Alabama Medicaid Agency must provide information and technical assistance to the Alabama Insurance Department on the insurance department's role of assuring that any individual who sells a Partnership Policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.
- H. **Reciprocity.** Pending the issuance of guidance by the Secretary pursuant to section 6021(b) of the DRA, the Alabama Long-Term Care Partnership Program shall provide reciprocity with respect to long-term care insurance policies covered under other state long-term care insurance partnerships (*i.e.*, Partnerships and Medicaid plan amendments approved as of May 14, 1993, providing for a long-term care insurance partnership).

With reciprocity, the amount of the Asset Disregard provided with respect to a policy purchased under the State long-term care insurance partnership of another State shall equal the Asset Disregard that would apply to a Partnership Policy covered directly by the Alabama Long-Term Care Partnership Program. Such reciprocity shall be provided to all States that maintain a State long-term care insurance partnership that provides similar reciprocity for Partnership Policies issued under the Alabama Long-Term Care Partnership Program. The provision of reciprocity under the Alabama Long-Term Care

Partnership Program does not affect eligibility requirements for Medicaid benefits that apply apart from those pertaining to permissible assets and resources.

After the issuance of guidance by the Secretary pursuant to section 6021(b) of the DRA, the Alabama Medicaid Agency, if it elects to be exempt from such standards, shall notify the Secretary in writing of such election within the period of time prescribed under such guidance.

- I. **Federal Long Term Care Insurance Program.** It is recognized that the enabling law for the creation of the Federal Long Term Care Insurance Program ("FLTCIP") set forth at 5 U.S.C. 9001-9009 provides for the preemption of state laws with respect to this program. Therefore, where the Director of the U.S. Office of Personnel Management has certified that a certificate issued pursuant to the FLTCIP meets the requirements of section 1917(b)(1)(C)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)), such certificate shall be deemed to qualify for the Asset Disregard.
- J. **Producer Training.** The DRA and the State Medicaid Director's Letter (SMDL #06-019) dated July 27, 2006, issued by Centers for Medicare & Medicaid Services, require the Alabama Insurance Commissioner to provide assurance that any producer who sells, solicits or negotiates "a policy under a Partnership receives training and demonstrates an understanding of Partnership policies and their relationship to public and private coverage to long-term care." Issuers are to maintain records, subject to the state's record retention requirements, that verify its producers who sell, solicit, or negotiate long-term care insurance products on their behalf have received the training required for Partnership policies and that they demonstrate an understanding of the policies and their relationship to public and private long-term care coverage.

**For More Information Contact:**

Alabama Department of Insurance  
201 Monroe Street, Suite 1700  
Montgomery, Alabama 36104  
Telephone: (334) 269-3550 or 1-800-433-3966  
Web site: [www.aldoi.gov](http://www.aldoi.gov)  
OR  
Alabama Medicaid Agency  
501 Dexter Avenue  
Montgomery, Alabama 36104  
Telephone: 1-800-362-1504  
Web site: [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov)

## **Attachment A**

### **ALABAMA STATE CERTIFICATION FORM**

(relating to Qualified State Long-Term Care Insurance Partnership)

Under section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the State Insurance Commissioner of a State implementing a qualified State long-term care insurance partnership ("Qualified Partnership") may certify that long-term care insurance policies (including certificates issued under a group insurance contract) covered under the Qualified Partnership meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. These consumer protection requirements are set forth in section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners ("NAIC") (as adopted as of October 2000) (referred to herein as the "2000 Model Regulation" and "2000 Model Act" respectively). (These requirements apply to policies covered under a Qualified Partnership even if the State has not adopted all of such requirements with respect to its regulation of long-term care insurance.)

This State Certification Form should be used by the State Insurance Commissioner to provide the certification under section 1917(b)(5)(B)(iii) of the Social Security Act. In providing this certification, the State Insurance Commissioner may reasonably rely upon the certification of issuers of the policies that is made in accordance with the Issuer Certification Form (see Attachment B). The Issuer Certification Form is not intended, however, to preclude the State Insurance Commissioner from requesting such further information from issuers of policies as the State Insurance Commissioner determines may be needed in order to reach a determination that such policies are in compliance with the provisions of the 2000 Model Regulation and 2000 Model Act that are applicable under section 1917(b)(5)(A) of the Social Security Act.

A State Insurance Commissioner may supplement its certification from time to time to include new policies that are certified.

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#### **I. POLICY FORMS COVERED BY CERTIFICATION**

The policies to which this certification applies are those issued on the policy forms identified on the attached Exhibit 1 that are intended to be covered by the Qualified Partnership. Once a certification is issued with respect to a policy form under this State Certification Form, such certification will continue to apply to policies issued on such form that are intended to be covered by the Qualified Partnership until such time that: (a) the State Insurance Commissioner revokes such certification, or (b) there is a change made by the U.S. Secretary of Health and Human Services (the "Secretary"), pursuant to section 1917(b)(5)(C) of the Social Security Act

(42 U.S.C. 1396p(b)(5)(C)), in the provisions of the NAIC's long-term care insurance models that apply to policies covered by the Qualified Partnership.

Any such change in requirements made pursuant to section 1917(b)(5)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5)(C)) shall apply prospectively only (or in accordance with any effective date rule promulgated by the Secretary in connection with such change), so that policies issued prior to such change will be unaffected, *i.e.*, they will continue to be deemed to satisfy the requirements of section 1917(b)(5)(A) of the Social Security Act. For example, if a new requirement is imposed under section 1917(b)(5)(C) of the Social Security Act and the Secretary specifies that such change will apply to policies issued after a certain date, then partnership policies issued on or prior to such date on policy forms covered by this State Certification Form will be treated as certified and will be unaffected by such new requirement. Also, if the policy form is covered by a new State Certification Form that reflects a change in the long-term care insurance model requirements and the new State Certification Form is made effective as of the effective date of such change, then partnership policies issued under such policy form after such date also will be treated as certified.

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## II. CERTIFICATION

I hereby certify that, to the best of my knowledge and belief, the partnership policies issued on the policy forms identified in Exhibit 1 to this State Certification Form comply with the requirements of section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)).

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Date

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Name of State Insurance Commissioner  
(or authorized delegate)

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Signature of State Insurance Commissioner  
(or authorized delegate)



**Attachment A: Exhibit 1**

**(to State Certification Form)**

**Issuer:** \_\_\_\_\_

**Policy forms covered by certification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issuer:** \_\_\_\_\_

**Policy forms covered by certification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issuer:** \_\_\_\_\_

**Policy forms covered by certification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issuer:** \_\_\_\_\_

**Policy forms covered by certification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issuer:** \_\_\_\_\_

**Policy forms covered by certification:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issuer:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## **Attachment B**

### **ISSUER CERTIFICATION FORM**

(relating to Qualified State Long-Term Care Insurance Partnership)

Under section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the State Insurance Commissioner of a State implementing a qualified State long-term care insurance partnership ("Qualified Partnership") may certify that long-term care insurance policies (including certificates issued under a group insurance contract) covered under the Qualified Partnership meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. These consumer protection requirements are set forth in section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) (referred to herein as the "2000 Model Regulation" and "2000 Model Act" respectively).

In order to provide each State Insurance Commissioner with information necessary to provide a certification for policies, this Issuer Certification Form requests information and a certification from issuers of long-term care insurance policies with respect to policy forms that may be covered under the Qualified Partnership of Alabama.

An insurance company may request certification of policies from time to time and, accordingly, may supplement this issuer certification for, *e.g.*, as it introduces new long-term care insurance policy forms for issuance.

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#### **I. GENERAL INFORMATION**

##### **A. Name, address and telephone number of issuer:**

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##### **B. Name, address, telephone number, and email address (if available) of an employee of issuer who will be the contact person for information relating to this form:**

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- C. Policy form number(s) (or other identifying information, such as certificate series) for policies covered by this Issuer Certification Form:

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Specimen copies of each of the above policy forms, including any riders and endorsements, shall be provided upon request.

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## II. QUESTIONS REGARDING APPLICABLE PROVISIONS OF THE 2000 MODEL REGULATION AND 2000 MODEL ACT

Please answer each of the questions below with respect to the policy identified in section I.C above. For purposes of answering the questions below, any provision of the 2000 Model Regulation or 2000 Model Act listed below shall be treated as including any other provision of the 2000 Model Regulation or 2000 Model Act necessary to implement the provision.

Are the following requirements of the 2000 Model Regulation met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership that are issued on each of the policy forms identified in section I.C above?

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ A. Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the 2000 Model Act relating to such section 6A.
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ B. Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ C. Section 6C (relating to extension of benefits).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ D. Section 6D (relating to continuation or conversion of coverage).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ E. Section 6E (relating to discontinuance and replacement of policies).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ F. Section 7 (relating to unintentional lapse).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ G. Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ H. Section 9 (relating to required disclosure of rating practices to consumer).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ I. Section 11 (relating to prohibitions against post-claims underwriting).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ J. Section 12 (relating to minimum standards).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ K. Section 14 (relating to application forms and replacement coverage).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ L. Section 15 (relating to reporting requirements).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ M. Section 22 (relating to filing requirements for marketing).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ N. Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ O. Section 24 (relating to suitability).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ P. Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ Q. The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in section 7702B(g)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(g)(4)).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ R. Section 29 (relating to standard format outline of coverage).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ S. Section 30 (relating to requirement to deliver shopper's guide).

Are the following requirements of the 2000 Model Act met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership that are issued on each of the policy forms identified in section I. C above?

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ A. Section 6C (relating to preexisting conditions).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ B. Section 6D (relating to prior hospitalization).
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ C. The provisions of section 8 relating to contingent nonforfeiture benefits.

Yes \_\_\_ No \_\_\_ N/A \_\_\_ D. Section 6F (relating to right to return).

Yes \_\_\_ No \_\_\_ N/A \_\_\_ E. Section 6G (relating to outline of coverage).

Yes \_\_\_ No \_\_\_ N/A \_\_\_ F. Section 6H (relating to requirements for certificates under group plans).

Yes \_\_\_ No \_\_\_ N/A \_\_\_ G. Section 6J (relating to policy summary).

Yes \_\_\_ No \_\_\_ N/A \_\_\_ H. Section 6K (relating to monthly reports on accelerated death benefits).

Yes \_\_\_ No \_\_\_ N/A \_\_\_ I. Section 7 (relating to incontestability period).

In order for a policy to be covered under the Qualified Partnership of Alabama, the answers to all questions above should be "Yes" (or "N/A" where all requirements with respect to a provision above are not applicable). If answers differ between policy forms (*e.g.*, a requirement would be answered "Yes" for one form and "N/A" for another), you should use separate Issuer Certification Forms for such policies.

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### III. CERTIFICATIONS:

1. I hereby certify that the answers, accompanying documents, and other information set forth herein are, to the best of my knowledge and belief, true, correct, and complete.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and title of Officer of the Issuer

\_\_\_\_\_  
Signature of Officer of the Issuer



## Attachment C

### **Partnership Program Notice Important Consumer Information Regarding the Alabama Long-Term Care Insurance Partnership Program**

Some long-term care insurance policies [certificates] sold in Alabama may qualify for the Alabama Long-Term Care Insurance Partnership Program (the Partnership Program). The Partnership Program is a partnership between state government and private insurance companies to assist individuals in planning their long-term care needs. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may protect the policyholder's [certificateholder's] assets through a feature known as "Asset Disregard" under Alabama's Medicaid program.

**Asset Disregard** means that an amount of the policyholder's [certificateholder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy [Certificate] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership Policy [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to persons whose home equity exceeds \$500,000. Asset Disregard is not available under a long-term care insurance policy [certificate] that is not a Partnership Policy [Certificate]. Therefore, you should consider if Asset Disregard is important to you, and whether a Partnership Policy meets your needs. ***The purchase of a Partnership Policy does not automatically qualify you for Medicaid.***

**What are the Requirements for a Partnership Policy [Certificate]?** In order for a policy [certificate] to qualify as a Partnership Policy [Certificate], it must, among other requirements:

- be issued to an individual after *{insert effective date of state partnership program}*;
- cover an individual who was an Alabama resident when coverage first becomes effective under the policy;
- to be a tax-qualified policy under Section 7702(B)(b) of the Internal Revenue Code of 1986;
- meet stringent consumer protection standards and
- meet the following inflation requirements:
  - For ages 60 or younger – provides compound annual inflation protection
  - For ages 61 thru 75 - provides some level of inflation protection
  - For ages 76 and older – no purchase of inflation protection is required

If you apply and are approved for long-term care insurance coverage, [carrier name] will provide you with written documentation as to whether or not your policy [certificate] qualifies as a Partnership Policy [Certificate].

**What Could Disqualify a Policy [Certificate] as a Partnership Policy.** Certain types of changes to a Partnership Policy [Certificate] could affect whether or not such policy [certificate] continues to be a Partnership Policy [Certificate]. If you purchase a Partnership Policy [Certificate] and later decide to make *any* changes, you should first consult with [carrier name] to determine the effect of a proposed change. In addition, if you move to a state that does not maintain a Partnership Program or does not recognize your policy [certificate] as a Partnership Policy [Certificate], you would not receive beneficial treatment of your policy [certificate] under the Medicaid program of that state. The information contained in this disclosure is based on current Alabama and Federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your policy [certificate] under Alabama's Medicaid program.

**Additional Information.** If you have questions regarding long-term care insurance policies [certificates] please contact [carrier name]. If you have questions regarding current laws governing Medicaid eligibility, you should contact the Alabama Medicaid Agency.

## **Attachment D**

### **Partnership Status Disclosure Notice**

#### **Important Information Regarding Your [Policy's] [Certificate's] Long-Term Care Insurance Partnership Status**

This disclosure notice is issued in conjunction with your long-term care policy:

Some long-term care insurance policies [certificates] sold in Alabama qualify for the Alabama Long-Term Care Insurance Partnership Program. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may be entitled to special treatment, and in particular an "Asset Disregard," under Alabama's Medicaid program.

**Asset Disregard** means that an amount of the policyholder's [certificateholder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy [Certificate] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership Policy [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to persons whose home equity exceeds \$[500,000]. Asset Disregard is **not** available under a long-term care insurance policy [certificate] that is not a Partnership Policy [Certificate]. **The purchase of a Partnership Policy does not automatically qualify you for Medicaid.**

**Partnership Policy [Certificate] Status.** Your long-term care insurance policy [certificate] is intended to qualify as a Partnership Policy [Certificate] under the *Alabama* Long-Term Care Partnership Program as of your Policy's [Certificate's] effective date.

**What Could Disqualify Your [Policy] [Certificate] as a Partnership Policy.** If you make any changes to your [policy] [certificate], such changes could affect whether your [policy] [certificate] continues to be a Partnership Policy. ***Before you make any changes, you should consult with [insert name of carrier] to determine the effect of a proposed change.*** When a policyholder requests a change to his or her policy that will result in the loss of partnership status, the insurer shall provide an explanation in writing of how such action impacts the insured. The policyholder shall also be advised how to retain partnership status if possible. If a partnership plan subsequently loses partnership status, the insurer shall explain to the policyholder in writing the reason for the loss of status. In addition, if you move to a State that does not maintain a Partnership Program or does not recognize your [policy] [certificate] as a Partnership Policy [Certificate], you would not receive beneficial treatment of your [policy] [certificate] under the Medicaid program of that State. The information contained in this Notice is based on current State and Federal laws. These laws may be subject to change. Any

change in law could reduce or eliminate the beneficial treatment of your [policy] [certificate] under Alabama's Medicaid program.

**Additional Information.** If you have questions regarding your insurance policy [certificate] please contact [insert name of carrier.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Alabama Medicaid Agency.

# Alaska

# Alaska (AK)

<b>Governing Law:</b>	Alaska's estate recovery law can be found in A.S. §47.07.055 and in the Alaska Administrative Code at 7 AAC 160.200 - 250.
<b>Estate Scope:</b>	Alaska does not officially adopt an expanded estate definition. After the Medicaid recipient dies, the department files a claim with the court when the recipient's estate is in probate. The department will pursue a claim only if it determines that the potential recovery amount would result in twice the administrative and legal cost of pursuing the claim, with a minimum pursuable net amount of \$10,000. In assessing the value of an estate, the department considers allowances and all other claims against the estate having precedence under state statute. When factoring in costs, the department is to look at the following costs: advertising, filing, and exercising a lien; legal representation of the state; tracking property with potential for a lien and then tracking its subsequent recovery; repair of the property to bring it into saleable condition; insurance to protect the asset; and advertising, listing, and selling the home including all applicable closing fees. <sup>1</sup>
<b>Partnership Program:</b>	Alaska does not operate a long-term care insurance partnership program nor does it give reciprocity to LTCIPP insurance policies from other states.
<b>Liens:</b>	Alaska uses TEFRA liens with the verbatim federal exclusions. A lien may not be filed under against an individual's home if the home is lawfully occupied by the individual's spouse; child under age 21; blind or disabled child <sup>2</sup> ; or sibling, if the sibling has an equity interest in the home and was residing in the home for at least one year before the date of the individual's admission to the institution. The state may not recover the costs of medical assistance under a lien on a home under until after the death of the individual's surviving spouse, if any, and only at a time when neither of the following is lawfully residing in the home: a sibling of the individual who was residing in the individual's home for a period of at least one year immediately preceding the date of the individual's institutionalization and who has continuously resided in the home since the institutionalization began; or a son or daughter of the individual who either resided in the home for at least two years immediately preceding the date of the individual's institutionalization or has continuously resided in the home since the institutionalization began and establishes to the department's satisfaction that the he or she provided care to the

<sup>1</sup> 7 AAC 160.210(c).

<sup>2</sup> As described in AS 47.25.615 (3) or (5) or 42 U.S.C. 1382(c).



individual that allowed the individual to reside in the home rather than in an institution. It is important to note that to prove such a waiver, the department requires the following documentation: written evidence that the child used the recipient's address as the child's mailing address on the child's driver's license or voter registration, and that the child's address remained unchanged throughout this entire time period; and a written statement from the recipient residing in a medical institution or the recipient's treating physician that the child's presence in the home had enabled the recipient to live in the community longer, postponing the need to move to the medical institution.<sup>3</sup> A lien and claim are extinguished if, during the individual's lifetime, the individual is discharged from the institution and returns home. However, a new lien and claim are authorized for subsequent expenses if covered care is provided after the individual returns home. A lien cannot be filed unless the Medicaid recipient has resided in a medical institution for at least one hundred twenty (120) consecutive days.<sup>4</sup>

**Recovery Scope:**

The probate estate of an individual who received medical- assistance payments is subject to a claim for recovery after the individual's death.<sup>5</sup> Other than recovery on the sale of a home, a claim can be made only after the death of the individual surviving spouse, if any, and only at a time when the individual has no surviving child under age 21 and no surviving child who is blind or totally and permanently disabled.<sup>6</sup> Estate recovery claims are treated as "debts with preference under the laws of the state."<sup>7</sup> Alaska probate code gives such debts priority in the fifth order of preference, behind administration, funeral, taxes, child support payments, and expenses of the last illness.<sup>8</sup>

**Hardship Waiver:**

The Department of Health and Social Services will carefully consider the effect estate recovery will have on the medical and financial condition of the Medicaid recipient's survivors. Waiver of recovery can be had in one of two ways, appealing a lien or requesting a hardship waiver.<sup>9</sup> After receiving a lien notice from the department, the recipient, legal representative of the recipient, or estate beneficiary may file an appeal of the lien with the department to: contest the amount of recoverable medical assistance identified by the department; contest whether the real property is a part of the recipient's estate; or request a waiver of recovery for undue

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<sup>3</sup> 7 AAC 160.220 (d).

<sup>4</sup> 7 AAC 160.220 (a).

<sup>5</sup> A.S. §47.07.055(a).

<sup>6</sup> A.S. §47.07.055(f).

<sup>7</sup> A.S. §47.07.055(g).

<sup>8</sup> A.S. §13.16.470(a).

<sup>9</sup> 7 AAC 160.230. Appealing a lien; 7 AAC 160.240. Waiving estate recovery.



hardship.<sup>10</sup> An appeal of a lien is considered timely if the department receives it no more than thirty (30) days after the date on the notice.<sup>11</sup> The department is allowed to accept an appeal received later than that – but no later than sixty (60) days – after the date on the notice if the individual demonstrates good cause for the late application.<sup>12</sup> Both an appeal and a request for hardship waiver must be submitted in writing; be signed by the recipient, legal representative of the recipient, or estate beneficiary; be submitted in person or by mail to the division of the department that administers the estate recovery provisions of the Medicaid program (see below); include a statement of the reason for contesting the department's action or explaining the reason why recovery will cause undue hardship; and include contact information for the person contesting the action.<sup>13</sup> The department must make a decision on a request for waiver for undue hardship no more than thirty (30) days after receipt of the request.<sup>14</sup> If the department decides that recovery would be burdensome to the family after considering a request for undue hardship, the estate may receive a hardship exemption, also known as a waiver if: the estate's only asset produces income, and taking that asset would cause an inheritor to lose his or her livelihood; estate recovery would deprive an inheritor of necessities of life to the extent that the inheritor's health and safety would be at risk; the estate's only significant asset is an inheritor's home, and recovery would make the inheritor eligible for public assistance, or unable to discontinue public assistance that could be turned down if the inheritor received the property; or an inheritor's home is of only "modest value," meaning that it is worth fifty percent (50%) or less of the average price of homes in the surrounding community.<sup>15</sup> To pursue hardship exemption, the person administering the estate or a potential inheritor should contact: Public Consulting Group, Inc. (PCG) at (907) 561-4455 or The State of Alaska, Department of Health and Social Services, Division of Health Care Services, Third Party Liability (TPL) Unit at (907) 334-2400.

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<sup>10</sup> 7 AAC 160.230(a)(1)-(3).

<sup>11</sup> 7 AAC 160.230(b).

<sup>12</sup> Ibid.

<sup>13</sup> 7 AAC 160.230(c).

<sup>14</sup> 7 AAC 160.230(d).

<sup>15</sup> 7 AAC 160.240(b).

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**Will the department consider my surviving family members before recovering from my estate?**

The department will carefully consider the effect estate recovery will have on the medical and financial condition of your survivors.

**I want to make sure my house stays in the family. Can I sell my house or give it away now to avoid Estate Recovery?**

You have the legal right to sell or give away your property. However, if you give away your property or sell it at less than fair market value, you could be penalized with a period of ineligibility for Medicaid. Before selling or giving away property it is best to contact your Division of Public Assistance caseworker who can explain the policy regarding transfer of asset penalties. It may also be beneficial to contact an attorney specializing in Medicaid or Elder Law who can advise you on managing your affairs in accordance with Medicaid rules.

**Where can I get more information?**

Contact the  
**Public Consulting Group, Inc. (PCG)**  
**(907) 561-4455**

OR

The State of Alaska  
Department of Health and Social Services  
Division of Health Care Services  
**Third Party Liability (TPL) Unit**  
**(907) 334-2400**



State of Alaska  
Department of Health and Social Services  
Division of Health Care Services  
4501 Business Park Blvd., #24  
Anchorage, Alaska 99503-7167  
2003

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**ALASKA MEDICAID**

**Estate  
Recovery  
Program**

*explained*

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## **What is the Estate Recovery Program?**

Federal and state law says that under certain conditions, when a Medicaid recipient dies, Medicaid has a right to recover some of the health care costs it paid on behalf of that person. Under this “estate recovery” program, the Department of Health and Social Services will attempt to recover the cost of long term care or related medical services provided, including nursing home care and home and community-based services. As a Medicaid recipient, it is important that you know about the Estate Recovery Program. The following questions and answers will tell you what it is all about.

### **What is an “estate”?**

In simple terms, an estate is all of the real estate, money, household items, automobiles, and personal property that a person owns at the time of their death.

## **How do I know whether my estate will be subject to the Estate Recovery Program?**

The department will only seek recovery from the estate of someone who used the following services when that person was 55 years of age or older:

- (1) Services received in a medical institution, including a nursing home or other long term care facility;
- (2) Home and community-based services.

## **How does the department recover from my estate?**

A claim against your estate is simply a legal demand for payment. After you die, the department will file a claim with the court when your estate is in probate. Sometimes the department will establish its claim before you die by placing a lien on your home. However, the department will only enforce that lien after you die.

The department will use the services of Public Consulting Group, Inc. (PCG) to help administer the Estate Recovery Program.

## **Are there other limits to the department’s ability to put a lien on my home?**

Yes. The department may not place a lien on your home if the home is lawfully occupied by your

1. spouse;
2. child under age 21;
3. child of any age who is blind or totally, permanently disabled;
4. brother or sister, if that sibling has an equity interest in the home and has resided in the home for at least one year before you entered a nursing home or began receiving home and community based services.

## **Which estates are exempt from recovery?**

The department will NOT attempt to recover from your estate if you have a

1. surviving spouse;
2. child under age 21;
3. child of any age who is blind or totally, permanently disabled.

Under certain circumstances, the department is also prohibited from pursuing recovery under a lien if your sibling or child still lives in the home. The state will not seek recovery from the estate of an Alaska Native or American Indian for Medicaid services provided by a tribal health program or authorized under IHS Contract Health Services due to the acknowledged federal responsibility for the health care of these populations.

## **Will the department recover from my estate even if it is not worth much?**

The department may decide that the administrative and legal costs of recovering from your estate are too high to justify such an action.





# Arizona

# Arizona (AZ)

## Governing Law:

Arizona authorizes an estate-recovery program and the use of liens to assist with recovery in A.R.S. §36-2935. The statute authorizes Arizona's Health Care Cost Containment System (AHCCCS) to pursue first-party estate recovery.<sup>1</sup> The program is more fully articulated by administrative regulations contained in A.A.C. R9-28-901 through A.A.C. R9-28-912 and in the Arizona Eligibility Policy Manual for Medical, Nutrition, and Cash Assistance at Chapters 1900 (Estate Recovery), 1901 (Recovery Agent), 1920 Estate Recovery Claims, and 1903 (TEFRA Liens).

## Estate Scope:

Arizona estate recovery rules direct readers to the trust and estate code for a formal definition of the term "estate."<sup>2</sup> The term "estate," therefore, includes the property of the decedent or the corpus of any trust subject to estate administration.<sup>3</sup> If the decedent is married, the estate includes only the separate property of the decedent, as well as the decedent's share of community property.<sup>4</sup> AHCCCS' estate claim is filed only against the property owned by the Medicaid recipient at the time of his/her death that is subject to Small Estate Affidavit or probate.<sup>5</sup> A Medicaid recipient's Personal Representative must notify AHCCCS of the member's estate or property within three months after the recipient's death if the recipient was at least 55 years of age and if AHCCCS has not already filed a Statement of Claim in the estate proceedings.<sup>6</sup>

Arizona provides a considerable exemption from recovery for certain income, resources, and property of Native Americans and Alaska Natives. This exemption includes: income and resources from tribal land and other resources currently held in trust and judgment from the Indian Claims Commission or U.S. Claims Court; ownership interest in trust or non-trust property; ownership interests left as remainder interests in an estate in rents, leases, royalties, or usage rights related to natural resources; ownership interests in rights in a property that has unique religious, spiritual, tradition, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and/or income left as a remainder in an estate derived from property collected by a Native American, or by a Tribe or Tribal organization and

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<sup>1</sup> A.A.C. R9-28-906 and A.A.C. R9-22-1006(9).

<sup>2</sup> A.A.C. R9-28-901.

<sup>3</sup> A.R.S. §14-1201.

<sup>4</sup> Ibid.

<sup>5</sup> Medicaid Assistance Estate Recovery Program Publication DE-810 (Rev. 1/11) and Arizona's Eligibility Policy Manual for Medical, Nutrition, and Cash Assistance, Chapter 1902.00(D).

<sup>6</sup> A.R.S. 36-2935.B

distributed to a Native American.<sup>7</sup> As translated into the Medicaid Policy Manual, being a Native American is a full exclusion to recovery.<sup>8</sup>

**Spousal Recovery:**

Recovery is limited to the estate or property of a recipient who was 55 or older at the time benefits were received.<sup>9</sup> Recovery from the recipient's estate is allowed only after the death of the recipient's surviving spouse and only at a time when there exists either a surviving child under age 21 or a surviving child who is considered blind or disabled per the SSI criteria.<sup>10</sup>

**Liens:**

Arizona's estate recovery statute directs the recovery of property by lien to be carried out "as nearly as possible" by the lien procedures contained in §§36-2915 and 36-2916 of the Arizona Revised Statutes, which respectively cover the imposition (i.e. perfection, recording, assignment, and notice) of a lien for third-party recovery and lien enforcement.<sup>11</sup> Any lien imposed for estate-recovery purposes must also be done in a manner consistent with federal law.<sup>12</sup> Liens are perfected by being recorded with the county recorder in the county where the patient's property is located.<sup>13</sup> A lien can only be recorded if the patient is "permanently institutionalized" which means the Medicaid recipient has resided in a long term care medical facility for at least ninety (90) consecutive days, and the patient's condition is not likely to improve to the point that discharge from the long-term care medical facility and return home will occur by a date certain.<sup>14</sup>

**Partnership Program:**

Under the Arizona Long Term Care Partnership Program, the Arizona Long Term Care System (ALTCS) does not count some or all of the applicant's resources (assets) when determining eligibility if the applicant has a long-term care insurance policy that meets certain requirements.<sup>15</sup> In addition to the amount not counted in determining eligibility, AHCCCS will not recover the same amount from the person's estate under the Estate Recovery program.<sup>16</sup> The resource exclusion can be applied to any type of countable resources, including real property. When the applicant has a spouse, the resource exclusion only applies to resources owned solely or jointly by the applicant and cannot be applied to resources owned solely by the spouse. AHCCCS will not count resources that a person with a qualified long-term care insurance policy has in an amount equal to

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<sup>7</sup> A.A.C. R9-28-911(E).

<sup>8</sup> Arizona's Eligibility Policy Manual for Medical, Nutrition, and Cash Assistance, Chapter 1902.00 (F).

<sup>9</sup> A.A.C. R9-28-910.

<sup>10</sup> A.A.C. R9-28-911(A).

<sup>11</sup> A.R.S. §36-2935(C).

<sup>12</sup> A.R.S. §36-2935(D).

<sup>13</sup> A.A.S. §36-2915(B).

<sup>14</sup> Medicaid Assistance Estate Recovery Program Publication DE-810 (Rev. 1/11).

<sup>15</sup> Arizona's Eligibility Policy Manual for Medical, Nutrition, and Cash Assistance, Chapter 703.11.

<sup>16</sup> Ibid at Chapter 1902.00(E).

the insurance benefit payments received through the end of the month before the month the person applied for ALTCS. The same dollar amount of the person's resources are protected from the Estate Recovery program. Partnership policies must include inflation protection and meet other legal requirements. Policies purchased in Arizona prior to July 1, 2008 will not meet requirements for the partnership. Arizona honors Long Term Care Partnership policies from other states.

**Undue Hardship:**

A representative of the patient's estate can request exemption from recovery by submitting an undue hardship exemption request.<sup>17</sup> The request must be submitted in writing within 30 days of receipt of notice of a claim from AHCCCS.<sup>18</sup> The request must describe the factual basis for a claim that the property should be exempt from estate recovery.<sup>19</sup> AHCCCS has thirty (30) days from receipt of such a request to respond, but the parties can mutually stipulate to an extension of that time.<sup>20</sup> Arizona provides several presumptive conditions precedent which are the automatic basis for waiver of an estate-recovery claim for undue hardship.<sup>21</sup>

The first automatic waiver is granted if the estate only consists of real property that is listed as residential property by the Arizona Department of revenue or County Assessor's Office, and the heir or devisee of the property owns a business located at the residential property, the business was in operation at the property for at least 12 months prior to the death of the patient, the business provides more than half of the heir's or devisee's livelihood, and recovery would result in the heir or devisee losing his or her means of livelihood.<sup>22</sup>

The second automatic waiver is granted if the estate only consists of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, the heir or devisee currently resides in the residence, resided there at the time of the patient's death, made the residence his or her home for the twelve (12) months immediately preceding the patient's death, and owns no other residence.<sup>23</sup>

The third automatic waiver is granted if the estate consists entirely of personal property, the heir's or devisee's gross annual income for the household size is less than 100% of the Federal Poverty Level

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<sup>17</sup> A.A.C. R9-28-911(B).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> A.A.C. R9-28-911(C).

<sup>22</sup> A.A.C. R9-28-911(C)(1)(a).

<sup>23</sup> A.A.C. R9-28-911(C)(1)(b).



(including new sources of income), and the heir or devisee does not own a home, land, or other real property.<sup>24</sup>

When the estate of the patient is comprised of both personal property and real property that qualify under the automatic hardship exemption listed above, AHCCCS is prohibited from granting an undue hardship waiver and is instead directed to adjust its claim to the value of estate's personal property.<sup>25</sup> When the heirs or devisees do not meet the requirements for an automatic undue hardship exemption, AHCCCS is required to use the flowing factors to determine whether to seek a partial recovery of funds from the estate:

- Financial and medical hardship to the heir or devisee;<sup>26</sup>
- Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100% of the Federal Poverty Limit;<sup>27</sup>
- Resources of the heir or devisee;<sup>28</sup>
- Value and type of assets;<sup>29</sup>
- The amount of AHCCCS'S claim against the estate;<sup>30</sup>
- Whether other creditors have filed claims against the estate or have foreclosed on the property subject to recovery.<sup>31</sup>

THE AHCCCS operates a grievance and fair hearing process. The grievance and request for a hearing process is indicated on notices sent the personal representative of the estate. A grievance must be received by the Office of Administrative Legal Services (OALS) no later than 60 days from the date shown on the "Notification of the AHCCCS Claim Against the Estate" or the "Decision Notice Regarding the AHCCCS Estate Claim." Grievances must be submitted in writing to: AHCCCS Administration, Office of Administrative Legal Services, Mail Drop 6200, P.O. Box 25520, Phoenix, Arizona 85002.<sup>32</sup>

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<sup>24</sup> A.A.C. R9-28-911(C)(2).

<sup>25</sup> A.A.C. R9-28-911(D).

<sup>26</sup> A.A.C. R9-28-912(1).

<sup>27</sup> A.A.C. R9-28-912(2).

<sup>28</sup> A.A.C. R9-28-912(3).

<sup>29</sup> A.A.C. R9-28-912(4).

<sup>30</sup> A.A.C. R9-28-912(5).

<sup>31</sup> A.A.C. R9-28-912(6).

<sup>32</sup> Arizona's Eligibility Policy Manual for Medical, Nutrition, and Cash Assistance, Chapter 1902.03(E).

STATE  
OF  
ARIZONA

MEDICAID ASSISTANCE  
ESTATE RECOVERY  
PROGRAM



ARIZONA  
HEALTH CARE  
COST CONTAINMENT  
SYSTEM (AHCCCS)

This brochure provides a general description of the Arizona Estate Recovery Program. Individual circumstances may vary and affect how law or policy is applied. Additionally, Federal and State laws and regulations are always subject to change. AHCCCS continues to update this brochure as changes occur in the Estate Recovery Program.

## **INTRODUCTION**

After almost two months in the hospital during the summer of 2010, Mr. Clark, age 68, entered a Phoenix nursing home. Mr. and Mrs. Clark learned that their health care coverage, Medicare, would not cover all of Mr. Clark's medical expenses. The Clarks found that they could not make the remaining share of the payments toward the steady flow of Mr. Clark's medical bills. The Clarks learned they could apply for Medicaid, a Federal-State health insurance program for qualified individuals. Mrs. Clark contacted the Arizona Long Term Care (ALTCS) office and scheduled an appointment to apply for long-term care assistance for Mr. Clark. During the Medicaid application process, Mrs. Clark learned of Arizona's "Estate Recovery Program" which affects Medicaid recipients ages 55 or older, who receive long term care medical assistance on or after January 1, 1994. Although the Clark family is "fictional", the situation describes circumstances that are commonly experienced. The purpose of this brochure is to help people like the Clarks and their family members better understand Arizona's Estate Recovery Program and what impact, if any, this will have to their family.

## **FREQUENTLY ASKED QUESTIONS ABOUT ARIZONA'S ESTATE RECOVERY PROGRAM**

### ***1. Why does Arizona have an Estate Recovery Program?***

Congress passed the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) on August 10, 1993. It became effective as Federal law under 42 U.S.C. 1396(p) on October 1, 1993. The passage of this Federal law mandated the State of Arizona to implement an Estate Recovery Program. Arizona implemented its Estate Recovery Program effective January 1, 1994.

### ***2. Who is responsible for Arizona's Estate Recovery Program?***

Arizona's Medicaid program is administered by the Arizona Health Care Cost Containment System Administration (AHCCCS), in compliance with Federal and State laws. Arizona's long term care program is referred to as "ALTCS".

AHCCCS contracts with Health Management Systems, Inc. (HMS) to conduct Arizona's Estate Recovery Program.

### ***3. Does Estate Recovery apply to everyone?***

The Estate Recovery Program only applies to the estates of individuals who are ages 55 and older and who were enrolled in the Arizona long term care medical assistance program. AHCCCS provides long term care medical assistance to individuals in a nursing home or in a residential setting referred to as home and community-based services (HCBS). AHCCCS will

defer recovery of its estate claim so long as there is an Estate Claim Statutory Exemption. In addition, Federal law requires states to waive its Estate Claim when an heir to the estate meets all of AHCCCS Undue Hardship Criteria. These processes are discussed in question 17 below.

***4. Will AHCCCS file a lien against my property?***

AHCCCS may impose a TEFRA lien, as authorized under 42 U.S.C. 1396(p) (Tax Equity and Fiscal Responsibility Act of 1982) against the real property, including the member's primary residence, of certain permanently institutionalized nursing home members. The purpose of the lien is to recover the cost of AHCCCS benefits provided upon the member's death or upon the sale or transfer of the property.

***5. How does AHCCCS determine the amount of the estate claim that will be filed against the ALTCS member's estate?***

The amount of the estate claim that will be filed against the ALTCS member's estate is the total of the ALTCS payments paid on behalf of the member for Medicaid covered services. AHCCCS will also recover ALTCS payments made for a member for Medicare cost sharing payments for services provided on, or before, December 31, 2009. The Medicare Improvements for Patients and Providers Act of 2008 exempts Medicare cost sharing payments from Medicaid estate recovery if they are for services provided on, or after, January 1, 2010. The following is a description of the ALTCS payments subject to recovery:

**Medicaid Covered Services:**

Capitation Payments: The AHCCCS program is based on cost containment through preventive care rather than emergency care. AHCCCS contracts with "program contractors" which in turn are responsible to ensure the delivery of all covered medical services to ALTCS members. AHCCCS pays program contractors a monthly "capitation" payment prospectively for each enrolled ALTCS member. This capitation concept is patterned on the way many individuals pay for private health care insurance. AHCCCS pays the monthly capitation payment to the program contractors for each month the ALTCS member is enrolled, regardless of whether the ALTCS member received a medical service during the month. If the ALTCS member is on Medicare, the capitation payment amount for months of service on, or after, January 1, 2010 that is subject to estate recovery will be the amount paid to the program contractors adjusted to remove the actuarially determined amount of the Medicare cost sharing portion.

The average contract year 2011 monthly capitation payment to program contractors is approximately \$3,340. It is approximately \$3,020 without the Medicare benefit. **It is important to be aware that capitation payments can exceed the actual costs of services provided during the month.**

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Reinsurance Payments: AHCCCS reimburses program contractors for certain contract service costs incurred by an ALTCS member that are beyond a contractual dollar threshold. These payments are known as reinsurance. Therefore, in addition to the monthly capitation payment, AHCCCS may make a reinsurance payment to the program contractor for a member. AHCCCS recovers reinsurance payments made for dates of service on, or before, December 31, 2009. It also recovers reinsurance payments for non-Medicare covered services for months of service on, or after, January 1, 2010.

Fee-For-Service Payments: In certain instances, AHCCCS may be responsible for direct payment of some or all of an ALTCS member's medical bills not covered by Medicare or other available insurance. These payments are called fee-for-service payments. AHCCCS recovers fee-for-service payments it pays for a member for dates of service on, or before, December 31, 2009. It also recovers fee-for-service payments for non-Medicare covered services for dates of service on, or after, January 1, 2010.

Medicare Cost Sharing Payments:

Medicare Coinsurance and Deductible Payments: Medicare provides health insurance to people ages 65 and over, those who have permanent kidney failure and certain people under age 65 with a disability. Medicare requires cost sharing in the form of deductibles and coinsurance. AHCCCS recovers ALTCS payments made for a member for Medicare cost sharing payments for services provided on, or before, December 31, 2009. No recovery is made for services provided on, or after, January 1, 2010.

Medicare Part A and Part B Premium Payments: Medicare also requires cost sharing in the form of premiums. AHCCCS recovers all Medicare Part A and Part B premium payments paid on behalf of the ALTCS member for months of service on, or before, December 31, 2009. No recovery is made for months of service on, or after, January 1, 2010.

***6. How can I determine if it is financially beneficial for me to enroll in ALTCS?***

If you need long-term medical care in your own home, or in a nursing home, and the medical care will not be paid by your Medicare or other health insurance coverage, you may want to apply for ALTCS to help pay for these costs.

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Before enrolling in ALTCS, if an applicant or family member is concerned about AHCCCS' claim that will be filed against the estate, the applicant and/or family member should evaluate the financial benefits of enrolling the applicant in ALTCS. Because ALTCS payments made on the member's behalf can exceed the actual costs of services provided, and accrue even if no medical service is provided, it is very important that ALTCS applicants (and family members) make an informed decision about enrolling in ALTCS. **This is especially true for those ALTCS applicants who elect to remain in their own home and do not enter a nursing home.** The applicant and family member should review whether it is better financially and medically for the applicant to pay for his/her needed medical services out-of-pocket (what won't be paid by Medicare and/or other insurance) rather than enrolling in ALTCS and incurring a claim against their estate. Individuals who do not require many medical services may not wish to enroll in ALTCS because their estate will be responsible for payment to AHCCCS of all ALTCS payments that are listed in question 5 above.

An ALTCS applicant may voluntarily withdraw his/her ALTCS application. An ALTCS enrolled member may elect to stop ALTCS enrollment at any time, to stop accruing additional AHCCCS capitation and other costs that will be included in AHCCCS' claim against the estate.

***7. When does AHCCCS' claim against the ALTCS member's estate begin to accrue?***

The effective date the AHCCCS claim against the estate begins to accrue depends on the age of the ALTCS member when the ALTCS coverage begins. Usually, the AHCCCS estate claim begins to accrue on the first day of the month in which the ALTCS coverage begins. However, if an ALTCS member is younger than age 55 on that date, then AHCCCS' estate claim begins to accrue on the date the ALTCS member becomes age 55. **Example:** If an ALTCS member is age 55 or older at the time of his/her ALTCS coverage effective date of January 1, 2010, the AHCCCS' claim begins to accrue on January 1, 2010. However, if the ALTCS member is age 54 on January 1, 2010, and turns age 55 on August 15, 2010; the AHCCCS estate claim begins to accrue on August 15, 2010.

***8. What assets owned by the ALTCS member are subject to AHCCCS' estate claim?***

AHCCCS' estate claim is filed only against the property owned by the ALTCS member at the time of his/her death that is subject to Small Estate Affidavit or probate. This means that AHCCCS' claim is filed only against the "estate" of the individual. A home that is solely owned by the ALTCS member, is owned jointly without right of survivorship, or is owned jointly with right of survivorship but the joint owner is deceased, is subject to Small Estate Affidavit or probate, and is therefore subject to payment of AHCCCS' claim against the estate. If the ALTCS member owns an annuity, and the annuity is subject to Small Estate Affidavit or probate, it is also subject to payment of AHCCCS' claim against the estate. For additional information regarding what real and personal property assets are subject to Small Estate Affidavit or probate, and the processes under each for administering the estate, contact the Arizona Probate Registrar for the Superior (Probate) court in your county.

### ***9. What is a TEFRA lien?***

AHCCCS may impose a TEFRA lien against the member's real property, including the member's home, after the member becomes permanently institutionalized at a nursing home, mental health hospital, or other long-term care medical facility. Permanently institutionalized means the member has resided in a long term care medical facility for at least 90 consecutive days, and the member's condition is not likely to improve to the point that the member will be discharged from the long-term care medical facility and return home by a date certain. The purpose of the lien is to recover the cost of benefits provided upon the member's death or upon the sale or transfer of an interest in the property. The lien is not enforced until one of these events occurs.

### ***10. Who do TEFRA liens apply to?***

ALTCS members who are ages 55 and older and who are permanently institutionalized will have a lien imposed against their personal home or other real property unless certain conditions exist. A lien will not be enforced so long as a spouse, child under 21, or a blind or permanently and totally disabled child survives the member. Also, a lien will not be enforced against a home so long as the following persons currently reside there:

- A sibling who was living there for at least a year before the member was admitted to the facility, or
- A child who was living there for at least two years before the member was admitted to a facility and provided care which allowed the member to stay out of an institution. Documentation proving the care was provided must be submitted to the state's satisfaction.

### ***11. How does the TEFRA lien process work?***

Following notification that a member has been placed into a medical institution for 90 days or more and cannot reasonably be expected to be discharged and return to their home, AHCCCS will send a Notice of Intent to File a Lien against Real Property to the member or their authorized representative. If there is no response, or if AHCCCS determines that the proper criteria have not been met, a TEFRA Lien will be filed against the member's real property. Should a member wish to contest the lien, he or she may file a request for a fair hearing within thirty days of receiving the Notice of Intent.

### ***12. What happens after the lien has been filed?***

No further action is taken by AHCCCS after the lien has been filed until either:

- The member returns home with the intention of remaining in the home;
- The property is sold or ownership is transferred; or
- The member dies.

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***13. What if I return home?***

If a member is discharged from a medical facility and returns to his or her own home on a permanent basis, the lien will be removed. However, if the member is readmitted into the medical facility permanently, a new lien may be filed against the member's real property.

***14. What happens if I want to transfer or sell the property?***

If you sell the property, you will need to repay AHCCCS for the medical payments AHCCCS has made on your behalf. The amount you need to repay will be equal to the amount that AHCCCS has paid.

***15. What happens when I die and a TEFRA lien was filed?***

The TEFRA lien will remain in place and claim will be made against your estate. The TEFRA lien may be released (removed) if there is an Estate Claim Statutory Exemption; or, if AHCCCS grants an Undue Hardship Waiver; or, if the Estate Claim is paid in full; or, if AHCCCS approves a request for a Partial Recovery (Reduction). These processes are discussed in FAQ numbers 17 and 18 below.

***16. How does AHCCCS' claim against the estate affect estates which will be filed by a Small Estate Affidavit and those filed through probate?***

The AHCCCS claim against the ALTCS member's estate has the same impact against the estate regardless of whether the estate will be filed by Small Estate Affidavit or filed through probate. Under Arizona Probate Law, A.R.S. § 14-3805, AHCCCS' claim against the estate is classified as a debt due the State. AHCCCS' claim against the estate must be paid from available estate assets in accordance with A.R.S. §§ 14-3971 and 14-3807. AHCCCS does not take direct possession of the estate assets. Rather the payment of AHCCCS' estate claim is made from the AHCCCS member's estate.

The Small Estate Affidavit and probate are the "processes" for liquidating the estate of a decedent and making distribution to the heir(s). The Small Estate Affidavit allows for some estates to be filed by an "affidavit" rather than probate, which reduces the administrative costs that are experienced when an estate must be probated.

***17. Does AHCCCS ever waive or reduce its claim against the ALTCS member's estate?***

Yes, in certain circumstances. AHCCCS shall waive its estate claim when an "Estate Claim Statutory Exemption" exists, or when an "Undue Hardship Waiver of Estate Claim" exists. Also, AHCCCS will reduce the amount of the estate claim when the heir(s) to the estate meets the criteria for a "Partial Recovery (Reduction)" of the estate claim.

In addition to the above waivers, Federal law limits recovery from the property owned by Native Americans (members of federally recognized Indian tribes).

Estate Claim Statutory Exemption: AHCCCS will defer recovery of its estate claim against the ALTCS member's estate so long as there is an Estate Claim Statutory Exemption. An Estate Claim Statutory Exemption exists when there is a:

- Surviving spouse;
- Surviving child who is under age 21; or
- Surviving child of any age who is blind or disabled and meets SSA or SSI disability criteria.

To claim an Estate Claim Statutory Exemption, proof of the exemption must be provided. Examples of proof are:

- A marriage license to verify there is a surviving spouse.
- A certificate or other legal document that verifies the child's relationship to the ALTCS member to verify there is a surviving child under age 21.
- An SSA/SSI disability benefit award letter from the Social Security Administration that verifies the child receives SSA or SSI disability benefits to verify the surviving child is blind or disabled.

Undue Hardship Waiver: AHCCCS will waive the claim against the ALTCS member's estate when the heir to the estate meets all of AHCCCS' undue hardship criteria in either a. or b. below:

- a. The estate contains real property assets only or both real and personal property assets, and
  1. The real property in the estate is listed as residential property by the Arizona Department of Revenue or County Assessor's Office; and
  2. The heir to the estate meets all of the criteria listed in either a. through d. or e. through h. below:
    - a. Owns a business that is located at the residential property;
    - b. The business has been in operation at the residential property for at least 12 months preceding the ALTCS member's death;
    - c. The business provides more than 50% of the heir's livelihood; and
    - d. The recovery of the property would result in the heir to the estate losing their means of livelihood.

OR

- e. Currently resides in the residence;
- f. Resided there at the time of the ALTCS member's death;
- g. Has made the residence his or her primary residence for the 12 months immediately preceding the ALTCS member's death; and
- h. Owns no other residence.

- b. The estate contains personal property assets only, and the heir to the estate meets all of the criteria listed in both 1 and 2:
  1. The heir's annual gross income for their household size is less than the federal income poverty guidelines. New sources of income (for example, employment, Social Security, etc.) will be included in determining the household's annual gross income; and
  2. The heir does not own a home, land, or other real property.

If the estate contains both real and personal property, and the heir qualifies for an undue hardship, then AHCCCS shall not grant an undue hardship waiver, but adjusts its claim to the value of the personal property.

The notices HMS sends provide additional information about undue hardship and the process for applying, including what verification must be provided.

The undue hardship criteria are also specified in AHCCCS regulation at Arizona Administrative Code, R9-28-911.

**Partial Recovery (Reduction):** AHCCCS will reduce the amount of the estate claim when the criteria for a partial recovery are met. AHCCCS considers the following factors in determining if a partial recovery (reduction) of the estate claim should be approved:

- Financial and medical hardship to the heir(s);
- Income of the heir(s) and whether the household income is within 100% of the Federal Poverty Guidelines;
- Resources of the heir(s);
- Value and type of assets in the estate (real and personal);
- Amount of AHCCCS' estate claim;
- Whether other creditors have filed claims against the ALTCS member's estate or have foreclosed on the property; or
- Any other factors relevant for a fair and equitable determination under the circumstances of a particular case.

The Partial Recovery criteria are also specified in AHCCCS regulations at Arizona Administrative Code R9-28-912.

The notices HMS sends provide additional information about partial recovery and the process for applying, including what verification must be provided.

### ***18. How does an heir apply for a waiver or reduction of AHCCCS' estate claim?***

If an heir to the estate wishes to apply for a waiver or reduction of AHCCCS' estate claim, the heir shall submit a written request and provide all supporting documentation to HMS so that it is received by HMS no later than 30 days from the date shown on the Notification of the AHCCCS Claim Against the Estate.

AHCCCS will make a decision within 60 days of receipt of a completed application and all supporting documentation. HMS will mail a Decision Notice Regarding the AHCCCS Estate Claim to the personal representative and heir informing them of AHCCCS' decision.

***19. When is the Member's Personal Representative required to notify AHCCCS?***

A member's Personal Representative must notify AHCCCS of the member's estate or property within three months after the member's death if the member was at least 55 years of age and if AHCCCS has not already filed a Statement of Claim in the estate proceedings (A.R.S. 36-2935.B).

***20. How does the estate recovery process work?***

When HMS is notified that an ALTCS member is deceased, and the ALTCS member received ALTCS benefits at age 55 or older on or after January 1, 1994, HMS will file a Demand for Notice with the Superior (Probate) Court. The purpose of the Demand for Notice is to require notice to AHCCCS of all orders and filings regarding the ALTCS member's estate. The Demand for Notice also assists in protection of AHCCCS' interest in any future estate proceedings.

After HMS files the Demand for Notice, HMS will send the personal representative or authorized representative the following notices:

- A Notice of Intent to File a Claim Against the Estate;
- An Estate Questionnaire; and
- A copy of the Demand for Notice that was filed with the Superior (Probate) Court(s).

The Estate Questionnaire assists HMS in identifying if there are circumstances which qualify for an "Estate Claim Statutory Exemption". AHCCCS will waive recovery of its claim against the estate so long as there is a qualifying Estate Claim Statutory Exemption.

If the estate has already entered probate, HMS will bypass the Demand for Notice and Notice of Intent process. A claim is immediately placed against the estate.

If HMS does not identify a qualifying Estate Claim Statutory Exemption, and the ALTCS member owned property that is, or appears to be, subject to Small Estate Affidavit or probate, HMS files a Superior Court Claim Against the Estate (referred to as a creditor's claim) with the Superior (Probate) Court. For estates that will be probated, HMS files the Superior Court Claim Against the Estate to meet the timeframe requirements in A.R.S. §§ 14-3801 and 14-3804.

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The Notification of the AHCCCS Claim Against the Estate provides the following information:

- AHCCCS' claim amount and list of AHCCCS expenditures to be recovered;
- Authority for the AHCCCS' estate claim;
- Explanation of the enclosed application form and the process for applying for one or more of the three processes which permit waiver or reduction of AHCCCS' estate claim: Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery;
- Estate Claim Statutory Exemption Criteria, Undue Hardship Waiver of Estate Claim Criteria, and Partial Recovery (Reduction) Criteria;
- Timeframes for filing a completed application;
- To whom and where to file the application and supporting documentation;
- Whom to contact if there are any questions;
- Where to send payment of the estate claim; and
- The heir's right to file a grievance and request a hearing.

***21. What if an heir disagrees with the amount of AHCCCS' claim against the estate or a decision regarding an application filed for an Estate Claim Statutory Exemption, Undue Hardship Waiver, or a Partial Recovery (Reduction) of the estate claim?***

AHCCCS provides a grievance and request for hearing process for heir(s) or other interested parties (e.g., personal representative) to present any dispute or disagreement regarding AHCCCS' claim against the estate or a decision made regarding an application filed for a waiver or reduction of the estate claim. HMS' Notification of the AHCCCS Claim Against the Estate and Decision Notice Regarding the AHCCCS Estate Claim provide information regarding an heir's right to file a grievance and request a hearing.

The grievance must be submitted in writing and must be received by the AHCCCS Administration, Office of Administrative Legal Services, Mail Drop 6200, P.O. Box 25520, Phoenix, Arizona 85002, no later than 60 days from the date shown on HMS' Notification of the AHCCCS Claim Against the Estate or Decision Notice regarding the AHCCCS Estate Claim.

***22. Who do I contact for more information?***

For more information about your Medicaid eligibility determination and ALTCS, please contact your local ALTCS eligibility office. To obtain the telephone number for the ALTCS eligibility office in your area, please call:

Local Calls: 602-471-7000

In-state toll free: 1-800-654-8713

Out-of-state toll free: 1-800-523-0231

The telephone numbers for the ALTCS offices can also be obtained from the Government section within your local telephone directory; look for "Arizona Health Care Cost Containment System" under the "State" listings.

For more information regarding Arizona's Estate Recovery Program, please contact:

AHCCCS, Division of Business & Finance, Third Party Liability

Local Calls: 602-417-4030

In-state toll free: 1-800-654-8713 (request ext. 74030)

Out-of-state toll free: 1-800-523-0231 (request ext. 74030)

OR

Health Management Systems, Inc. (HMS)

Phoenix Area: 602-954-8380 (enter 0 for the receptionist)

Out-of-state toll free: 1-888-378-2836 (enter 0 for the receptionist)

AHCCCS provides information about the ALTCS program at its website:

<http://www.azahcccs.gov>.

The Centers for Medicare & Medicaid Services (CMS) provides information about Medicaid at its website: <http://www.cms.hhs.gov>



# Arkansas

# Arkansas (AR)

<b>Governing Law:</b>	Arkansas codified its estate recovery law at A.C.A. §20-76-436.
<b>Estate Scope:</b>	Arkansas has adopted an enhanced estate definition. <sup>1</sup> However, beyond the traditional probate estate, the estate recovery is only enhanced to the extent of any interest acquired from any named beneficiary of property received by beneficiary deed. <sup>2</sup> Arkansas law specifically authorizes the use of a beneficiary deed (also known as a “Ladybird Deed”) which avoids probate but the state can still attach a recovery claim to the property even though it bypasses probate. <sup>3</sup> Although enhanced, the limit of the enhancement to beneficial interests in property conveyed specifically by beneficiary deed creates a bright-line cordon around the use of such deeds in an attempt to bypass probate. However, because the enhancement was so specific, the use of other non-probate property transfers do not give rise to recovery.
<b>Spousal Recovery:</b>	The presence of a surviving spouse at the death of a Medicaid patient is a full bar to recovery. There is no express or implied provision for recovery against a spouse in the estate recovery statute, but the statute does have a disclaimer which says that if there is a conflict with the federal rules, the federal rules govern. <sup>4</sup> The effect of a spouse on recovery is dealt with at the Medicaid manual where it states that “recovery will not be made from the estate of deceased individuals when: there is a surviving spouse, dependent children under age 21, or blind or disabled children (as determined by SSA disability guidelines); recovery will create an undue hardship for other surviving family members, or recovery is not cost effective.” <sup>5</sup>
<b>Liens:</b>	Arkansas makes no provision for the use of TEFRA liens to secure recovery debt.
<b>Partnership Program:</b>	A.C.A. §20-77-1801 to §20-77-1805 provide only for “resource disregard of one dollar (\$1.00) for every dollar of long-term care insurance benefits paid...” <sup>6</sup> An asset disregard in an amount up to the amount of benefits paid out by a Qualified Long Term Care Insurance Partnership policy are allowed when determining eligibility for Medicaid. <sup>7</sup> The benefits are disregarded in determining an individual’s Medicaid eligibility for Facility Care as well as Home

<sup>1</sup> A.C.A. §20-76-436(a)(2)(A).

<sup>2</sup> Ibid.

<sup>3</sup> A.C.A. §18-12-608.

<sup>4</sup> A.C.A. §20-76-436(c).

<sup>5</sup> Medicaid Services Policy Manual, Chapter 21700.

<sup>6</sup> A.C.A. §20-77-1803(b)(4).

<sup>7</sup> Medicaid Services Policy Manual, Chapters 3300, 20000-20070, and 21700-21705.



and Community Based Services.<sup>8</sup> The Arkansas Department of Insurance has established specific criteria that the qualified long term care insurance policy must meet. The criteria are: the policy must cover a person who is a resident of the Qualified Partnership State when coverage first became effective; the policy must meet the definition of a “qualified long term care insurance policy” established by the Internal Revenue Code of 1986; the policy must not have been issued earlier than July 1, 2008; and the policy must include inflation protection which is established at the time of purchase. The inflation protection can be up to 5% but not less than 3%.<sup>9</sup> A person is not required to exhaust benefits under a qualified policy before applying for Medicaid.<sup>10</sup> The Arkansas Long-Term Care Partnership Act makes no direct reference whatsoever to exclusion of assets from recovery, but state regulations allow for the initial amount of protected assets disregarded from eligibility to also be protected from estate recovery.<sup>11</sup> Interestingly, Arkansas also provides protection for Partnership Policy owner to transfer protected assets without incurring a divestment penalty.<sup>12</sup>

**Hardship Waiver:**

The Arkansas estate recovery statute spells out specific occurrences where hardship is presumed: If an asset is the sole income-producing asset of the heir or beneficiary (i.e., family farm or family business); if without receiving the asset, the heir or beneficiary would become eligible for need-based federal or state benefits; if the receipt of the inheritance would lead the heir or beneficiary to become ineligible for benefits; and if the asset is a home with a value of fifty (50%) percent or less of the average prices of homes in the county where the home is located.<sup>13</sup> Arkansas also allows undue hardship under other “compelling circumstances” and provides an example where estate assets cannot be readily converted to cash.<sup>14</sup>

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<sup>8</sup> Ibid at Chapter 20010.

<sup>9</sup> Ibid at Chapter 20020.

<sup>10</sup> Ibid at Chapter 20040.

<sup>11</sup> Ibid at Chapters 20070, 21700, and 21705.

<sup>12</sup> Ibid at Chapter 20060.

<sup>13</sup> A.C.A. §20-76-436(b).

<sup>14</sup> Medicaid Services Policy Manual, Chapter 21705.

**Arkansas Department of  
Human Services**

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**Your Guide To  
Medicaid  
Estate  
Recovery  
In Arkansas**



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### **What is Medicaid Estate Recovery?**

Medicaid is a government program that pays for healthcare for people with limited income and assets. One type of service that Medicaid pays for is long-term care services. Long-term care services assist persons in need of help with activities of daily living. Medicaid pays for long-term care services in the person's own home or for residents living in Level II Assisted Living Facilities, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and nursing homes. The Medicaid programs that pay for long-term care services at home are called home and community-based services waivers.

To help pay for the long-term care services, every state is required by federal law to have a Medicaid Estate Recovery program. If you received Medicaid long-term care services, the Arkansas Department of Human Services (DHS) is required to file a claim against your estate upon death. In some cases, DHS may not pursue the claim, and the state will never pursue a claim for more money than it paid for your long-term care services.

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### **Who does estate recovery affect?**

Estate recovery applies only to:

- Individuals age 55 or older who received Medicaid in a nursing home or Intermediate Care Facility for the Mentally Retarded (ICF/MR) or in a home and community-based waiver program; and
- Individuals under age 55 considered permanently institutionalized in a nursing home or ICF/MR.

### **What is a Home and Community-Based Waiver Program?**

Medicaid programs that allow individuals in need of long-term care services to receive them at home or in the community. In Arkansas, these programs currently include the DDS/ACS Waiver, ElderChoices, Alternatives for Adults with Physical Disabilities and LivingChoices (Assisted Living Facility Waiver).

### **What is an estate?**

An estate is property, such as money, a house, a lawsuit settlement or other things of value that a person leaves to family members or others (heirs) when he or she passes away.

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### **What will the heirs to the estate have to pay?**

The amount of the estate recovery claim is the amount Medicaid paid for long-term care services for the recipient after the Medicaid recipient reached age 55, or younger if determined permanently institutionalized. If the total of the claim exceeds the value of the estate, heirs will not be liable for the balance.

### **Are there times when the state will not pursue a claim against the estate?**

Yes, the state will not pursue a claim when:

- There is a spouse who is still alive.
- There is a child under 21 years of age.
- There is a child of any age who is blind or disabled. This child did not have to live with or be dependent on the recipient at the time of their death.

The state may also choose to waive its claim if the DHS Hardship Waiver Committee determines that:

- Recovery will create an undue hardship for other surviving family members, or
- Recovery is not cost effective

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**Is there property that the state will not collect on?**

Yes, these may include:

- A home, when:
  - ◊ There is a son or daughter currently living in the home and was living in the home for at least two years before the recipient entered the nursing home and who provided care to the recipient which permitted the recipient to live at home longer.
  - ◊ There is a brother or sister currently living in the home and who lived in the home for at least one year before the recipient entered the nursing home.
- Assets that pass directly to a beneficiary independently of the probate process. Some examples of this may include:
  - ◊ Insurance policy proceeds
  - ◊ Retirement Accounts, such as IRAs
  - ◊ Pension plans
  - ◊ Mutual funds
  - ◊ Deferred compensation plans

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### **How does Estate Recovery work?**

When a person applies for Medicaid long-term care services, DHS provides a notice that explains estate recovery. When the person dies, DHS will determine if estate recovery is appropriate, file a claim and explain how the representative may request an undue hardship waiver.

### **What is Undue Hardship?**

Estate recovery may be waived if recovery would result in undue hardship for the heirs of the estate. The representative of the estate will receive a notice of estate recovery at the death of the recipient which provides instructions on how to apply for an undue hardship. The DHS Hardship Waiver Committee will determine if undue hardship exists. The committee considers the following in making their determination:

- The estate asset subject to recovery is the sole income-producing asset of the beneficiaries of the estate;
- Without receipt of the proceeds of the estate, a beneficiary would become eligible for federal or state benefits;

**(continued)**



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### **Undue Hardship (continued)**

- Allowing a beneficiary to receive the inheritance from the estate would enable a beneficiary to discontinue eligibility for federal or state benefits;
- The estate asset subject to recovery is a home with a value of fifty percent (50%) or less of the average price of homes in the county where the homestead is located; and
- Other compelling circumstances.

If the representative doesn't agree with the committee's decision, they may file an appeal.

### **Is it true that Medicaid takes your house when you enroll?**

No, Medicaid does not "take" nor put a lien against a recipient's home while he or she is alive. When the recipient dies and it is determined that estate recovery does apply, DHS will file a claim against the estate. The judge will then decide what will have to be paid to DHS. If it doesn't go to probate, DHS will issue a demand notice with the county clerk's office. This will require the county clerk to notify DHS if the house is sold or goes to probate, at which time DHS will file a claim.

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**My husband is 45 years old and has been in an accident. His doctor wants him to move to a nursing facility for about 3 months for rehab services. If we apply for Medicaid, would he be subject to estate recovery?**

No, since your husband is under age 55 and his stay in a nursing home is considered temporary (not permanently institutionalized), estate recovery would not apply to him.

**I'm receiving QMB Medicaid. Does that mean estate recovery will apply to me?**

No, QMB or other Medicare Savings categories do not provide long-term care services, so estate recovery would not apply to you.

**Is property that I own in another state exempt from recovery?**

Not necessarily. Any property you own, regardless of location, can be part of your estate and subject to recovery.

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**If I receive long-term care services in another state as well as Arkansas, which state will file a claim?**

Both states may file a claim. The probate court will determine how to divide the estate between the competing claims.

**I want to will my home to my children. Can the state still take it?**

A will does not protect your home from estate recovery. All claims against an estate, including Medicaid estate recovery claims, must be paid before property can be distributed as specified in a will.

**What if I transfer all my assets now to avoid estate recovery?**

Medicaid has very strict penalties in regards to transferring assets. Giving away, selling for less than fair market value, or restricting your access to any type of property or financial instrument may cause you to be ineligible for Medicaid long-term care coverage for months or possibly for up to five years based on the total amount of the transfer and services requested. Before making any changes to your assets, it would be best to consult an attorney.

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**I have assets protected through a Qualified Long-Term Care Insurance Partnership Policy. Will it be subject to Estate Recovery?**

No, any disregarded assets under a Qualified Long-Term Care Partnership Policy remaining at the death of the policyholder is exempt from estate recovery. Any other assets not disregarded through a Qualified Long-Term Care Insurance Partnership Policy will be subject to estate recovery.

**If you have additional questions about Medicaid Estate Recovery or need advice concerning estate planning, please contact an Elder Law attorney.**

This publication was produced for informational purposes only and should not be construed as legal advice. The information in this publication was correct at the time of its printing, but laws and rules can change. This book is not a legal document. It is a guide, not a contract. DHS is not responsible for information in this guide that is no longer correct.



If you need this publication in a different format, such as large print, contact your DHS county office.

PUB 428  
(1/10)





# California (CA)

<b>Governing Law:</b>	California's Medi-Cal estate recovery statute is found at Cal. Welf. Inst. Code §14009.5 and in Estate Recovery Administrative Code: 22 CCR §50960 to §50966.
<b>Estate Scope:</b>	California has adopted the full enhanced definition of the recoverable estate. <sup>1</sup> The equity interest that the patient had which is recoverable against by the state is defined by regulation as the fair-market value of the property to which the deceased patient held legal title or interest at the time of the patient's death only to the extent of such an interest, an interest less any amount previously owned and encumbered against the asset. <sup>2</sup> Any claim against the estate can be exempted during the lifetime of the surviving spouse. <sup>3</sup> California's third district court of appeals keyed in on the fact that the expanded estate definition included anyone who came into ownership of property or assets by "survival" which is distinctively more broad than mere survivorship. <sup>4</sup>
<b>Divestments:</b>	Similarly to the irrevocable portions of life estate is discussed above, California expressly exempts any recovery against any property interests before death. <sup>5</sup>
<b>Annuities:</b>	While California has not yet fully adopted all requirements of the DRA, annuities are considered as part of a decedent's estate and subject to estate recovery. <sup>6</sup> While not in line with the full reading of the DRA, California adopted a statute that names the state as remainder beneficiary as an operation of law for all annuities purchased after February 8, 2006 or for any purchased before that date subjected to a transaction (e.g., changes in payments or income). <sup>7</sup> Changes that would bring California in line completely with the DRA were proposed in 2012 and have yet to be implemented.
<b>Liens:</b>	California does not use lifetime liens to secure estate-recovery claims, making it easier to deal with assets during the patient's lifetime and easier to avoid recovery by divesting the property shortly before a patient's death. Strangely enough, California does have something it calls a "voluntary post-death lien" for the purpose of tracking debt on

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<sup>1</sup> 22 C.C.R. §50960.12.

<sup>2</sup> 22 C.C.R. §50960.9.

<sup>3</sup> 22 C.C.R. §50961(d)(2).

<sup>4</sup> *Bonita v. Burke*, 98 Cal.App.4th 788 (2002).

<sup>5</sup> 22 C.C.R. §50961(j).

<sup>6</sup> 22 C.C.R. §50961(h).

<sup>7</sup> Cal. Welf. & Inst. Code § 14009.6.

assets that are not recoverable or easily liquidatable.<sup>8</sup> The lien is used to secure the debt against property when one or more of the decedent's dependents are living in it and not willing to sell the property, are unable to pay the claim in full from other assets, and can demonstrate they are unable to retain financing to pay off the debt.<sup>9</sup> If a person qualifies to delay recovery and a lien is used to secure the debt, the person must make payments on the debt to the extent they are financially able.<sup>10</sup>

#### **Executor Duties:**

Within ninety (90) days of the death of a recipient of Medi-Cal benefits or his or her surviving spouse – since claims can be made against either's estate – the attorney for the estate, beneficiary of (expanded) estate assets, personal representative of the estate or a person in possession of property claimable under estate-recovery law must give written notice of death, including a copy of the death certificate, to the Director of the Department of Health Care Services of the Estate Recovery Section.<sup>11</sup> The Department then will provide whoever is handling the estate with a statement of the total debt owed to the state along with an Application of Hardship Waiver.<sup>12</sup>

The person handling the estate must notify the interested persons that they have sixty (60) days to contest the claim or seek hardship waiver or exemption. A contested debt claimed by the state can be contested like any other improper debt of the estate. Hardship waivers are sought by filing the Application for Hardship Waiver (see Hardship Waiver below). Exemption can force the state to withdraw its claim by providing documented proof of blindness or disability along with documented proof that the person seeking exemption is a child of the decedent.<sup>13</sup> If such documentation does not exist, the person seeking exemption can request a disability determination by phone or in writing.<sup>14</sup> Any disability determination not made in the surviving child's favor is final and non-appealable through an administrative hearing but would presumably give rise to a cause of action against the state if the determination was grossly improper.<sup>15</sup>

California also maintains an on-line page designed for estate administrators and others to submit notice to the Department of

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<sup>8</sup> 22 C.C.R. §50965.

<sup>9</sup> 22 C.C.R. §50965(a).

<sup>10</sup> 22 C.C.R. §50965(d).

<sup>11</sup> 22 C.C.R. §50962(a).

<sup>12</sup> 22 C.C.R. §50962(c).

<sup>13</sup> 22 C.C.R. §50964(a).

<sup>14</sup> 22 C.C.R. §50964(c).

<sup>15</sup> 22 C.C.R. §50964(g).



Health Care Services.<sup>16</sup> Estate Recovery Program web site: [http://www.dhcs.ca.gov/services/Pages/TPLRD\\_ER\\_cont.aspx](http://www.dhcs.ca.gov/services/Pages/TPLRD_ER_cont.aspx)

**Spousal Recovery:**

A claim for recovery cannot be made when there is a surviving spouse or child under 21 or blind or disabled.<sup>17</sup> The statute expressly allows for a claim against the surviving spouse's estate to collect against assets received from the deceased patient.<sup>18</sup>

**Life Estates:**

California regulations are explicit about the claims to be made against life estates. While life estates are included in the expanded estate's scope, California goes further to delineate which life estates are to be included. Where the decedent made an irrevocable transfer of the remainder interest in the property and retained a life estate, no recovery can be claimed against either the life estate or the remainder interest.<sup>19</sup> If the decedent made a revocable transfer of the remainder interest and retained a life estate, a claim against the property is for full value of the property.<sup>20</sup> In a hybrid transaction where the decedent made a revocable transfer of the remainder interest and an irrevocable grant of a life estate, a claim can only be pursued against the fair-market value of the remainder interest.<sup>21</sup> In short, whichever portion of the transfer was revocable exposes that portion of the property to recovery at death.

**Partnership Program:**

California is one of the original partnership states. Statutory authority is found in West's Ann. Cal. Welf. & Inst. Code §22000 to §22010. Regulations are contained in 22 C.C.R. §58000 to §58038. Both explicitly provide for an exclusion of resources from Medi-Cal eligibility and subsequent estate recovery.<sup>22</sup> The ownership of a qualified plan provides a dollar-for-dollar exclusion referred to as "Medi-Cal Asset Protection."<sup>23</sup>

**Hardship Waiver:**

An eligible hardship waiver applicant who files the Application for Hardship Waiver can have his or her proportion of the claim waived if the applicant meets one or more of the six factors set forth by regulation.<sup>24</sup>

- When allowing a person to receive an inheritance would allow them to discontinue eligibility for public assistance or medical assistance; or<sup>25</sup>

<sup>16</sup> Required by California Probate Code § 215, 9202, and 19202.

<sup>17</sup> Cal. Welf. & Inst. Code §14009.5(b)(2)(A)-(C).

<sup>18</sup> Ibid.

<sup>19</sup> 22 C.C.R. §50961(i).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Cal. Welf. & Inst. Code §22004(a)(3); 22 C.C.R. §50453.7(b).

<sup>23</sup> 22 C.C.R. §50823.

<sup>24</sup> 22 C.C.R. §50963(a).

<sup>25</sup> 22 C.C.R. §50963(a)(1).

- When estate property is part of an income-producing business and recovery would deny the person of the source of their income. Regulations expressly recognize a working farm or ranch as an exclusion; or<sup>26</sup>
- When an “aged, blind, or disabled” person lived in the home for a year prior to the decedent’s death, continues to reside in the home, and is unable to obtain financing to pay off the recovery amount owed to the state; or<sup>27</sup>
- When a person provided care to the decedent for two or more years that prevented admission to a long-term care institution as documented in writing from a licensed healthcare provider; or<sup>28</sup>
- When the person had transferred the property to the decedent for no consideration. In other words, if someone gives a patient an asset to use until death without that asset going back to the quasi-lender as a result of the patient’s death, the quasi-lender can recover the “loaned” asset without it being subject to attachment by Medi-Cal recovery rules; or<sup>29</sup>
- When equity in real property is needed by the recipient of such property to make the property habitable or to acquire the basic staples of life.<sup>30</sup>

It is important to note that recovery occurs against any person who receives property by “distribution or survival” from either the patient or subsequently from the surviving spouse who received such from the patient.<sup>31</sup> Under substantial-hardship regulations, an “applicant” is any “dependent, heir, or survivor” of the decedent requesting a waiver.<sup>32</sup> The term “heir” is given a broad definition to include anyone who survives the decedent and is designated to recoup some or all of the decedent’s property regardless of how they receive it.<sup>33</sup> The department is required to issue a ruling on the waiver request within 90 days after the submission of the application.<sup>34</sup>

If a hardship waiver is not administratively granted, the applicant can request a hearing called an “estate hearing.”<sup>35</sup> The applicant has 60 days from a negative determination to request an estate hearing.<sup>36</sup>

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<sup>26</sup> 22 C.C.R. §50963(a)(2).

<sup>27</sup> 22 C.C.R. §50963(a)(3).

<sup>28</sup> 22 C.C.R. §50963(a)(4).

<sup>29</sup> 22 C.C.R. §50963(a)(5).

<sup>30</sup> 22 C.C.R. §50963(a)(6).

<sup>31</sup> Cal. Welf. & Inst. Code §14009.5(a).

<sup>32</sup> 22 C.C.R. §50960.4.

<sup>33</sup> 22 C.C.R. §50960.23.

<sup>34</sup> 22 C.C.R. §50963(d).

<sup>35</sup> 22 C.C.R. §50964(a).

<sup>36</sup> 22 C.C.R. §50964(a)(3).

The hearing must be conducted within 60 days of the date of the request.<sup>37</sup> For in-state applicants, the hearing is conducted by the department at any agency within the applicant's local appeals court district.<sup>38</sup> For an out-of-state applicant, the hearing is held in Sacramento.<sup>39</sup> The hearing officer has 30 days after the hearing to submit a ruling to the director; the director then has 30 days to adopt the ruling or ask for more evidence.<sup>40</sup> The decision is final when adopted by the director.<sup>41</sup> An applicant can seek judicial review of a final decision by filing a petition for writ of administrative mandate in the appropriate appellate court.<sup>42</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> 22 C.C.R. §50964(a)(2).

<sup>39</sup> Ibid.

<sup>40</sup> 22 C.C.R. §50964(c).

<sup>41</sup> 22 C.C.R. §50964(e).

<sup>42</sup> 22 C.C.R. §50964(f).

## ESTATE RECOVERY CASES

### MEDI-CAL ESTATE RECOVERY PROGRAM

The Medi-Cal program pays for medical care for some people whose savings and income are too low for them to be able to pay for their own care. The cost of the recipient's medical care, or the cost of the premiums paid for care may be required to be repaid to the Medi-Cal program. Repayment is never more than the value of the assets the recipient had at the time of death. The amount repaid can then be used to pay for medical care for others who need it.

### ACCOMPLISHING THE MISSION

After receiving notification regarding the death of a person who received Medi-Cal benefits, the Department of Health Care Services (Department) will decide whether or not the cost of services must be paid back. In making this decision, the Department will consider how much was paid by Medi-Cal and what is left in the estate of the deceased Medi-Cal beneficiary. Regardless of what is owed, the Department will never collect more than the value of the assets owned by the Medi-Cal recipient at the time of his/her death.



The Department cannot require reimbursement under the following circumstances:

- During the lifetime of a surviving spouse.
- For Medi-Cal services provided before the beneficiary's 55<sup>th</sup> birthday (unless the beneficiary is institutionalized).
- If the Medi-Cal beneficiary is survived by a child under 21 years old.
- If the Medi-Cal beneficiary is survived by a child who is blind or disabled (as defined by the Federal Social Security Act).

### ► FREQUENTLY ASKED QUESTIONS

**Q:** What laws govern the Estate Recovery Program?

**A:** The rights and responsibilities of the Department, health care providers, Medi-Cal beneficiaries and their representatives are outlined in the California Code of Regulations (CCR), Title 22, §50960-50966; California Medical Assistance Program, Division 3,

Subdivision 1, Article 19; Welfare and Institutions Code (W&IC) §14009.5; Probate Code § 215, 9202, and 9203; and the United States Code (USC) § 1396.

**Q:** How is the obligation to repay Medi-Cal for health care services established?

**A:** California law requires that the estate attorney, executor, administrator, heir(s), or anyone who receives assets from a deceased Medi-Cal beneficiary, must provide written notice and a copy of the death certificate to the Department within 90 days of the beneficiary's death. Notice of death should be forwarded to:

Director, c/o Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997425, Sacramento, CA 95899-7425.

Notice to the County or Social Security Administration does not satisfy this requirement. The Department can present a claim within four months of receiving the notice of death.

**Q:** What if I cannot afford to pay the Estate Recovery claim?

**A:** The Department may waive or reduce its claim if payment of the claim would cause a substantial hardship. An application for Hardship Waiver is included with each claim. You may contact the Department for further information.



**Q:** Is an allowance made for estate debts and expenses?

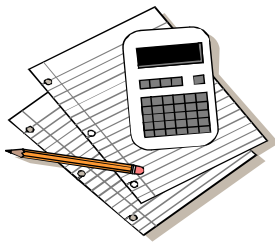
**A:** The value of the estate is reduced by the amount of outstanding debts and certain expenses, including burial expenses.

**Q:** I am currently receiving Medi-Cal benefits. I'd like to start paying off my debt now so that my spouse and family are not burdened later.

**A:** The Department does not have a claim until after your death and the death of your spouse. Nothing is owed during a beneficiary's or surviving spouse's lifetime.

**Q:** I believe that there is an error in the amount of services reflected on the bill. What should I do?

**A:** If you believe there is an error on the bill related to the claim amount or the services provided, you should contact the Collection Representative indicated on the claim letter.



**Q:** I want to pay the claim, but the only estate asset is a home. I would like to keep the home but a lump sum payment is not possible. What can I do?

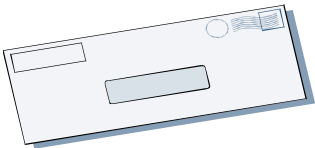
**A:** Whether the estate consists of a home, bank account or other asset, payment options are available. You may contact the collection representative indicated on the claim letter for assistance.

**Q:** Will the State take my house?

**A:** If your estate does not have sufficient other resources to repay Medi-Cal, the Department may allow a voluntary lien to be placed on the house to ensure payment of its claim.

#### CONTACT INFORMATION

Department of Health Care Services  
Estate Recovery Section, MS 4720  
P.O. Box 997425  
Sacramento, CA 95899-7425  
Phone: (916) 650-0490  
Fax: (916) 650-6584



## MEDI-CAL ESTATE RECOVERY PROGRAM

### INFORMATION PAMPHLET

*This pamphlet offers an overview of the  
Estate Recovery Program.  
For additional information, please contact the  
Department of Health Care Services.*



## Application for Hardship Waiver

**Submission of this application is necessary to apply for a waiver of the claim due to substantial hardship. Only the applicant's proportionate share of the claim can be waived. An applicant has 60 days from the date stated on the Department of Health Care Services' (Department) notice of claim in which to submit an application. All of the information requested in the application is voluntary; however, failure to completely and accurately provide the information may result in a denial of the waiver application.**

**A substantial hardship shall not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery.**

**A. ESTATE OF:** Case Number: Date of Application:

Total Value of Estate: Claim Amount: Your Share of Estate: (50%, 75%, 100% etc).  
Attach a copy of the Will or Trust

**B. APPLICANT'S NAME (First, Middle, Last):** Social Security Number: Driver's License/ID Number: Birth Date (mm/dd/yy):

Relationship to Decedent:

Street Address: City: State: Zip: Telephone Number:  
( )

P. O. Box City: State: Zip:

Spouse's Name (First, Middle, Last): Social Security Number: Driver's License/ID Number: Birth Date (mm/dd/yy):

Applicant's Employer: Address: City/State/Zip: Telephone Number:  
( )

Spouse's Employer: Address: City/State/Zip: Telephone Number:  
( )

Are there any unmarried children, or any other persons, living with the applicant? Yes ( ) No ( )

If yes, list their name, birth date, and relationship to applicant.

**Please include any rent or household contributions made to the applicant in Section E.**

Name (First, Middle, Last): Birth Date ((mm/dd/yy): Relationship to Applicant:

Name (First, Middle, Last): Birth Date (mm/dd/yy): Relationship to Applicant:

Name (First, Middle, Last): Birth Date (mm/dd/yy): Relationship to Applicant:

**C. Criteria for Hardship Waiver consideration can be found in the California Code of Regulations, Section 50963. Please check the criteria below that qualifies the applicant for a hardship waiver. Attach documentation that provides substantiation for the criteria selected. Failure to provide sufficient substantiation may result in a denial of the waiver.**

- ( ) Receiving the inheritance from the estate will enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs.
- ( ) The estate property is part of an income-producing business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicant losing his or her primary source of income.
- ( ) The applicant is aged, blind, or disabled and has continuously lived in the decedent's home for at least one year prior to the decedent's death and continues to reside there, and is unable to obtain financing to repay the State. The applicant shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40. The applicant shall provide the Department with a denial letter(s) from the financial institution.
- ( ) The applicant provided care to the decedent for two or more years that prevented or delayed the decedent's admission to a medical or long-term care institution. The applicant must have resided in the decedent's home during the period care was provided and continue to reside in the decedent's home. The applicant must provide written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution.
- ( ) The applicant transferred the property to the decedent for no consideration.
- ( ) The equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter or medical care.

**D. DECEDENT'S ESTATE CONSISTS OF: Check all applicable assets and complete all related information. List all estate assets including property conveyed through joint tenancy, tenancy in common, life estate, living, trust, annuities purchased on or after September 1, 2004, life insurance policy, or retirement account. Please attach copies of recorded deed(s), registration(s), bank statement(s), listing agreements/contracts, life insurance policy statements, stocks, bonds, and annuity documentation, etc.**

	Market Value \$	Mortgage Owed \$	Is the property listed for sale? Yes ( ) No ( ) If no, Please explain.
( ) Real Property	_____	_____	_____
( ) Mobile Home	_____	_____	_____

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Estate Property Street Address:	City:	State:	Zip:
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Is anyone living in the property?	Yes ( ) No ( )	If yes, how long have they lived in the property?
Is the property being rented?	Amount of monthly rent collected?	Name and relationship to decedent, (if any).

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Are you paying space rent for the mobile home?	Yes ( ) No ( )	If yes, how much? (Attach statement)
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Is the estate property held in a trust?	Yes ( ) No ( )	Type of trust? (Attach copy of Trust document)
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Is this estate property part of an income producing business, including a working farm or ranch?	Yes ( ) No ( )
If yes, is this your primary source of income?	Yes ( ) No ( )
(Please include income in Section E.)	

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( ) Bank Account	Checking \$	Savings \$	Name and Address of Bank	Account Number
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( ) Annuities	Value \$	Type	Date Purchased
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( ) Life Estate	Value \$	Type
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( ) Life Insurance Policy	Value \$	Beneficiary(s)	
( ) Retirement Accounts	Value \$	Beneficiary(s)	Type (CDs/IRA/ROTH IRA/Other)
( ) Stocks/Bonds/Notes/Other	Value \$	Type	Date Purchased

**E. APPLICANT'S MONTHLY INCOME. Please attach copy of most recent federal and state income tax return**

Applicant's Net Pay (Attach two months most recent pay stubs)  
(If not monthly, please indicate weekly, bi-weekly, etc.) \$ \_\_\_\_\_

Spouse's Net Pay (Attach two months most recent pay stubs)  
(If not monthly, please indicate weekly, bi-weekly, etc.) \$ \_\_\_\_\_

Rents Paid to Applicant (Please provide rental agreement) \$ \_\_\_\_\_

Social Security/Retirement/Pensions/Annuities (Attach two most recent stubs) \$ \_\_\_\_\_

Business Income (Attach Profit & Loss statement) \$ \_\_\_\_\_

Disability (Attach award letter) \$ \_\_\_\_\_

Public Assistance (Attach award letter) \$ \_\_\_\_\_

Other income (source): \_\_\_\_\_ \$ \_\_\_\_\_

Dividends, interest, child support, alimony, tips, commissions, etc.  
(Attach documentation supporting other income)

TOTAL INCOME \$ \_\_\_\_\_

**F. APPLICANT'S MONTHLY EXPENSE.**

**If monthly expenses exceed monthly income, an explanation must be provided (please attach separately):**

Mortgage/Rent (Attach copy of annual mortgage statement/rent agreement/receipts) \$ \_\_\_\_\_

Alimony/Child Support Paid to: \$ \_\_\_\_\_  
(Please provide documentation of 3 months of payments)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Groceries \$ \_\_\_\_\_

Utilities (Attach documentation of 3 months of bills) \$ \_\_\_\_\_

Medical (Attach copy of outstanding bills not paid by insurance) \$ \_\_\_\_\_

Insurance (Attach copy of statement for auto, health, life, homeowners, etc.) \$ \_\_\_\_\_

Auto Expenses (Include car payments, gas, maintenance receipts) \$ \_\_\_\_\_

Installment Payments (Attach copy of statements) \$ \_\_\_\_\_

Other Expenses (Explain) \_\_\_\_\_ \$ \_\_\_\_\_  
(Attach documentation supporting other expenses)

TOTAL MONTHLY EXPENSES \$ \_\_\_\_\_



**G. APPLICANT'S ASSETS AND DEBTS****REAL ESTATE** (Include personal residence, vacation property, etc. Please attach copy of annual mortgage statement. If monthly payment is made, it should be accounted for in Section F.)

Address (include city/county/state/zip): Mortgage Holder: Current Market Value: Mortgage Balance:

**BANK ACCOUNTS** (Including Savings & Loans, Credit Unions, Certificates of Deposit, Individual Retirement Accounts.)

Name of Institution &amp; Address: Account Number: Type of Account (checking, savings, etc): Balance:

**LIFE INSURANCE & ANNUITIES** (Monthly payments should be listed in Section E if income, and/or Section F if expense.)

Name of Company: Policy Number:

**CREDIT CARDS** (Monthly payments should be listed in Section F.)

Name of Credit Card, Bank, etc.: Total Amount Owed:

**MOTOR VEHICLES** (Include all cars, trucks, motorcycles, boats, recreational vehicles - Paid for or not. Monthly payments should be listed in Section F.)

Year, Make, and License Number: Date Purchased: Current Value: Loan Balance:

**OTHER ASSETS** (Miscellaneous items you own or are currently buying, e.g., stocks, bonds, etc.)

Description: Date Purchased: Current Value: Loan Balance:

## H. ATTACHMENTS/DOCUMENTATION/CERTIFICATION

**All of the information requested in the application is voluntary; however, failure to completely and accurately provide the information may result in a denial of the waiver application. Any errors or omissions in the information provided by the applicant, that would affect the Department's decision, may be a basis for denial of the request for hardship waiver. If applicable, attach a copy of:**

1. The most recent real estate sales contract or listing agreement.
2. The deed(s), registration(s), order determining succession, Affidavit of Death of Joint Tenant, life estate or trust documents.
3. Applicant's most recent annual mortgage statement and/or rental agreement/receipts.
4. A current appraisal of estate property (including name of appraiser and license number).
5. The Will, Trust, or other court documents showing the names of all the heirs and the percentage of the estate each will receive.
6. A certified estimate by a licensed contractor for any work that is necessary to make the property habitable or marketable.
7. Applicant's most recent federal and state income tax returns.
8. Payroll stubs or other proof of monthly-earned income.
9. The most recent Profit & Loss Statement from business(s).
10. Documentation/receipts of any bills you paid on behalf of the decedent after their death.
11. The decedent's bank statement at the time of death.
12. Applicant's bills/statements substantiating medical bills, insurance bills, installment payments.
13. Documentation/substantiation for meeting the hardship criteria. (Section C.)
14. Statements verifying expenses such as burial expenses, out-of-pocket administration expenses (taxes, insurance, maintenance, etc.).
15. Copies of annuity, life insurance, and/or pension documents.
16. Written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution.
17. Documentation or evidence that the applicant who provided care to the decedent resided in the decedent's home during the period care was provided and continues to reside in the decedent's home.
18. A denial letter(s) from the financial institution.

### Certification

**I understand that the statements I have made on this application are subject to investigation and verification. I declare under penalty of perjury, that the statements I have given on this form, to the best of my knowledge, are true and correct.**

Signature of Applicant (Person applying for Waiver) Print or Type Full Name	Telephone Number	Date
(     )		
Signature of Person Completing Form (If different from above) Print or Type Full Name	Telephone Number	Date
(     )		

## **PRIVACY STATEMENT**

The Information Practices Act of 1977 (California Civil Code, section 1798.1, et. seq.) and the Federal Privacy Act of 1974 (Title 5, United States Code, section 552a, et. seq.) require that this notice be provided when collecting personal information from individuals.

The Estate Recovery Section, Third Party Liability and Recovery Division, of the California Department of Health Care Services (Department), is seeking the information requested on the Application for Hardship Waiver. The person responsible for the system of records for information obtained from the application is the Chief of the Third Party Liability and Recovery Division, MS 4718, PO Box 997425, Sacramento, CA, 95899-7425.

This information is being collected pursuant to the authority granted to the Department by Welfare & Institutions Code, section 14009.5, and, Title 22, California Code of Regulations, section 50960, et. seq.

All of the information requested in the application is voluntary; however, failure to completely and accurately provide the information may result in a denial of the waiver application. The principle purpose for which the information will be used is to assess an applicant's financial condition, to determine if hardship criteria apply to the applicant, and to verify information stated in the application in an effort to circumvent any form of fraud against the Medi-Cal program.

The Department does not have any known or foreseeable disclosures that may be made of the information. The applicant has a right of access to records containing personal information maintained by the Department.



TOBY DOUGLAS  
DIRECTOR

# State of California – Health and Human Services Agency Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

## MEDI-CAL ESTATE RECOVERY QUESTIONNAIRE

**ATTENTION:** Person responsible for the estate of:

Notice of death must be provided to the Department of Health Care Services pursuant to California law (Probate Code sections 215, 9202, and 19202). For faster processing, please complete this form and mail it to the address below.

**Please complete this questionnaire to the best of your knowledge.  
Include a copy of the decedent's death certificate. We will contact you if we have any additional questions.**

**1. Provide the information for the attorney, person or trustee handling the estate:**

Name: \_\_\_\_\_ Telephone No: \_\_\_\_\_

Address: \_\_\_\_\_

Email address: \_\_\_\_\_ Relationship: \_\_\_\_\_

Number of heirs to the estate: \_\_\_\_\_ List name(s) and address(es) on separate sheet.

**2. Check any of the following that apply:**

Decedent's spouse or registered domestic partner is still living. If not, provide copy of death certificate.

Decedent is survived by a child under the age of 21, as of the date of death.

Decedent is survived by a child of any age who is blind or disabled. Provide current copy of Social Security Award letter and copy of child's birth certificate.

**3. Is or will the estate be probated?** Yes \_\_\_\_ No \_\_\_\_

If yes, enter the probate number: \_\_\_\_\_ County of filing: \_\_\_\_\_

**4. Is there a trust?** Yes \_\_\_\_ No \_\_\_\_ If yes, provide a copy of the trust.

**5. Did the decedent own any of the following?\*** Provide copies of bank statement, deed, insurance policy etc.

House	Stocks/bonds	Mobile Home	Bank account/cash
Annuities	Retirement accounts	Auto/Boat	Other
Land	Insurance policies	Jewelry	No assets

\*Total estimated value of assets: \_\_\_\_ Did you pay for funeral/burial expenses from your personal funds? Yes \_\_\_\_ No \_\_\_\_ If yes, provide receipts.

Print Your Name: \_\_\_\_\_ Telephone No: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# MEDICAL ASSISTANCE ESTATE RECOVERY PROGRAM

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## **WHAT IS ESTATE RECOVERY?**

Estate Recovery is a federally mandated program to help pay for medical costs for the increasing number of people in need of care. The Colorado Department of Health Care Policy and Financing recovers medical care costs from the estates of certain former recipients.

## **WHO WILL BE AFFECTED BY ESTATE RECOVERY?**

The Department may recover the costs of medical assistance from the estates of institutionalized clients OR persons age 55 and older who receive medical assistance in any living situation.

## **DOES ESTATE RECOVERY AFFECT A RECIPIENT'S ELIGIBILITY OR BENEFITS?**

No. This program does not affect eligibility or exempt property that can be held by a living recipient for eligibility determination.

## **WHAT COSTS WILL BE RECOVERED BY THE ESTATE RECOVERY PROGRAM?**

ALL payments made by Medicaid will be recovered in the Estate Recovery process. Payments include, but are not limited to: payments made to providers on behalf of the client, capitation fees paid on behalf of the client, cost sharing for Medicare and private insurance coverage (e.g. premiums, coinsurance, deductibles, etc.), etc.

## **WILL ANY ESTATES BE EXEMPT FROM RECOVERY?**

The Department will not recover medical assistance costs from the sale of a deceased recipient's home if:

- 1) The deceased recipient is survived by a spouse, child under age 21, or blind or disabled dependent residing in the home.

OR

- 2) There is a brother or sister who lived in the home for at least one year before the recipient went into a nursing facility, and who has lived there continuously since the date of the nursing facility entry.

OR

- 3) There is a son or daughter who lived in the home for at least two years before the recipient entered a nursing facility, whose care allowed the recipient to delay nursing facility placement, and who has lived in the home continuously since the date of the nursing facility entry.

## **HOW WILL ESTATE RECOVERY BE ACCOMPLISHED?**

The Department will file a claim against the estate of a deceased medical assistance recipient. The estate will include all of the property (personal and real) that is left when the recipient passes. The personal representative handling the estate will use money from the sale of the property in the estate to pay the Department for the costs of medical care provided to the recipient.

## **DOES THE PROGRAM REQUIRE A RECIPIENT TO SELL A HOME?**

No. The program does not require a medical assistance recipient to sell a home. However, the Department may place a lien on the property while the recipient is alive. A lien secures property so that medical costs can be recovered by the Department when the property is sold.

A lien on property does not change the ownership of the property. It only represents a debt that must be satisfied when the property is sold. Liens will be used when ALL of the following conditions are met:

- 1) The recipient lives in a nursing facility.
- 2) The recipient owns a home or other real property.
- 3) The Department determines that the recipient is not likely to return to the property. This determination is made by the Department's peer review organization.
- 4) The nursing facility resident does not have a spouse, child under age 21, or blind or disable dependent living in the home.
- 5) The recipient does not have a brother or a sister who is part owner of the home and who has lived in the home continuously since at least one year prior to the recipient entering the nursing facility.

If a nursing facility resident is discharged and returns home to live, the Department will dissolve any lien it has on the recipient's home or other property within thirty (30) days.

## **CAN A RECIPIENT'S HEIRS KEEP THE PROPERTY FROM THE ESTATE AND PAY THE DEPARTMENT THE AMOUNT THEY INTEND TO RECOVER?**

Yes. If the heirs wish to receive the property that is in the estate they may do so as long as they agree to pay the amount the Department would have otherwise recovered. If the heirs are not able to pay the full amount of the claim at the time the estate is settled, the Department may arrange a payment plan.

## **ARE THERE EXEMPTIONS IF ESTATE RECOVERY WOULD CAUSE A HARDSHIP?**

Yes. The Department will not recover from an estate if doing so would cause a hardship for the heirs. The heirs may submit a request to waive or compromise the recovery of medical assistance costs from the estate on the basis of hardship. Determination of hardship is at the discretion of the Department.



# Colorado

# Colorado (CO)

**Governing Law:**

Colorado's estate-recovery statute is found at C.R.S.A. §255-4-302. The Department of Health Care Policy and Financing has promulgated regulations at 10 Code Colo. Regs. 2505-10, Rule 8.063, et. seq.

**Estate Scope:**

The department is authorized to make claims against an estate of an individual who received medical assistance (i.e., medical services were delivered to a person of any age who lives in a nursing facility or to a person over the age of 55 in any living situation).<sup>1</sup> Recovery is only authorized to the extent it is cost effective to do so.<sup>2</sup> A contract for an exempt burial fund is required to include a provision that pays over any remainder of the fund not used for the full cost of the burial to the state automatically. The remaining funds are to be used to satisfy the decedent's debt to the state. The personal representative of an estate must give notice by serving a copy of the notice of administration or notice to creditors of the estate within three (3) months after the first publication of the notice.

**Liens:**

The department is authorized to file TEFRA liens against any property of an individual who is institutionalized and from whom the state can expect to recover.<sup>3</sup> A lien can only be recorded if:

- The department determines the patient is not likely to return home; and<sup>4</sup>
- There is no spouse residing in the home; and<sup>5</sup>
- There is no child under 21 or blind or disabled dependent; and<sup>6</sup>
- There is no sibling with an equity interest that lawfully resided in the home for a year prior to the patient's institutionalization; and<sup>7</sup>
- Recovery will be cost effective.<sup>8</sup>

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<sup>1</sup> C.R.S.A. §25.5-4-302(2)(a).

<sup>2</sup> C.R.S.A. §25.5-4-302(2)(c).

<sup>3</sup> C.R.S.A. §25.5-4-302(3).

<sup>4</sup> 10 Code Colo. Regs. §2505-10: 8.063.13(A).

<sup>5</sup> Ibid at (B).

<sup>6</sup> Ibid at (C).

<sup>7</sup> Ibid at (D).

<sup>8</sup> Ibid at (E).



The department is required to use a Utilization Review Contractor to determine if a patient is unlikely to return home, a predicate factor used to decide if a lien can be filed.<sup>9</sup> Such a determination must be made with a notice to the patient that includes the right to an appeal.<sup>10</sup> The recovery program operates a website at: [www.comedicaidrecovery.com](http://www.comedicaidrecovery.com).

**Spousal Recovery:**

The state is fully barred from recovery if there is a surviving spouse.<sup>11</sup> Recovery is also fully barred if there is a child under 21 or a blind or disabled “dependent.”<sup>12</sup> The term “dependent” as used here is a broader exclusion than the typical use of the term “child.” Dependent could mean any person who derives a significant amount of the resources from the patient to be declared dependent for tax purposes. To the extent the term “dependent” excludes a blind or disabled child because he or she is not financially dependent, such an exclusion would appear to be impermissibly overbroad.

**Partnership Program:**

Effective January 1, 2008, Colorado implemented a long-term care partnership program.<sup>13</sup> The partnership program corresponds with the estate-recovery statute to allow the application of estate recovery against only those assets not protected by the partnership program.<sup>14</sup>

**Hardship Waiver:**

The Colorado statute provides broad authority for the state department to “compromise, settle, or waive” recovery for “good cause.”<sup>15</sup> To determine the guidelines for “good cause,” Colorado regulations lay out presumptive hardship guidelines.<sup>16</sup> If a hardship waiver is applicable to only one of numerous estate heirs, the portion of the recovery waived allows only that heir to whom the hardship waiver was granted to receive the unclaimed portion of the estate to which the claim was released by partial waiver.<sup>17</sup> The three presumptive hardship criteria that satisfy the “good cause” requirement are:

- Without the inheritance, the heir(s) would become eligible for assistance payments or medical-assistance programs; or<sup>18</sup>
- Allowing an inheritance will cause the heir(s) to discontinue eligibility for assistance payments or medical-assistance programs; or<sup>19</sup>

<sup>9</sup> 10 Code Colo. Regs. §2505-10: 8.063.14.

<sup>10</sup> Ibid.

<sup>11</sup> 10 Code Colo. Regs. §2505-10: 8.063.15(A).

<sup>12</sup> 10 Code Colo. Regs. §2505-10: 8.063.15(B).

<sup>13</sup> C.R.S.A. §25.5-6-110.

<sup>14</sup> C.R.S.A. §25.5-4-302(7).

<sup>15</sup> C.R.S.A. §255-4-302(4).

<sup>16</sup> 10 Code Colo. Regs. §2505-10: 8.063.18.

<sup>17</sup> *In re Estate of Ligon*, App. 2007, 160 P.3d 361.

<sup>18</sup> 10 Code Colo. Regs. §2505-10: 8.063.18(A).

- The home is a part of a business, including a working farm or ranch, and recovery will result in loss of the heir(s) means of livelihood.<sup>20</sup>

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<sup>19</sup> 10 Code Colo. Regs. §2505-10: 8.063.18(B).  
<sup>20</sup> 10 Code Colo. Regs. §2505-10: 8.063.18(C).



# Connecticut

# Connecticut (CT)

**Governing Law:**

Connecticut's estate recovery is contained within general claim repayment statutes contained in C.G.S.A. §17b-93 through §17b-97 and specifically in the Uniform Policy Manual at §7525.10. Any applicant for medical assistance in Connecticut must be given a plain language of notice of the liability for repayment.<sup>1</sup>

**Estate Scope:**

The state recovers Medicaid benefits from any real or personal property comprising the estate of a non-institutionalized individual only after the death of the individual's surviving spouse; and when the individual has no surviving child who is under age 21 or who is either blind or disabled.<sup>2</sup> The state recovers funds for Medicaid benefits correctly paid from the estate of an institutionalized individual regardless of the individual's age (including persons who receive home and community-based services under a Medicaid waiver) only after the death of the individual's surviving spouse; and if the individual has no surviving child who is under age 21 or who is either blind or disabled.<sup>3</sup> However, extended recovery is attached to annuities by statute is deemed to be part of the estate of the deceased Medicaid recipient and payable to the state of Connecticut to the extent necessary to achieve full reimbursement of benefits.<sup>4</sup> The state's claim is given priority over all claims except the following: expenses of last sickness not to exceed an amount specified by state law; funeral and burial expenses, up to the amount specified by state law. This amount is reduced by the amount of any revocable or irrevocable burial fund owned by the individual; and administrative expenses, including probate fees and taxes, and fiduciary fees, in accordance with state law.<sup>5</sup>

**Spousal Recovery:**

There is no authority to recover from the spouse; the state's claim only takes priority over unsecured claims in decedent's estate.<sup>6</sup> Liens are levied against property, described more fully below, and the state allows the surviving spouse or dependent child to occupy the real property.<sup>7</sup>

**Liens:**

The commissioner of social services is authorized to place a lien against any property that a recipient has an interest in to secure the claim of the state.<sup>8</sup> The claim of the state is for all amounts which it

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<sup>1</sup> C.G.S.A. §17b-77(b).

<sup>2</sup> UPM §7525.10(A)(2).

<sup>3</sup> UPM §7525.10(B).

<sup>4</sup> C.G.S.A. §17b-95(d).

<sup>5</sup> UPM §7525.10(D).

<sup>6</sup> C.G.S.A. §17b-93(a).

<sup>7</sup> C.G.S.A. §17b-79.

<sup>8</sup> Ibid.

has paid or may thereafter pay under the Medicaid assistance program on the recipient's behalf.<sup>9</sup> The state's claim is secured by filing a certificate in the land records office of the town or towns in which any such real estate is located.<sup>10</sup> The lien can be foreclosed against in any court of competent jurisdiction; however, a surviving spouse or dependent child may be permitted to occupy the property.<sup>11</sup>

**Partnership Program:** Connecticut does not recover from an individual's assets which have been disregarded because of payments made by the individual's precertified long-term care insurance policy for certain medical services covered under the Medicaid program.<sup>12</sup> Connecticut is part of the Medicaid Asset Protection Reciprocity Compact and has a special rule that requires stat nursing homes to provide at least a 5% reduction in their private pay rate for Partnership policyholders at no additional premium cost.

**Hardship Waiver:** An heir under the terms of a testamentary will of a deceased Medicaid recipient, or a survivor entitled under Connecticut statutes to a share of the estate of a deceased Medicaid recipient who died intestate, may apply to the for undue hardship relief in the form of a full or partial waiver or deferral of the state's claim for recovery against the decedent estate. Undue hardship is presumed to exists if: the applicant was dependent upon the deceased recipient for his or her support at the time of the recipient's death, and if the applicant demonstrates that the death of the recipient impoverishes him or her; or the single applicant's income is less than two times the medically needy income limit, and such applicant has less than \$2,000.00 in assets; or the married applicant's combined income is less than two times the medically needy income limit for an assistance unit of two persons, and if the combined assets of the applicant and spouse is less than \$3,000.00. A demonstration of impoverishment of the applicant for relief cannot be as a result of the applicant's liability for excess funeral costs of the decedent.<sup>13</sup>

An applicant can obtain undue hardship relief the applicant demonstrates that the decedent estate includes real estate that was formerly used by the decedent as his or her personal residence for at least two years prior to the decedent's application for Medicaid or admission to a nursing facility, whichever is earliest; the applicant for undue hardship relief was residing in the home at the time of the decedent's death, had been continuously residing in the home for a

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> UPM §7525.10(F).

<sup>13</sup> UPM §7525.10(G).



period of at least twelve months prior to the decedent's death, and is living in the home as his or her sole place of residence at the time of the application for undue hardship relief; the applicant for undue hardship relief would otherwise, but for the state's claim for recovery from the decedent estate, inherit the home either under the terms of the decedent's will or under the laws of intestacy; the applicant for undue hardship relief demonstrates to the state's satisfaction that he or she intends to reside continuously in the home for the foreseeable future as his or her sole place of residency; and the applicant demonstrates to the state's satisfaction that, as a practical matter, he or she cannot afford to pay for alternative comparable housing or due to the exigent circumstances of the case. The state presumes that an applicant for undue hardship relief, based on the practical inability to afford alternative housing, is not eligible for such relief if such applicant's income exceeds three times the medically needy income limit for a single individual or married couple, whichever applies.<sup>14</sup>

The applicant for undue hardship relief must demonstrate that any relief, if granted, will incur solely and exclusively to the benefit of the applicant, and that the granting of undue hardship relief will not benefit another creditor of the decedent estate or another heir or survivor who is not entitled to undue hardship waiver and not used for paying any part of the expenses of the administration of the decedent's estate. Any waiver or deferral of the state's claim for recovery is conditional until an estate is settled in full. The applicant for such relief must show that the decedent did not engage in estate planning techniques during the decedent's lifetime in order to establish eligibility for Medicaid or in order to avoid the state's claim for recovery upon his or her death and that the applicant for undue hardship relief did not create his or her economic hardship. The applicant for such relief must show that neither the applicant, such applicant's spouse or children, received property of any substantial value that was formerly owned in whole or in part by the decedent or the decedent's spouse during their lifetime or on either of their deaths, and that neither the applicant, the applicant's spouse or children are the beneficiary of a trust, annuity or similar device that was funded in whole or in part by the decedent or the decedent's spouse during their lifetime or at the time of their death. For this, however, routine, normal gifts from the decedent, such as ordinary holiday or birthday gifts, do not constitute property of substantial value.<sup>15</sup>

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<sup>14</sup> UPM §7525.10(H).

<sup>15</sup> UPM §7525.10(I).

Applications for undue hardship relief, when granted by the state may result in the waiver, partial waiver, or the deferral of the state's claim for recovery against the decedent estate. If an application for undue hardship relief is granted in whole or part, it is the state's decision whether to waive, partially waive, or to defer a claim for recovery against the decedent estate. Applications for undue hardship relief may result in a deferral in the time of collection of the State's claim for recovery under terms that allow the applicant to continue his or her beneficial use of the home or to otherwise obtain and have access to the interest provided to the applicant in the decedent estate, but secures the State's claim for eventual recovery. The state may defer the present satisfaction of its claim for recovery against the decedent estate, in whole or in part, only if satisfactory arrangements (e.g., executed promissory note or mortgage) are made by the applicant to secure the state's claim for eventual full recovery and payment.<sup>16</sup>

The Department of Social Services utilizes the Financial Services Center (FSC) of the Department of Administrative Services (DAS) to act on its behalf in submitting claims for recovery against decedent estates and in making decisions on applications for undue hardship relief under these regulations. The FSC must notify the estate fiduciary of the claim and include with the claim, a notice of availability of a hardship waiver, an application for a hardship waiver, and a copy of the relevant regulations. The estate fiduciary must inform the heirs and survivors of the availability of a hardship waiver. Any heir or survivor of the decedent shall request undue hardship relief by writing to the Estate Administrator of DAS. Any written application for undue hardship relief must be received by the Estate Administrator not later than forty-five (45) days after the date on which FSC informed the estate fiduciary of the potential availability of undue hardship relief. The application for relief must set forth sufficient facts to demonstrate eligibility for undue hardship relief. The applicant has fifteen (15) days from the request of the agency for more information to comply. After reviewing all information, the Estate Administrator of DAS must notify the applicant in writing within sixty (60) days. Only a "desk review" (i.e., no additional testimony can be introduced) is allowed by the administrative agency if the application is denied and the determination is presumed to be upheld unless determined to be clearly erroneous.<sup>17</sup>

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<sup>16</sup> UPM §7525.10(J).

<sup>17</sup> UPM §7525.10(K).



## **PROVIDES SIGNIFICANT ADDITIONAL VALUE FOR CONSUMERS**

### **MEDICAID ASSET PROTECTION:**

- At no extra cost to the consumer, Partnership policyholders can protect \$1 of their assets for every \$1 their Partnership policy pays in benefits, if they need to access Medicaid after first using their private insurance or when they become eligible for Medicaid even while still using their private insurance. The Partnership requires quarterly asset protection reports be sent to each policyholder who is receiving insurance payments so that policyholders know how much asset protection they have accumulated.

### **NURSING HOME DISCOUNT:**

- CT state law requires CT nursing homes to provide at least a 5% reduction in their private pay rate for Partnership policyholders at no additional premium cost. This discount is not required for non-Partnership policyholders.

### **SPECIAL POLICY REVIEW PROCESS:**

- Partnership policies undergo a rigorous review process involving the Office of Policy and Management and the Insurance Department to assure that Partnership policies meet the required Partnership consumer protection standards and that the policy language is clear and understandable.

### **CONSUMER PROTECTION STANDARDS:**

- All Partnership policies must include several very important consumer protection provisions designed to assure that the Partnership policy's benefits are meaningful. These provisions are available in non-Partnership policies, but are not required to be included. Non-Partnership and Partnership policies from the same insurance company that include identical benefits have the same premium.
  - ♥ **AUTOMATIC 5% COMPOUND INFLATION PROTECTION:**  
Insurance coverage increases yearly at no less than 5% compounded to keep up with inflation.
  - ♥ **MINIMUM INSURANCE DAILY BENEFIT AMOUNTS:**  
Minimum daily benefits must be purchased with a Partnership policy to help assure the benefits are meaningful. The minimum Daily Benefit Amounts increase 5% each year.



- ♥ **DETAILED BENEFIT TRIGGER LANGUAGE:**  
Partnership policies must include very specific language defining both the physical and cognitive impairment benefit triggers in the policy.  
The benefit trigger provision is one of the most important provisions since benefits cannot be accessed until the benefit trigger is met. Clear, concise language that is binding on the insurance company through the policy contract is essential in providing consumers protections and options if their claim is denied.

- ♥ **EXTENSIVE HOME & COMMUNITY-BASED SERVICES:**  
In an effort to assure that the benefits for Home and Community-Based Services are extensive and meaningful, Partnership policies must offer not only skilled home care services, but also supportive services to help a policyholder remain at home for as long as possible.

The Home and Community-Based Benefits must include, at a minimum:

- Skilled Nursing Visits
- Physical, Speech, Occupational and Respiratory Therapies
- Extensive Case Management Services, including Plan of Care Development, Coordination and Monitoring of Services and Reassessments
- Homemaker Services without the requirement that other services must be provided as well
- Adult Day Care
- Home Health Aide Services
- Respite Care

- ♥ **ANCILLARY SERVICES COVERED IN NURSING HOMES:**  
Ancillary services in nursing homes, such as laundry, physical, speech, occupational and respiratory therapy, must be covered above and beyond the “room and board” charge if there is enough benefit available within the policy

### **CONSUMER EDUCATION:**

- The Partnership provides consumers with objective information on long-term care, Medicaid, Medicare, long-term care insurance and the Partnership through:

- ♥ **CONSUMER PUBLICATIONS**

- ♥ **WEBSITE – [WWW.CTPARTNERSHIP.ORG](http://WWW.CTPARTNERSHIP.ORG)**

- ♥ **STAFF AND TRAINED VOLUNTEERS ABLE TO ANSWER QUESTIONS IN PERSON, BY PHONE (1-800-547-3443) OR BY EMAIL ([DAVID.GUTTCHEN@CT.GOV](mailto:DAVID.GUTTCHEN@CT.GOV))**

- ♥ **PUBLIC PRESENTATIONS/SPECIAL INSURANCE AGENT TRAINING**

A white outline map of the state of Delaware is positioned vertically on the left side of the slide. The map shows the state's irregular coastline and its rectangular landmass. The word "Delaware" is written in a white serif font, centered horizontally and partially overlaid by the map's outline.

# Delaware

# Delaware (DE)

<b>Governing Law:</b>	Delaware's Medicaid estate recovery program is actually found in its property law statutes located in Title 25, Chapter 50 (Liens and Estate Recoveries) at 25 Del. C. §5001 through §5006 and its Medicaid regulations contained in Title 16, Delaware Administrative Code, §20500, et seq.
<b>Estate Scope:</b>	The estate recovery definition of estate refers the reader to the Delaware's Decedent's Estate code. <sup>1</sup> The reference takes the reader to the Section that defines which of the decedent's assets are subject to probate administration. <sup>2</sup> Therefore, the estate recovery is limited to the probate estate in Delaware, as well as any lien property described below.
<b>Spousal Recovery:</b>	Recovery from a patient's estate or from the sale of property subject to a lien is only allowed after the death of the patient and the death of the patient's surviving spouse who was residing in the home on a continuous basis. <sup>3</sup> Recovery is also allowed through a lien on the patient's home, when there is no: surviving child who is blind or disabled or who was residing in the home on a continuous basis immediately prior to the patient's death; non-disabled child or sibling of the patient lawfully residing in the home who has resided there for a period of at least two years immediately prior to the patient's admission to a long-term care service, who has resided there on a continuous basis since that time, and who can establish that he or she provided care that permitted the patient to reside in the home rather than in a long-term care facility; or a minor child who was residing in the home on a continuous basis immediately prior to the death of the individual but only until that child reaches majority. <sup>4</sup>
<b>Liens:</b>	<p>When the state makes an outlay for a patient (55 and older) receiving services in a long-term care facility, a TEFRA lien is created against all real property of the patient, prior to the patient's death, after notice and opportunity for a hearing before the state's Department of Health and Social Services that the patient cannot reasonably be expected to return home.<sup>5</sup></p> <p>No lien may be imposed on a patient's home if any of the following are lawfully residing in the home: the patient's spouse; the patient's child who is either under 21, blind or permanently and totally</p>

<sup>1</sup> 25 Del. C. §5001(c).

<sup>2</sup> 12 Del. C. §1901.

<sup>3</sup> 25 Del. C. §5003(1).

<sup>4</sup> 25 Del. C. §5003(2).

<sup>5</sup> 25 Del. C. §5002(a).

disabled; or the patient's sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately prior to the patient's admission to the long-term care facility.<sup>6</sup>

The lien attaches to real property upon the state's recording of a notice of lien at the Recorder of Deeds' office in the county where the property is located.<sup>7</sup> The lien, once satisfied, can be released by similarly recording of release of lien form.<sup>8</sup> However, any lien imposed by the state dissolves and becomes null and void upon the patient's discharge from the long-term care facility and return home.<sup>9</sup>

The Department of Health and Social Services is required to discharge any lien upon such discharge.<sup>10</sup> As discussed in the previous Section above, recovery against the property subject to lien is only allowed after the death of the surviving spouse of the patient (who was living in the home on a continuous basis)<sup>11</sup> and only when there is none of the following living in the home on a continuous basis: a surviving child of the patient who is blind or disabled per SSI criteria; non-disabled child or sibling of the patient who lived in the home for two years prior to the patient's admission to a long-term care service and who provided care to the patient that permitted the patient to reside in the home rather than a long-term care facility; or a minor child who had been residing in the home on a continuous basis immediately prior to the patient's death, but only until the child reaches majority.<sup>12</sup>

**Partnership Program:** Delaware has a Qualified State Long-Term Care Insurance Partnership program which requires the following for a policy to qualify for asset disregard: the policy must have been issued on or after November 1, 2011; the covered individual must be a resident of a Qualified Partnership State when coverage first becomes effective. If a policy is exchanged for another policy, the residency rule applies to the issuance date of the original policy; the policy must meet the definition of a "qualified long-term care insurance policy" as stated in section 7702B(b) of the Internal Revenue Code of 1986; the policy must meet specific requirement of the National Association of Insurance Commissioners (NAIC) Long Term Care Insurance Model Regulations Act and Model Act; the policy must include some level of inflation protection, depending on the age of the

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<sup>6</sup> 25 Del. C. §5002(b).

<sup>7</sup> 25 Del. C. §5002(c).

<sup>8</sup> 25 Del. C. §5002(d).

<sup>9</sup> 25 Del. C. §5002(e).

<sup>10</sup> Ibid.

<sup>11</sup> 25 Del. C. §5003(1).

<sup>12</sup> 25 Del. C. §5003(2).



applicant.<sup>13</sup> The amount of the disregard is equal to the dollar amount of insurance benefits that have been paid to or on behalf of the individual, even if additional benefits are available under the terms of the policy.<sup>14</sup> Disregarded assets are also excluded from estate recovery.<sup>15</sup>

**Hardship Waiver:**

Delaware's Department of Health and Social Services is authorized to waive collection if recovery would work an undue hardship.<sup>16</sup> However, hardship waivers are not considered permanent in Delaware. Any hardship waiver granted by the state remains in effect only for so long as the undue hardship conditions persist; once the reason for the undue hardship waiver no longer exists, the state is authorized to continue pursuing its recovery claim.<sup>17</sup> Only the following individuals are entitled to seek a recovery waiver: a civil union partner, children, grandchildren, parents, or siblings of the DHSS long-term care recipient who meet one of the following conditions:

- Receive any Federal or State funded assistance for living expenses (examples: SSI, AFDC, VA Aid and Attendance) and have no other home to which they can return; or
- Have total family income less than or equal to 200% of the current monthly Federal Poverty limit, and have total family resources that can be converted to cash less than or equal to \$3,000, including any real property that they own; or
- DHSS will also not recover if the real property that is held in ownership with a civil union partner, children, grandchildren, siblings or parents constitutes a business that contributes to the livelihood of that other individual or his/her dependents or heirs.

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<sup>13</sup> 20345(3)

<sup>14</sup> 20345(4)

<sup>15</sup> 20345(5)

<sup>16</sup> 25 Del. C. §5005.

<sup>17</sup> Ibid.

A white outline map of the state of Florida is centered on a blue background. The word "Flordia" is written in a white serif font across the middle of the state.

# Flordia

# Florida (FL)

<b>Governing Law:</b>	Florida's estate recovery is governed by the "Medicaid Estate Recovery Act," which is codified at F. S. A. §409.9101.
<b>Estate Scope:</b>	<p>Florida's estate recovery is simply limited to a debt of the deceased recipient, which is properly claimed in probate court.<sup>1</sup></p> <p>The Florida statute creates three broad full exclusions from recovery. First, recovery is prohibited if the decedent is survived by a spouse, a child under 21, or a child who is blind and totally and permanently disabled.<sup>2</sup> Existence of any of these persons is a full bar to recovery. The second bar for recovery is any asset which is exempt from creditor claims under Florida constitution or statute.<sup>3</sup> The third bar to recovery comes from any heir of the estate, beyond the excluded class, claiming a waiver of recovery due to "undue hardship,"<sup>4</sup> discussed more fully below.</p> <p>The attorney or personal representative of any estate in which the decedent at the time of death was 55 years of age or older, promptly send a notice and a copy of the death certificate to the Agency for Health Care Administration. This should be mailed to Xerox Recovery Services, P.O. Box 12188, Tallahassee, FL 32317-2188. Once received, Xerox determines whether Medicaid provided any medical assistance and, if so, files a claim with the probate court. The claim states the amount owed. The Clerk of Court then forwards a copy of the claim to the estate attorney or personal representative.</p> <p>In Florida, homes can have special exemption. The probate judge makes the determination about what is exempt. In general, if the Medicaid recipient owned the home as the primary place of residence and it passes to the decedent's relatives, the judge will likely declare it to be "homestead protected from creditors" and, thus, not recoverable by the state.</p>
<b>Spousal Recovery:</b>	Florida not only does not collect against a surviving spouse or the surviving spouse's estate; recovery is completely prohibited if the deceased patient is survived by a spouse. <sup>5</sup>
<b>Liens:</b>	Florida does not utilize TEFRA liens for recovery.

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<sup>1</sup> F.S.A. §409.9101(2), (3).

<sup>2</sup> F.S.A. §409.9101(6)(a)-(c).

<sup>3</sup> F.S.A. §409.9101(7).

<sup>4</sup> F.S.A. §409.9101(8).

<sup>5</sup> F.S.A. §409.9101(6)(a).

<b>Partnership Program:</b>	Florida authorizes the use of a partnership program under F.S.A. §409.9102 and F.S.A. §627.94075. The statute itself provides only for asset disregard in the eligibility process. An individual who is a beneficiary under a qualified state Long-Term Care Insurance Partnership Policy is given a resource disregard equal to the amount of the insurance benefit payments made to or on behalf of the individual for long term care services when determining if the individual's countable resources are within the program limits to qualify for Medicaid. <sup>6</sup>
<b>Hardship Waiver:</b>	<p>An heir of an estate not entitled to full exclusion as a protected heir can request a hardship waiver to waive all or part of the recovery against the estate of the decedent.<sup>7</sup> The statute indicates four criteria which are to be considered in determining whether such a waiver should be granted, providing a presumption in favor of granting such a waiver if any of the specified conditions precedent are satisfied:</p> <ul style="list-style-type: none"> <li>• The heir currently lives in the residence of the decedent, lived there at the time of death of the decedent, made the residence a primary residence for a full year before the decedent's death, and owns no other home;<sup>8</sup></li> <li>• The heir would be deprived of food, clothing, shelter, or medical care for the maintenance of life or health;<sup>9</sup></li> <li>• The heir can document that he or she provided full-time care to the decedent which caused the decedent to delay admission to the nursing home. In that case, the heir claiming the exemption must be the decedent's sibling or child and must have resided with the decedent for one year prior to the decedent's death;<sup>10</sup> or</li> <li>• The cost involved in the sale of the property would be equal to or greater than the value of the property,<sup>11</sup> While the state can pursue nonexempt personal or real property when there are no liquid assets to cover the claim, the non-liquid assets are to be liquidated to satisfy the claim and the state will not take title to real property to satisfy the claim.<sup>12</sup></li> </ul>

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<sup>6</sup> Fla. Admin. Code R. 65A-1.712.

<sup>7</sup> Ibid.

<sup>8</sup> F.S.A. §409.9101(8)(a).

<sup>9</sup> F.S.A. §409.9101(8)(b).

<sup>10</sup> F.S.A. §409.9101(8)(c).

<sup>11</sup> F.S.A. §409.9101(8)(d).

<sup>12</sup> F.S.A. §409.9101(10).



A white outline map of the state of Georgia is centered on a dark blue background. The word "Georgia" is written in a white serif font across the middle of the map.

# Georgia

# Georgia (GA)

<b>Governing Law:</b>	Georgia authorizes estate recovery under Ga. Code Ann. §49-4-147.1 and implements recovery via Ga. Comp. R. Regs. §111-3-8-.01 to §111-3-8-.08.
<b>Estate Scope:</b>	<p>Georgia’s administrative code defines “estate” as all real and personal property under the probate code as well as real estate which transfers by “joint tenancy, right of survivorship, life estate, survivorship, trust, annuity, homestead or any other arrangement.”<sup>1</sup></p> <p>Estates valued at \$25,000 or less are exempt from recovery.<sup>2</sup> For non-probate assets, the recovery administrator is authorized to file an affidavit to recover assets from a financial institution that would otherwise pass outside of probate. Georgia is one of the few states that allows for the avoidance of any transfers of assets that occur on or after the lookback date (i.e. five years prior to filing for Medicaid assistance).<sup>3</sup> If any transfer is made by the patient or the Community Spouse without adequate consideration, the department can have the transaction voided by a court action.<sup>4</sup></p>
<b>Executor Duties:</b>	<p>A number of persons are obliged to report the death of the patient to the Department of Community Health, Division of Medical Assistance, including the personal representative of the decedent’s estate.<sup>5</sup> Such notice must be given within 30 days.<sup>6</sup> If the personal representative distributes the estate without taking the state’s recovery claims into account, the personal representative can be held personally liable for the debt to the state, not the recipient of the inheritance.<sup>7</sup></p> <p>Once the state is notified of the death, it will submit its claim to the personal representative. The state has as much time to bring a claim as any other creditor by the date indicated in the notice to creditors which must be published by the personal representative.<sup>8</sup> Claims by the state have priority over all other claims except, in order of priority:</p> <ul style="list-style-type: none"><li>• Support for the family;</li></ul>

<sup>1</sup> Ga. Comp. R. & Regs. §111-3-8-.02(6).

<sup>2</sup> Ibid.

<sup>3</sup> Ga. Comp. R. & Regs. §111-3-8-.04(14).

<sup>4</sup> Ibid.

<sup>5</sup> Ga. Comp. R. & Regs. §111-3-8-.03(1).

<sup>6</sup> Ibid.

<sup>7</sup> Ga. Comp. R. & Regs. §111-3-8-.05(6).

<sup>8</sup> Ga. Comp. R. & Regs. §111-3-8-.05(5).

- Funeral expenses, if no pre-paid funeral;
- Estate administration;
- Expenses of the last illness; and
- Unpaid taxes or other taxes due the state or federal government. (For priority, the Medicaid bill is considered a debt due the state under this category.)<sup>9</sup>

**Spousal Recovery:**

Recovery is merely delayed, not barred, when the patient is survived by a spouse or child who is under 21, blind or permanently disabled.<sup>10</sup> The department is also required to delay recovery against any lien on a home, discussed below, while certain persons are living in the home. All this merely postpones the inevitable, since the rules explicitly allow for delayed recovery until such a time where conditions are no longer present.<sup>11</sup> Such recovery authority is so expansively broad that the rules explicitly declare that the claim can be executed regardless of whether there is an open estate file.<sup>12</sup> Georgia's recovery becomes one of the most visibly tenacious, as recovery is directed to be pursued until all assets in the recipient's expanded estate are no longer "accessible."<sup>13</sup>

**Liens:**

Georgia's administrative rules allow the department to impose a TEFRA lien on the recipient's real estate.<sup>14</sup> Such liens are only authorized when the patient is not reasonably expected to return home and only when there is none of the following living in the home: spouse, child under 21; disabled child of any age; or sibling with an equity interest who lived in the home at least a year before the patient entered the nursing home.<sup>15</sup> If the state determines that a person qualifies to have a lien placed on real property, the determination can be appealed within 30 days after receiving the notice.<sup>16</sup>

Even when a lien is attached to a home of a deceased Medicaid recipient, the state will not seek recovery against the property until none of the following are not residing in the home: a sibling of the decedent who resided in the home for at least a year before the patient was institutionalized or a child of the decedent who lived in the home for at least two years before the patient was institutionalized and provided the patient with care that caused the

<sup>9</sup> Ga. Comp. R. & Regs. §111-3-8-.05(3).

<sup>10</sup> Ga. Comp. R. & Regs. §111-3-8-.04(8).

<sup>11</sup> Ga. Comp. R. & Regs. §111-3-8-.04(16).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ga. Comp. R. & Regs. §111-3-8-.07(1).

<sup>15</sup> Ga. Comp. R. & Regs. §111-3-8-.07(2).

<sup>16</sup> Ibid at (6).

patient to remain home rather than become institutionalized.<sup>17</sup> Georgia also can use a lien to attach inheritances paid out of an estate when recovery is delayed in order to maintain its claim until such time as the reason for delay no longer exists.<sup>18</sup>

**Partnership Program:** Georgia implemented a partnership program under the Georgia Long-Term Care Partnership Program Act, codified at Ga. Code Ann. §49-4-162 to §49-4-165. Upon the exhaustion of policy benefits or upon diminishment of assets below the anticipated remaining benefits of the policy, assets are disregarded for eligibility purposes and any subsequent recovery attempt by the state.<sup>19</sup>

**Hardship Waiver:** An heir can request a hardship waiver to ameliorate estate recovery and lien recovery.<sup>20</sup> While federal hardship criteria prevails, the administrative code sets forth two presumptive criteria for establishing undue hardship: the asset to be recovered is an income-producing farm of one or more of the heirs with an annual gross income of the farm is \$25,000 or less, or the recovery of the assets would result in the heir becoming eligible for government public assistance based on need and/or medical assistance programs.<sup>21</sup> However, such eligibility cannot also be the result of the heir having divested assets to qualify.<sup>22</sup> The personal representative or heir has 30 days from receipt of a notice of the state's claim to file a hardship waiver.<sup>23</sup> The state has 30 days from receipt of the request to grant or deny the request.<sup>24</sup> A denial can be appealed.<sup>25</sup> The appeal can be heard by an administrative law judge if the estate is not in probate; otherwise, the probate judge overseeing the probate estate can hear the appeal.<sup>26</sup>

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<sup>17</sup> Ga. Comp. R. & Regs. §111-3-8-.024(9).

<sup>18</sup> Ga. Comp. R. & Regs. §111-3-8-.03(3)(c).

<sup>19</sup> Ga. Code Ann. §49-4-162(b).

<sup>20</sup> Ga. Comp. R. & Regs. §111-3-8-.08(a).

<sup>21</sup> Ga. Comp. R. & Regs. §111-3-8-.08(4).

<sup>22</sup> Ga. Comp. R. & Regs. §111-3-8-.08(6)(b).

<sup>23</sup> Ga. Comp. R. & Regs. §111-3-8-.08(8).

<sup>24</sup> Ga. Comp. R. & Regs. §111-3-8-.08(9).

<sup>25</sup> Ga. Comp. R. & Regs. §111-3-8-.08(10).

<sup>26</sup> Ga. Comp. R. & Regs. §111-3-8-.08(11).



## How Does Medicaid Pursue Recovery?

Estate Recovery will occur when the State files a statement of claim against the estate of a deceased Medicaid member. Notification will be mailed to the representative of the estate to advise them of the claim. The personal representative should contact the Estate Recovery Unit to receive detailed information about the recovery process.

## What is a Lien?

“Lien” means a claim, encumbrance or charge against the Medicaid member’s real or personal property on account of medical assistance paid to the member correctly under the State Plan. A lien may be placed on the real property of a member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded, or other institution or a lien may be placed on both real and personal property of a member after the member’s death.

## How Should Notification Be Given of a Medicaid Member's Death?

The provider, attorney, personal representative, or case manager (if applicable) should contact the Estate Recovery Unit by fax (see contact information on back of brochure) to provide notification of a member's death within 30 days of death. The initial notification should include:

- Full name of the deceased member;
- Medicaid ID number and/or social security number;
- Date of death;
- Name, address, and telephone number of the personal representative and/or attorney handling the estate.

Once notification has been received, the representative and/or attorney will be contacted promptly by DCH and advised in detail on how to proceed with the recovery process.

## Do You Have Questions?

Please call our office for any further assistance.  
Phone: (770) 916-0328  
Fax: (678) 569-0066

Georgia Department of Community Health  
Estate Recovery Unit  
6300 Powers Ferry Road, Suite 600-288  
Atlanta, GA 30339  
[www.dch.georgia.gov](http://www.dch.georgia.gov)

**georgia.gov**  
Online access to Georgia government

The Medicaid Estate Recovery Unit is administered by Health Management Systems, Inc. under contract with the Department of Community Health.



Health Management Systems, Inc. is an Equal Opportunity Employer



## GEORGIA MEDICAID ESTATE RECOVERY PROGRAM



## INFORMATION GUIDE

**georgia.gov**  
Online access to Georgia government

## What is Estate Recovery?

Estate Recovery is a program, required by the federal government in every state, in which the assets of deceased Medicaid members are used to reimburse the taxpayers for long term care provided through Medicaid.

Funds are recovered from the member's estate after his/her death for the cost of these services. The total value of the estate must be valued over \$25,000 for estate recovery to apply. An estate includes all real and personal property (homes, land, vehicles, cash, bank accounts) held individually or jointly. All assets of a deceased Medicaid member are subject to recovery including property held with a life estate interest.



## Why does Georgia have an Estate Recovery Program?

The Medicaid program is a joint federal/state program. Federal law, enacted in 1993, requires states to develop and enforce an Estate Recovery Program. The Department of Community Health (DCH) has the responsibility to recover money paid on behalf of the Medicaid member up to the full amount that Medicaid paid. This requirement was established by Title XIX of the Social Security Act.

To ensure that Georgia complied with the federal requirement for estate recovery, Chapter 111-3-8 of the Rules of the Department of Community Health for Medical Assistance was passed which establishes and governs the Estate Recovery Program.

## Who is Affected By Estate Recovery?

The Estate Recovery Program applies to a person who receives any of the following services paid for by Medicaid:

- A person of any age living in a nursing home;
- A person of any age living in a long-term care program outside their own family's home;
- A person 55 years of age or older who has a worker coming to their home to help them with health care needs.



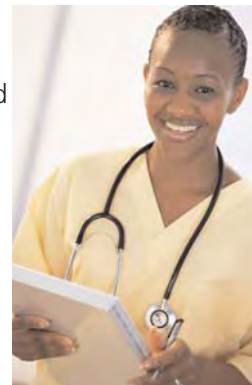
*An example would be a nurse that comes to the member's home to help with medications or to change bandages.*

*Another example would be a worker who comes to the member's home to help with bathing, cleaning, or getting dressed.*

## What Medicaid Expenses Must Be Reimbursed?

Qualified expenses incurred by Medicaid on behalf of affected members for any services provided in a long-term care facility or in the home when provided as an alternative to institutionalization must be reimbursed. Recoverable in-home services include:

- Nursing facility services
- Personal care services
- Home and community-based services
- Hospital services
- Prescription drug services



## Are There Any Exceptions to Estate Recovery?

In order to protect the family of the Medicaid member, the following rules must be observed before any money can be collected:

- The Medicaid member must have passed away and the surviving husband/wife must have also passed away. Until both have passed, recovery will be delayed.
- The Medicaid member must not have dependent children younger than 21 years of age. Until the child reaches age 21, recovery will be delayed.
- The Medicaid member must not have any dependent children of any age with a disability or blindness that has been confirmed by a government agency. Recovery will be delayed until the disabled/blind child has also passed away.

## What is an Undue Hardship?

The Medicaid program will waive or delay recovery if an undue hardship exists. The two conditions for an undue hardship are:

- The asset to be recovered is an income-producing farm of one or more of the heirs, and the annual gross income is limited to \$25,000 or less;
- Recovery of assets would result in the applicant becoming eligible for governmental assistance based on need and/or medical assistance programs.

If the heir feels he/she could be considered for an undue hardship waiver, a request may be made within 30 days of receiving Medicaid's notice against the estate, or upon the sale, transfer, or conveyance of the real property subject to a TEFRA lien. The Estate Recovery Unit will provide detailed instructions on how to file for an undue hardship waiver in the Medicaid notice.

# FACT SHEET



GEORGIA DEPARTMENT  
OF COMMUNITY HEALTH

## Medicaid and Estate Recovery

### Overview

By law, Estate Recovery is the reimbursement claim that Medicaid has against the estate of a deceased Medicaid member. Since 1993, states have been required to have an Estate Recovery Program under the provisions of the Omnibus Budget Reconciliation Act of 1993.

Estate Recovery by the Georgia Department of Community Health (DCH) applies to Medicaid members who at the time of their death:

- Were of any age and an inpatient in a nursing facility, intermediate care facility for people with mental retardation or other mental institution.
- Were 55 years of age or older when they received home- and community-based services instead of care in an institution.

The Estate Recovery statute has existed in Georgia since 1981. Only estates with a gross value of less than \$25,000 are excluded from Estate Recovery.

### The Definition of “Estate”

For Estate Recovery, the estate is defined as all real and personal property under the probate code, and real property passing by joint tenancy, right of survivorship, life estate, survivorship, trust, annuity, homestead, or any other arrangement. The estate also includes excess funds from a burial trust or contract, promissory notes, cash and personal property.

### Notifying DCH about a Member’s Death

DCH must be notified in writing within 30 days of the death of the Medicaid member by mailing notice to the Georgia Department of Community Health, Estate Recovery Unit, P.O. Box 1984, Atlanta, GA 30303. *NOTE: If the personal*



### Hardship Criteria

The following criteria will be used to determine whether an undue hardship exists:

- The asset to be recovered is the sole income-producing farm of one or more of the heirs, is the sole income source of the family, and the annual gross income is limited to \$25,000 or less; or
- The recovery of assets would result in the applicant becoming eligible for governmental public assistance based on need and/or medical assistance programs.



# FACT SHEET



GEORGIA DEPARTMENT  
OF COMMUNITY HEALTH

## An Overview of Medicaid's Estate Recovery

*representative of an estate makes a distribution either in whole or in part of the property of an estate without having reimbursed the Medicaid agency, the personal representative may be held personally liable for the amount of the Estate Recovery claim.*

### Delayed Recovery

Recovery is delayed if:

- The deceased member's spouse is still living.
- The deceased member has a living child under the age of 21.
- The deceased member has a living child of any age who is blind or permanently and totally disabled pursuant to Title XIX of the Social Security Act.

### Tax Equity and Fiscal Responsibility Act (Pre-Death) Liens

According to the Tax Equity and Fiscal Responsibility Act (TEFRA), Medicaid may place a lien on the home of a member who is institutionalized if there is not a reasonable expectation that the member will return home. However, recovery on the lien will be delayed as long as any of the following persons are living in the home:

- The member's spouse.
- The member's living child under the age of 21.
- The member's living child of any age who is blind or permanently and totally disabled pursuant to Title XIX of the Social Security Act.
- A sibling of the member who has an equity interest in the home and was living in the member's home for at least one year on a continuous basis immediately before the date that the member was institutionalized.
- A child of the member who was living in the member's home for at least two years on a continuous basis before the date that the member was institutionalized and who has established to the satisfaction of the department that he or she provided care that permitted the member to live at home rather than be institutionalized.

### For More Information

For additional information, contact the Medicaid Estate Recovery Unit at 770-916-0328 or visit the DCH website at [www.dch.georgia.gov](http://www.dch.georgia.gov). Members with questions about Medicaid Estate Recovery may submit them to [GAEstateRecovery@dch.ga.gov](mailto:GAEstateRecovery@dch.ga.gov), or write to Georgia Department of Community Health, Estate Recovery Unit, 5660 New Northside Drive, Suite 750, Atlanta, GA 30328, or fax to 678-569-0066.



## Medicaid Estate Recovery Program

### What is Estate Recovery?

Estate Recovery is a program in every state whereby the states are reimbursed from the estates of deceased Medicaid members for long term care such as nursing home care or community care services provided through Medicaid. By accepting Medicaid benefits, a debt is created on part of the beneficiary that must be paid from the beneficiary's estate. Funds are recovered from the member's estate, only after death, for the cost of these services.

### Why is Estate Recovery Program being implemented in Georgia?

The Medicaid program is a joint federal/state program. Federal law, enacted in 1993, required states to develop and implement an estate recovery program. Georgia is one of the last two states to implement an Estate Recovery Program.

### Who is affected by Estate Recovery?

The Estate Recovery Program applies to people who receive any of the following services paid for by Medicaid:

- A person of any age living in a nursing home.
- A person of any age living in a facility or medical institution outside their own family's home.
- A person 55 years of age or older who is in a home or community based program. For example, a nurse that comes to your home to help you take your medication or change bandages or a person that comes to your home to help you with bathing or getting dressed in the morning.

### When will Estate Recovery begin?

Medicaid members or their authorized representative who qualify for Estate Recovery will receive notification by mail that the Estate Recovery Program began date has changed from May 1, 2006 to **May 3, 2006**. Individuals who apply for Medicaid and who may be subject to start Estate Recovery will be advised of this program prior to determination as Medicaid eligible.

The Estate Recovery Program has been put in place to help the federal government get back some of the money that Medicaid has used to pay for your health care. In order to protect your family and you, the federal government has put the following rules in place before any money will be collected:

- The person on Medicaid must have passed away and the husband or wife must also be deceased.
- The person on Medicaid must not have any dependent children younger than 21 years of age.
- The person on Medicaid must not have any dependent children of any age with a disability.
- The person on Medicaid must have property or cash that is worth more than \$25,000.
- Collection will be delayed or waived if the family of the person on Medicaid can show the collection will be an undue hardship.

### Does recent action by the Georgia General Assembly regarding the asset threshold and retroactivity affect the program?

The Georgia General Assembly, in their 2006 session, passed Senate Bill 572, which increased the asset threshold from \$25,000 to the first \$100,000 of an estate and removed the retroactive provision from the program. The Department of Community Health (DCH) submitted to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Georgia plan capturing the legislation. Since CMS did not approve the proposal, the legislative changes had no effect on the current Estate Recovery Program. At the direction of Governor Sonny Perdue and upon final Board approval the Department seeks to modify the effective date of the Estate Recovery Program from August 1, 2001 to May 3, 2006 through a formal rule making process. Simply stated only Medicaid members with expenditures on and after May 3, 2006 will be subject to Estate Recovery upon Board approval of the proposed rules.

### What constitutes a hardship?

The Medicaid program will waive or delay recovery if an undue hardship exists. Some of these reasons include:

- Asset to be recovered is an income producing farm of one or more of the heirs and the annual gross income is limited to \$25,000 or less.
- Recovery of assets would result in the applicant becoming eligible for governmental assistance based on need and/or medical assistance programs.
- The asset to be recovered is the sole income-producing asset of the Medicaid member's heirs.

**What expenses must be reimbursed?**

In accordance with the State's plan, expenses incurred by Medicaid, for any service provided in a long-term care facility and for individuals receiving institutional services in the home, Medicaid payments for nursing facility services, home and community based services, related hospital services and prescription drug services are recoverable.

**What assets are considered subject to recovery?**

Estate includes all real and personal property (i.e. homes, real estate, vehicles, cash and other financial instruments) held individually or jointly. Assets subject to recovery also includes property held with a life estate interest.

**How will Medicaid go about recovering assets?**

Estate Recovery will occur when the State files a notice of claim against the estate of a deceased Medicaid member. No action to recover debt due by the deceased Medicaid member will be taken against the personal representative or heirs until six months after personal representative or heirs have been notified.

**How do I apply for an undue hardship waiver?**

Undue hardship waiver request may be made within 30 days of receiving the Medicaid's notice against the estate, or upon the sale, transfer or conveyance of the real property subject to a TEFRA lien. The Estate Recovery Unit will provide detailed instructions on how to file for undue hardship waiver in the Medicaid notice.

**What is a lien?**

A lien means a claim, encumbrance or charge against the Medicaid member's real or personal property on account of medical assistance paid to the member correctly under the State plan. A lien may be placed on the real property of a Member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded, or other institution or a lien may be placed on both real and personal property of a member after the member's death.

**Can I transfer my assets to avoid the Estate Recovery Program?**

If you choose to transfer your assets, you must contact your local Department of Family and Children Services (DFCS) case worker prior to the transfer to evaluate how the transfer may affect your Medicaid eligibility and if any penalties are applicable.

**Does this program apply to me if I am not receiving home and community based waiver services or nursing home services?**

No. However, if in the future you enroll in one of these services, yes it will apply to you.

**How much money will I owe back to the Medicaid program?**

If you meet the criteria for Estate Recovery, your case will be evaluated to establish the exact amount owed to Medicaid at the time of the member's death. The amount requested will be limited to the amount that Medicaid has paid on qualified expenses and the available assets.

**How do I find out how much has been paid for member's Medicaid services?**

Members may request this information by fax at (678) 569-0066 or call the Estate Recovery Unit at (770) 916-0328.

**Disclaimer:** The information contained herein shall not constitute legal advice but should be used for informational purposes only.

For additional information, contact the Medicaid Estate Recovery Office at 770-916-0328 or visit our website at [www.dch.georgia.gov](http://www.dch.georgia.gov). Members with questions on Medicaid Estate Recovery can submit questions to [GAEstateRecovery@dch.ga.gov](mailto:GAEstateRecovery@dch.ga.gov).



An outline map of the Hawaiian Islands is centered on the page. The islands are depicted in white and light blue against a dark blue background. The word "Hawaii" is written in a large, white, serif font, with the letter 'i' having a dot. The map shows the main island of Hawaii (the Big Island) in the lower right, and several smaller islands to the northwest, including Midway, Laysan, and the main island of Lanai.

# Hawaii

# Hawaii (HI)

<b>Governing Law:</b>	Hawaii has instituted an estate recovery program which is authorized by and couched within its general recovery statute located at H.R.S. §346-37 and is complemented by a recovery lien mechanism statute found at H.R.S. §346-29.5 and Hawaii Administrative Rules, Title 17 (Department of Human Services), Subtitle 12 (Med-Quest Division), Chapter 1705 (Medical Assistance Recovery).
<b>Estate Scope:</b>	Hawaii requires recovery only from the probate estate of the recipient. <sup>1</sup>
<b>Spousal Recovery:</b>	Recovery is strictly limited to the decedent's estate. <sup>2</sup> The existence of a surviving spouse or a surviving child who is under 21 years of age, blind, or disabled presents a full bar to recovery. <sup>3</sup>
<b>Liens:</b>	<p>The Hawaii Department of Human Services can levy a lien against any property of the recipient of inpatient-medical assistance for institutionalization if the patient cannot be reasonably expected to be discharged and return home.<sup>4</sup> A presumption exists that the patient will not return home if the patient or the patient's representative declares there is no intent to return or if the patient has been institutionalized for six months or more without a discharge plan.<sup>5</sup> Once a determination has been made that the patient will not return home, The Department sends a notice to inform affected recipients that a lien may be placed on the home. The Medicaid recipient (or the recipient's authorized representative) has an opportunity to request a hearing if they disagree with the determination to file a lien. After the notice and the opportunity for a hearing, a lien is filed on the home property if there is no request for a hearing or if the outcome of requested hearing is in the state's favor.<sup>6</sup> Recovery from the lien will take place after the death of the recipient or when the home is sold or transferred while the recipient is living.</p> <p>The department is prohibited from placing a lien on a home if any of the following reside in the home: the patient's spouse; a minor, blind or disabled child; or a sibling who has an equity interest in the home and lived in the home for one year before the patient's admission to</p>

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<sup>1</sup> H.R.S. 346-37(a).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> H.R.S. 346-29.5(b).

<sup>5</sup> Ibid.

<sup>6</sup> <http://humanservices.hawaii.gov/mqd/fss-liens/>

the nursing home.<sup>7</sup> No recovery can be had against the home from the lien when there is a sibling of the patient who resided in the home for a year before the patient's admission to the medical institution or child who resided in the home for two years prior to the patient's admission to the medical institution as long as the child provided care to the patient that permitted the patient to remain living in the home rather than an institution.<sup>8</sup>

If the patient died leaving a surviving spouse or a surviving minor, blind or disabled child, the existence of any one of the aforementioned survivors creates an absolute bar to recovery if any lien was filed.<sup>9</sup> Liens are enforceable on their own in court or as an estate claim.<sup>10</sup> Lien claims have priority over all other debts except taxes, actual funeral expenses, expenses of the last illness, the cost of the estate administration, and any allowances to the surviving spouse and children for their support during the administration of the estate.<sup>11</sup>

**Hardship Waiver:**

The department is allowed to settle or compromise claims only when there is a showing of undue hardship.<sup>12</sup> Recovery may be waived for the period the following conditions exist:

- The real property is the sole income-producing asset such as a family farm or other family business; and
- The income from the property is not over 100% of the federal poverty guidelines for the number of family members solely dependent on the real property;<sup>13</sup> or
- The real property is a home of modest value and the family members have lawfully resided in the home for a continuous period that started three months immediately before the recipient's admission to the medical institution and provided care that delayed the admission; and
- These family members do not own other real property and have income not greater than 100% of the federal poverty limit.<sup>14</sup>

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<sup>7</sup> H.R.S. 346-29.5(b)(1).

<sup>8</sup> H.R.S. 346-29.5(b)(2).

<sup>9</sup> H.R.S. 346-29.5(b)(3).

<sup>10</sup> H.R.S. 346-29.5(d).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Haw. Admin. R. §17-1705-55(e)(1).

<sup>14</sup> Haw. Admin. R. §17-1705-55(e)(2).







# Idaho (ID)

**Governing Law:**

Under I.C. §56-218, Idaho's Department of Health and Welfare is authorized to pursue estate recovery. Lifetime liens are authorized separately under I.C. §56-218A. Idaho has adopted administrative rules to govern estate recovery found at IDAPA §16.03.09.900, et seq.

**Estate Scope:**

Idaho adopts the broadest definition of estate allowable under federal law.<sup>1</sup> The administrative code defines estate as "All real and personal property and other assets including those in which the participant had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased participant through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."<sup>2</sup> It is also one of the few states to allow its department to file an action in district court to set aside any transfers of "real or personal property, on or after the lookback dates" proscribed by federal law, that were made "without adequate consideration."<sup>3</sup> Divestments made by either the patient or the patient's spouse in that timeframe are potentially voidable by court action.<sup>4</sup> Additionally, the Idaho Supreme Court ruled in 2014 that the state may recover Medicaid benefits from the entire value of a property that a Medicaid recipient transferred to his family member while retaining a life estate.<sup>5</sup>

Like the handful of other states that allow this inclusion, the inclusion predates the DRA requirement that penalty periods are prospective from the date of application. Before enactment of the DRA, it was quite common for divestment to occur which caused a penalty that would elapse before the application is filed but still be within the former three-year lookback window. Because those divestments could be performed to establish eligibility without any relevant penalty period (e.g., serial divestment), it could be easily understood that a legislature which could not overtly curb such divestments would attempt to expand the scope of estate recovery to include those transfers as a backdoor way to deter such divestments.

However, if any divestment is made under the current prospective penalty provisions brought into existence by the DRA, the recovery

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<sup>1</sup> I.C. §56-218(4).

<sup>2</sup> IDAPA §16.03.09.901.04.

<sup>3</sup> I.C. §56-218(2).

<sup>4</sup> Ibid.

<sup>5</sup> *In re Estate of Peterson* (Idaho, No. 40615, Aug. 13, 2014).

of assets intentionally transferred within the lookback period would presumably be a double penalty because the patient would have had to private pay through the period of ineligibility caused by the divestment. Although not yet put to the test, the attempt to recover against such divestments like the Idaho statute provides for would be ripe for challenge based on pre-emption for two key reasons: first, the double recovery presents a windfall to the state, and, second, the estate can only be expanded to include such assets that the patient had an interest at death. To use the “other arrangement” to reach back and undo bona fide, completed gifts would exceed the scope of the federal recovery statute and run contrary to divestment rules that already take into account such transfers and penalize them soundly.

All notification regarding liens, estate claims, and requests for notice must be directed to the Department of Health and Welfare, Estate Recovery Unit, 3272 Elder, Suite B, P.O. Box 83720, Boise, Idaho, 83720-0009.<sup>6</sup>

**Spousal Recovery:**

After litigation exposed holes in the Idaho recovery statute in regards to recovering against the estate of the non-recipient spouse,<sup>7</sup> the statute was expanded to include full recovery from the patient or the patient’s spouse’s estate.<sup>8</sup> There is no recovery allowed until after the death of the patient and the patient’s spouse, and recovery is also delayed if there is a child who is under 21, blind or permanently and totally disabled.<sup>9</sup> While only one spouse survives, a recovery claim can be established in the deceased spouse’s estate, regardless of which spouse died and regardless of whether recovery is allowed at that time.<sup>10</sup> Additionally, the issue of recovery against separate property was litigated and the courts held that despite the presence of a marital agreement that separated property in a marriage, estate recovery could pursue those assets as if the marital agreement was not in place<sup>11</sup>;

**Liens:**

Idaho authorizes the department to use liens to secure recovery.<sup>12</sup> These liens are not used on property during the patient’s lifetime but merely to establish the state’s potential estate claim on assets in the estate which cannot be recovered against at the time the estate is administered because of the presence of a person (i.e., surviving spouse, totally disabled child, etc.) whose existence delays recovery.

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<sup>6</sup> IDAPA §16.03.09.902.

<sup>7</sup> *In re Estate of Dolores Arlene Elliott*, 141 Idaho 177, 108 P.3d 324 (2005).

<sup>8</sup> I.C. §56-218(1).

<sup>9</sup> I.C. §56-218(1)(a).

<sup>10</sup> I.C. §56-218(1)(b).

<sup>11</sup> *In re Estate of Wiggins*, 2013 Opinion No. 85 (August 9, 2013). A Marital Settlement Agreement executed to reach Medicaid eligibility did not transmute community property into separate property for purposes of estate recovery after the death of the Medicaid recipient. Also stated in IDAPA §16.03.09.905.06.

<sup>12</sup> I.C. §56-218(6).

Post-death liens must be attached within 90 days of a request to do so by the estate's personal representative or successor, otherwise the department has up to three years to file the lien<sup>13</sup> which is consistent with the limitations on presentation of claims under Idaho's Uniform Probate Code.<sup>14</sup> The department can foreclose on a post-death lien without adjudication of a claim in probate where no personal representative has been appointed after one year from the date of death of the survivor of both the patient and the patient's spouse, if any;<sup>15</sup> when the property has been abandoned by the decedent's heirs or successors, if any;<sup>16</sup> where taxes are past due for two years;<sup>17</sup> or where all interested parties consent to the foreclosure.<sup>18</sup>

I.C. §56-218A authorizes the use of lifetime (i.e. TEFRA) liens to secure potential recovery and to trigger notification of any activity on the real property which cannot be recovered against at the time of the activity because of limitations on recovery. Liens can only be placed against the real property of the patient prior to death after determination that the patient cannot reasonably be expected to return home, proper notice of such determination, and opportunity for a hearing to contest such determination.<sup>19</sup> No lien can be imposed on a home if any of the following people are lawfully residing in the home: patient's spouse; patient's child under age 21; patient's blind or permanently and totally disabled child; or patient's sibling who holds an equity interest and resided in the home for one year prior to the patient's admission to the medical institution.<sup>20</sup>

Idaho liens are perfected by filing them with Idaho's Secretary of State.<sup>21</sup> Recovery by lien can only be had from the patient's estate under the recovery statute or upon the sale of the property but only after the death of the patient's spouse and only when there is no child under 21, blind or permanently disabled, or no sibling living in the home who resided in the home for one year prior to the patient's admission to the medical institution, or no child of the individual who lived in the home for two years before the patient's admission to the medical institution and provided the patient care before entry to the institution.<sup>22</sup> The state is also authorized under I.C. §56-225 to record a request for notice in the relevant county recorder's office in

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<sup>13</sup> I.C. §56-218(6)(a).

<sup>14</sup> I.C. §15-3-803(a).

<sup>15</sup> I.C. §56-218(6)(c)(i).

<sup>16</sup> I.C. §56-218(6)(c)(ii).

<sup>17</sup> I.C. §56-218(6)(c)(iii).

<sup>18</sup> I.C. §56-218(6)(c)(iv).

<sup>19</sup> I.C. §56-218A(1)(b).

<sup>20</sup> I.C. §56-218A(2).

<sup>21</sup> I.C. §56-218A(3).

<sup>22</sup> I.C. §56-218A(5).

order to alert the state of any transfer or encumbrance on any property subject to recovery.<sup>23</sup>

**Partnership Program:** The Idaho Long-Term Care Partnership Program will disregard a policyholder's personal assets equal to amounts paid out under a qualifying insurance policy when it determines the person's eligibility for Medicaid assistance. The state insurance commissioner maintains a list of companies that offer qualifying policies.<sup>24</sup> The portion of the Idaho Administrative Code that places restrictions on what assets can be recovered against makes no mention whatsoever to assets excluded under a partnership policy.<sup>25</sup>

**Hardship Waiver:** The recovery statute specifies three presumptive conditions, proof of which would constitute the basis of an undue hardship.<sup>26</sup> Waivers can be granted if:

- The estate subject to recovery is income-producing property that provides the primary source of support for other family members;<sup>27</sup> or
- The estate is below a minimum value (as set periodically by the department's rules);<sup>28</sup> or
- Recovery causes the heirs to be eligible for public assistance.<sup>29</sup>

Note: The administrative code also adds the following circumstance: "The participant received medical assistance as the result of a crime committed against the participant."<sup>30</sup>

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<sup>23</sup> I.C. §56-225(1); I.C. §55-819.

<sup>24</sup> [http://www.doi.idaho.gov/company/LTC\\_companies.aspx](http://www.doi.idaho.gov/company/LTC_companies.aspx)

<sup>25</sup> IDAPA §16.03.09.905.

<sup>26</sup> I.C. §56-218(7).

<sup>27</sup> Id at (7)(A).

<sup>28</sup> Id at (7)(B); Note: IDAPA §16.03.09.905.10(c) limits recovery if the department's claim is less than five hundred dollars (\$500) or the total assets of the entire estate are less than five hundred dollars (\$500), excluding trust accounts or other bank accounts.

<sup>29</sup> Id at (7)(C).

<sup>30</sup> IDAPA §16.03.09.905.10(d).





# Illinois (IL)

<b>Governing Law:</b>	Illinois authorizes recovery by statute at 305 ILCS 515-13 and under administrative rules contained in 89 Ill. Adm. Code §102.200 to §102.250. <sup>1</sup> Under these rules, the State of Illinois has the legal right to recover assistance received through the Aid to the Aged, Blind or Disabled (AABD) program.
<b>Estate Scope:</b>	The scope of the estate is strictly limited to the patient's probate estate as defined under the Probate Act of 1975. <sup>2</sup> However, as one of the few states that properly complies with 42 U.S.C. §1396p(b)(4)(B). Namely, if a portion of the estate is disregarded under the exclusion provided for by Illinois' Long-Term Care Partnership Program Act <sup>3</sup> (see below), then the state adopts an expanded estate definition for recovery of assets over and above the exclusions provided by the partnership program policy. <sup>4</sup> It is possible, in a limited way, for the state to treat transfers or conveyances of property when using the expanded estate definition as fraudulent in order to pull them back into the expanded estate. <sup>5</sup> Any such claims asserted against non-probate assets must be claimed by filing a lien (see below). <sup>6</sup>
<b>Spousal Recovery:</b>	Illinois adopted a clear spousal-recovery statute which provided that the cost of the care shall be a "claim against the person's estate or a claim against the estate of the person's spouse." <sup>7</sup> However, this provision was challenged and the Illinois Supreme Court ruled that the provision permitting the estate to recover from the estate of the surviving spouse violates the supremacy clause of Article 6 of the U.S. Constitution. <sup>8</sup> In doing so, they did not find express recovery allowed against the spouse's estate in the Federal Social Security Act. Therefore, recovery against the spouse's estate in Illinois is deemed to be prohibited; and recovery is exclusively limited to the estate of the patient. Medicaid regulations expressly state that no claim is enforceable against any property, real or personal, of the deceased patient while there is a surviving spouse, a surviving child who is under 21, or a child over 21 who is blind or permanently and totally disabled. <sup>9</sup>

<sup>1</sup> Estate recovery is also briefly mentioned in the Illinois Department of Human Services' Cash, Snap and Medical Policy Manual at PM 23-09-00: Liens and Estate Claims (AABD), PM 23-09-01: Liens, and PM 23-09-02: Estate Claims.

<sup>2</sup> 305 ILCS §515-13; 89 Ill. Adm. Code §102.210(a)(1).

<sup>3</sup> 215 ILCS §132/2, et seq.

<sup>4</sup> 305 ILCS §515-13; 89 Ill. Adm. Code §102.210(a)(1).

<sup>5</sup> 305 ILCS §515-13.

<sup>6</sup> Ibid.

<sup>7</sup> 305 ILCS §515-13 (emphasis added).

<sup>8</sup> *Hines v. Department of Public Aid*, 221 Ill. 2d 222, 850 N.E.2d 148 (2006).

<sup>9</sup> 89 ILAC §102.210(d).



**Liens:**

The Department of Healthcare and Family Services is empowered to file a TEFRA lien against the nursing home patient's real property.<sup>10</sup> Liens are to be filed on all real property, including but not limited to the homestead, of the patient who cannot reasonably be expected to be discharged and return home.<sup>11</sup> There is a rebuttable presumption that, if the patient has resided for more than 120 days in one or more institutions, the patient is considered permanently institutionalized.<sup>12</sup>

The department is required to provide the patient at least 10 days' notice before it files a lien based on a permanent institutionalization.<sup>13</sup> The notice must inform the patient of the right to contest such a determination by fair hearing.<sup>14</sup> Any such lien expires after five years, and the state is required to renew the lien if the state still intends to pursue recovery against the asset via lien encumbrance.<sup>15</sup>

The state is prohibited from filing a lien on a home occupied by the patient's spouse; minor disabled or blind child; or sibling who has an equity interest and legally resided in the home for one year immediately before the patient's admission to the medical institution.<sup>16</sup> The lien can be enforced anytime there is a transfer of the property, in the case of fraud, or at the time of the patient's death.<sup>17</sup> Foreclosure is merely deferred if the property is occupied by the surviving spouse, a child under 21, or a child over 21 who is blind or permanently and totally disabled.<sup>18</sup>

Recovery is also deferred if a sibling of the patient resided continuously in the property for at least one full year immediately before the patient was admitted to the institution or a child has resided continuously in the property for at least two full years before the patient was admitted to the institution and also shows proof that care was provided for at least two years before the admission that enabled the patient to live at home rather than in an institution.<sup>19</sup>

The department must release the lien if it receives payment in full, the patient is discharged and returns home, the lien was filed in error, or a bond is filed with surety or sureties acceptable to the state (i.e.,

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<sup>10</sup> 89 ILAC §102.220(a); "real property" is defined as land and anything erected on, growing on, or affixed to the land, such as buildings. Liens are placed on both homestead and non-homestead property but are not placed on mobile homes.

<sup>11</sup> 89 ILAC §102.235(b).

<sup>12</sup> 89 ILAC §102.235(d).

<sup>13</sup> 89 ILAC §102.235(e).

<sup>14</sup> Ibid.

<sup>15</sup> 89 ILAC §102.230(b).

<sup>16</sup> 89 ILAC §102.230(c).

<sup>17</sup> 89 ILAC §102.240(a).

<sup>18</sup> 89 ILAC §102.240(b)(1).

<sup>19</sup> 89 ILAC §102.240(b)(2).

payment plan) that guarantees payment.<sup>20</sup> The state can also release a lien if it receives the value of the property to which the lien attaches, but its claim for any balance due on the lien is reserved against any of the patient's subsequently discovered assets or deferred if the patient has a dependent spouse or minor children.<sup>21</sup>

**Partnership Program:** Illinois created a partnership program which is authorized at 215 ILCS §132/1 to §132/99.<sup>22</sup> The partnership program expressly comports to the federal proscription of the treatment of assets for eligibility and estate recovery.<sup>23</sup> If a patient has a policy and receives asset disregard for eligibility purposes, the asset disregard applies to the patient's estate assets; but it triggers the use of the broader definition of estate.

**Hardship Waiver:** Illinois provides heirs and beneficiaries an opportunity to request a hardship waiver.<sup>24</sup> The state's rules only provide one presumptive hardship: if the recovery would cause the heir or beneficiary to become or remain eligible for a public benefit program such as SSI, TANF, or Food Stamps.<sup>25</sup> The state is required to provide a notice to heirs and beneficiaries delineating the opportunity, time frame, and method to request a waiver based on undue hardship.<sup>26</sup> As beneficial as using a partnership program policy may seem in general, since the expanded estate is used for recovery, it is far easier to starve the patient's probate estate. With the *Hines* decision, recovery stops at the patient's estate; keeping it restricted to that is essential.

The state agency which oversees recovery can be contacted at: Illinois Department of Healthcare and Family Services, Bureau of Collections – Technical Recovery Section, 2200 Churchill, Building A-1, Springfield, Illinois 62702-3406.

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<sup>20</sup> 89 ILAC §102.250(a).

<sup>21</sup> 89 ILAC §102.250(b).

<sup>22</sup> Entitled "Illinois Long-Term Care Partnership Program Act."

<sup>23</sup> 215 ILCS §132/1.

<sup>24</sup> 89 ILAC §102.210(f).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.



# Indiana (IN)

**Governing Law:**

Indiana's estate-recovery authority is found in Sections 8.5 (Liens) and 9 (Estate Claims) of Title 12 (Human Services) Article 15 (Medicaid) of the Indiana Code.<sup>1</sup>

**Estate Scope:**

Indiana employs as broad a view of an estate as could be reasonably imagined from the federal options. In Indiana, the "estate" includes: all real and personal property and other assets included within an individual's probate estate; any interest in real property owned by the patient at the time of death that was conveyed to the patient's survivor through joint tenancy with right of survivorship, if joint tenancy was created after June 30, 2002; any real or personal property conveyed through a non-probate transfer; and any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of the patient or the patient's spouse.<sup>2</sup>

Non-probate transfers are defined as valid transfers, effective at death, by a transferor whose last domicile was in Indiana and who immediately before death had the power, acting alone, to prevent the transfer of the property by revocation or withdrawal and use of the property for the benefit of the transferor or apply the property to discharge claims against the transferor's probate estate.<sup>3</sup> Any non-probate assets determined to be exempt or transferred out of the patient's probate estate before May 1, 2002, are not included.<sup>4</sup> Additionally, the term non-probate transfer expressly does not include property that transfers as tenants by the entireties or the death proceeds of a life insurance policy.<sup>5</sup> A claim for recovery cannot be enforced against any of the following:

- Real estate while it is necessary for the support, maintenance, or comfort of the surviving spouse, a dependent child under 21, or a dependent who is in need of support because of blindness or other disability;<sup>6</sup>
- Personal property necessary for the support, maintenance, or comfort of the people listed above;<sup>7</sup> or

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<sup>1</sup> I.C. §12-15-9, et seq.

<sup>2</sup> I.C. §12-15-9-0.5(a).

<sup>3</sup> I.C. §12-15-9-0.5(b).

<sup>4</sup> I.C. §12-15-9-0.8.

<sup>5</sup> I.C. §12-15-9-0.5(b).

<sup>6</sup> I.C. §12-15-9-2(1).

<sup>7</sup> I.C. §12-15-9-2(2).

- Personal effects, ornaments, or keepsakes of the deceased.<sup>8</sup>

The state provides a list<sup>9</sup> of assets that it does not recover against which include the following:

- The proceeds of a life insurance policy that names a beneficiary.
- Real property held by a Medicaid recipient that is subject to a life estate.
- Non-probate assets that were transferred out of the probate estate before May 1, 2002.
- The sum due from an annuity contract purchased before May 1, 2005.
- Personal effects, ornaments, or keepsakes of the Medicaid recipient.
- Assets protected by an Indiana Partnership Long Term Care Insurance Policy (see below for link to the Indiana Long Term Care Insurance Program).
- All of a recipient's assets so long as the Medicaid recipient is survived by a spouse, a child under 21 years of age, or a child is who disabled or blind.

**Spousal Recovery:**

Medicaid may not file a claim against the estate of a Medicaid recipient's surviving spouse.<sup>10</sup>

**Priority of Claims:**

The state's claim for reimbursement can only be paid after the following expenses which take priority, consistent with the probate code:<sup>11</sup>

- Funeral expenses for the patient and the patient's spouse, not to exceed \$350 each;
- Expenses of the last illness of the patient and the patient's spouse; and

<sup>8</sup> I.C. §12-15-9-2(3).

<sup>9</sup> <http://www.in.gov/fssa/ompp/4874.htm>

<sup>10</sup> I.C. §12-15-9-5.

<sup>11</sup> I.C. §29-1-14-9.



- Estate administration expenses, including attorneys' fees approved by the probate court.

## **Liens:**

When it is determined that a patient cannot reasonably be expected to return to the medical institution, a lien may be filed against the patient's real property.<sup>12</sup> The Medicaid agency is authorized to conduct a "lookback" of the patient's property for at least the preceding three years to find divested property interests to lien.<sup>13</sup> If the property to be lien is secured by a loan used to operate a farm, the Medicaid lien is subordinate to any such farm loan, regardless of which is recorded first.<sup>14</sup>

No lien can be obtained if any of the following persons are lawfully residing in the home: the patient's spouse; the patient's child who is under 21 or disabled under SSI rules; the patient's sibling who has an ownership interest in the home and continuously lived in the home for 12 months before the patient was admitted to the nursing home; or the patient's parent(s).<sup>15</sup>

Before a lien can be imposed, the state must give the patient written notice and an opportunity to request a fair hearing.<sup>16</sup> If no hearing is requested, the lien can be filed at any time after 30 days has elapsed from the date notice is given to the patient.<sup>17</sup> The lien may be foreclosed on during the patient's lifetime if the property is sold or upon the patient's death; however, the lien automatically expires if the foreclosure action is not commenced within two years after the patient's death.<sup>18</sup>

No lien is enforceable if the recipient's child is living in the home and the child resided in the home for 24 months before the patient was admitted to the medical institution, provided care that delayed such admission, and continues to reside in the home since the patient's admission.<sup>19</sup> Additionally, no lien can be enforced if the patient's sibling is residing in the home, has an ownership interest in the home, and continuously lived in the home for one full year before the patient's admission to the medical institution.<sup>20</sup> The lien must be released if the patient is discharged and returns home to live.<sup>21</sup>

<sup>12</sup> I.C. §12-15-8.5-2(a).

<sup>13</sup> I.C. §12-15-8.5-2(b).

<sup>14</sup> I.C. §12-15-8.5-2(c).

<sup>15</sup> I.C. §12-15-8.5-3.

<sup>16</sup> I.C. §12-15-8.5-4; I.C. §12-15-28.

<sup>17</sup> I.C. §12-15-8.5-4(3).

<sup>18</sup> I.C. §12-15-8.5-7.

<sup>19</sup> I.C. §12-15-8.5-8(1).

<sup>20</sup> I.C. §12-15-8.5-8(2).

<sup>21</sup> I.C. §12-15-8.5-9.



<b>Partnership Program:</b>	Indiana is one of the original four partnership states. The partnership program is statutorily authorized by I.C. §27-8-12-7.1 and I.C. §12-15-39.6, which authorizes the implementation of the program under the insurance code and provides for asset disregard in Medicaid eligibility, respectively. Asset disregard is either a dollar-for-dollar disregard based upon the benefits paid out by a qualified policy or a total protection of assets if the policy has a maximum benefit of \$140,000 with a 5% annual compounded increase. <sup>22</sup> Assets protected by the use of an Indiana Partnership long term care insurance policy are not subject to estate recovery. <sup>23</sup>
<b>Hardship Waiver:</b>	Indiana provides waivers of recovery in the case of undue hardship consistent with the federal guidelines. <sup>24</sup> To apply for a waiver, a person must complete and file an application for undue hardship waiver. <sup>25</sup>

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<sup>22</sup> I.C. §12-15-39-6-10.

<sup>23</sup> <http://www.in.gov/iltcp/2425.htm>

<sup>24</sup> I.C. §12-15-9-6.

<sup>25</sup> State Form 48259 (7-97) / OMPP 0003.



# APPLICATION FOR UNDUE HARDSHIP WAIVER

State Form 48259 (7-97) / OMPP 0003

The information contained on this form is **CONFIDENTIAL** according to I.C. 12-15-27.

\* The request for your Social Security number is **VOLUNTARY** and you are not required to supply it according to 42 CFR 435.910.

1. Name of applicant		2. Telephone number (       )	
3. Street address			
4. City		5. State	6. ZIP code
7. County		8. Social Security number *	
9. Name of the deceased			10. Deceased's date of birth
11. Deceased's Social Security number *		12. Deceased's medicaid recipient identification number (if known)	
13. What is your relationship to the deceased? <input type="checkbox"/> Spouse <input type="checkbox"/> Parent <input type="checkbox"/> Sister <input type="checkbox"/> Grandchild <input type="checkbox"/> Child <input type="checkbox"/> Grandparent <input type="checkbox"/> Brother <input type="checkbox"/> Great-grandchild <input type="checkbox"/> Other (please specify relationship) _____			
14. Please indicate which of the following conditions is the basis for your claim of undue hardship: <input type="checkbox"/> Enforcement of the state's claim will cause the applicant to become eligible for public assistance; <input type="checkbox"/> Enforcement of the state's claim will cause the applicant to remain dependent on public assistance; <input type="checkbox"/> Enforcement of the state's claim will result in the complete loss of the applicant's sole source of income; <input type="checkbox"/> Other compelling circumstances, as described in #20 below.			
15. Do you currently receive benefits under any of the following programs? (check all that apply) <input type="checkbox"/> Temporary Assistance for Needy Families <input type="checkbox"/> Medicaid <input type="checkbox"/> Food Stamps <input type="checkbox"/> Supplemental Security Income (SSI)			
16. If you receive benefits under any of the above programs, please indicate your Recipient Identification Number:			
17. Will enforcement of the state's claim result in a reduction in your current income? If your answer is yes, explain below. <input type="checkbox"/> Yes <input type="checkbox"/> No			

18. Please list all sources of income and the amounts you currently receive from each source. Indicate the frequency (weekly, bi-weekly, monthly, quarterly, annually) for each reported amount. Please attach supporting documentation (pay stubs, bank statements, dividend statements etc.)

SOURCE	AMOUNT
	per
	per
	per
	per
	per

19. Please list the property that you expect to receive from the deceased's estate. Include real estate, cash, bank accounts, stocks, bonds, and other tangible property. You need not list personal effects or keepsakes.


20. Please describe any other relevant factors or circumstances that you think should be considered in reviewing this request for a waiver of the state's claim. (Attach additional sheets if necessary.)


Please attach supporting documentation to support your claim of undue hardship.

I affirm that the foregoing information and any attachments are true and accurate to the best of my knowledge.

Signature of applicant	Date (month, day, year)
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Submit completed form and supporting documentation to:

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# Iowa (IA)

**Governing Law:**

Iowa's estate recovery is governed by statute located at I.C.A. §249A.5 and the administrative code located at Iowa Admin. Code §441-11.1(217) and §441-75.4 (249A).

**Estate Scope:**

Recovery in Iowa is made from the patient's estate but deferred until the death of a spouse or child that qualifies for a waiver.<sup>1</sup> The estate to be recovered from includes any real property, personal property, or other assets in which the patient, the surviving spouse, or child had any legal title or interest at the time of the patient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property, retained a life estates, and interests in trusts.<sup>2</sup> In 2014 the Supreme Court of Iowa ruled that the receipt of medical assistance creates a debt immediately upon the provision of services to a recipient and that the state may recover Medicaid payments from the corpus of a husband and wife's irrevocable income-only trusts.<sup>3</sup>

The estate recovery law has a long-arm provision that includes all of the aforementioned assets in the probate estate of the decedent.<sup>4</sup> Litigation which either challenged or clarified attempted recovery against property in joint ownership as tenants in common,<sup>5</sup> recovery against a retained life estate in a family farm,<sup>6</sup> and recovery against the remainder of a discretionary testamentary trust,<sup>7</sup> all have reached the Iowa Supreme Court – each reaffirming the broad reach of the state's ability to recover against the expanded estate. Iowa specifically adopts the Minnesota rationale that the estate-recovery statute requires the patient's interest in property owned by the surviving spouse to be included in the patient's estate for the purposes of Medicaid reimbursement (see Spousal Recovery below).<sup>8</sup>

A litany of persons is required to notify the state within ten (10) days of the patient's death, including the personal representative of the patient.<sup>9</sup> The Iowa statute differentiates "personal representative" from "executor" by defining the personal representative as the person who filed the Medicaid application or who managed the financial

<sup>1</sup> I.C.A. §249A.5(2)(a)(1), (b)(1), and (b)(2).

<sup>2</sup> I.C.A. §249A.5(2)(c).

<sup>3</sup> *Estate of Melby* (Iowa, No. 12–1593, Jan. 10, 2014).

<sup>4</sup> I.C.A. §249A.5(2)(d).

<sup>5</sup> *In re Estate of Serovy*, 711 N.W.2d 290 (2006).

<sup>6</sup> *In re Estate of Laughead*, 696 N.W.2d 312 (2005).

<sup>7</sup> *In re Estate of Gist*, 763 N.W.2d 561 (2009).

<sup>8</sup> *In re Estate of Laughead*, 696 N.W.2d 312, 316 (2005), citing *In re Estate of Gulberg*, 652 N.W.2d 709, 713 (Minn. Ct. App. 2002).

<sup>9</sup> I.C.A. §249A.5(2)(f).



affairs of the patient.<sup>10</sup> If a personal representative or an executor has not properly dealt with the debts of the decedent as provided for under Iowa's probate code,<sup>11</sup> he or she may be held personally liable for the debt to the state due under the recovery statute to the extent of the property that was in his or her control which could have been levied.<sup>12</sup> The state maintains online forms for executors and other such persons to provide notice through online submission.<sup>13</sup>

**Spousal Recovery:**

A temporary waiver of collection of recoverable debt is automatic if it would reduce the amount of the estate to be received by the surviving spouse, or child under 21, blind, or permanently and totally disabled at the time of the patient's death.<sup>14</sup> Waiver can also be granted for undue hardship using the federal criteria.<sup>15</sup> If waiver is granted which defers collection to the extent the patient's estate was received by a spouse, child, or hardship waiver recipient, the amount waived shall become a debt to each of their estates or due when hardship no longer exists for a hardship waiver recipient.<sup>16</sup>

**Liens:**

Iowa's administrative code provides for medical-assistance liens in Iowa Admin. Code §441-75.4 (249A) but expressly reserves their use and application to "all monetary claims which the [Medicaid recipient] may have against third parties."<sup>17</sup> In other words, Iowa only authorizes the use of liens for third-party subordination claims and not to secure estate recovery claims.

**Partnership Program:**

Iowa has a partnership program authorized by statute at I.A.C. §5144.1 to §5144.9. The statute provides for asset disregard of "a one dollar increase in the amount of assets an individual ... may retain [for eligibility purposes] for each \$1 of benefit paid out ...."<sup>18</sup> After the death of a person who has received Medicaid funded medical assistance, partnership protected assets are exempt.

**Undue Hardship:**

Iowa provides for waiver of the estate claim for undue hardship.<sup>19</sup> To be eligible for an undue hardship waiver, the heir or beneficiary must have an income level of less than 200% of the poverty level; and less than \$10,000 in resources, not including the house; and the application of estate recovery would deprive that person of food, shelter, clothing, or medical care such that life or health would be

<sup>10</sup> I.C.A. §249A.5(2)(f)(3).

<sup>11</sup> I.C.A. §633.425.

<sup>12</sup> I.C.A. §249A.5(2)(f)(2).

<sup>13</sup> <http://dhs.iowa.gov/ime/members/members-rights-and-responsibilities/estate-recovery>

<sup>14</sup> I.C.A. §249A.5(2)(a)(1).

<sup>15</sup> I.C.A. §249A.5(2)(a)(2).

<sup>16</sup> I.C.A. §249A.5(2)(b).

<sup>17</sup> Iowa Admin. Code 441-75.4(249A).

<sup>18</sup> I.C.A. §5144.5(1).

<sup>19</sup> 249A.5(2)(a)(2) and (b)(3).



endangered.<sup>20</sup> The undue hardship waiver applies when the automatic waivers for a spouse or child do not apply. The debt returns at the time of the waiver recipient's death, just like the waiver for a spouse or disabled child, or when the waiver recipient no longer meets the undue hardship criteria.

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<sup>20</sup> Iowa Admin. Code 441-76.12(g)(2).

## Estate Recovery Program Frequently Asked Questions

### ***What is estate recovery?***

Estate recovery in Iowa applies to the costs a Medicaid member incurs over the age of 55, or for the costs of all others - regardless of age - in long-term care who have no reasonable expectation of returning home.

It does NOT apply if you are under 55 and not in long term care.

### ***Are any programs not impacted by estate recovery?***

People who are only enrolled in the Medicare Savings Program are not impacted by estate recovery. The Medicare Savings Program includes people with full Medicaid and Medicare, Qualified Medicare Beneficiaries (QMB) and Specified Low Income Medicare Beneficiaries (SLMB).

### ***What is an estate?***

For the purposes of the Estate Recovery Program, an estate includes any property, bank accounts, excess funds in a burial trust, or other assets in which the individual had any legal title or interest. This includes, but is not limited to jointly held property and interest in trusts, including life estates.

### ***Why do I have to pay money back?***

This practical approach sustains Medicaid financially, allowing it to continue ensuring that Iowa's most vulnerable citizens have access to critical health care services. Iowa's Medicaid program is projected to serve nearly 680,000 Iowans in SFY14, or 22.2 percent of Iowa's population.

### ***When do I have to pay back Medicaid assistance?***

If you have assets, repayment occurs after death, with no interest until six months after death. If there is a surviving spouse or disabled child, the repayment for Medical Assistance is waived until the death of the surviving spouse, or adult disabled child.

### ***How much will I have to pay?***

All repayments are based on the estate's ability to repay. If there are no assets in the estate, which happens in the majority of cases, there is no collection. After death, if there are assets, repayment occurs only after all funeral, legal, tax and last medical expenses have been paid.

## Iowa Medicaid Estate Recovery Program



### ***What if my family can't pay?***

Any repayment comes from your estate - your assets. If there are no assets, then no payment is required. As long as your family has not taken money from your estate, they do not have to pay anything out of pocket.

Iowa's estate recovery program also provides waivers if:

- There is a surviving spouse or disabled child, the repayment for Medical Assistance is waived until the death of the surviving spouse, or disabled child.
- The repayment of the debt to Iowa's taxpayers would cause an undue hardship on the heirs of the deceased member, then the repayment can be waived if the heir meets the hardship waiver guidelines.

### ***Does estate recovery apply to the new Iowa Health and Wellness Plan?***

Yes. Estate recovery application to the Iowa Health and Wellness Plan, which is part of Iowa Medicaid Program, is required under the law. It is consistent with the IowaCare program, which was implemented in 2005. To date, the majority of Iowans who may be subject to estate recovery under the Iowa Health and Wellness Plan had similar terms under the IowaCare program. Iowa's Estate Recovery Program has been in place since 1994.

### ***What do I get from the Medicaid Iowa Health and Wellness Plan?***

With the Iowa Health and Wellness Plan, Iowans get comprehensive, low-cost health care without having to sell off/liquidate their assets (house, cars, retirement plans) while they are alive, which prior eligibility rules would have required. This way, many vulnerable Iowans can maintain their lifestyle, such as remaining in their home, while receiving quality, taxpayer-funded medical services.

### ***When did the Estate Recovery Program begin and why did it start?***

Iowa has pursued Medicaid Estate Recovery since 1994, in compliance with the federal mandate. All 50 states and the District of Columbia are required by federal law to have an estate recovery program to recover Medicaid expenses.

### ***Why do I need health coverage?***

The federal Affordable Care Act requires that all Americans have health insurance starting in 2014. No one plans to get sick or hurt, but most people need medical care at some point. Health insurance covers these costs and protects you from very high medical expenses.

### ***What if I don't want to owe Medicaid, but I can't afford another insurance plan?***

The Affordable Care Act requires a person to have minimum essential coverage, purchase a health insurance plan, enroll in a Medicaid or Medicare program if eligible, or pay the related penalty (in 2014 it is \$95 or 1 percent of income, whichever is higher).

## Iowa Medicaid Estate Recovery Program



### ***What if I choose a plan through the federal marketplace at HealthCare.gov?***

The federal Health Insurance Marketplace plans are not part of Iowa Medicaid.

### ***What else should I know?***

Iowa's Medicaid program is projected to serve nearly 680,000 Iowans in SFY14, or 22.2 percent of Iowa's population. Estate recovery sustains the program financially, allowing it to continue ensuring that Iowa's most vulnerable citizens have access to critical healthcare services.

The program has returned more than \$220 million dollars to the state's Medicaid Program where these funds can then be reused to assist others. The average cost of a Medicaid nursing facility bed is \$4,000 per month in Iowa or about \$48,000 each year. Annually, more than 400 current Medicaid recipients' care is paid through the recoveries from Iowa's estate recovery program.

The Estate Recovery Program opens and closes approximately 9,000 cases annually. In 2013, over half of the cases, 5,350, were closed with no payment received. Of the 3,546 cases that were closed with at least one payment, there were 4,937 payments received, but only 506 repaid the Medicaid claim in full.

The Estate Recovery Program is not a collection agency and has less than 20 ongoing payment arrangements where family members have taken funds from the estate that must be repaid.

Iowa has two decades of precedent that, to the extent assets exist for a citizen whose healthcare was covered through taxes on others, those assets should be rightly subject to recovery at the time of death to the extent allowed by law.

### ***Where can I get more information specific about the Estate Recovery Program?***

For additional information about only the Estate Recovery Program, please contact:  
Iowa Medicaid Estate Recovery Program

**Toll Free: 877-463-7887**

Local: 515-246-9841

Email: [estates@dhs.state.ia.us](mailto:estates@dhs.state.ia.us)

For other information about Medicaid programs, benefits, finding a provider and more, please contact Iowa Medicaid Member Services

**Toll Free: 1-800-338-8366**

Local: 515-256-4606

Email: [IMEMemberServices@dhs.state.ia.us](mailto:IMEMemberServices@dhs.state.ia.us)



# IOWA LONG-TERM CARE PARTNERSHIP PROGRAM CONSUMER GUIDE

Most people do not like to think about the possibility of needing long-term care. But as we get older, the likelihood that we will need some kind of assistance is very real. The Iowa Long-Term Care Partnership Program was developed as a public-private partnership allowing you to pay for long-term care through private insurance and Medicaid, without using all your assets.

## **What is long term care?**

Long-term care provides supportive services when you can't care for yourself for an extended period of time. It ranges from simple assistance with activities in your own home to highly skilled care in a nursing facility.

## **What is long-term care insurance?**

Long-term care insurance is designed to pay some or all of the costs of assisted care when you can no longer take care of your needs on your own. Policy options may include care in a nursing home, assisted living facility, adult day care or even in your own home. If you need care longer than your policy pays you must use your own resources.

## **What is Medicaid?**

Medicaid pays for medical services for people with limited income and resources. It is also known as Title 19. Nursing home and "home and community-based" long-term care are Medicaid covered services. The program is funded by federal and state governments and is managed by the Iowa Department of Human Services (DHS). To qualify for Medicaid, a person must meet specific income and resource limits. An individual would have to spend down all but \$2,000 of their assets before qualifying for Medicaid.

## **What is the Long-Term Care Partnership?**

The Iowa Long-Term Care Partnership program provides an alternative to depleting assets by forming a partnership between Medicaid and private long-term care insurers. People who purchase Long-Term Care Partnership policies may be able to qualify for Medicaid before spending all of their assets.

Partnership policies must meet state and federal requirements. They are only marketed by licensed insurance professionals who have completed eight hours of training required by the State of Iowa Insurance Division.

## How does Medicaid asset protection work?

The most unique aspect of the Iowa Partnership policy is the Medicaid asset protection. This feature provides dollar-for-dollar asset protection. Each dollar that your Partnership policy pays out in benefits entitles you to keep a dollar of your assets if you ever need to apply for Iowa Medicaid long-term care services. Protected assets are not considered in determining Medicaid eligibility.

Example:

If your Partnership policy paid \$200,000, Iowa's Medicaid program would allow you to keep \$200,000 in assets and still qualify for Medicaid assistance. The amount of assets you are able to protect under the Partnership is in addition to the \$2,000 Medicaid allows you, as an individual, to keep.

## Are Partnership protected assets subject to Medicaid estate recovery?

No. After the death of a person who has received Medicaid funded medical assistance, federal law requires that the individual's assets be used to repay the Iowa Department of Human Services for benefits provided, however Partnership protected assets are exempt.



## Does the Partnership guarantee I'll qualify for Medicaid benefits?

While the Partnership allows for the protection of assets, this is not a guarantee that you will qualify for Medicaid benefits.

To receive Medicaid benefits for long-term care in Iowa you must meet an income limit in addition to the resource limit of \$2,000. This amount changes annually. Contact your county Department of Human Services or SHIP (800-351-4664 or TTY 800-735-2942) for the income limit.

## What do Partnership policies provide?

### *Inflation Protection—*

For a person who is **less than 61 years of age** as of the date of purchase, the policy provides either annual compounded inflation protection of not less than 3% or annual compounded inflation protection of not less than a rate based on changes in the consumer price index. Since nursing home and other long-term care rates increase regularly, inflation protection helps the policy's daily benefit keep up with long-term care costs.

For a person who is at **least 61 years of age, but less than 76 years of age**, the policy provides either annual compounded inflation protection of not less than 3%, annual compounded inflation protection of not less than a rate based on changes in the consumer price index or an automatic inflation feature that provides annual simple inflation increases at a rate not less than 3%.



### ***Medicaid asset protection—***

Only Partnership policies provide this protection.

### ***Tax qualified—***

All Partnership policies are **tax qualified plans** under federal law. This means the premiums can be included as a medical expense if you itemize on your federal income tax return and benefits paid are generally not counted as taxable income.

### ***How do I know if purchasing a long-term care insurance policy is right for me?***

Your first step in shopping for long-term care insurance should be to determine whether it is a suitable purchase. Start by assessing your personal objectives, needs, limitations and finances. To help you do a personal assessment and evaluate long-term care policies, contact the Senior Health Insurance Information Program (SHIIP) at 1-800-351-4664 (TTY 1-800-735-2942) or go to [www.TheRightCallIowa.gov](http://www.TheRightCallIowa.gov). Request your copy of the *Iowa Guide to Long-Term Care Insurance*. If you decide to buy a policy, your next decision will be whether you want a Partnership policy.

### ***Who can purchase a Partnership policy?***

There is no set age requirement for someone interested in purchasing a Partnership policy. Individual insurance companies determine the minimum and maximum age for policy sales.



### ***How can I purchase a Partnership policy?***

If you are interested in a Partnership policy, contact a local agent or insurance company that is approved to sell them. The Iowa Insurance Division authorizes companies to market and sell Partnership policies, but the state does NOT sell policies. The Insurance Division and Iowa Department of Human Services administer and monitor the Iowa Long-Term Care Partnership Program. A list of companies approved to sell Partnership policies can be obtained by contacting the Iowa Insurance Division at 1-877-955-1212 or [www.iid.state.ia.us](http://www.iid.state.ia.us).

### ***What if I already have a long-term care insurance policy?***

You may be able to exchange your current long-term care policy for a Partnership policy. This may require a premium increase.

### ***Will the Partnership protect my assets if I move to another state?***

Some states will provide reciprocity to an Iowan who moves to their state. This means you would be eligible for asset protection. For a list of reciprocity states contact the Iowa Insurance Division at 1-877-955-1212 or [www.iid.state.ia.us](http://www.iid.state.ia.us).



**For more information contact:**

***Iowa Department of  
Human Services:***

1-800-972-2017

[www.dhs.state.ia.us](http://www.dhs.state.ia.us)

The Iowa Department of Human Service's mission is to help individuals and families achieve safe, stable, self-sufficient, and healthy lives. Medical Assistance (Medicaid—Title XIX) is one of its programs, providing health care coverage for financially-needy parents with children, children, people with disabilities, elderly people, and pregnant women.

***Iowa Insurance Division:***

1-877-955-1212

[www.iid.state.ia.us](http://www.iid.state.ia.us)

The Iowa Insurance Division (IID) has general control, supervision and direction over all insurance and securities business transacted in the state, and enforces Iowa's laws and regulations. The IID investigates consumer complaints and prosecutes companies, agents and brokers engaging in unfair trade practices. Consumers with insurance or investment questions or complaints may contact the IID.

***SHIIP:***

1-800-351-4664

(TTY 800-735-2942)

[www.therightcalliowa.gov](http://www.therightcalliowa.gov)

The Senior Health Insurance Information Program (SHIIP) is a service of the Iowa Insurance Division. SHIIP provides free, confidential and objective information and assistance to people on Medicare with questions and problems related to Medicare and health insurance. Included in its services is education and assistance with the Long-Term Care Partnership Program.





Kansas

# Kansas (KS)

<b>Governing Law:</b>	Kansas authorizes collection against the “medical-assistance estate” in K.S.A. §39-709.
<b>Estate Scope:</b>	<p>The cost of care is a claim against the property or any interest therein belonging to and a part of the estate of the deceased patient or, if there is no such estate, the estate of the surviving spouse,<sup>1</sup> as well as a claim against any moneys of either spouse held in various financial accounts.<sup>2</sup> Transfers of real or personal property by patients without adequate consideration are voidable and may be set aside.<sup>3</sup> The medical assistance estate includes all real and personal property and other assets in which the deceased patient had any legal title or interest immediately before death but only to the extent of that interest.<sup>4</sup> This expanded estate includes assets conveyed to a survivor, heir, or assign of the deceased patient through joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities, or similar arrangement.<sup>5</sup></p> <p>Recovery can be waived if it is not cost effective to the state. Kansas’s rules provide two conditions where it is not presumptively cost effective:</p> <ul style="list-style-type: none"><li>• The estate is less than the administrative costs of recovery from the estate;<sup>6</sup> or</li><li>• The estate is \$10,000 or less.<sup>7</sup></li></ul>
<b>Spousal Recovery:</b>	<p>Recovery is delayed until after the death of the surviving spouse, if any, and only until a time when the individual has no surviving child who is under 21, blind or permanently and totally disabled.<sup>8</sup> However, the statute expressly allows recovery in the surviving spouse’s estate, limited to the expanded estate assets that flowed into such an estate from the deceased patient and potentially any lifetime transfers to the spouse without consideration.</p>

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<sup>1</sup> K.S.A. §39-709(g)(2)(A).

<sup>2</sup> K.S.A. §39-709(g)(2)(B).

<sup>3</sup> K.S.A. §39-709(g)(2).

<sup>4</sup> K.S.A. §39-709(g)(3)(B).

<sup>5</sup> Ibid.

<sup>6</sup> 907 Ks. Admin. Regs. 1:585, §3(3)(b)(1).

<sup>7</sup> 907 Ks. Admin. Regs. 1:585, §3(3)(b)(2).

<sup>8</sup> K.S.A. §39-709(g)(2).

**Liens:**

Kansas authorizes the filing of liens against a patient's real property only after notice and an opportunity for a hearing had been given.<sup>9</sup> The patient must be determined to not reasonably be able to return home, which is automatically presumed if the patient has been institutionalized for six months.<sup>10</sup> The lien is subject to removal if the patient returns home, but the patient must be in the home for at least 90 days in order to be considered "returned."<sup>11</sup> The lien can only be enforced before the patient's death by a foreclosure action in state district court or after the patient's death by action in probate court estate proceedings.<sup>12</sup> The lien can only be enforced after the death of the surviving spouse; when there is no child under twenty-one (21) residing in the home; when there is no adult child, natural or adopted, who is blind or disabled residing in the home; or when no sibling of the patient is lawfully residing in the home, who resided there for at least a year before the patient's admission to the medical facility and has continuously resided there since.<sup>13</sup> The lien remains on the property even after the title to the property transfers when recovery is forestalled unless: the lien is satisfied; another foreclosure action terminates the lien; the value of the property is consumed by the lien, forcing the sale to satisfy the lien; or the patient returns home for ninety (90) days or more.<sup>14</sup> Liens not revived or acted on within ten (10) years go dormant and cease to operate as a lien on the property.<sup>15</sup>

**Partnership Program:**

Kansas authorizes a partnership program under the Long-Term Care Partnership Act, codified at K.S.A. §40-2132 to §40-2137. Both the partnership act and the estate recovery statute provide full exclusion of disregarded assets from recovery.<sup>16</sup>

**Undue Hardship:**

Kansas allows for undue hardship waiver requests to be filed with its estate recover unit: Estate Recovery Unit, P.O. Box 2428, Topeka, KS 66601, or its estate recovery contractor: HMS Estate Recovery Program, 2942 Wanamaker, Suite 1C, Topeka, KS 66614.

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<sup>9</sup> K.S.A. §39-709(g)(4).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> K.S.A. §39-709(g)(5).

<sup>13</sup> Ibid.

<sup>14</sup> K.S.A. §39-709(g)(6).

<sup>15</sup> K.S.A. §39-709(g)(7).

<sup>16</sup> K.S.A. §40-2134(d)(2) and §39-709(g)(2).

## **Kansas Medical Assistance**

### **Estate Recovery**

#### **What is Estate Recovery?**

Estate Recovery is a program mandated by federal law for the recovery of medical assistance payments from the assets and estates of recipients of medical assistance. Medical assistance is commonly known as Medicaid.

#### **Who is affected by Estate Recovery?**

This will depend on the nature of the care and the age of the recipient. If the recipient is 55 year of age or older, they would be subject to estate recovery. If the recipient is under 55 years of age, they would only be subject to estate recovery if they have been in long-term care at a nursing facility.

#### **What types of services are included in the medical assistance claim?**

The majority of the claims are for the following services:

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

#### **Are QMB services exempt?**

Beginning January 1, 2003, the agency will not establish a claim for persons who only received coverage under the Medicare Savings Program (QMB and LMB programs). If other programs are used, though, the agency would collect for all programs.

#### **How does Estate Recovery work?**

The Estate Recovery Unit uses agreements with heirs, claims against financial accounts, and the filing of claims in a court action. In certain situations after July 1, 2004, Estate Recovery could use a lien on the recipient's real property to preserve the medical assistance claim.

#### **How does a recovery through a probate action work?**

If the recipient owned an asset, the Estate Recovery Unit would review the case and determine whether the family has started a probate action. If there is a case filed, the Unit will file a claim in the probate case.



## **What happens if the family does not want to start a probate action?**

If the heirs of the deceased recipient choose to not initiate probate proceedings, ERU may start the probate action. In these instances, ERU determines whether to proceed with probate based on the amount of the agency's claim, value of estate assets, and the cost-effectiveness of the action.

## **I have left my property to my children in my Will. Can the state still take my property?**

Any creditor, including the State, has a legal right to recover its claim from the property in your estate. Creditors' claims usually take priority over any bequest to heirs or beneficiaries.

## **Can a probate action deal with property that the recipient owned with another person?**

Possibly. If the recipient received benefits on or after July 1, 2004, the agency could file a claim for those benefits against all property that the recipient had any legal title or interest immediately before or at the time of death to the extent of that interest. The main example of this type of property is joint tenancy property or property transferred by a pay-on-death provision. If the recipient only received benefits before July 1, 2004, then the agency's claim would only apply to property solely owned by the recipient.

## **Does anyone else do estate recovery in Kansas?**

Yes. Health Management Systems has a contract with the State to do part of the estate recovery program.

## **Can you file a lien against my real property?**

Yes. As of July 1, 2004, if the recipient is presently receiving inpatient care at a nursing home or other medical facility that is partially or totally paid by Medicaid, the agency could impose a lien on the recipient's home or real property.

## **When will you consider using a lien?**

If the recipient has received 6 months or more of inpatient care at a nursing home or other medical facility, the agency may determine that the recipient is not returning home. If the agency makes that decision, then the agency must notify the recipient of that conclusion and the agency's intent to impose a lien on the recipient's real property.

## **Can the recipient challenge the agency's decision about the lien?**

Yes. The recipient has 30 days from the date they received the agency's notice to request a fair hearing. At the fair hearing, the issue would be whether the recipient could reasonably be expected to return to their home.

### **When would the lien be filed?**

If there is no challenge by the recipient, the lien would be filed after 30 days from the notice date. If there is a challenge, the agency would only file the lien if the fair hearing and any subsequent legal action ruled in their favor.

### **Will the agency proceed with a lien or probate action when there is a spouse or a dependent child living in the home?**

No. If there is a surviving spouse, surviving child under the age of 21 years, blind or permanently disabled child according to Social Security criteria, the agency does not pursue a probate claim nor a lien at that time. You should check with the Estate Recovery Unit for specific rules.

### **Can I request a waiver of the estate recovery action?**

Yes. The family may request a waiver of the estate recovery action under certain financial or hardship situations.

### **How do I contact Estate Recovery?**

To contact Estate Recovery:

Call 785-296-6707

E-mail to [eeseru@khpas.ks.gov](mailto:eeseru@khpas.ks.gov)

Mail to Estate Recovery Unit  
P.O. Box 2428  
Topeka, KS. 66601

To contact the contractor, Health Management Systems:

Call 800-817-8617

E-mail to: [KSestaterecovery@hms.com](mailto:KSestaterecovery@hms.com)

Fax to 646-465-6530



# Kentucky (KY)

<b>Governing Law:</b>	Kentucky derives statutory authority for estate recovery from its generic third-party liability statute at K.R.S. §205.520. The meat of Kentucky's recovery plan is found in its administrative code at 907 Ky. Admin. Regs. 1:585.
<b>Estate Scope:</b>	Kentucky uses the expanded estate definition contained in the federal law, virtually verbatim. <sup>1</sup> The service provider providing the Medicaid patient's services is required to notify the state of the death of the patient within ten (10) days. <sup>2</sup> The department then prepares a notice of its intent to recover and serves it on the estate representative. <sup>3</sup> An estate representative is defined for these purposes as the court-appointed fiduciary or the fiduciary's attorney, a family member of the patient, or any other interested person who lets the state know that he or she is representing the estate. <sup>4</sup> The estate representative is responsible for notifying the individuals who are affected by the proposed recovery. <sup>5</sup> If no estate representative exists, the state must notify heirs or family members directly. <sup>6</sup> The notice provides the affected person with the claim amount and the procedures for applying for an undue hardship waiver, as well as appealing any denial of such application (see Hardship Waiver below). <sup>7</sup>
<b>Spousal Recovery:</b>	The existence of a surviving spouse or child under 21 or blind or disabled are a full bar to recovery from the estate. <sup>8</sup>
<b>Partnership Program:</b>	Kentucky authorizes a partnership program under the "Kentucky Long-Term Care Partnership Insurance Program" at K.R.S. §205.619. The partnership program's operation is spelled out in K.R.S. §304.14-640 to §304.14-644. The estate recovery rules expressly prohibit recovery from any resources protected from consideration during the eligibility determination process based on payment issued by a long-term care insurance policy.
<b>Hardship Waiver:</b>	Kentucky allows for the waiver of recovery for undue hardship but provides only one presumptive condition, the proof of which creates an automatic waiver. Hardship exists if the asset subject to recovery is the sole income-producing asset (i.e., family farm or business)

<sup>1</sup> 907 Ky. Admin. Regs. 1:585, §1(3).

<sup>2</sup> 907 Ky. Admin. Regs. 1:585, §4(2).

<sup>3</sup> 907 Ky. Admin. Regs. 1:585, §4(3)(a).

<sup>4</sup> 907 Ky. Admin. Regs. 1:585, §1(4).

<sup>5</sup> 907 Ky. Admin. Regs. 1:585, §4(3)(b).

<sup>6</sup> 907 Ky. Admin. Regs. 1:585, §4(3)(c).

<sup>7</sup> 907 Ky. Admin. Regs. 1:585, §4(4).

<sup>8</sup> 907 Ky. Admin. Regs. 1:585, §3(1).



conveyed to the patient's surviving family members.<sup>9</sup> This does not apply if the asset is residential real property producing income through a lease or rental agreement.<sup>10</sup> The estate representative has thirty (30) days from receipt of notice of the state's claim to file for an undue hardship exemption.<sup>11</sup> The state is precluded from granting an undue hardship if the person requesting it created the hardship via estate-planning methods that include divestment.<sup>12</sup> The department may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir.<sup>13</sup> The state has thirty (30) days from the receipt of a hardship waiver request to rule on it.<sup>14</sup> If the state denies it, the estate representative can request an administrative hearing to appeal the decision.<sup>15</sup>

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<sup>9</sup> 907 Ky. Admin. Regs. 1:585, §3(3)(a).

<sup>10</sup> Ibid.

<sup>11</sup> 907 Ky. Admin. Regs. 1:585, §3(3)(b)(1).

<sup>12</sup> 907 KAR 1:585, §3(3)(e).

<sup>13</sup> <http://chfs.ky.gov/dms/Estate+Recovery.htm>

<sup>14</sup> 907 KAR 1:585, §3(3)(c).

<sup>15</sup> 907 KAR 1:585, §3(3)(d); 907 KAR 1:563, §4.





# Louisiana (LA)

<b>Governing Law:</b>	The statutory authority for Louisiana's estate-recovery program is LSA-R.S. 46:153.4 and the Medicaid Estate Recovery Rule. <sup>1</sup>
<b>Estate Scope:</b>	Recovery is strictly limited to the succession estate of the patient. <sup>2</sup> The term "estate" is defined as "the gross estate of the deceased as defined by Louisiana succession law." <sup>3</sup> Recovery is prohibited if it is not cost effective and the first \$15,000 or one-half of the median value of homesteads in the parish, whichever is greater, is fully excluded from recovery. <sup>4</sup> Louisiana also provides a generous offset to recovery. Recovery can be reduced by any reasonable and necessary expense incurred by the patient's heirs after the patient's admission to the long-term care facility in order to maintain the patient's homestead but only if that homestead is included in the patient's succession estate. <sup>5</sup> For priority of the state's recovery claim in the succession estate, the claim is considered a privilege on the succession estate and has a priority equivalent to the expenses of the last illness. <sup>6</sup> Expenses of the last illness are subservient to only those of the funeral and succession estate administration expenses. <sup>7</sup>
<b>Spousal Recovery:</b>	Louisiana makes no provision for recovery from the succession estate of the patient's spouse and specifically adopts the federal standards for when a succession estate cannot be collected against. <sup>8</sup>
<b>Liens:</b>	Louisiana statute does not expressly authorize the use of liens against the homestead to secure estate-recovery collection and does its level best to balance the requirement to have an estate-recovery program with the state's long tradition of protecting citizens' rights to home ownership and the state's interest in assuring the transfer of real property within family units. <sup>9</sup>
<b>Hardship Waiver:</b>	Louisiana statutorily prohibits the Department of Health and Hospitals from recovering in the case of undue hardship. <sup>10</sup> A statutory presumption of undue influence exists if an heir's family income is 300% or less of the U.S. Department of Health and Human Services' Federal Poverty Level Guidelines as published

<sup>1</sup> [http://www.doa.louisiana.gov/osr/reg/may96/9605\\_049.pdf](http://www.doa.louisiana.gov/osr/reg/may96/9605_049.pdf)

<sup>2</sup> LSA-R.S. 46.153.4(D).

<sup>3</sup> Medicaid Estate Recovery Rule 9605#049.

<sup>4</sup> LSA-R.S. 46.153.4(E).

<sup>5</sup> LSA-R.S. 46.153.4(G).

<sup>6</sup> LSA-R.S. 46.153.4(D).

<sup>7</sup> LSA-C.C. Art. 3252.

<sup>8</sup> LSA-R.S. 46.153.4(H).

<sup>9</sup> LSA-R.S. 46.153.4(C).

<sup>10</sup> LSA-R.S. 46.153.4(F)(1).

annually in the Federal Register.<sup>11</sup> Additionally, the Medicaid Estate Recovery Rule, there are three additional conditions which would potentially give rise to undue hardship:

- The estate is the sole income producing asset of the surviving spouse and/or dependent, and income from the estate is limited;
- Recovery would necessitate the surviving spouse and/or dependent becoming eligible to receive public assistance, including but not limited to Medicaid; or
- Any other compelling circumstances that would result in placing an unreasonable financial burden on the surviving spouse and/or dependent.<sup>12</sup>

However, an undue hardship cannot exist if the circumstances giving rise to the hardship were created by, or are the result of estate planning methods under which assets were sheltered or divested in order to avoid estate recovery.<sup>13</sup>

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<sup>11</sup> LSA-R.S. 46.153.4(F)(2).

<sup>12</sup> Medicaid Estate Recovery Rule 9605#049.

<sup>13</sup> Ibid.



# Maine (ME)

<b>Governing Law:</b>	Maine's estate recovery is authorized by 22 M.R.S.A. §14 and regulated by MaineCare Benefits Manual, Chapter VII, Section 5.
<b>Estate Scope:</b>	The Department of Human Services is mandated to recover against the assets of the probate estate as well as any other real and personal property and other assets the patient held title to at death, to the extent of the interest. This includes assets conveyed to a survivor, heir, or assign of the patient through tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property, or other arrangement but does not include joint tenancy in real property. <sup>1</sup> The recovery of MaineCare benefits from non-probate assets is authorized by filing a claim in any court of competent jurisdiction. <sup>2</sup> The definition of assets found in the MaineCare Benefits Manual includes all of the following: "Assets means property, real or personal, tangible or intangible, or any interest therein, and anything that may be the subject of ownership. It includes assets conveyed to a survivor, heir or assignee of the deceased member through a tenancy in common, survivorship, life estate, living trust, joint tenancy in personal property or other similar arrangement." <sup>3</sup>
<b>Spousal Recovery:</b>	A claim for recovery cannot be made against the estate assets until such time as the patient has no surviving spouse and the recipient has no surviving child under age 21 or who is blind or permanently and totally disabled as defined by SSI rules. <sup>4</sup> The Maine statute merely defers collection but does not bar it. Heirs, assignees, or transferees of the patient who are considered collectible can enter into a voluntary payment arrangement consisting of a payment plan, promissory note, or other payment mechanism that would avoid the specific attachment of assets. <sup>5</sup>
<b>Liens:</b>	MaineCare does not utilize liens against property to preserve the estate recovery claim.
<b>Partnership Program:</b>	Maine established a partnership program at 22 M.R.S.A. §3174-GG. MaineCare must disregard assets for eligibility purposes and estate recovery in an amount equal to the benefits paid by an approved long-term care insurance policy. <sup>6</sup>

<sup>1</sup> 22 M.S.R.A. §14, 2-I(F).

<sup>2</sup> 22 M.S.R.A. §14, 2-I(B)(2).

<sup>3</sup> MaineCare Benefits Manual, Chapter VII, §5.02.

<sup>4</sup> 22 M.S.R.A. §14, 2-I(C).

<sup>5</sup> 22 M.S.R.A. §14, 2-I(C-2).

<sup>6</sup> 22 M.S.R.A. §3174-GG(3); See also: MaineCare Benefits Manual, Chapter VII, §5.09.

**Hardship Waiver:**

If a patient did not have estate recovery asset disregard from the partnership program policy, a claim for estate recovery can be waived for undue hardship.<sup>7</sup> A waiver may not be granted if either the patient or the waiver applicant acted to lose, diminish, divest, encumber, or otherwise transfer any value of title to an asset for the purpose of preventing recovery under this section.<sup>8</sup> An undue hardship exists when the collection of the state's claim would result in placing the income of the person requesting the waiver below one hundred eighty percent (180%) of the current federal poverty level adjusted for the person's household size, and the total value of the household's assets is equal to or less than one hundred eighty percent (180%) of the current federal poverty annual level; or the estate's real property is the primary income-producing resource for the person requesting the waiver, and enforcement of the state's claim would result in placing that person's household income below one hundred eighty percent (180%) of the current federal poverty level, and the total value of the household's assets is equal to or less than one hundred eighty percent (180%) of the current federal poverty level.<sup>9</sup>

A request for hardship waiver must be made within six (6) months from the Medicaid recipient's death or within thirty (30) days from the notice of the state's claim, whichever is later. The request must contain a written statement of the circumstances constituting the hardship and all supporting documentation. The state may request additional information, which must be provided within sixty (60) days of the request. If the information requested is not provided within sixty (60) days, the request for hardship waiver can be denied.<sup>10</sup>

MaineCare has a "Care Given" exemption. The state may exempt a portion of a estate from recovery for health maintenance activities and personal care services performed for the recipient by an individual who has a beneficial interest in the estate. If the current income level of the person requesting the exemption is below two hundred percent (200%) of the current federal poverty level, adjusted for the person's household size, MaineCare can designate a portion of a estate as exempt from its estate recovery efforts if a person can demonstrate that health care maintenance activities or personal care services have been provided to the deceased Medicaid recipient.<sup>11</sup>

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<sup>7</sup> 22 M.S.R.A. §14, 2-I(E).

<sup>8</sup> Ibid.

<sup>9</sup> MaineCare Benefits Manual, Chapter VII, §5.07.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid at §5.08.

A decision on any request for hardship waiver is considered final unless within thirty (30) days of the date of the decision, the person making the request sends a written request for agency review to: Estate Recovery, Office of MaineCare Services, Department of Health and Human Services, 11 State House Station, Augusta, Maine 04333-0011. The review is conducted by the Department's Office of Administrative Hearings. Any final decisions from the Office of Administrative Hearings may be appealed to the Superior Court.<sup>12</sup>

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<sup>12</sup> Ibid at §5.10.





# Maryland (MD)

<b>Governing Law:</b>	Maryland's estate-recovery program is authorized by a two-sentence statute granting authority to the Department of Health and Mental Hygiene to make a claim against the estate of a deceased assistance recipient for medical assistance payments. The statute is found at MD HEALTH GEN §15-121. The bulk of Maryland's estate recovery program is found in the Code of Maryland Regulations at COMAR 10.09.24.15.
<b>Estate Scope:</b>	The definition of "estate" in Maryland is all real and personal property and other assets included within the patient's estate, as defined for purposes of Maryland probate law. <sup>1</sup> A claim by the Department of Health and Mental Hygiene against the estate of a deceased Maryland Medical Assistance Program recipient is barred if not brought in a timely manner. <sup>2</sup> The state must file its claim within six (6) months of the publication of the notice of first appointment of the personal representative or within two months after the personal representative mails or delivers a notice to the state advising them that their claim is barred unless presented within the two-month time frame. <sup>3</sup>
<b>Spousal Recovery:</b>	Maryland makes no provision for recovery against a surviving spouse's estate. Recovery against the patient's estate is allowed only after the death of the patient's surviving spouse or when the patient has no surviving minor child or surviving child who is blind or disabled. <sup>4</sup>
<b>Liens:</b>	Liens are authorized against the real property of the patient before the patient's death provided that the Department of Health and Mental Hygiene has determined the patient has no reasonable expectation of discharge and has provided both notice and opportunity for a hearing to the patient to challenge such a determination. <sup>5</sup> No lien can be placed on the home if any of the following are lawfully residing in the home: the patient's spouse; the patient's child under 21; the patient's child who is blind or disabled; or the patient's sibling who has an equity interest in the home (provided that such equity interest was not divested for the result of a transfer of the property for less than fair-market value within two years prior to institutionalization) <sup>6</sup> who was residing in the home for

<sup>1</sup> COMAR 10.09.24.15(A)(3).

<sup>2</sup> MD Code, Estates and Trusts, §8-103(f).

<sup>3</sup> Ibid.

<sup>4</sup> COMAR 10.09.24.15(A-3).

<sup>5</sup> COMAR 10.09.24.15(A-2)(2).

<sup>6</sup> COMAR 10.09.24.15(A)(3).

a period of at least one year prior to the patient's admission to the long-term care facility.<sup>7</sup> The lien must be dissolved if the patient is discharged from the long-term care facility and returns home.<sup>8</sup> Maryland must delay collection against any lien property until there is no sibling residing in the home who resided there for a full year before the patient's admission to a long-term care facility and who lawfully resided there on a continuous basis since admission. Collection must also be delayed if there is a child lawfully residing in the home who resided there for two years prior to the patient's institutionalization, who continues to reside there since such institutionalization, and who provided care that permitted the patient to stay in the home rather than be admitted to the facility.<sup>9</sup>

**Partnership Program:** Maryland's partnership program is found at MD Code, Health-General, §15-401 to §15-407. The partnership program only provides asset disregard equal to the amount of benefits paid when determining eligibility for medical assistance.<sup>10</sup> However, the Maryland Insurance Administration claims that the asset disregard applies to both eligibility and recovery.<sup>11</sup>

**Hardship Waiver:** If the state determines a hardship exists, it may not seek recovery.<sup>12</sup> Maryland's recovery rules provide for one presumptive definition of "substantial hardship." Hardship exists if the state's claim would result in the sale or transfer of real property owned by the decedent and the sale or transfer would result in the removal from the property a dependent (i.e., child; grandchild; great-grandchild; sibling, including half or step; parent; or ancestor of the decedent)<sup>13</sup> who resided in the property on the date of the patient's death, resided there for two continuous years before the patient's death, and cannot provide an alternative residence.<sup>14</sup> All hardship waiver requests and lien issues are dealt with by the Department of Health and Mental Hygiene, Office of Operations, Eligibility & Pharmacy, Recoveries and Financial Services Division, Estates, Liens & Trust Section, P.O. Box 13045, Baltimore, MD 21203, Phone: (410) 767-6613.

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<sup>7</sup> COMAR 10.09.24.15(A-2)(3).

<sup>8</sup> COMAR 10.09.24.15(A-2)(4).

<sup>9</sup> COMAR 10.09.24.15(A-3)(2)(d).

<sup>10</sup> MD Code, Health-General, §15-405.

<sup>11</sup> Maryland Insurance Administration, A Consumer Guide to the Maryland Long-Term Care Insurance Partnership Program, p. 7.

<sup>12</sup> COMAR 10.09.24.15(A-3)(3).

<sup>13</sup> COMAR 10.09.24.15(A)(1).

<sup>14</sup> COMAR 10.09.24.15(A)(10).

## **MEDICAL ASSISTANCE (MEDICAID) PROPERTY LIENS & ESTATE RECOVERY FACT SHEET**

**This fact sheet is designed to provide more information regarding property liens and estate recovery, which is addressed on the Medicaid application under Rights and Responsibilities.**

### **What is a lien?**

A lien is the legal right to hold an interest in the property of another until some debt is paid. A mortgage is an example of a lien. A property lien is filed in the Circuit Court for the area in which the property is located. The lien may become payable at the time of sale either during the lifetime of a person or after a person's death through his/her estate.

### **What is a Medicaid property lien?**

Federal and State law allow Medicaid to place liens on the homes of persons who have been:

1. Admitted to a nursing home, and
2. Granted eligibility for Medicaid, and
3. Determined by medical review as "not able to resume living in the home property."

Medicaid files a lien in these instances due to the large payments made to nursing homes. Having a property lien enables Medicaid to recover the money it spent on behalf of the recipient when the property is sold. Medicaid can file a property lien regardless of a person's age. Medicaid cannot file a lien if: a spouse, a child under 21 or a blind or disabled child lives in the home.

### **What is an estate?**

An estate is all real and personal property and other assets (anything owned that can produce wealth) of a deceased person. An estate can include the home and property of a deceased person.

### **What is estate recovery and how does it work?**

In 1976 the Maryland General Assembly granted Medicaid the right to file a claim against the estate of a deceased Medicaid recipient for medical services it provided to the recipient. The Medicaid recipient must have been at least 55 years old when receiving Medicaid benefits and only money that was paid by Medicaid for medical services rendered to the recipient on or after his/her 55<sup>th</sup> birthday can be recovered. However, Medicaid cannot file a claim if there is:

1. A surviving spouse, or
2. An unmarried child younger than 21, or
3. A blind or totally disabled child.

Usually Medicaid is considered a general creditor. This means that Medicaid is paid after priority claims such as court fees, fees used to administer the estate, funeral expenses, attorney's fees and taxes. In some instances there may be other assets that can satisfy Medicaid's claim that would not require the selling of the deceased person's home and property. If the assets are not enough to pay the Medicaid claim, Medicaid will withdraw the claim, accept the remaining assets as payment in full, or work with the administrator of the estate in choosing other options to repay the Medicaid debt. Medicaid is not interested in taking the title to anyone's home.

## **TURN OVER**

### Example 1

John Doe, age 85, was in a nursing home in May. He died June 3. Medicaid paid \$2,000 for his care. His estate is worth \$50,000. Medicaid will recover \$2,000, once all priority claims are paid.

### Example 2

Joe Smith dies while in the Older Adults Waiver. Medicaid paid \$25,000 for his care. His estate is worth \$20,000. Medicaid will recover whatever remains once all priority claims are paid.

### Are there exceptions in estate recovery?

Estate recovery may also be waived in certain circumstances due to hardship. A hardship means Medicaid's claim will result in the removal of a dependent who:

1. Lived in the property at the time of the Medicaid recipient's death.
2. Lived there continuously for a period of two years before the Medicaid recipient's death, and
3. Cannot find another place to live.

Sometimes, when all the conditions above are not met, Medicaid will allow the dependent to continue to live in the property, but may place a non-interest bearing mortgage on the property. Medicaid, based on the dependent's ability to pay, determines monthly payments. This agreement protects the dependent who lives in the property and Medicaid's interest in the property.

### What expenses can Medicaid recover?

**All** medical services are subject to repayment. This includes, but is not limited to, nursing home care, hospital services, home and community based waivers (for example, Older Adults Waiver, Living at Home Waiver), personal care, physician and pharmacy services. **It is important to note that recovery will be made even if Medicaid paid a relative, friend or agency to provide services to the Medicaid recipient as allowed under certain Medicaid waivers (such as the Older Adults Waiver).** However, in those instances where Medicaid made **Medicare premium, co-pay and deductible payments only**, the Medicaid Program **will not seek** reimbursement.

Additional questions concerning estate and/or property lien recovery should be directed to your caseworker at the local department of social services or:

Department of Health and Mental Hygiene  
Office of Operations, Eligibility & Pharmacy  
Recoveries and Financial Services Division  
ATTN: Estates, Liens & Trust Section  
P.O. Box 13045  
Baltimore, MD 21203  
Phone (410) 767-6613

Applicable references may be found at Article 15-120 of the Annotated Code of Maryland, COMAR 10.09.24.15, and the Tax Equity and Fiscal Responsibility Act of 1982



# Massachusetts





# Massachusetts (MA)

<b>Governing Law:</b>	Massachusetts directs estate recovery under M.G.L.A. 118E §31 to §34. Massachusetts' estate-succession law reflexively refers to M.G.L.A. 118E §32 to govern the notice and claim procedures of any estate-recovery claims. <sup>1</sup> The MassHealth estate recovery program is governed through the administrative code at 130 CMR §515.011 and the accompanying lien provision is found at 130 CMR §515.012.
<b>Estate Scope:</b>	Recovery is limited to the probate estate of the patient. <sup>2</sup> A petition for admission to probate of a decedent's will or for administration of a decedent's estate shall include a sworn statement that copies of said petition and death certificate have been sent to the Division of Medical Assistance by certified mail. <sup>3</sup> The Division has four (4) months from the receipt of the sworn statement to file a claim or one (1) year from the death of the Medicaid recipient to commence its own action. <sup>4</sup>
<b>Spousal Recovery:</b>	Recovery can only be made after the death of the surviving spouse, if any, and only at a time when he or she has no surviving child under 21 or blind or permanently and totally disabled. <sup>5</sup>
<b>Liens:</b>	<p>The Division of Medical Assistance is authorized to file liens against the patient's property and collect against it during the patient's lifetime if the property is sold. The lien can only be placed if there is a MassHealth determination that the Medicaid recipient cannot reasonably be expected to be discharged from the medical institution and return home.<sup>6</sup> Repayment cannot be required by the lien if either of the following are lawfully residing in the property:</p> <ul style="list-style-type: none"><li>• A sibling who resided in the property for one full year before the patient was institutionalized; or</li><li>• A child who resided in the property for two years before the patient was institutionalized, provided the patient care to delay institutionalization for those two years, and resided in the property continuously during the parent's institutionalization.<sup>7</sup></li></ul>

<sup>1</sup> M.G.L.A. 197 §9(d).

<sup>2</sup> M.G.L.A. 118E §31(c); 130 CMR §515.011(A)(2). Note: Massachusetts adopted the expanded definition of the estate in 2003, but it was subsequently repealed. The bill to repeal the expanded definition was vetoed by the Governor in 2004 but the veto was overridden by the state legislature.

<sup>3</sup> M.G.L.A. 118E §32(a).

<sup>4</sup> Ibid at §32(b).

<sup>5</sup> M.G.L.A. 118E §31(b)(3); 130 CMR §515.011(C).

<sup>6</sup> 130 CMR §515.012(A)(2)(c).

<sup>7</sup> M.G.L.A. 118E §31(d).

<b>Partnership Program:</b>	Massachusetts has made several attempt to create a partnership program; but none have materialized as of yet. <sup>8</sup> However, Massachusetts does provide an exclusion from recovery if: the individual receiving medical assistance was permanently institutionalized; had notified the Division of Medical Assistance that the individual had no intention to return home; and on the date of admission to the nursing facility or other medical institution, had long-term care insurance that, when purchased, met the requirements of a qualified policy (as found in 211 C.M.R. §65.00). <sup>9</sup>
<b>Hardship Waiver:</b>	<p>The Division of Medical Assistance is authorized to grant waivers of recovery for undue hardship.<sup>10</sup> Recovery will be waived if a sale of real property would be required to satisfy a claim against the recipient's probate estate; and an individual who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions: the individual lived in the property on a continual basis for at least one year immediately before the now-deceased recipient became eligible for MassHealth or other assistance from the MassHealth agency and continues to live in the property at the time the MassHealth agency first presented its claim for recovery against the deceased recipient's estate; the individual has inherited or received an interest in the property from the deceased recipient's estate<sup>11</sup>; the individual is not being forced to sell the property by other devisees or heirs at law; and at the time the MassHealth agency first presented its claim for recovery against the deceased recipient's estate, the gross annual income of the individual's family group was less than or equal to one hundred thirty-three (133%) percent of the applicable federal-poverty-level income standard for the appropriate family size.<sup>12</sup></p> <p>Any waiver provided is conditional for a period of two (2) years from the date the MassHealth agency mails notice that the waiver requirements have been met, or from the date that a court determines that the waiver requirements have been met. At the end of that period, all circumstances and conditions must continue to exist and the real property must not have been sold or transferred for the MassHealth agency to continue to waive recovery and for the waiver to become permanent and binding. Otherwise, the claim will be due in full.<sup>13</sup></p>

<sup>8</sup> Bill H.934, filed 1/22/2013; Bill H.3939, file 4/11/2011.

<sup>9</sup> M.G.L.A. 118E §32.

<sup>10</sup> M.G.L.A. 118E §31(b)(3).

<sup>11</sup> As defined in 130 CMR §501.013(A)(2) and §515.011(A)(2).

<sup>12</sup> 130 CMR §515.012(D)(1).

<sup>13</sup> Ibid at §515.012(D)(2).

## Contents

**Statement of Intent to Return Home** – sent by enrollment center workers to determine if the institutionalized applicant intends to return home. The form explains that the home will be considered a countable asset if they do not intend to return there.

**Agreement to Sell Property** - sent by enrollment center workers to applicants who have indicated they have no intent of returning home. As a condition of MassHealth eligibility, they must sign this form, agreeing to sell their property in the following nine months.

**Statement of Expectation to Return Home** – completed by the applicant's physician who must indicate if there is a reasonable expectation that the applicant will return home in six months. If the answer is no, a lien will be placed on the applicant's home.

**Notice of Intent to Place a Lien** – sent to applicants by enrollment center workers when their physician has indicated they are not expected to return home in six months. The notice reiterates exemption rules for dependent relatives living in the home and also summarizes repayment/recovery rules.

**The MassHealth Lien** - completed by the enrollment worker and sent to the lien coordinator once the MassHealth application is approved.

**Status Change for a Member in a Long Term Care Facility or Rest Home** - completed by the Long Term Care provider and sent to the appropriate MassHealth Enrollment Center whenever a MassHealth applicant or member is admitted or discharged.

**Authorization to Release a MassHealth Lien** - completed by enrollment workers and sent to the lien coordinator when a filed lien needs to be released because the spouse or other dependent relatives live in the property or the property was permissibly transferred.

**Release of MassHealth Lien** - completed by Estate Recovery Unit staff who effect the release of the lien without recovery after having received the Authorization to Release form from the enrollment center worker. This form is also used to release the lien after claims have been settled either during the member's lifetime or during the probate process.

**Notice of Claim** - completed by Estate Recovery Unit staff and filed in Probate Court. The Notice of Claim indicates the amount that will be claimed from the estate based on MassHealth payments made on behalf of the decedent.

**Notice of Claim Cover Letter** - sent by Estate Recovery Unit staff to the administrator/executor of the estate along with a copy of the Notice of Claim. The cover letter explains the process that must be followed if the estate wishes to dispute the validity of the claim or request a deferral or waiver of repayment.

## MassHealth

Division of Medical Assistance

### Statement of Intent to Return Home

*MassHealth Enrollment Center*

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

SSN: \_\_\_\_\_

The Commonwealth of Massachusetts Division of Medical Assistance will determine if your home is a countable asset pursuant to regulations at 130 CMR 520.007(G). Your home is a countable asset if you do not intend to return there. Your home is not a countable asset if you do intend to return there. It may, however, be subject to a real estate lien pursuant to regulations at 130 CMR 515.012(A).

***Please complete this form and return it within 10 days to the MassHealth Enrollment Center at the above address.***

When did you leave your home? \_\_\_\_\_

Why did you leave your home? \_\_\_\_\_

Do you intend to return home?    ☐ Yes    ☐ No

If you do **not** intend to return home, when did you make that decision? \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant/Member

\_\_\_\_\_  
Date

***If you are completing this form for the applicant/member, please complete the following.***

I certify under the pains and penalty of perjury that I have answered the above questions (please check one of the following):

\_\_\_based on the intentions expressed to me by: \_\_\_\_\_  
Name of Applicant/Member

\_\_\_on behalf of: \_\_\_\_\_ who is incapable of expressing his/her intentions.  
Name of Applicant/Member

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title/Relationship

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

MA-10 (Rev. 04/99)

## MassHealth

Division of Medical Assistance

## Agreement to Sell Property

*MassHealth Enrollment Center*

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

SSN: \_\_\_\_\_

The Commonwealth of Massachusetts Division of Medical Assistance has determined that pursuant to regulations at 130 CMR 520.007(G), the equity value of your real estate at \_\_\_\_\_ is a countable asset in determining your eligibility for MassHealth.

We will exempt this property for a nine-month period if you agree to:

- take action to sell the property for no less than fair-market value or otherwise liquidate the equity value in the property to pay for your medical care;
- provide evidence, upon request from the Division, that you are trying to sell at no less than fair-market value, or liquidate the equity in the property to pay for your medical care;
- provide to the Division, on request, information on any offer you have received, including the date of the offer, the amount of the offer, and the identity of any real-estate agent conveying the offer;
- accept any offer of at least fair-market value; and
- notify the Division, within 10 days, of any sale or refinancing of the property.

***To qualify for this exemption, you must sign and return this form to the MassHealth Enrollment Center listed above within 30 days. If you have any questions, call your eligibility worker.***

The Division may extend the nine-month exemption period if, at the end of the nine-month period, you:

- provide evidence that you have been unable to sell the property at fair-market value;
- provide information on each offer you have received and the reason for not accepting it; and
- continue to make good-faith efforts to sell the property in accordance with 130 CMR 520.007(G)(4).

\_\_\_\_\_  
Eligibility Worker

\_\_\_\_\_  
Telephone Number

### Signature of Applicant or Authorized Representative

I hereby agree to dispose of real estate owned by me in accordance with the terms described above. I understand that my eligibility for MassHealth will terminate when one of the following occurs:

- I sell the property for less than fair-market value;
- I reject an offer of at least fair-market value; or
- after nine months, I reject a reasonable offer that is equal to at least two-thirds of the fair-market value.

\_\_\_\_\_  
*Signature of Applicant*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Authorized Representative      Date*

## MassHealth

Division of Medical Assistance

## Statement of Expectation to Return Home

MassHealth Enrollment Center

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town/Zip: \_\_\_\_\_

SSN: \_\_\_\_\_

***This form must be completed by a licensed physician and returned within 10 days to the MassHealth Enrollment Center at the above address.***

Patient's Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Address of Nursing Facility: \_\_\_\_\_

Address of Former Home: \_\_\_\_\_

Diagnosis: \_\_\_\_\_

Is it reasonable to expect this patient to return home within six month?    ☐ Yes    ☐ No

\_\_\_\_\_  
Physician's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician's Name (*please print*)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number



## MassHealth

*Division of Medical Assistance*

## Notice of Intent to Place a Lien

*MassHealth Enrollment Center*

*Address:* \_\_\_\_\_

*City/Town/Zip:* \_\_\_\_\_

*Date:* \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town/Zip SSN: \_\_\_\_\_

The Commonwealth of Massachusetts Division of Medical Assistance, pursuant to regulations at 130 CMR 515.012(A), intends to place a lien against your property at the following address(es):

Division of Medical Assistance regulations authorize the lien placement because:

- the Division has determined that you cannot reasonably be expected to be discharged from the nursing facility or other medical institution to your home; and
- none of the following relatives reside in the property:
  - a. a spouse;
  - b. a child under the age of 21, or a blind or permanently and totally disabled child; or
  - c. a sibling who has an equity interest in the property and has been living in the house for at least one year prior to your admission to the nursing facility or other medical institution.

If you are discharged from the nursing facility or other medical institution and return home after the lien is placed, the Division will release the lien. If the property is sold during your lifetime, you must repay the Division from your share of the proceeds for the cost of all medical services provided on or after April 1, 1995. Any remaining proceeds will be used in determining your continued eligibility. Repayment of the cost of medical services may be deferred while any of the following relatives are still lawfully residing in the property:

- a sibling who has been residing in the property for at least one year immediately prior to your admission to the nursing facility or other medical institution; or
- a son or daughter who:
  - a. has been residing in the property for at least two years immediately prior to your being admitted to the nursing facility or other medical institution;
  - b. establishes to the satisfaction of the Division that he or she provided care that permitted you to reside at home during the two-year period prior to institutionalization; and
  - c. has resided lawfully in the property on a continual basis while you have been in the nursing facility or other medical institution.

Whether or not a lien is placed, the Division may have the right to recover the amount of payment for medical benefits from your probate estate after your death. Recovery is limited to payment for all services that were provided:

- on or after March 22, 1991, regardless of your age, if you were institutionalized and the Division determined that you could not reasonably be expected to return home;
- on or after October 1, 1993, if you were aged 55 through 64; or
- while you were aged 65 or older.

If you disagree with the Division's intention to place a lien, you have the right to a fair hearing. For information about appeal rights, see the other side of this form.

\_\_\_\_\_  
MassHealth Eligibility Worker

\_\_\_\_\_  
Telephone Number

## MassHealth Lien

The Commonwealth of Massachusetts Division of Medical Assistance, pursuant to M.G.L. c. 118E, § 34 and regulations at 130 CMR 515.012(A), hereby asserts a lien for the cost of medical assistance paid or to be paid against all property and rights to all property in \_\_\_\_\_ County, including the property more fully described below.

### Ownership

Member's Last Name	First Name	MI
--------------------	------------	----

SSN: \_\_\_\_\_

### Location

Street Address	City/Town	Zip Code
----------------	-----------	----------

County	District
--------	----------

### Registration/Recording Information

Book	Page	<b>OR</b>	Certificate Number/Document Number
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#### Return to:

Commonwealth of Massachusetts  
Division of Medical Assistance  
Lien Coordinator  
Estate Recovery Unit  
P.O. Box 15205  
Worcester, MA 01615-0205  
,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
MassHealth Enrollment Center (City/Town only)

\_\_\_\_\_  
Date

**Status Change for a Member in a Long Term Care Facility or Rest Home  
(Admission or Discharge of MassHealth Member or SSI Recipient)**

1. Date	REG	MEC	Coverage type	Member's last name	First name	MI
2. Name of facility submitting this notification			Address		Telephone	
3. Provider number		4. Admit date		5. MassHealth request date		
6. ___A–Admit___ D–Discharge ___R–Both admit and discharge				7. Member's ID/SSN		
<b>FOR MASSHEALTH USE ONLY</b>						
8. PPA Amount		Effective Date (MM/YY)		Retro PPA _____		
PPA Amount		Effective Date (MM/YY)		Retro PPA _____		
9. Level of Care			10. MassHealth Start Date			
11. Discharge Reason			12. Worker CAN			
13. Discharge Date	14. Date of Death	15. Comments				
<b>Check all appropriate boxes:</b> 16. A. Short term (6 months or less) _____ B. Long term (more than 6 months) _____ C. Short-term-care stay terminated; now long-term-care _____ D. Medicare upon admission _____ E. SCO (NF screening-notification form not needed) _____						
17. Admitted from			18. Discharged to			
<b>Complete items 19 and 20 only if member's expected stay is six months or less.</b>						
19. I certify that the above-named member's expected length of stay is						
20. Physician's signature			Date			
21. Signature of authorized representative completing this form			Date			
<b>NOTE:</b> Nursing-facility screening-notification form or admission-determination letter must be attached.						

**SEE REVERSE SIDE FOR INSTRUCTIONS FOR COMPLETING THIS FORM.**

## Instructions to Long Term Care Providers

The following instructions correspond to numbered items on the reverse side. Please Note: For SSI recipients, a copy of the SC-1 must be sent to the appropriate Social Security District Office.

1. Enter today's date, the member's region, MassHealth Enrollment Center, MassHealth coverage type, and name (please print).
2. Enter the name, address, and telephone number of the facility submitting this form.
3. Enter the seven-digit provider number.
4. Enter the date of admission.
5. Enter the date from which MassHealth payment is requested.
6. Enter the appropriate code: A for admitted, D for discharged, or R for both admitted and discharged.
7. Enter the member's 10-digit MassHealth identification number, if known.

### **ITEMS 8 THROUGH 12 ARE FOR INTERNAL MASSHEALTH USE ONLY.**

13. Enter the discharge date for the current discharge and if both admitting and discharging.
14. Enter the date of death, if applicable.
15. Use this space to enter any comments.
16. Check box 16A to indicate a short-term stay (six months or less), 16B to indicate a long-term stay, or 16C to indicate that the short-term stay is terminated and is now long term. Check 16D if the member is Medicare eligible upon admission. Check 16E if the member is admitted to nursing facility under SCO
17. (nursing-facility screening-notification form not needed).
18. Enter where member is admitted from (i.e., home, name of acute or chronic hospital).
19. Enter where member is discharged to (i.e., home, name and address of acute or chronic hospital).
20. Enter the expected length of stay only if the expected stay is six months or less.
21. The physician must sign and date only if the expected stay is six months or less. For a long-term stay, no signature is required.
22. An authorized representative of the facility must sign and date this form.

## MassHealth Enrollment Center Authorization To Release a MassHealth Lien

The MassHealth Enrollment Center (MEC) at \_\_\_\_\_, MA authorizes the release of the attached MassHealth lien for the following MassHealth member:

\_\_\_\_\_  
Member name (first, last)

\_\_\_\_\_  
Member SSN

A MassHealth Lien Release is requested for the following reason:

**Relative Lives in the Property** In accordance with MassHealth regulations at 130 CMR 515.012, one of the following relatives lives in the property:

- ☐ A spouse.
- ☐ A child under the age of 21, or a blind or permanently and totally disabled child.
- ☐ A sibling who has a legal interest in the property and has been living in the house for at least one year before the member's admission to the medical institution.

**Permissible Transfer** In accordance with MassHealth regulations at 130 CMR 520.019(D)(6), the nursing-facility resident transferred the home he or she used as the principal residence at the time of the transfer, and the title to the home to one of the following persons.

- ☐ The spouse.
- ☐ The nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled.
- ☐ The nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility.
- ☐ The nursing-facility resident's child [other than the child described in 130 CMR 520.019(D)(6)(b)] who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by MassHealth, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.
- ☐ Other: \_\_\_\_\_

I, hereby acknowledge that I have received all supporting documentation to substantiate the release of this MassHealth lien.

\_\_\_\_\_  
Signature of MEC representative

\_\_\_\_\_  
Date

Lien released by:

\_\_\_\_\_  
Signature of Estate Recovery Unit Lien Coordinator

\_\_\_\_\_  
Date

**MassHealth***Division of Medical Assistance***Release of MassHealth Lien**

The Commonwealth of Massachusetts Division of Medical Assistance hereby releases a lien, dated \_\_\_\_\_, that it had asserted (or that had been asserted by the former Department of Public Welfare, now known as the Department of Transitional Assistance) pursuant to M.G.L. c. 118E § 34 and regulations at 130 CMR 515.012(A) for the cost of medical assistance paid or to be paid against all property and rights to all property described below.

**Ownership**

Member's Last Name	First Name	MI
--------------------	------------	----

SSN: \_\_\_\_\_

**Location**

Street Address	City/Town	Zip Code
----------------	-----------	----------

County	District
--------	----------

**Registration**

Deed Book	Page	<b>OR</b> Certificate Number
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Lien Book	Page	<b>OR</b> Document Number
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\_\_\_\_\_  
Case Specialist

Estate Recovery Unit  
P.O. Box 15205  
Worcester, MA 01615-0205

Date

MA-14 (Rev. 09/01)



NOTICE OF CLAIM  
COMMONWEALTH OF MASSACHUSETTS  
ESTATE RECOVERY UNIT

PROBATE COURT  
No.

To the Register of Probate for the County of \_\_\_\_\_:

Please file the following Notice of Claim for the estate of MEMBER NAME, late of CITY/TOWN in said county.

To FIDUCIARY of \_\_\_\_\_ in the County of \_\_\_\_\_, Co-Administrator of the estate of NAME OF MEMBER,

To FIDUCIARY of \_\_\_\_\_ in the County of \_\_\_\_\_, Co-Administrator of the estate of NAME OF MEMBER,

To \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_, Co-Administrator of the estate of \_\_\_\_\_,

This notice is given to you as required under the General Laws of Massachusetts, including but not limited to:

Section 20 of Chapter 202 of the General Laws

Section 32 of Chapter 118E of the General Laws

Section 9 of Chapter 197 of the General Laws

The estate of said NAME OF MEMBER is indebted to the Commonwealth of Massachusetts, MassHealth for the sum of \$\_\_\_\_\_ dollars under Section 31 of Chapter 118E of the General Laws for medical assistance (Medicaid) provided for the decedent.

COMMONWEALTH OF MASSACHUSETTS

By: ERUADMIN ERUADMIN, Administrator

\_\_\_\_\_  
Estate Recovery Program  
P. O. Box 15205  
Worcester, Massachusetts 01615-0205

Dated:

*MassHealth*  
*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*

Date:

To:

Re: Estate of

Dear Attorney     :

Enclosed please find a copy of the Notice of Claim that MassHealth has filed with the Probate Court. Please note that payment of this claim is due four months plus sixty days from the date the executor or administrator was appointed. Interest will then begin to accrue. Payment should be made by check payable to the “Commonwealth of Massachusetts, Estate Recovery Unit.” If there are not sufficient assets in the estate to satisfy the claim in full, MassHealth will accept what remains after payment of any funeral expenses and reasonable and necessary costs of administration.

If you believe that the claim is not valid, you have sixty days to send written notice by certified mail to MassHealth. If MassHealth disagrees, it will file suit against the executor or administrator within sixty days after it receives your notice, and a Court will determine the validity of MassHealth's claim.

Pursuant to 130 CMR 501.013(B) and 130 CMR 515.011(C), if the member was survived by a spouse, a blind or permanently and totally disabled child, or a child under 21 years of age, MassHealth will permit the estate to **defer** repaying this claim during the lifetime of the spouse, the blind or permanently and totally disabled child, or until the minor child reaches 21 years of age.

MassHealth will waive its claim if it determines that **all of the following conditions** exist as stated in 130 CMR 501.013 (C) and 130 CMR 515.011(D):

- (1) a sale of real property would be required to satisfy a claim against the estate; and,
- (2) a person who was using the property as a principal place of residence on the date of the member's death meets all of the following conditions:
  - (a) the person lived in the property on a continual basis for at least one year immediately before the now-deceased member became eligible for Mass Health or other assistance from MassHealth and continues to live in the property at the time MassHealth first presented its claim for recovery against the deceased member's estate;

- (b) the person was left an interest in the property under the deceased member's will, inherited the property from the deceased recipient under the laws of intestacy;
- (c) the person is not being forced to sell the property by other devisees or heirs at law; and
- (d) at the time MassHealth first presented its claim for recovery against the deceased member's estate, the gross annual income of the person's family group, as defined in 130 CMR 501.001, was less than or equal to 133 percent of the applicable federal-poverty-level income standard for the appropriate family size.

If all of the above conditions are met a waiver will be granted on a conditional basis for two years from the date that MassHealth mails notice that the waiver requirements have been met, or from the date that a court of competent jurisdiction determines that the waiver requirements have been met. If at the end of that period, all circumstances and conditions that must exist for MassHealth to waive recovery still exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), and the real property has not been sold or transferred, the waiver will become permanent and binding. If at any time during the two year period, the circumstances and conditions for the waiver no longer exist, including meeting the same income standards under 130 CMR 501.013(C)(2)(d), or the property is sold or transferred, or the person does not use the property as their primary residence, MassHealth will be notified and its claim will become due and payable in full.

MassHealth will request an annual review to ensure that the conditions set forth in 130 CMR 501.013 and 130 CMR 515.011 continue to exist. The individual requesting the waiver must furnish the required information and documentation for the periodic review. Failure to do so will result in the revocation of the conditional waiver and MassHealth's claim will become due and payable in full

If you wish to deny MassHealth's claim, or believe that recovery should be waived, or repayment deferred, you are required to notify MassHealth in writing by **certified mail** within **sixty days**. If you are asking MassHealth to waive its claim under 130 CMR 501.013(C) and 130 CMR 515.011(D) or to defer repayment, you must state the specific circumstances and conditions, which exist and provide supporting documentation satisfactory to MassHealth. If MassHealth disagrees with your denial of its claim or denies your request for deferral or waiver, it will file suit within sixty days of receipt of your request, and a Court will determine the validity of the MassHealth's claim.

Please address any notice to this office at the following address:

Estate Recovery Program  
P.O. Box 15205  
Worcester, Massachusetts 01615-9906

Thank you for your cooperation

Sincerely,

Enclosure

**Telephone: 1-800-754-1864 508-856-6381**  
**Fax: 508-856-7803**



# Michigan (MI)

<b>Governing Law:</b>	Michigan's estate-recovery program, the last in the nation to be implemented, is contained in M.C.L.A. §400.112g to §400.112k.
<b>Estate Scope:</b>	Michigan's reluctance in enacting estate recovery translated into a relatively generous statute. The estate-recovery claims are limited to the probate estate. <sup>1</sup> The statute provides two exemptions to recovery in addition to a hardship waiver discussed below: the equity in a patient's homestead equal to or less than half of the average price of the home in the county where the homestead is located and any portion of the estate that is the primary income-producing asset of survivors, including a family farm or business. <sup>2</sup>
<b>Spousal Recovery:</b>	<p>Michigan's law appears to provide some leeway for the Department of Social Services to pursue claims against the surviving spouse<sup>3</sup> and to track assets of the patient available for recovery.<sup>4</sup> However, the statute explicitly bars recovery of assets from the home of a patient if any of the following are lawfully residing in the home:</p> <ul style="list-style-type: none"><li>• Patient's spouse;</li><li>• Patient's child under 21 or child who is blind or permanently and totally disabled under SSI rules;</li><li>• Patient's caretaker relative (i.e., any relation by blood, marriage, or adoption within the fifth degree of kinship to the patient) who resided in the home for two years before the patient's admission to the medical institution and who establishes that he or she provided care that permitted the patient to reside in the home rather than in the institution; or</li><li>• Patient's sibling who has an equity interest in the patient's home and who resided in the home for one year before the patient's admission to the medical facility.<sup>5</sup></li></ul>
<b>Liens:</b>	Michigan's estate-recovery statute expressly prohibits the recording of a lien on property. <sup>6</sup>

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<sup>1</sup> M.C.L.A. §400.112g(3)(d).

<sup>2</sup> M.C.L.A. §400.112g(3)(e).

<sup>3</sup> M.C.L.A. §400.112g(3)(c).

<sup>4</sup> M.C.L.A. §400.112g(2)(a).

<sup>5</sup> M.C.L.A. §400.112g(6).

<sup>6</sup> M.C.L.A. §400.112g(a).

**Partnership Program:** Michigan's statute authorizes a partnership program at M.C.L.A. §400.112c. Michigan provides a dollar-for-dollar asset disregard for any benefits paid out by a qualifying long-term care insurance policy.<sup>7</sup> After diminishment of assets below the anticipated remaining benefits of a qualified policy, the assets of a patient's corresponding policy's payout cannot be taken into account for Medicaid eligibility or any subsequent recovery.<sup>8</sup>

**Hardship Waiver:** Hardship waivers are available by application.<sup>9</sup> The exclusions described above are available through hardship waiver.<sup>10</sup> Additionally, an undue hardship may exist when the estate subject to recovery is the primary income-producing asset of the survivors (where such income is limited), such as a family farm or business; the estate subject to recovery is a home of modest value; or the state's recovery of a decedent's estate would cause a survivor to become or remain eligible for Medicaid.<sup>11</sup>

To qualify for an undue hardship waiver, the applicant must satisfy a means test to ensure that an actual hardship would result. An applicant satisfies the means test if the total household income of the applicant is less than 200% of the poverty level for a household of the same size and total household resources of the applicant are less than \$10,000.<sup>12</sup> However, no hardship shall be deemed to exist if the hardship resulted from estate-planning methods under which assets were diverted in order to avoid estate recovery.<sup>13</sup> Hardship decisions can be appealed by requesting a hearing through the Michigan Administrative Hearing System for the Department of Community Health, PO Box 30736, Lansing, MI 48909.<sup>14</sup>

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<sup>7</sup> M.C.L.A. §400.112c(5).

<sup>8</sup> M.C.L.A. §400.112c(4).

<sup>9</sup> M.C.L.A. §400.112g(3)(e).

<sup>10</sup> Ibid.

<sup>11</sup> [http://www.michigan.gov/mdch/0,1607,7-132-2943\\_4860-252705--,00.html#print](http://www.michigan.gov/mdch/0,1607,7-132-2943_4860-252705--,00.html#print)

<sup>12</sup> Ibid.

<sup>13</sup> M.C.L.A. §400.112g(3)(e)(i).

<sup>14</sup> [http://www.michigan.gov/mdch/0,1607,7-132-2943\\_4860-252705--,00.html#print](http://www.michigan.gov/mdch/0,1607,7-132-2943_4860-252705--,00.html#print)



## WHERE CAN I GET MORE INFORMATION?

For more detailed information about Estate Recovery, please contact:

HMS, Inc.  
Estate Recovery Unit  
1-877-791-0435

Or visit the website at:  
[www.michigan.gov/estaterecovery](http://www.michigan.gov/estaterecovery)

Or email questions to:  
[miestaterecovery@hms.com](mailto:miestaterecovery@hms.com)

**Please note that this brochure is only a summary of Michigan Estate Recovery and does not contain all relevant information.**

For questions and/or problems, or help to translate, call the Beneficiary Help Line at 1-800-642-3195 or TTY 1-866-501-5656.

Spanish: Si necesita ayuda para traducir o entender este texto, por favor llame al telefono, 1-800-642-3195 or TTY 1-866-501-5656

Arabic: TTY 1-866-501-5656

إذا كان لديكم أي سؤال، يرجى الإتصال بخط المساعدة على الرقم المجاني ١-٨٠٠-٦٤٢-٣١٩٥

Michigan Department  
of Community Health



Rick Snyder, Governor  
Olga Dazzo, Director

The Michigan Department of Community Health is an equal opportunity employer, services and programs provider.

DCH-3895

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# YOUR GUIDE TO ESTATE RECOVERY IN MICHIGAN



Michigan Department  
of Community Health



# WHAT IS ESTATE RECOVERY?

The Medicaid program pays for health care services for people who meet the income and asset rules. Medicaid is funded by both state and federal government. The federal government requires Medicaid to recover money that it paid for services from the estates of Medicaid beneficiaries who have died. This is called Estate Recovery.

Medicaid will only recover the amount Medicaid paid for a beneficiary. Medicaid will not recover more than was paid.

## WHAT IS AN ESTATE?

An estate includes all property and assets that pass through probate court. Examples are homes, cars, insurance money, and bank accounts.

## WHO IS SUBJECT TO ESTATE RECOVERY?

**Estate Recovery only applies to:**

- Medicaid beneficiaries age 55 or older who received long-term care services after the effective date of the statute.

## ARE THERE EXCEPTIONS TO ESTATE RECOVERY?

**Yes, the state may decide not to recover money if it creates an “Undue Hardship” or if any of the following people lawfully live in the beneficiary’s home:**

- Beneficiary’s spouse;
- Beneficiary’s child who is under the age of 21, blind, or permanently disabled;
- Beneficiary’s sibling who has an equity interest in the home and was living in the home for at least 1 year immediately before the beneficiary’s death;
- A survivor who:
  - ◆ was living in the beneficiary’s home for at least 2 years immediately before the beneficiary went into a medical facility; *and*
  - ◆ provided care so the beneficiary could stay at home during that period.

***The state will not seek recovery of certain Medicare cost-sharing benefits.***

## WHAT IS AN UNDUE HARDSHIP?

**An undue hardship exists when:**

- The estate is the sole source of income for the survivors, such as a family farm or business; *or*

- The estate is a home of modest value; *or*
- A survivor would become or remain eligible for Medicaid if recovery occurred.

## HOW DOES ESTATE RECOVERY WORK?

When a Medicaid beneficiary age 55 or older dies, the state sends an estate recovery notice to the estate representative or heirs. The estate recovery notice tells them:

- the state plans to file a claim;
- how much the state will claim;
- how to apply for an Undue Hardship Waiver.

## HOW DO I APPLY FOR AN UNDUE HARDSHIP WAIVER?

You need to fill out and send in an Undue Hardship Application. You can get an application:

- by calling 1-877-791-0435;
- by sending an email to [miestaterecovery@hms.com](mailto:miestaterecovery@hms.com).

You need to send the completed application to the address on the application no later than 60 days from the date on the letter that accompanies the application. You must also send copies of any documents the application tells you to send. The state will tell you if you qualify for a waiver.

## Michigan Estate Recovery Frequently Asked Questions

### What is an estate?

An estate is property, such as money, a house or other things of value that a person leaves to family members or others when he or she dies. Estate recovery does not apply to all property that a person may own. Estate recovery only applies to those assets that are subject to probate court administration.

### Who does estate recovery affect?

Estate recovery applies to individuals receiving Medicaid benefits who are 55 years of age or older and have received Medicaid long-term care services on or after September 30, 2007. If you would like to check whether a deceased family member is subject to estate recovery you may call the number listed below.

### How does estate recovery work?

When the recipient dies, the Michigan Department of Community Health will send a notice to the estate representative or a family member to tell them that MDCH intends to file a Medicaid estate recovery claim against the recipient's estate. That notice will include an estate questionnaire form that is to be completed so that MDCH can determine whether it should file a claim. This notice will also provide information on how to request an undue hardship waiver application. If no exemptions or hardships apply, MDCH will file a claim against the estate.

### Are there any times when the Michigan Department of Community Health will not try to recover from my estate?

Yes, there are several situations when MDCH will temporarily defer recovery. MDCH will not ask for money back after a recipient dies while one of the following persons is living:

- A spouse.
- A child under 21 years of age.
- A child of any age who is blind or permanently and totally disabled.

MDCH will also defer recovery while one of the following is living in the home:

- A survivor who was residing in the home and providing care for a period of at least 2 years immediately before the date of the recipient's admission to a medical institution, and that care allowed the recipient to live at home rather than in an institution.
- A sibling who has an equity interest in the home who was residing in the home for a period of at least 1 year immediately before the recipient's admission to a medical institution.

**If none of the above situations apply, does that mean the Michigan Department of Community Health will file a claim against my estate?**

If none of the five situations above apply, then MDCH may file a claim against the probate estate of the Medicaid recipient unless:

- The estimated cost of recovery efforts would exceed the estimated amount expected to be recovered; or
- It is determined that estate recovery would result in an undue hardship.

### What is an Undue Hardship?

After an undue hardship application is filed, MDCH may grant a hardship waiver when:

- The estate property is the primary income-producing asset of the beneficiaries, such as a family business or farm and the income produced by the asset is limited;
- The estate property is a home of modest value; or
- Recovery from a recipient's estate would cause a survivor to become or remain eligible for Medicaid.

An applicant for an undue hardship must also satisfy a Means Test.

### What is the Means Test?

The means test is applied to make sure an actual hardship would result if recovery is made. To pass the means test, an applicant must prove that:

- Their total household income is less than 200% of the poverty level; and
- Their total household resources are less than \$10,000.

### How do I apply for an undue hardship waiver?

To receive a waiver based on an undue hardship, the applicant must request, complete, and submit an application and provide proof of the hardship. An application may be obtained by calling the number listed below or by visiting the website at [www.michigan.gov/estater recovery](http://www.michigan.gov/estater recovery). A hardship waiver should only be applied for if probate has been open. If no probate is open, MDCH cannot file a claim and so there is no claim to defer with a waiver. Any applications received when there is no probate estate opened will not be processed.

### What if there is not enough money in the estate to pay MDCH's claim?

The state is limited to what is in the decedent's estate. If there is not enough money or assets in the estate to pay all claims filed against the estate, the estate is deemed "insolvent." If the estate is insolvent, then payment will occur by order of priority until there is nothing left.

### What is the Order of Priority?

The order of priority refers to the order that creditor's claims are paid from estate assets. Under Michigan law, there are several things that are paid before an estate recovery claim is paid such as funeral and costs of administration.

**What is Probate?**

Probate refers to the process of administering an estate in court. This is how assets are distributed to heirs and creditors are paid.

**How do I open an estate?**

MDCH cannot provide legal advice. You may wish to consult an attorney or probate clerk.

**What are my responsibilities as Personal Representative?**

MDCH cannot provide legal advice. You may wish to consult an attorney or probate clerk. In general, duties of a personal representative are found in the Estates and Protected Individuals Code in Michigan.

**How can I get more information about the Medicaid estate recovery process?**

If you need more detailed information on how this will work, or if you have a specific question, you may send an e-mail to [MDCH-EstateRecovery@michigan.gov](mailto:MDCH-EstateRecovery@michigan.gov) or call the Third Party Liability Division toll-free at 1-844-TPL-MDCH.

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
**MICHIGAN ESTATE RECOVERY QUESTIONNAIRE**

**Instructions: (Print or typewritten)**

- Complete each section and sign at the end of this form.
- Provide a copy of the deceased Medicaid member's death certificate and any other documentation requested on this form. *(No exceptions; a copy must accompany this questionnaire.)*
- Mail completed form and all requested documentation in the enclosed (postage paid) envelope provided to:

Michigan Department of Community Health  
Third Party Liability  
P.O. Box 30435  
Lansing, Michigan 48909

If you have any questions about how to complete this form, you may call the TPL Division toll-free at 1-844-TPL-MDCH.

Person Completing this Form	
(Check one)	Name: _____
<input type="checkbox"/> Personal Representative	Address: _____
<input type="checkbox"/> Attorney for Estate	_____
<input type="checkbox"/> Other (Specify) _____	Telephone: _____
_____	
Court Information	
Has a petition for probate of the estate been filed? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> If YES, provide a copy of the inventory.	
If YES, provide:	Probate Case Number: _____ Date Filed: _____
County Probate Court: _____	
If No, do you anticipate a petition for probate being filed? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
Have there been any third party lawsuits filed on behalf of the estate? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
If YES, provide:	Case Number: _____ Date Filed: _____
County Court: _____	
If NO, do you anticipate any third party lawsuits being filed? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
Deceased Medicaid Member Information	
Last Name: _____	Date of Birth: _____
First Name: _____	Date of Death: _____
Middle Name: _____	Social Security Number: _____
Marital Status: (at time of death) <i>Check appropriate status</i> <input type="checkbox"/> <b>Married</b> <input type="checkbox"/> <b>Divorced</b> <input type="checkbox"/> <b>Widowed</b> <input type="checkbox"/> <b>Never Married</b>	
If checked married, provide a copy of the marriage license.	
Is the deceased Medicaid member's spouse still living? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
Spouse Last Name: _____	Date of Birth: _____
Spouse First Name: _____	Date of Death: _____
Spouse Middle Name: _____	Social Security Number: _____
_____	

**AUTHORITY:** MCL 400.112g  
**COMPLETION:** Completion is voluntary, but is required for an Estate Recovery exemption.

The Department of Community Health is an equal opportunity employer, services and programs provider.

### Statutory Exemption Information

A. Is the deceased Medicaid member survived by a child under the age of 21 OR a child of any age who has been deemed blind or permanently disabled by the Social Security Administration? ☐ **Yes** ☐ **No**

If Yes, provide a copy of the child's birth certificate and recent Social Security Administration determination of disability, and:

Child's Name: \_\_\_\_\_

Child's Date of Birth: \_\_\_\_\_ Child's Social Security Number: \_\_\_\_\_

B. Is there a caretaker relative residing in the home that has been residing in the home for at least 2 years prior to the deceased Medicaid member's admission to a facility? ☐ **Yes** ☐ **No**

Caretaker's Name: \_\_\_\_\_

If YES, provide copies of driver's license and bank statements to show residence for the 2 year period, AND a statement from a physician stating that the care provided allowed the deceased Medicaid member to reside at home rather than in an institution.

C. Was there a sibling residing in the home for 1 year prior to the deceased Medicaid member's admission to a nursing facility with an equity interest in the home? ☐ **Yes** ☐ **No**

Sibling's Name: \_\_\_\_\_

If YES, provide copies of driver's license and bank statements to show residence for the 1 year period, AND a statement of equity interest in the home.

### Asset Information

D. Did the deceased Medicaid member own a home or other real property at the time of death? ☐ **Yes** ☐ **No**

If YES, complete Homestead and/or Other Real Property and provide a copy of the deed showing ownership.

#### Homestead

Address: _____	Approximate Market Value: \$ _____
----------------	------------------------------------

Type of ownership (i.e., tenants in common, life estate, joint tenants, fee simple, etc.) \_\_\_\_\_

#### Other Real Property

Address: _____	Approximate Market Value: \$ _____
----------------	------------------------------------

Type of ownership (i.e., tenants in common, life estate, joint tenants, fee simple, etc.) \_\_\_\_\_

E. Did the deceased Medicaid member have any bank accounts at the time of death? ☐ **Yes** ☐ **No**

If YES, provide a copy of the bank statement and complete the information below:

#### Bank Name:

\_\_\_\_\_

Is this a joint account? <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Account Number: _____	Account Balance: _____
---	-----------------------	------------------------

F. Did the deceased Medicaid member own other personal property (i.e., vehicles, jewelry, other personal items of value)? ☐ **Yes** ☐ **No**

List any other personal property : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I certify that the information contained in this form is true and complete to the best of my knowledge. I understand that the Michigan Department of Community Health is relying on this information when determining the value of Medicaid's claim and/or granting an exemption from Estate Recovery.

Signature of person completing this form \_\_\_\_\_

Date \_\_\_\_\_



# Michigan Department of Community Health APPLICATION FOR HARDSHIP WAIVER

(Please Print)

Submission of this application is necessary to apply for a waiver of the claim due to substantial hardship. Only the **applicant's proportionate share of the claim can be** waived. An application must be submitted within 60 days of the date stated on the Notice of Intent sent by MDCH to the personal representative or estate contact. All information requested is voluntary; however, failure to completely and accurately provide the information may result in denial of the waiver application. A substantial hardship shall not exist if the hardship resulted from estate planning methods designed to avoid estate recovery. Additionally, no waiver will be granted if it would result in a creditor of lower priority being paid.

Estate of:	Today's Date:
Medicaid ID #:	Total Value of Estate: \$

## INSTRUCTIONS

To request an undue hardship waiver, please complete each section of the application and provide all requested documentation. Applications and any supporting documentation should be sent to:

Third Party Liability  
P.O. Box 30435  
Lansing, MI 48909

Written notification of the determination will be sent to the applicant. If the waiver is granted, the claim is only waived temporarily; once the hardship no longer exists recovery will be pursued. If the waiver is denied, the applicant has 60 days to appeal the decision under the Administrative Procedures Act, MCL § 24.201-24.328. If you have any questions about how to complete this form and what documentation is necessary, please contact the Third Party Liability Division toll-free at 1-844-TPL-MDCH.

## CRITERIA FOR HARDSHIP WAIVER

An undue hardship may exist when: (please indicate which is being applied for)

- ☐ The estate asset subject to recovery is the primary source of income for a survivor, such as a family farm or business, and income of the applicant is limited; *or*
- ☐ The estate asset subject to recovery is a home of modest value (i.e. a home with a value no higher than 50% of **the average price of homes in the county where the home is located as of the date of the recipient's death**); *or*
- ☐ Recovery would cause a survivor to become or remain eligible for Medicaid.

In addition, to be eligible for an undue hardship waiver both of following must be true:

1. Total household resources of the applicant do not exceed \$10,000; *and*
2. Total household income of the applicant is less than 200% of the poverty level for a household of the same size.

Effective April 2014, Reference Table Manual 246 reports 200% of the poverty level as follows\*:

Household size	1	2	3	4
Monthly income	\$1,945.00	\$2,621.67	\$3,298.33	\$3,975.00

\*Monthly income amounts will be modified annually once updated figures are provided.

**AUTHORITY:** MCL 400.112g  
**COMPLETION:** Completion is voluntary, but is required for a hardship waiver.

The Department of Community Health is an equal opportunity employer, services and programs provider.

**APPLICANT INFORMATION**

<b>Applicant's Last name:</b>		First:	Middle:	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs.	<input type="checkbox"/> Miss <input type="checkbox"/> Ms.	Birth Date: / /	Age:
Street address:			Social Security no.:		Home phone no.: ( ) -		
P.O. box:	City:		State:		ZIP Code:		
Occupation:	Employer:				Employer phone no.: ( ) -		
<b>Applicant's Anticipated Share of Estate (50%, 100%, etc):</b>				Relationship to Decedent:			
Marital Status (circle one): Single / Mar / Div / Sep / Wid		<b>Spouse's Last name:</b>		First:			
<b>Spouse's Birth date:</b>	<b>Spouse's Age:</b>	<b>Spouse's Social Security no.:</b>		<b>Spouse's Phone no.:</b> ( ) -			
<b>Spouse's Occupation:</b>	<b>Spouse's Employer:</b>			<b>Spouse's Employer phone no.:</b> ( ) -			

**ESTATE ASSET INFORMATION**

Check all applicable assets and complete all related information. List all estate assets including property conveyed through joint tenancy, tenancy in common, life estate, living trust, annuities, life insurance policies, or retirement accounts. Please attach copies of any deeds, registrations, bank statements, listing agreements/contracts, life insurance policy statements, stocks, bonds, and annuity documentation, etc. Attach additional sheets if necessary.

<input type="checkbox"/> Real Property	Market Value: \$			
	Mortgage Owed: \$			
	Is property listed for sale? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please explain:			
Estate Property Street Address:		City:	State:	Zip:
Is anyone living in the property? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, how long have they lived in the property?	Name of person living there:		Relationship to decedent:
Is the estate property the site of an income-producing family business, farm, or ranch? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, provide the year the property was first used as a business and describe the nature of the business:		If yes, is this your primary source of income? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Bank Account(s)	<input type="checkbox"/> Checking	Balance: \$	Account No.:	Bank:
	<input type="checkbox"/> Savings	Balance: \$	Account No.:	Bank:
<input type="checkbox"/> Stocks/Bonds/Notes/Other	Type:	Value: \$	Date Purchased:	
<input type="checkbox"/> Other	Description:			

### APPLICANT'S MONTHLY INCOME

Please attach a copy of the most recent federal and state income tax returns.

<b>Applicant's Net Pay:</b> (attach two month's most recent pay stubs) \$		This amount is paid: <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly	
<b>Spouse's Net Pay:</b> (attach two month's most recent pay stubs) \$		This amount is paid: <input type="checkbox"/> Monthly <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly	
Rents Paid to Applicant: (please provide rental agreement) \$		Business Income: (attach profit and loss statement) \$	
Social Security/Retirement/Pensions/Annuities: (attach two most recent stubs) \$		Disability: (attach most recent award letter) \$	
Public Assistance: (attach award letter) \$	Other Income (dividends, interest, child support, alimony, tips, commissions, etc.) \$ (indicate source and provide documentation)		
TOTAL MONTHLY INCOME: \$			

### APPLICANT'S ASSETS

Please provide information on assets owned by the *applicant*. Attach additional sheets if needed.

Real Estate: (include personal residence, vacation property, rental property, etc.)

Property #1	Street Address:	City:	State:	Zip:
	Value: \$	Mortgage Balance: \$		
Property #2	Street Address:	City:	State:	Zip:
	Value: \$	Mortgage Balance: \$		

Bank Accounts: (include savings, checking, certificates of deposit, retirement accounts, etc.)

Name of Institution:	Account No.:	Type of Account:	Balance: \$
Name of Institution:	Account No.:	Type of Account:	Balance: \$
Name of Institution:	Account No.:	Type of Account:	Balance: \$

Motor Vehicles: (include all cars, trucks, motorcycles, boats, recreational vehicles, etc.)

Year, Make, Model:	Date Purchased:	Value: \$	Loan Balance: \$
Year, Make, Model:	Date Purchased:	Value: \$	Loan Balance: \$

Other Assets: (miscellaneous items you own or are currently buying, e.g. stocks, bonds, etc.)

Description:	Date Purchased:	Value:	Loan Balance:

## DOCUMENTATION AND CERTIFICATION

All of the information requested in the application is voluntary; however, failure to completely and accurately provide the information may result in denial of the waiver application. Any errors or omissions in the information provided by the applicant that would affect the **MDCH's** decision may be a basis for denial of the waiver application.

As appropriate, please include a copy of:

- 1) **Decedent's** Will showing names of heirs and the percentage of the estate each will receive;
- 2) Deeds to any real property owned by the decedent or the applicant;
- 3) **Applicant's most recent federal and state income tax returns;**
- 4) **Applicant's most recent pay stubs;**
- 5) Bank statements of the decedent; and
- 6) **Appraisal showing the value of the decedent's real property.**

## CERTIFICATION

I understand that the statements I have made on this application are subject to investigation and verification. I declare under penalty of perjury, that the statements I have given on this form, to the best of my knowledge, are true and correct.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Full Name

(      ) -  
\_\_\_\_\_  
Telephone No.

# REQUEST for HEARING INSTRUCTIONS

**You may use this form to request a hearing. You may also submit your hearing request in writing on any paper.**

A hearing is an impartial review of a decision made by the Michigan Department of Community Health or one of its contract agencies that client believes is wrong.

## GENERAL INSTRUCTIONS:

- Read ALL instructions FIRST, then remove this instruction sheet before completing the form.
- Complete **Section 1**.
- Complete **Section 2** only if you want someone to represent you at the hearing.
- **Do NOT** complete Section 4.
- Please use a PEN and PRINT FIRMLY.
- If you have any questions, please call toll free: **1 (877) 833 - 0870**.
- Remove the BOTTOM (**Yellow**) copy and save with the instruction sheet for your records.
- After you complete this form, mail it in the enclosed self addressed, postage paid envelope or mail to:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH  
PO BOX 30763  
LANSING MI 48909**

- You may choose to have another person represent you at a hearing.
  - This person can be anyone you choose but he/she must be at least 18 years of age.
  - You **MUST** give this person written permission to represent you.
  - You may give written permission by checking **YES** in **SECTION 2** and having the person who is **representing you complete SECTION 3. You MUST still complete and sign SECTION 1.**
  - Your guardian or conservator may represent you. A copy of the Court Order naming the guardian/conservator must be included with this request.

- The Department of Community Health will not discriminate against any individual or group because of race, sex, religion, age, national origin, marital status, political beliefs or disability.
- If you need help with reading, writing, or hearing, you are invited to make your needs known to the Department of Community Health.

If you do not understand this, call the Department of Community Health at (877) 833-0870.  
Si Ud. no entiende esto, llame a la oficina del Departamento de Salud Comunitaria.

إذا لم تفهم هذا، اتصل بإدارة الصحة المحلية التابعة لولاية ميتشيجن.

**1 (877) 833 - 0870**

**Completion:** Is Voluntary

# REQUEST FOR HEARING

## MICHIGAN ADMINISTRATIVE HEARING SYSTEM FOR THE DEPARTMENT OF COMMUNITY HEALTH

PO BOX 30763  
LANSING, MI 48909  
1 (877) 833-0870

### SECTION 1 – To be completed by PERSON REQUESTING A HEARING:

Your Name			Your Telephone Number (     )		Your Social Security Number	
Your Address (No. & Street, Apt. No.)			Your Signature			Date Signed
City	State	ZIP Code				
What <b>Agency</b> took the action or made the decision that you are appealing.					Case Number	
<b>I WANT TO REQUEST A HEARING:</b> The following are my reasons for requesting a hearing. <i>Use Additional Sheets if Needed.</i> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>						
Do you have physical or other conditions requiring special arrangements for you to attend or participate in a hearing? <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (Please Explain in <b>Here</b> ):						

### SECTION 2 – Have you chosen someone to represent you at the hearing?

Has someone agreed to represent you at a hearing?
<input type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> (If YES, have the individual complete section 3)

### SECTION 3 – Authorized Hearing Representative Information:

Name of Representative			Representative Telephone Number (     )	
Address (No. & Street, Apt. No.)			Representative Signature	
City	State	ZIP Code		
			Date Signed	

### SECTION 4 – To be completed by the AGENCY distributing this form to the client

Name of Agency			AGENCY Contact Person Name	
AGENCY Address (No. & Street, Apt. No.)			AGENCY Telephone Number (     )	
City	State	ZIP Code	State Program or Service being provided to this appellant	

DCH-0092 (MAHS) (Rev 6/11)

DISTRIBUTION: WHITE-(2<sup>nd</sup> page) Michigan Administrative Hearing System, YELLOW-Person Requesting Hearing



A white outline map of the state of Minnesota is centered on the page. The map shows the state's characteristic shape, including the North Star area in the upper left and the irregular eastern border.

# Minnesota

# Minnesota (MN)

**Governing Law:**

Minnesota's estate recovery is extensively outlined in M.S.A. §256B.15 and more particularly described in Minnesota Health Care Programs Manual at Chapter 19, Section 19.50 – Liens and Estate Recovery.

**Estate Scope:**

Minnesota uses a broad definition of “estate.” The estate includes:

- The patient's probate estate;
- All of the patient's interests or proceeds of those interests in the real property owned by the patient as a life tenant or as a joint tenant with a right of survivorship at the time of the patient's death;
- All of the patient's interests or proceeds of those interests in securities the patient owned in beneficiary form at the time of the patient's death, to the extent the interests or proceeds of those interests become part of the probate estate;
- All the patient's interest in joint accounts, multiple-party accounts, and pay-on-death accounts, brokerage accounts, investment accounts, or the proceeds of any of those accounts, held at the time of the patient's death, the extent the interests become part of the patient's probate estate; and
- Assets conveyed to a survivor, heir, or assign of the patient through survivorship, living trust, or other arrangement.<sup>1</sup>

The statute expressly recognizes that the continuation of a patient's life estate or joint tenancy interest for the purpose of recovery modifies common law principles which hold that such interests usually terminate on the death of the holder.<sup>2</sup> The patient's life estate and joint tenancy interests continue after death and are not merged into the remainder interest or the interest of the joint tenants.<sup>3</sup> However, the patient's interests in real property do not continue if the property is the patient's homestead and is jointly owned with the patient's spouse as joint tenant with right of survivorship.<sup>4</sup> The Medicaid recovery statute goes so far as to modify probate law indirectly by providing that the interest or proceeds of interest the

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<sup>1</sup> M.S.A. §256B.15, Subd. 1a(b).

<sup>2</sup> M.S.A. §256B.15, Subd. 1(3).

<sup>3</sup> M.S.A. §256B.15, Subd. 1(5).

<sup>4</sup> M.S.A. §256B.15, Subd. 1(6).

patient owned as a life tenant or joint tenant, which typically merge by their nature and avoid probate, are now subject to probate estate administration and, therefore, available for recovery.<sup>5</sup>

The Minnesota Health Care Programs Manual defines four methods of estate recovery: probate estate; Decree of Descent; Affidavit of Collection of Personal Property; and Transfer on Death Deed.<sup>6</sup>

**Spousal Recovery:**

Minnesota's statute expressly provides for recovery from the estate of the surviving spouse.<sup>7</sup> When this provision was challenged, the Supreme Court of Minnesota held that federal law allowed for the recovery from the estate of the surviving spouse but that such recovery was restricted to assets that the deceased Medicaid recipient had an interest to at the time of death.<sup>8</sup> The *Barg* case is instructive since the surviving spouse had all assets transferred into his name before the death of his Medicaid-recipient wife. Such transfers are allowed because of the exemption for divestment penalty when assets are transferred between spouses.

Because the wife had no interest in the assets at the time of her death, there was no recovery allowed against those assets in the surviving spouse's estate. Recovery is delayed by statute until after the decedent's spouse dies, if any, and only when the deceased patient has no surviving children under 21 or blind or permanently and totally disabled under the SSI rules.<sup>9</sup> If recovery is delayed, the state can attach a lien on assets in the patient's estate that will follow those assets until such time as the asset can be recovered against.<sup>10</sup> Such liens are similar to but distinctly different from the lifetime TEFRA liens as discussed below.

**Liens:**

Minnesota provides for the Department of Human Services to pursue recovery in the estate of the patient or the patient's spouse; and when recovery is delayed, the state is allowed to establish a lien on assets that can eventually be recovered against.<sup>11</sup> However, during the patient's lifetime if the patient is institutionalized for six months or more, there is a presumption that the patient is unlikely to be discharged if also certified by the patient's treating physician.<sup>12</sup> When that condition precedent is established, the state can provide notice of a potential claim.<sup>13</sup> The notice does not take effect until the patient

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<sup>5</sup> M.S.A. §256B.15, Subd. 1g.

<sup>6</sup> Minnesota Health Care Programs Manual, §19.50.

<sup>7</sup> M.S.A. §256B.15, Subd. 1g(a).

<sup>8</sup> *In re Estate of Barg*, 752 N.W.2d 52 (2008).

<sup>9</sup> M.S.A. §256B.15, Subd. 1i(f).

<sup>10</sup> M.S.A. §256B.15, Subd. 1j(a).

<sup>11</sup> *Ibid.*

<sup>12</sup> M.S.A. §256B.15, Subd. 1a(e)(2).

<sup>13</sup> M.S.A. §256B.15, Subd. 1c(a).

dies.<sup>14</sup> The notice must be recorded in each county where the patient has real property<sup>15</sup> and, once it becomes effective, serves as a notice to anyone subject to take an ownership interest in the property of the state's claim.<sup>16</sup> The notice constitutes a TEFRA lien in favor of the state for 20 years from the date of filing the notice or the date of the patient's death, whichever is later.<sup>17</sup>

**Partnership Program:** Minnesota authorizes a partnership program at M.S.A. §256B.0571. The partnership program allows the patient to designate assets when applying for Medicaid coverage in an amount up to the dollar amount of benefits used under the partnership policy that will be protected from recovery and lien.<sup>18</sup> An amount equal to the total amount paid by a Partnership policy may be protected as an asset during the person's lifetime and from estate recovery after his or her death.<sup>19</sup>

**Hardship Waiver:** Any person entitled to notice of a claim by the state can apply for a waiver of a claim based upon undue hardship.<sup>20</sup> If the deceased patient divested or directed assets to avoid estate recovery, undue hardship cannot be established.<sup>21</sup> If the state agency denies the appeal, the person whose claim was denied can appeal the negative decision to the department's commissioner.<sup>22</sup>

Review for a hardship waiver depends upon a number of factors. Waiver may be granted if the estate claim could not be paid except by the sale of assets (real or personal property), subject to probate proceedings, for which all of the following statements are true for a period of at least one hundred eighty (180) days prior to the date the decedent died and continue as true:

- The assets are used by the waiver applicant to produce income in his or her trade, profession, or occupation (including a working farm that the waiver applicant actually operates, but not a farm that is not worked by the applicant, or a farm that is rented);
- The assets are a necessary part of the waiver applicant's trade, profession or occupation;

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<sup>14</sup> Ibid.

<sup>15</sup> M.S.A. §256B.15, Subd. 1c(b).

<sup>16</sup> M.S.A. §256B.15, Subd. 1c(c).

<sup>17</sup> M.S.A. §256B.15, Subd. 1f.

<sup>18</sup> M.S.A. §256B.0571, Subd. 9(b), Subd. 13, and Subd. 15.

<sup>19</sup> Minnesota Health Care Programs Manual, §19.50.

<sup>20</sup> M.S.A. §256B.15, Subd. 5.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid; M.S.A. §256.045.

- The trade, profession or occupation in which the assets are used is the waiver applicant's sole source of income; and
- The waiver applicant has worked continuously and exclusively in the trade, profession or occupation in which the assets are used.<sup>23</sup>

Additionally, the estate claim could not be paid except by the sale of the decedent's real estate subject to probate proceedings and the following are true:

- The waiver applicant actually and continuously occupies the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to occupy the dwelling; and
- The real estate for which the hardship waiver is requested was classified as homestead property for property tax purposes under Minnesota Statutes § 273.124 throughout the entire 180 days prior to the date the decedent died.<sup>24</sup>

The state will consider other compelling circumstances when a request for waiver is filed. Additionally, Minnesota recognizes established standards for hardship that exempt certain assets and resources of American Indians from estate recovery. These include: Certain American Indian income and resources (such as interests in and income derived from Tribal land and other resources currently held in trust status, and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations.<sup>25</sup>

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<sup>23</sup> Minnesota Health Care Programs Manual, §19.50.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.





# Mississippi



# Mississippi (MS)

## Governing Law:

Mississippi's Medicaid department is authorized to file claims from the estate of the deceased Medicaid recipient under MS ST §43-13-317, Mississippi Administrative Code, Title 23: Medicaid, Part 102: Non-Financial Requirements, Rule 7.10: Estate Recovery Requirements, Mississippi Division of Medicaid Eligibility Policy and Procedures Manual, Chapter 102, Section 102.09.06, and Eligibility Determination Policy, Volume III, Section D, pages 4900 – 4902.

## Estate Scope:

Mississippi allows recovery only against the estate, which is the probate estate delineated in MS ST §91 (i.e., Mississippi's trust and estate code). The state is considered a creditor of the estate.<sup>1</sup> However, Mississippi probate law allows for the designation of exempt assets which can pass from a person's estate to a rightful heir free of claims from creditors.<sup>2</sup> The Mississippi Court of Appeals ruled in 2011 that the Mississippi Department of Medicaid could not recover against assets in the probate estate deemed as "exempt."<sup>3</sup> The Administrative Code defines the scope of recoverable assets as: Estate property includes any real or personal property owned by the recipient in its entirety or by shared ownership, but excludes ownership of life estate interests or ownership of property that has been transferred into a trust; real property includes the home and any other real property, including ownership of mineral rights and/or timber rights; and personal property includes ownership of any cash reserves, stocks, bonds, automobiles, RVs, mobile homes or any other type of property with value known to be owned by the Medicaid recipient in full or in part.<sup>4</sup>

The following are fully exempt from recovery: Interest in and income derived from Tribal land and other resources currently held in trust status and judgment funds from the Indian Claims commission and the U. S. claims court; ownership interest in trust or non-trust property, including real property and improvements located on a reservation; and any reservation payments to special populations.<sup>5</sup>

The Third Party Liability office has established a \$5,000 liquid asset threshold for use in determining whether a case is to be referred to their office for estate recovery purposes. The \$5,000 threshold is set

<sup>1</sup> MS ST §43-13-317(1); MS ST §91-7-145.

<sup>2</sup> MS ST § 85-3-33.

<sup>3</sup> *In re Estate of Darby*, NO. 2010-CA-00335-COA.

<sup>4</sup> MS Admin. Code, 23-102-7, Rule 7.11.

<sup>5</sup> MS Admin. Code, 23-102-7, Rule 7.12.

	so that the client will have sufficient funds for burial. When calculating the \$5,000 threshold; burial insurance and life estate property are not included. Life insurance will only be included when the estate is named as the primary beneficiary. <sup>6</sup>
<b>Spousal Recovery:</b>	If the patient is survived by a spouse or any dependent who is under 21 or blind or disabled, there is a full bar to recovery against the estate of the patient. <sup>7</sup>
<b>Liens:</b>	Mississippi does not use liens to secure recovery.
<b>Partnership Program:</b>	A bill was proposed in 2014 to enact a long-term care partnership program, which took effect on July 1, 2014. <sup>8</sup>
<b>Hardship Waiver:</b>	The Mississippi statute incorporates by reference the standard for undue hardship promulgated by federal law and regulation as the state's applicable standards for undue hardship. <sup>9</sup> Additionally, a claim shall be waived by the state: If there is a surviving spouse; if there is a child who is under the age of twenty-one (21) years or who is blind or disabled; or as provided by federal law and regulations if it is determined by the Division of Medicaid or by court order that undue hardship would result. Examples undue hardship in Mississippi include cases where the asset to be recovered is the sole income producing asset of the survivors, such as a family farm; a homestead of modest value; or other compelling circumstances. Other compelling circumstances include an adult relative living in the home of the decedent, who depends on that home as a principle residence for at least one year before the decedent entered the nursing home and gave care so that the Medicaid recipient did not have to enter a nursing home during that year.

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<sup>6</sup> Mississippi Division of Medicaid Eligibility Policy and Procedures Manual §102.09.06.

<sup>7</sup> MS ST §43-13-317(2).

<sup>8</sup> House Bill 1269.

<sup>9</sup> MS ST §43-13-317(2)(c).

**DIVISION OF MEDICAID**

**Estate Recovery Form**

**TO:** Third Party Liability (TPL) Unit

**FROM:** \_\_\_\_\_, Medicaid Specialist

\_\_\_\_\_ Regional Office

**RECIPIENT'S NAME** \_\_\_\_\_

**MEDICAID ID NUMBER** \_\_\_\_\_

**DATE OF DEATH** \_\_\_\_\_ **DATE OF BIRTH** \_\_\_\_\_

**NURSING FACILITY** \_\_\_\_\_

**HCBS WAIVER** \_\_\_\_\_

The above named client is now deceased and there is ownership of real and/or personal property which may be considered an estate. The client was age 55 or over when he/she received Medicaid in a nursing facility and there is no legal surviving spouse or dependent child(ren) under age 21 or dependent blind or disabled child(ren) known to the Regional Office.

The case record is attached.

List the assets that were used in calculating the value of the estate. Do not include burial or life insurance, joint bank accounts, life estate property, annuities or promissory notes.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Area Supervisor's Initials

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MEDICAID ELIGIBILITY  
FORMS AND INSTRUCTIONS

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**DOM-TPL-411 - ESTATE RECOVERY FORM**

**PURPOSE & USE**

This form is used to notify the TPL Unit of the death of a Medicaid eligible who was 55 years of age or older when nursing facility services were received and is affected by the estate recovery provision. A form is required whenever the recipient owned or shared ownership in real property or owned personal property totaling \$5,000 or more in value.

Do not complete this form if the recipient is exempt from the estate recovery provision, or if there is no real property owned in full or in part and no personal property valued at \$5,000 or more at the time of death.

**INSTRUCTIONS**

Mail the prepared form along with the case record to the TPL Unit.

DOM-TPL 412  
Issued 02-01-96

DIVISION OF MEDICAID  
NON-REFERRAL ESTATE RECOVERY FORM

TO: Third Party Liability (TPL) Unit

FROM: \_\_\_\_\_, Medicaid Specialist

\_\_\_\_\_ Regional Office

RECIPIENT'S NAME \_\_\_\_\_

MEDICAID ID NUMBER \_\_\_\_\_

TOTAL ASSETS (including burial contract) \$ \_\_\_\_\_

DECEASED SPOUSE'S NAME \_\_\_\_\_

COUNTY OF RESIDENCE PRIOR TO NF \_\_\_\_\_

The above named client is now deceased. There is no ownership of real property. There is ownership of personal property; however, the value is less than \$5,000. The client was 55 or older when he/she received Medicaid in a nursing facility and there is no legal surviving spouse or dependent child(ren) under age 21 or dependent blind or disabled child(ren) known to Regional Office.

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MEDICAID ELIGIBILITY  
FORMS AND INSTRUCTIONS

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**DOM-TPL-412 - NON-REFERRAL ESTATE RECOVERY FORM**

**PURPOSE & USE**

This form is used to notify the TPL Unit of the death of a Medicaid eligible who was 55 years of age or older when nursing facility services were received, but is not affected by the estate recovery provision. A form is required when there is no ownership of real property, personal property is valued at less than \$5,000, there is no surviving legal spouse, no dependent child(ren) under age 21, and no dependent blind or disabled child(ren).

**INSTRUCTIONS**

Complete an original and one copy. Mail the original to the TPL Unit. Retain the copy in the case record. Do not mail the case record.









MISSOURI DEPARTMENT OF SOCIAL SERVICES  
MO HEALTHNET DIVISION  
**ESTATE NOTICE**

1. DECEDENT NAME		2. MO HEALTHNET PARTICIPANT NUMBER (IF KNOWN)	
3. DATE OF BIRTH	4. DATE OF DEATH		5. SOCIAL SECURITY NUMBER
6. SURVIVING SPOUSE <input type="checkbox"/> YES <input type="checkbox"/> NO Name: _____			
7. CHILDREN UNDER AGE 21 IN HOME <input type="checkbox"/> YES <input type="checkbox"/> NO		8. IS THERE A BLIND OR DISABLED DEPENDENT IN THE HOME <input type="checkbox"/> YES <input type="checkbox"/> NO	
9. COUNTY OF ESTATE FILING	10. DATE ESTATE FILED		11. BALANCE OF ASSETS
12. ATTORNEY NAME			
13. STREET ADDRESS, CITY, STATE, ZIP CODE			
14. TELEPHONE NUMBER		15. FAX NUMBER	
16. EXECUTOR, PERSONAL REPRESENTATIVE, OR CONSERVATOR NAME			
17. STREET ADDRESS, CITY, STATE, ZIP CODE			
18. SIGNATURE			19. DATE
<p>FAX: (573) 526-1162</p> <p>Mail: Department of Social Services MO HealthNet Division ATTN: Cost Recovery Unit PO Box 6500 Jefferson City, MO 65102-6500</p> <p>TELEPHONE: (573) 751-2005</p> <p>EMAIL: MHD.COSTRECOVERY@dss.mo.gov</p>			
<b>FOR MO HEALTHNET DIVISION USE ONLY</b>			
<input type="checkbox"/> Decedent was a MO HealthNet Participant. Case will be reviewed to determine if referral to be made to Attorney General Office for filing claim.			
<input type="checkbox"/> Decedent was not a MO HealthNet Participant. Waiver issued on: _____			
MO HEALTHNET DIVISION SIGNATURE			DATE

# Missouri (MO)

**Governing Law:**

Missouri's estate-recovery statute is found in V.A.M.S. §473.398 and V.A.M.S. §473.399.

**Estate Scope:**

The estate-recovery statute considers the money expended on behalf of the patient to be a debt of the patient's at death which is recoverable from the patient's probate estate.<sup>1</sup> However, when a probate estate is insufficient to pay the decedent's bills and despite the fact that Missouri did not adopt the expanded definition of estate, Missouri probate law allows for assets received by recipients of non-probate transfers to become assets of the probate estate in order to satisfy creditors.<sup>2</sup> The probate code gives creditors standing to petition for an accounting to discover non-probate transfers that can be used to satisfy debts.<sup>3</sup> Numerous Missouri appellate courts have upheld the state's standing to use the accounting procedure as a way to reach non-probate assets to satisfy estate recovery debt.<sup>4</sup>

Any open estate may not be closed with respect to a decedent who, at the time of death, was enrolled in MO HealthNet until a release of the Estate Recovery Claim by MO HealthNet is obtained.<sup>5</sup> Additionally, the state's burden as to what evidence needs to be proffered to constitute a valid claim against the estate has received clarification through litigation. The state must provide more than a computerized summary of payments for a Medicaid patient, but provide proof of payments made and accepted by the state to each care agency or care facility that provides services to the Medicaid recipient.<sup>6</sup>

**Spousal Recovery:**

Under Missouri statute, providing assistance to the patient creates an obligation which may be recovered by filing a claim in the probate division of the circuit court against the decedent estate of the spouse of the decedent patient upon such spouse's death for the full amount of assistance paid on behalf of the recipient during the marriage of the recipient and the spouse, provided, however, that the liability to the surviving spouse's estate cannot exceed the value of the combined resources of the recipient and the spouse of the Medicaid recipient on the date of the Medicaid recipient's death.<sup>7</sup>

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<sup>1</sup> V.A.M.S. §473.396(1).

<sup>2</sup> V.A.M.S. §461.300.

<sup>3</sup> *Ibid.*

<sup>4</sup> *In re Estate of Jones*, 280 S.W.3d 647 (Mo. App. W.D. 2009); *In re Estate of Hayden*, 258 S.W.3d 505 (Mo. App. E.D. 2008); and *In re Estate of Macormic*, 244 S.W.3d 254 (Mo. App. S.D. 2008).

<sup>5</sup> <http://dss.mo.gov/mhd/general/pages/estate-recovery.htm>.

<sup>6</sup> *Estate of Nelson v. Missouri Dept. of Social Services, MO HealthNet Division*, No. WD 73957. Decided: March 20, 2012.

<sup>7</sup> V.A.M.S. §473.399(2).

As a general rule, the courts have interpreted Missouri's estate-recovery statute<sup>8</sup> as granting broad authority to recover from estates of surviving spouses those assets which flowed into those estates from their deceased Medicaid recipient spouses.<sup>9</sup> However, there is a bit of a split since the western district ruled that such would only apply if the state were to adopt an expanded estate definition to include automatic non-probate transfers of real property by survivorship, which it did not.<sup>10</sup> Because Missouri's probate code does not include property owned between spouses as tenants by the entirety, each spouse owns the entire property with an undivided interest.<sup>11</sup> Property held in such a fashion is not considered part of the patient's estate and, therefore, is not recoverable in the estate of the surviving spouse.<sup>12</sup> Nor, by the way, can the non-probate transfer part of the probate code (V.A.M.S. §461.300) be used to pull property held in tenancy by the entirety into the deceased patient's estate for the purposes of estate recovery.<sup>13</sup>

**Liens:**

When an applicant for MO HealthNet or a MO HealthNet participant is a patient, or will become a patient, in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, the Missouri Department of Social Services will determine if a TEFRA property lien is applicable.<sup>14</sup> A determination must be made that the Medicaid recipient has no reasonable expectation of discharge within the next one hundred twenty (120) days.<sup>15</sup> A lien is not imposed on the property if any one of the following is currently living in the house: the institutionalized person's spouse; the institutionalized person's child who is under twenty-one years of age or is blind or permanently and totally disabled; or the institutionalized person's sibling who has an equity interest in the property and who was residing in the property for at least one year before the person's admission to the institution.<sup>16</sup>

**Partnership Program:**

Missouri's partnership program is authorized by the Missouri Long-Term Care Partnership Program Act, codified at V.A.M.S. §208.690 to §208.698. Upon payment of benefits under a partnership policy, certain assets are required to be disregarded from any patient seeking assistance from MO HealthNet from both eligibility and subsequent recovery by the state.<sup>17</sup>

<sup>8</sup> V.A.M.S. §473.399.

<sup>9</sup> *In re Estate Shuh*, 248 S.W.3d 82, 85-86 (Mo. App. E.D. 2008).

<sup>10</sup> *In re Estate Bruce*, 260 S.W.3d 398 (Mo. App. W.D. 2008).

<sup>11</sup> *Id.*, at 403.

<sup>12</sup> *Id.*, at 403.

<sup>13</sup> *Id.*, at 404.

<sup>14</sup> 13 CSR 70-4.110(1).

<sup>15</sup> 13 CSR 70-4.110(1)(C).

<sup>16</sup> 13 CSR 70-4.110(D).

<sup>17</sup> V.A.M.S. §208.692.2.

**Undue Hardship:**

According to the Missouri Attorney General, “the Medicaid Estate Recovery Program does not pursue recovery when the deceased leaves a surviving spouse, minor child under the age of 21-years-old, or leaves a child of any age who is blind or is disabled. The federal government also requires states to waive recovery if recovery would cause undue hardship...”<sup>18</sup>

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<sup>18</sup> <http://ago.mo.gov/divisions/financial-services-division-faqs.htm#header1f>.





# Montana



# Montana (MT)

<b>Governing Law:</b>	Montana's Department of Public Health and Human Services is authorized to conduct recovery of Medicaid benefits after a patient's death under MCA 53-6-165, -167 and -168 and Mont. Admin. R. 37.82.431. Additionally, Montana's lien statutes are found at MCA 53-6-171 through 53-6-189.
<b>Estate Scope:</b>	The state must execute and present a claim against the patient's estate within the time specified in the published notice to creditors in the estate proceedings. <sup>1</sup> The state may also execute and present a claim against a person who has received property of the patient by distribution or survival. <sup>2</sup> The amount recovered from such a person must be reduced by the value of any property transferred to the person by the patient for less than fair-market value for which a period of ineligibility (i.e., divestment-penalty period) was imposed against the patient. <sup>3</sup>
<b>Spousal Recovery:</b>	The state is prohibited from recovering while there is a surviving spouse or surviving child under 21, blind, or permanently and totally disabled. <sup>4</sup> Once there is no such survivor, the state is no longer prohibited from pursuing its claim but is only authorized to pursue the claim against the estate of the deceased patient. <sup>5</sup>
<b>Liens:</b>	Montana's extensive lien program is found at MCA 53-6-171 through MCA 53-6-189. Before imposing a lien, the state must give the patient 30 days' written notice of its determination that the patient is permanently institutionalized. <sup>6</sup> The patient is considered permanently institutionalized if the patient cannot reasonably be expected to be discharged from the facility to return home. <sup>7</sup> A rebuttable presumption arises that the patient is permanently institutionalized if the patient has been institutionalized for six months or longer without a discharge plan. <sup>8</sup> No lien can be imposed by the state when there are any of the following living in the patient's home: patient's spouse; patient's child under 21, blind, or permanently and totally disabled; or patient's sibling who was residing in the house for a period of 18 months prior to the patient's institutionalization. <sup>9</sup>

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<sup>1</sup> MCA 53-6-167(1).

<sup>2</sup> MCA 53-6-167(2).

<sup>3</sup> Ibid.

<sup>4</sup> MCA 53-6-167(9)(b).

<sup>5</sup> Ibid.

<sup>6</sup> MCA 53-6-172.

<sup>7</sup> MCA 53-6-172(2).

<sup>8</sup> Ibid.

<sup>9</sup> MCA 53-6-172(1).

A Medicaid lien has the same effect as a standard judgment lien and must be renewed every six years.<sup>10</sup> The lien may be enforced upon the death of the patient or during the patient's lifetime upon the sale, transfer, or exchange of the property by filing a writ of execution with the district court clerk in the county where the property is located.<sup>11</sup> The state may not recover on a lien while there is a surviving spouse; a surviving child under 21, blind or permanently and totally disabled; or a sibling living in the property who lived in the home for 18 months before the patient's institutionalization and has continuously resided there since.<sup>12</sup> When the presence of such an individual precludes recovery, it is merely delayed until the condition precluding recovery no longer exists or the property is sold, transferred, or exchanged.<sup>13</sup> If the surviving spouse sells, transfers, or exchanges a home, the surviving spouse is entitled to a limited exemption from the recovery against the lien.<sup>14</sup> The exemption is equal to the lesser of either the fair-market value interest in the home the surviving spouse received from the deceased patient by distribution or survival or \$100,000 less than the total fair-market value of the entire surviving spouse's other assets.<sup>15</sup> Anyone with an interest in the property subject to lien by the state can apply for a hardship waiver.<sup>16</sup> If the state denies a request for a hardship waiver, the person seeking such a waiver can assert a claim of entitlement for such a waiver in an action to challenge the writ.<sup>17</sup> Actions to challenge the writ may be filed in the district court where the property is located within 60 days of service or publication of the notice of the writ.<sup>18</sup>

**Partnership Program:** Montana's partnership program is codified at MCA 53-6-801 to MCA 53-6-805. Montana's program provides a dollar-for-dollar asset disregard from eligibility and recovery, including exemption of assets from recovery liens.

**Hardship Waiver:** After the state presents its claim, the personal representative of the estate or another affected person can file an application for undue hardship on the form provided by the department.<sup>19</sup> The applicant must submit the form to the Department of Human Services, Quality

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<sup>10</sup> MCA 53-6-174.

<sup>11</sup> MCA 53-6-175.

<sup>12</sup> MCA 53-6-178.

<sup>13</sup> MCA 53-6-181.

<sup>14</sup> MCA 53-6-182(1).

<sup>15</sup> MCA 53-6-182(2).

<sup>16</sup> MCA 53-6-180.

<sup>17</sup> MCA 53-6-180(c).

<sup>18</sup> MCA 53-6-177.

<sup>19</sup> MCA 53-6-167; ARM 37.82.431(2).

Assurance Division, Third Party Liability, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.<sup>20</sup>

There is a presumption of undue hardship if the estate assets or property received by survival or distribution is part of a business, including a working farm or ranch that the applicant was dependent on for his or her livelihood during the patient's lifetime, if recovery would deprive the applicant of his or her sole means of livelihood, and if the applicant has no other means of satisfying the department's claim.<sup>21</sup> Additionally, undue hardship is presumed if the applicant is over 65, blind, or a disabled relative of the patient who had been living for at least one full year in the patient's house before the patient's death, continues to live there since, and would have difficulty in securing alternate living arrangements and financing on the property to satisfy the claim.<sup>22</sup>

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<sup>20</sup> ARM 37.82.431(2).

<sup>21</sup> ARM 37.82.421(4)(a).

<sup>22</sup> ARM 37.82.421(4)(b).

#### LEGAL CITATIONS AND WEBSITES:

- Montana Code Annotated (MCA) 53-6-165, MCA 53-6-167, MCA 53-6-168, MCA 53-6-169, and MCA 53-6-171 through 53-6-189
- <http://www.mtrules.org/>  
(For Administrative Rules of Montana)
- [http://data.opi.mt.gov/bills/mca\\_toc/index.htm](http://data.opi.mt.gov/bills/mca_toc/index.htm)  
(For MCA)

#### FOR MORE INFORMATION, PLEASE CONTACT:

Third Party Liability Unit  
Lien and Estate Recovery  
P.O. Box 202953  
Helena MT 59620-2953  
Telephone (toll free): 1-800-694-3084

#### OR CALL (TOLL FREE):

Your local Information and Assistance Program at  
1-800-551-3191,  
or  
The Senior and Long Term Care Division at  
1-800-332-2272

#### You can also visit our website at:

[www.dphhs.mt.gov/slrc](http://www.dphhs.mt.gov/slrc) to print out this information.

# Montana Medicaid Lien & Estate Recovery Program



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## ESTATE RECOVERY AFTER A MEDICAID

### RECIPIENT'S DEATH:

Federal law requires the State of Montana to recover Medicaid payments made on behalf of certain Medicaid recipients after the recipient's death. Those Medicaid recipients subject to recovery are:

- Residents of nursing homes;
- Residents of medical facilities or institutions such as Montana State Hospital and Montana Developmental Center; and
- Individuals age 55 and older at the time they receive Medicaid-paid services.

The State may recover by filing a claim against the deceased recipient's estate for the amount Medicaid paid on the recipient's behalf. Recovery may also be made by filing a claim against the estate of the deceased recipient's spouse if the spouse survives the recipient. Recovery from the estate of the recipient's spouse is limited to the value of any property the spouse received from the recipient by distribution or right of survivorship and cannot exceed the amount Medicaid paid on behalf of the deceased.

Recovery may be made from any property the Medicaid recipient had an interest in prior to the recipient's death, including both real property (real estate; land with or without improvements) and personal property including but not necessarily limited to:

- Property that is part of the recipient's probate estate;
- Property that is not part of the recipient's probate estate;

- Property that was solely owned by the recipient; and
- Property that the recipient owned jointly with another or others as a joint tenant or tenant-in-common.

The State may recover from any person who received property from a deceased recipient by distribution or right of survivorship. Recovery may be made during the lifetime of the person who received property by distribution or survivorship or from the person's estate after the person's death. Recovery is limited to the value of the property received from the recipient and cannot exceed the amount Medicaid paid on behalf of the deceased recipient.

The State cannot, however, recover from Tribal trust property, including real property and improvements, or from income derived from trust resources or Tribal trust property.

### **The State is also entitled to receive:**

- Any funds of a recipient held by a financial institution at the time of the recipient's death, such as funds in a checking or savings account, if the recipient resided in a nursing facility;
- Any funds of a recipient held by a nursing facility at the time of the recipient's death, such as funds in a patient/resident account;
- Personal funds of a recipient held by any person at the time of the recipient's death, if the recipient resided in a nursing facility; and
- Unused funds from a burial/funeral contract or fund in excess of \$5,000.

**Medicaid payments that will be recovered include payments for:**

- Health insurance premiums (including Medicare premiums paid before July 1, 2009);
- Nursing home services;
- Home and community based services;
- Hospital services;
- Prescription drug services, and
- All other Medicaid covered services.

**The State cannot recover Medicaid payments for:**

- Medicare premiums paid after 7/1/2009; and
- Medicare co-insurance and deductibles paid after 7/1/2009 under the Qualified Medicare Beneficiary Program (QMB).

**Example:** *Mr. Roberts left his only property, a house valued at \$75,000, to his son. At the time of his death, Medicaid had paid \$24,000 for his nursing home care. Other debts of Mr. Roberts' estate for funeral bills and the costs of probating his estate totaled \$10,000. The State received \$24,000 and Mr. Roberts' son received \$41,000 (\$75,000 - \$10,000 - \$24,000 = \$41,000) from the estate.*

**Example:** *Mrs. Jones and her husband owned their home worth \$80,000, as joint tenants. Mrs. Jones began receiving Medicaid benefits when she was 80 years old but never resided in a nursing home or other medical facility or institution. Medicaid made payments of \$50,000 on her behalf. When she died, her one-half share in the house passed to her husband by right of survivorship. Mr. Jones died two years after his wife. The State of Montana filed a claim for \$50,000 against Mr.*

*Jones' estate but recovered only \$40,000, the value of Mrs. Jones' property that Mr. Jones received by right of survivorship.*

**Example:** *Mrs. Black, a widow, and her daughter Mary owned a home worth \$80,000 as joint tenants. Medicaid made payments of \$30,000 for Mrs. Black's nursing home care. When Mrs. Black died, her one-half share in the house passed to her daughter by right of survivorship. The State filed an action against Mary to recover Medicaid payments made for Mrs. Black. The State recovered \$30,000 from Mary because the value of the property Mary received by right of survivorship was more than \$30,000.*

**Recovery is not enforced if the State is notified that the recipient:**

- Has a surviving spouse, except the State can recover from the estate of the surviving spouse if the spouse dies within three years of the recipient;
- Has a surviving child who is under age 21; or
- Has a surviving child of any age who is blind or permanently disabled.

**HARDSHIP:** A deceased recipient's heirs may ask the State to waive or reduce recovery based on undue hardship. All requests will be considered, and arrangements will be made if undue hardship exists based on criteria contained in Rule 37.82.431 of the Administrative Rules of Montana (ARM).

**Note:** There is no undue hardship waiver for recoveries from funds of the recipient held by a financial institution, nursing facility or other person or from unused funds in a burial/funeral contract or fund.

**LIEN RECOVERY:**

To secure recovery of Medicaid payments made, the State may place a lien on real property (real estate; land with or without improvements) owned by a Medicaid recipient living in a nursing home or other medical facility or institution such as the Montana State Hospital or Montana Developmental Center. A lien may be imposed only if the recipient is permanently institutionalized in the nursing home or other medical facility or institution. The amount of the lien cannot exceed the amount Medicaid paid on behalf of the recipient.

For purposes of imposing a lien, a recipient is considered to be permanently institutionalized when the recipient cannot be expected to return home.

**A lien may not be imposed if the State is notified that any of the following relatives of the recipient is living in the home:**

- The spouse;
- A child under 21;
- A child of any age who is blind or permanently and totally disabled;
- A brother or sister who has an ownership interest in the home and who has lived in the home for at least 18 months before the recipient entered the nursing home.

No lien may be imposed on Tribal trust property and improvements (buildings or other attachments) to Tribal trust property.

If a lien is imposed and the recipient is discharged from the facility or institution and returns to the home, the State will release its lien based on a written request from the recipient.

The State may enforce its lien after the Medicaid recipient's death or upon the sale, transfer or exchange of the real property or of any right, title and interest in the property.

**Example:** *Ms. Perez, a single adult, lived in the nursing home for three years prior to her death. A lien was placed on her home during that time. Medicaid paid \$67,000 on Ms. Perez' behalf. After Ms. Perez' death the home is sold for \$90,000, and the State's lien in the amount of \$67,000 is satisfied from the proceeds of the sale of the home.*

**HARDSHIP WAIVERS AND EXEMPTIONS:**

The surviving spouse of a deceased recipient who resides in and has a legal interest in a home is entitled to an exemption from lien recovery as provided in Rule 37.82.437, Administrative Rules of Montana (ARM). The State may also waive enforcement of its lien, wholly or in part, for other individuals on the basis of undue hardship according to the criteria contained in ARM 37.82.436.

Additionally, heirs, if they wish, can retain the property by paying the lesser of:

- The amount the State is entitled to recover; or
- The fair market value of the property.





Nebraska



# Nebraska (NE)

**Governing Law:**

Nebraska's estate-recovery statute can be found at Neb. Rev. St. §68-919 and in the regulations at 471 NAC 38-000.

**Estate Scope:**

The estate is defined as “all real and personal property and other assets included within the Medicaid recipient’s estate as defined for purposes of state probate law.”<sup>1</sup> The patient becomes indebted to the state for the cost of care while on Medicaid,<sup>2</sup> but the claim is held in abeyance until after the death of the patient.<sup>3</sup> At that time, Nebraska’s Department of Health and Human Services must file a claim in the decedent’s estate to recover the debt. The personal representative of the patient’s estate is required to give the state written notice identical to that which the personal representative must publish in the local newspaper which gives all creditors two months after the date of publication of the first notice in the newspaper to present their claims or be forever barred.<sup>4</sup> The state’s claim is given priority under Nebraska’s Decedent’s Estates Statute after the cost of estate administration, reasonable funeral expenses, and debts and taxes with preference under federal law.<sup>5</sup> The state’s claim has equal priority with the patient’s last medical and hospital expenses.<sup>6</sup> Time limitations set forth in probate code<sup>7</sup> applied to the Department of Health and Human Services’ Medicaid estate recovery claim, because under this section, under which the claim was made, the indebtedness to the department arose during the lifetime of the recipient.<sup>8</sup> A Medicaid reimbursement claim under § 68-1036.02 necessarily arises at or after the death of the Medicaid recipient and the claim must be filed within the applicable limitations period.<sup>9</sup>

**Spousal Recovery:**

The recovery statute expressly defers recovery until after the death of the surviving spouse, if any, and only when the patient is not survived by a child who either is under 21 or is blind or totally disabled per SSI criteria.<sup>10</sup> Nebraska’s rules are not so specific as to mandate recovery against a surviving spouse’s estate but are broad enough to mirror other states that have interpreted such deferral as license to continue pursuing assets beyond the patient’s estate;

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<sup>1</sup> 471 NAC 38-002.

<sup>2</sup> Neb. Rev. Stat. §68-919(1).

<sup>3</sup> Neb. Rev. Stat. §68-919(2).

<sup>4</sup> Neb. Rev. Stat. §30-2483.

<sup>5</sup> Neb. Rev. Stat. §30-2487(a).

<sup>6</sup> Ibid.

<sup>7</sup> At section 30-2485(a).

<sup>8</sup> *In re Estate of Cushing*, 283 Neb. 571, 810 N.W.2d 741 (2012).

<sup>9</sup> *In re of Estate of Tvrz*, (Neb. Sup. Ct., No. S-98-1127, Jan. 5, 2001).

<sup>10</sup> Neb. Rev. Stat. §68-919.

however, the CSRA language of the eligibility portion of Nebraska's Medicaid Assistance Act expressly prohibits recovery against any assets designated as protected under the CSRA for the Community Spouse.<sup>11</sup> The regulations, on the other hand, provide a more direct evidence that recovery will not be made against a spouse. "However, if the deceased [Medicaid recipient] was survived by a child under 21 years of age or by a child of any age who is on SSI, the Department will NOT seek recovery."<sup>12</sup>

**Liens:** Nebraska does not employ TEFRA liens against the patient's home or other property in order to secure recovery.

**Partnership Program:** Nebraska's partnership program is authorized by statute at Neb. Rev. St. §68-1095.01, which authorizes its administration by the Nebraska Department of Health and Human Services. Resources equal to the amount of benefits paid out by a long-term care partnership policy are disregarded for an individual applying for Medicaid if the policy was issued on July 1, 2006 or later and the individual is otherwise Medicaid eligible. The amount of the resource disregard is also excluded from estate recovery.<sup>13</sup>

**Hardship Waiver:** Nebraska authorizes the Department of Health and Human Services to waive or compromise its claim if it determines doing so would be in the best interest of the state or if recovery would result in an undue hardship.<sup>14</sup> Any of the following circumstances may constitute an undue hardship and may result in a full or partial compromise of claim: an heir of the recipient resided in the recipient's home for two (2) years prior to the recipient's entry into a nursing home and the heir provided the type of unreimbursed care that delayed the recipient's entry into a nursing home; an heir of the recipient resided in the recipient's home for two (2) years prior to the recipient's receipt of recoverable medical services and the heir provided unreimbursed care that delayed the recipient's receipt of those services; payment of the state's claim would cause heirs of the deceased recipient to be eligible for public assistance; Waiver of the state's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or other situations which the state determines constitutes an undue hardship on the heirs.<sup>15</sup>

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<sup>11</sup> Neb. Rev. Stat. §68-923(4).

<sup>12</sup> 469-000-322, Manual Letter # 24-2009A.

<sup>13</sup> 471 NAC 38-005.

<sup>14</sup> Neb. Rev. Stat. §68-919(5).

<sup>15</sup> 471 NAC 38-004.02.



# Nevada (NV)

<b>Governing Law:</b>	Nevada's estate-recovery statute is found in N.R.S. 422.29302 and Medicaid Operations Manual, Chapter 100 – Medicaid Estate Recovery (MER) Program.
<b>Estate Scope:</b>	Estate recovery is limited to the estate in any probate proceedings. <sup>1</sup> However, if a transfer of real or personal property is made by a Medicaid recipient for less than fair-market value, the state can use the fraudulent conveyance statute in N.R.S. Chapter 112 to recoup such assets for purpose of recovery. <sup>2</sup> Certain income, property and resources of Native Americans and Alaska Natives are exempt if one or more of the following criteria can be met: Located within or near a current or prior federally recognized reservation, pueblo or colony; derived from reservation land – including income from rents, leases, usage rights and natural resources (the origins must be able to be clearly traced to tribal land); Held in trust status; Protected assets that have been passed down from an Native American to a relative or other Native American. It is not necessary for the heir to be a tribal member; anything not included above with unique religious, spiritual and/or cultural significance; or government reparation payments. <sup>3</sup>
<b>Spousal Recovery:</b>	Recovery is delayed if there is a surviving spouse, or a child under 21, blind or disabled. <sup>4</sup> The government's interest in collecting the cost of Medicaid services provided to a patient survives and continues with any recipient's property even though the state is estopped from executing its interest until the surviving spouse's death. <sup>5</sup> Beyond that, the state is fully authorized to recover from the undivided estate of the patient and any recipient of money or property from the undivided estate of the patient.
<b>Liens:</b>	Nevada authorizes the use of liens on property either before or after the death of the patient. <sup>6</sup> After death, the lien can be placed on the individual estate of the deceased patient. <sup>7</sup> However, the Nevada Supreme Court has found that post-death liens, while permissible during a surviving spouse's or qualified dependent's lifetime to ensure adequate protection of the government's legitimate claim and protect against fraudulent transfers, the use of a lien is not an

<sup>1</sup> N.R.S. 422.29302.

<sup>2</sup> N.R.S. 422.29302(3).

<sup>3</sup> Nevada Medicaid Operations Manual, Sec. 103.11.

<sup>4</sup> N.R.S. 422.29302(2).

<sup>5</sup> *State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer*, 87 P.3d 1045, 120 Nev. 108 (2004).

<sup>6</sup> N.R.S. 422.29306; Nevada Medicaid Operations Manual, Sec. 103.8.

<sup>7</sup> *Ibid.*



absolute right.<sup>8</sup> Liens must provide adequate leeway for the qualified dependent owner to conduct a bona fide transaction with a property, such as selling it, refinancing it, or obtaining a reverse mortgage.<sup>9</sup> Also, the lien must clearly delineate a claim solely for whatever interest the deceased Medicaid recipient had in the property prior to death and not to the entire property if someone else shares an interest with the Medicaid recipient.<sup>10</sup>

**Partnership Program:** Nevada authorizes a long-term care insurance partnership contract at NAC 687B.0335. In the partnership program notice asset disregard is defined as the following: “ASSET DISREGARD means that an amount of the policyholder’s or certificate holder’s assets equal to the amount of long-term care insurance benefits received under a qualified partnership contract or partnership certificate will be disregarded for the purpose of determining the insured’s eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified partnership contract or partnership certificate without affecting the person’s eligibility for Medicaid. All other Medicaid eligibility criteria will apply....”<sup>11</sup> Neither the Nevada partnership program statutes nor the Medicaid estate recovery statutes or policy manuals make any reference to recovery against assets disregarded from as a result of owning a partnership policy.

**Hardship Waiver:** A hardship waiver can be applied for at the time of recovery.<sup>12</sup> Hardship is presumed if any one of the following conditions is rightfully claimed: The asset is the sole income producing asset of the waiver applicant; the recovery of the asset would result in the waiver applicant becoming eligible for government public assistance; or, there is a doctor’s written verification of a medical condition that compromises the waiver applicant’s ability to repay the Medicaid claim. A claim may be waived, deferred or reduced on a case by case basis.<sup>13</sup>

Additional hardships may be considered for granting of a waiver: The waiver applicant resided in the recipient’s home for at least two years immediately prior to death or admission into a medical institution and/or the arrangement allowed the decedent to continue living in the home rather than in an institution; the waiver applicant provided daily care to the Medicaid recipient – including assistance with daily living activities and medical needs; the cost of recovering

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<sup>8</sup> *State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer*, 87 P.3d 1045, 120 Nev. 108 (2004).

<sup>9</sup> *Id.* at 1054, 119.

<sup>10</sup> *Ibid.*

<sup>11</sup> NAC 687B.058; N.R.S. 679B.130.

<sup>12</sup> Nevada Medicaid Operations Manual, Sec. 103.12.

<sup>13</sup> *Ibid.* at Sec. 103.13.

an asset is more than the value of the asset; or, the financial impact of recovery against immediate family members of the waiver applicant would place them in a position of financial hardship.<sup>14</sup>

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<sup>14</sup> Ibid.



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# WHAT IS MEDICAID ESTATE RECOVERY...

A program operated by the Department of Health and Human Services, Division of Health Care Financing and Policy (DHCFP) which permits recovery of all Medicaid benefits paid on behalf of a recipient from their estate. Recoveries accomplished through this program are re-deposited into the Medicaid budget to fund future program expenditures.

In October 1993, state operation of the Medicaid Estate Recovery (MER) program was federally mandated under section 1917 of the Social Security Act and corresponding state enabling legislation was secured under Nevada Revised Statute (NRS) 422.29302. Pursuant to this legislation, the Nevada Dept of Health and Human Services operates the MER program. Correctly paid Medicaid assistance is recovered from the estate of the person who received benefits AFTER October 1993.

## **RECOVERY EXCEPTIONS**

There is no recovery on Medicare cost sharing such as Part A and B Medicare premiums; deductibles, coinsurance and co-payments with dates of service on or after January 1, 2010; or when there are children under 21, blind and/or disabled children.

Recovery is delayed until the death of a surviving spouse and only at a time when recovery will not impose a hardship.

*Hardship information may be requested from a MER specialist.*

## **WHO IS AFFECTED BY MER**

- Medicaid recipients age 55 or older;
- Medicaid recipients (of any age) who are inpatients of a medical institution.

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## **WHAT IS CONSIDERED AN ESTATE ASSET**

All real and personal property and other assets included in the estate of the deceased Medicaid recipient and any other real and personal property which he had an interest or legal title immediately before or at the time of his death, to the extent of that interest or title. Included would be assets passing by reason of joint tenancy, tenancy-in-common, survivorship, transfer on death deed, life estate, living trust, annuity, declaration of homestead or other arrangement.

## **WHAT CAN BE RECOVERED TO REPAY MEDICAID**

The MER Unit may pursue all of the decedent's real and personal property in which they hold any interest at the time of their death.

## **CAN MY HOME BE TAKEN**

During a recipient's lifetime, both state and federal legislation prohibit the "forced taking" of a recipient's home. A lien may be placed against the interest in the home of

the Medicaid decedent to allow recovery when it is appropriate to do so.

## **MAY ESTATE ASSETS BE PASSED TO A SURVIVOR**

The MER claim must be satisfied before any condition specified in the decedent's "Will" can be accommodated.

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## **CAN A LIEN BE PLACED AGAINST MY HOME**

The MER Unit can pursue liens under certain circumstances. The lien would be the value of the recipient's interest in the property or the Medicaid claim, whichever is less. A lien may be placed on property anytime after the death of the Medicaid recipient in order to protect the State's ability to recover at the appropriate time. If the surviving spouse, child under 21, blind and/or disabled child or their legal representative, wishes to engage in a bona fide sale or financial transaction, the State will release its lien. The lien allows the heirs to enjoy and benefit from their interest in the property and also allows the State to secure its interest in the property.

## **CAN THE HEIR(S) KEEP THE PROPERTY IN THE ESTATE AND PAY THE STATE THE AMOUNT OF THE MER CLAIM**

**YES.** If the heirs wish to inherit the property, they may do so as long as they agree to pay the MER claim. Any lien may be satisfied and removed.

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**HOW WILL ESTATE RECOVERY BE ACCOMPLISHED**

The MERs Unit provides notification to all known survivors and legal representatives when recovery actions are initiated.

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***MEDICAID APPROVAL  
REQUIRES AN APPLICANT TO  
HAVE LESS THAN \$2,000, SO  
HOW CAN THE MER UNIT  
EXPECT TO COLLECT MORE  
THAN THIS AMOUNT***

....When determining Medicaid eligibility, some of the applicant's assets are excluded from consideration, i.e., the applicant's residence, \$1,500 of funeral funds and one vehicle regardless of value. While these items are excluded for eligibility, they are part of the individual's estate and therefore subject to estate recovery actions.

**WHO CAN I CONTACT WITH  
QUESTIONS . . .**

**FOR ADDITIONAL INFORMATION  
YOU MAY CONTACT :**

**DIVISION OF HEALTH CARE  
FINANCING AND POLICY  
MEDICAID ESTATE RECOVERY UNIT  
1000 E WILLIAM STREET, SUITE 102  
CARSON CITY NV 89701**

**(775) 684-3716**

**FAX (775) 684-3720**

**MEDICAID  
ESTATE  
RECOVERY  
PROGRAM**

Nevada Dept of Health and Human Services  
Division of Health Care Financing and Policy  
1000 E. William Street, Suite 102  
Carson City, Nevada 89701

# New Hampshire





# New Hampshire (NH)

**Governing Law:**

New Hampshire's principal estate-recovery statute is NH ST §167:14-9. Lien language is spread over non-successive statutes: NH ST §167:14 (Authorization); NH ST 167:16 (Enforcement); and NH ST §167:16-9a (Limitations). Recovery is also mentioned in the New Hampshire Medical Assistance Manual at sections 317.17 and 317.19.

**Estate Scope:**

For the purposes of recovering the costs of medical assistance provided to the deceased patient, New Hampshire includes in the patient's estate all property, real or personal, which at the time of the patient's death was held by the patient in joint tenancy with the rights of survivorship or life estate for any such title or interest established on or after July 1, 2005.<sup>1</sup> Recovery is limited to the value of the patient's ownership interest and does not extend to any interest in property for which the non-patient owner paid fair-market value for at the time the ownership interest was acquired.<sup>2</sup> Additionally, New Hampshire's statute makes a clear and broad-sweeping provision for the recovery of assets in a revocable living trust.<sup>3</sup> Specifically, all property, real or personal, in a revocable living trust is subject to recovery by the state for medical assistance provided to the grantor of the trust; and the state is authorized to make a claim against the trust assets by providing notice to the trustee of the amount owed to the state.<sup>4</sup> New Hampshire probate law provides generally for a one-year statute of limitations<sup>5</sup> on claims, with the possibility of an extension of time.<sup>6</sup> In estates where the state has a claim but cannot recover due to the existence of a qualified survivor, the state probate code allows contingency claims to be filed in the decedent's estate and the assets to remain available to the estate administrator unless the recipient of estate assets agrees to give bond for the amount owed.<sup>7</sup> Additionally, the term "estate" is defined as "all assets and liabilities of a Medicaid recipient subject to the jurisdiction of the probate court, including but not limited to all property, real or personal, in a revocable trust as contemplated by RSA 167:14-a,V and property held by the recipient during his or her lifetime in either joint tenancy, tenancy in common, or life estate as contemplated at RSA 167:14-a,VI."<sup>8</sup>

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<sup>1</sup> NH ST. §167:14-a(VI)(a).

<sup>2</sup> Ibid.

<sup>3</sup> NH ST. §167:14-a(V).

<sup>4</sup> Ibid.

<sup>5</sup> NH ST §556:5.

<sup>6</sup> NH ST §556:28.

<sup>7</sup> NH ST §556:6.

<sup>8</sup> He-W 695.02.

**Spousal Recovery:**

Recovery is prohibited when there is a surviving spouse, minor, or disabled child.<sup>9</sup> However, the New Hampshire Attorney General issued an opinion that held that the legislature intended that the state recover for assistance granted for medical aid after the death of the patient and after the death of the patient's surviving spouse.<sup>10</sup> When a patient dies leaving a surviving spouse and the Division of Welfare of the Department of Health and Welfare cannot present to have its claim paid within one year after the appointment of an estate administrator because of the existence of a surviving spouse, the state is required to file a contingency claim under the probate code<sup>11</sup> to establish and protect the state's interests in recovery after the surviving spouse passes and there is no minor, blind, or disabled child in the line of succession.<sup>12</sup>

**Liens:**

The real property of the patient can be attached by lien for recovery of medical-assistance payments, subject to certain restrictions.<sup>13</sup> Lifetime liens are only allowed to be filed against the patient's property when it is determined, after notice and an opportunity for a hearing, that the patient cannot be expected to be discharged and return home.<sup>14</sup> No lien can be imposed on the patient's home if the patient's spouse, child under 21, blind, or permanently and totally disabled under SSI rules, or sibling with an equity interest who resided in the home for at least a year before the patient was admitted to the medical institution are currently residing in the home.<sup>15</sup> Any such lien is considered dissolved if the patient returns home.<sup>16</sup> Additionally, there can be no recovery of a home with a lien against it when there is a sibling of the patient who lived in the home for a year before the patient's admission to the medical institution and who has lived there continuously since admission or there is a child who has resided in the home for two years prior to the parent's admission, provided care that delayed admission, and has continued to live in the home since the parent's admission.<sup>17</sup>

**Partnership Program:**

Asset Disregard "Asset Disregard" means that an amount of your assets equal to the amount of long-term care insurance benefits you have received under your Partnership Policy will not be counted for the purpose of determining your eligibility for Medicaid. This generally allows you to keep additional assets equal to the insurance benefits received under your Partnership Policy without affecting

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<sup>9</sup> NH ST §167:14-a(VI)(b).

<sup>10</sup> 1 N.H. Op. A.G. 84.

<sup>11</sup> NHST §556:6.

<sup>12</sup> 1 N.H. Op. A.G. 84.

<sup>13</sup> NH ST §167:14(II).

<sup>14</sup> NH ST §167:16a(b).

<sup>15</sup> NH ST §167:16a(II).

<sup>16</sup> NH ST §167:16a(III).

<sup>17</sup> NH ST §167:16a(IV)(b).

your eligibility for Medicaid. All other Medicaid eligibility criteria will still apply. This "Asset Disregard" is only available if you have a Partnership Policy.<sup>18</sup>

**Hardship Waiver:**

The state must provide notice to anyone taking property that is subject to a recovery claim of the amount of the claim.<sup>19</sup> The notice, in addition to listing the members of the patient's family that would forestall recovery, must provide the persons receiving notice of their right to request a waiver for undue hardship and the procedure for doing so.<sup>20</sup> Anyone receiving such a notice has 30 days from receipt of the notice to acknowledge the notice and declare exemption or request a hardship waiver; otherwise the debt must be either settled and, if it is not, the state can pursue recovery in probate or superior court, as the case may be, to enforce the recovery.<sup>21</sup>

The state waives recovery on the basis of undue hardship:

Where the estate includes real property on which a business or farm is located and: (1) The business or farm has been in operation at the primary residence of the heir for at least 12 months preceding the death of the decedent; (2) The business or farm produces more than 50% of the heir's livelihood; and (3) The recovery of the claim would directly result in the loss of the livelihood of the heir.<sup>22</sup>

Where the estate includes income-producing property and: (1) The heir has used his/her own personal resources for the past 12 months to maintain the income-producing property; (2) The property produces more than 50% of the heir's livelihood; and (3) The recovery of the claim would directly result in the loss of the livelihood of the heir.<sup>23</sup>

Where the estate includes only personal property and recovery by the state would directly result in the heir becoming eligible for public assistance.<sup>24</sup>

Where the estate includes the home of the Medicaid recipient upon which the state placed a lien or upon which the department had authority to place a lien but didn't due to insufficient time, and: (1) The applicant is an adult child of the deceased Medicaid recipient; or (2) The applicant is the grandchild of a deceased Medicaid recipient who died on or after January 1, 2008 and who can establish that the

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<sup>18</sup> NHID Admin Rules INS 3602

<sup>19</sup> NH ST §167:14a(VI)(b).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> He-W 695.04 (a).

<sup>23</sup> He-W 695.04 (b).

<sup>24</sup> He-W 695.04 (c).



deceased Medicaid recipient had guardianship over the applicant while the applicant was a minor or that the deceased Medicaid recipient served as in-loco parentis to the applicant while he or she was a minor; (3) The applicant resided in the home of the deceased Medicaid recipient for a period of at least 2 years immediately before the date of the deceased Medicaid recipient's admission to the medical institution; (4) The applicant establishes that he or she provided uncompensated care daily to the deceased Medicaid recipient for at least 2 years immediately before the date of the deceased Medicaid recipient's admission to the medical institution which permitted the deceased Medicaid recipient to reside at home rather than in a medical institution, including but not limited to any or all of the following activities: bathing; dressing; administering medication; shopping; cooking; feeding; house cleaning; money management; driving; or other care specific to the condition of the deceased Medicaid recipient; and the applicant is lawfully residing in the home of the deceased Medicaid recipient and has lawfully resided in such home on a continuous basis since the date of the deceased Medicaid recipient's admission to the medical institution.<sup>25</sup>

Where the estate includes the home of the Medicaid recipient and: (1) The applicant is a sibling of the deceased Medicaid recipient; (2) The applicant resided in the home of the deceased Medicaid recipient for a period of at least one year immediately before the date of the deceased Medicaid recipient's admission to the medical institution; and (3) The applicant is lawfully residing in the home of the deceased Medicaid recipient and has lawfully resided in such home on a continuous basis since the date of the deceased Medicaid recipient's admission to the medical institution.<sup>26</sup>

Where the estate includes the home of the Medicaid recipient which she or he held either in life estate or in joint tenancy and: (1) The applicant can demonstrate that he or she is either the remainderman under the life estate or the surviving joint tenant; and (2) The applicant can demonstrate that he or she paid value for the remainder interest or joint interest either when the interest was created or to cure a transfer of asset penalty contemplated at He-W 620.01(t)(3).<sup>27</sup>

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<sup>25</sup> He-W 695.04 (d).

<sup>26</sup> He-W 695.04 (e).

<sup>27</sup> He-W 695.04 (f).

**REIMBURSEMENT AGREEMENT AND ACKNOWLEDGMENT**

Applicant Name: \_\_\_\_\_ Spouse: \_\_\_\_\_  
(Please print) (Please print)  
Address: \_\_\_\_\_ County: \_\_\_\_\_

**FINANCIAL ASSISTANCE APPLICANTS**

I, \_\_\_\_\_ and \_\_\_\_\_,  
understand that N.H. State Laws, RSA 167:13, RSA 167:14, RSA 167:14-a, and RSA 167:28, require reimbursement to the State and County from me or my spouse for the financial assistance provided, as a condition of eligibility for the APTD, ANB, and OAA Programs.

**I UNDERSTAND THAT:**

**INITIALS**

- a notice of lien may be filed against any real property owned by me or my spouse, severally or jointly, at any time after financial assistance begins and that the State shall not seek collection on such a lien so long as my spouse or I reside on the property as the lawful owners, unless the property is voluntarily sold or refinanced while a lien is in place. \_\_\_\_\_
- a claim may be filed against my or my spouse's estate to satisfy the State's claim for reimbursement of financial assistance granted. \_\_\_\_\_
- if the State intends to file a notice of lien on my real property, written notification will be sent to me and I will have the opportunity to appeal the lien placement. \_\_\_\_\_
- the State also has the right to recover the cost of medical assistance (Medicaid) payments made on my behalf, as described on page two (2) of this form. \_\_\_\_\_
- failure to sign this form will result in ineligibility for financial assistance in accordance with RSA 167:28. \_\_\_\_\_

☐ I have read and understand my rights and responsibilities as explained on this Form and have had the opportunity to ask questions about this information.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(Place) (Date) (Month) (Year)

\_\_\_\_\_  
Signature of Applicant/Parent

\_\_\_\_\_  
Signature of Spouse/Parent

The State of New Hampshire

\_\_\_\_\_  
ss.

Personally appeared the above named \_\_\_\_\_

and \_\_\_\_\_ and acknowledged the foregoing document to be their voluntary act and deed.

Before me,

\_\_\_\_\_  
(Month/Day)

\_\_\_\_\_  
(Year)

Justice of the Peace or Notary Public

**POLICIES APPLYING TO ALL MEDICAL ASSISTANCE (MEDICAID) APPLICANTS**

Applicant Name: \_\_\_\_\_ (Please print) Spouse \_\_\_\_\_ (Please print)

Address: \_\_\_\_\_ County: \_\_\_\_\_

**I UNDERSTAND THAT:**

**INITIALS**  
(Optional)

- under Federal and State law, I may be required to reimburse the government for the cost of Medicaid payments made on my behalf under OAA, ANB, MEAD, BCCP, or APTD while I am age 55 or older, and that the State may file a lien against my real property and/or file a claim against my estate to recover Medicaid costs. \_\_\_\_\_
- pursuant to State and Federal Law, the State will not seek recovery from my estate until or unless my spouse, if any, has died and I have no child who is under age 21 or who is blind or permanently and totally disabled. \_\_\_\_\_
- only assets contained in my estate will be available for recovery for the medical assistance provided to me. \_\_\_\_\_
- for the purpose of recovery of medical assistance provided to me, my "estate" includes both assets that pass through probate and assets that pass outside the probate process such as certain trust assets, assets held jointly, and unpaid annuity balances benefiting me. \_\_\_\_\_
- under state law my estate includes all property real or personal, in which I hold an interest on the date of my death. Such interests include joint tenancy with rights of survivorship, tenancy in common, life estates, and living trusts without regard to the date that such title or interest was established. \_\_\_\_\_
- if I hold property as a joint tenant with right of survivorship or hold a life estate at the time of my death, the State will provide written notice of the State's claim to the surviving owner(s). \_\_\_\_\_
- when recovery action begins, the State will notify the executor of my estate of the reimbursement claim and, pursuant to He-W 695, the availability of a waiver if recovery would cause an undue hardship to my heirs. \_\_\_\_\_

**POLICIES APPLYING TO PERMANENT RESIDENTS OF MEDICAL INSTITUTIONS:**

In addition to the reimbursement responsibilities described above, the following applies to individuals permanently residing in medical institutions who receive Medicaid payments for the cost of institutional care.

**I UNDERSTAND THAT:**

**INITIALS**  
(Optional)

- if it is determined that I cannot reasonably be expected to be discharged from a medical institution, the State will file a lien against real property I own, including my home, unless any of the following individuals resides in my home:
  - My spouse;
  - My child who is under age 21, or who is blind or permanently and totally disabled; or
  - My sibling who has an equity interest in the home and who was residing in the home for at least one year prior to my admission to the medical institution.\_\_\_\_\_
- if the State intends to file a lien on my real property, written notification will be sent to me and any other joint owner(s) and I will have an opportunity to appeal the lien placement. \_\_\_\_\_
- any lien placed on my home will be removed upon my discharge from a medical institution. \_\_\_\_\_

☐ I have read and understand my rights and responsibilities as explained on this Form and have had the opportunity to ask questions about this information.

\_\_\_\_\_  
(Optional) Signature of Applicant/Parent

\_\_\_\_\_  
(Optional) Signature of Spouse/Parent

\_\_\_\_\_  
Family Services Specialist

\_\_\_\_\_  
Date

## WHAT IS A LIEN?

A lien is a document filed with the county registry of deeds which alerts anyone who wants to buy your house or land that you have a debt against the property which must be paid when the home is sold or refinanced.

## WILL THE STATE FILE A LIEN ON MY HOUSE?

If you receive OAA, ANB, or APTD **cash** assistance, the State will file a lien on your home or land to get paid back for this assistance.

If you live in a nursing home and your house or land is not being lived in by your spouse, minor or disabled child(ren), or sibling with an equity interest, the State will file a lien to get paid back for the OAA, ANB, MEAD, or APTD **medical** assistance (Medicaid) you received after age 55.

## IF THE STATE FILES A LIEN ON MY HOUSE, WHAT WILL HAPPEN?

When the State files a lien on your house, it **does not** mean:

- that you must move or sell your house; or
- that the State owns your house or wants to own your house.

What it **does** mean is that when you sell or refinance the property, the State will

collect on the lien that was placed on your house or land.

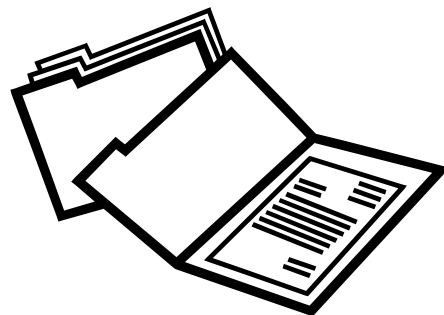
This means that money from the sale goes to the State to pay off the OAA, ANB, MEAD, or APTD assistance you received.

## WHAT IF I OWN MY PROPERTY WITH OTHER PEOPLE?

If you receive OAA, ANB, or APTD **cash** assistance and the property is jointly owned with your spouse, when the property is sold or refinanced the State will collect on the full amount of the lien, if the money from the sale is enough to pay off the lien.

If the property is jointly owned with someone other than your spouse, the State will collect on the lien for **cash** assistance only up to the amount that equals your share of the ownership of the property.

If you receive OAA, ANB, MEAD, or APTD **medical** assistance and the property is jointly owned, the State will collect on the lien only up to the amount that equals your share of the ownership of the property.



## I AM NO LONGER ON ASSISTANCE. HOW CAN I GET RID OF THE LIEN ON MY PROPERTY?

You can make a *voluntary* payment to the State in an amount equal to the assistance provided. Upon receipt of the payment, the State will remove the lien.

Even if you no longer receive assistance, the State will only act upon the lien if you sell or refinance your property, or die.

## WHAT IS AN ESTATE CLAIM?

An estate is all of the property (such as cash, savings, stocks, land, etc.) owned by a person at the time of death. For the purpose of recovery of medical assistance, your estate includes both assets that pass through probate and assets that pass outside the probate process. Your estate includes property held solely or jointly with others on the date of death. This includes assets held in joint tenancy, tenancy in common, life estates and living trusts regardless of when the asset was obtained or divided.

If you owe money to creditors (like the State) when you die, the creditors can file a claim against your estate to get paid back the money owed to them.

Through the probate process, the court makes sure that:

- all debts or claims filed against the estate are paid; and

- after debts are paid, any remaining assets go to the proper people.

For assets passing outside the probate process, the surviving owners or beneficiaries will be sent a notice of the Department's claim.

## WILL THE STATE FILE A CLAIM AGAINST MY ESTATE?

When probate is started for someone who received OAA, ANB, MEAD, or APTD cash **or** medical assistance, the State may file a claim against the estate for repayment of the assistance received.

The State will file a claim against your estate for the:

- OAA, ANB, or APTD **cash** assistance you received, if the total assistance is more than \$100; and/or
- OAA, ANB, MEAD, or APTD **medical** assistance you received after age 55, if you are unmarried or widowed at the time of your death and do not have any minor or disabled children.
- There is no recovery for Medical Assistance received prior to age 55.

## WHAT IF I HAVE A WILL THAT SAYS MY PROPERTY GOES TO SOMEONE OTHER THAN THE STATE?

Probate law provides that creditors, such as the State, must be paid before any directions in a will are followed.

If any assets remain after paying all debts against the estate, the court will follow the directions of the will and allow assets to be given to the heirs in the will.

**ARE THERE ANY TIMES WHEN MY ESTATE WON'T HAVE TO REPAY THE STATE?**

All **cash** assistance received must be repaid to the State.

The State will only file a claim if you are over the age of 55 and you do not have a surviving spouse, minor or disabled child. If repayment of **medical** assistance received would cause the family to experience a hardship, repayments are sometimes waived.

Your family and/or the administrator of your estate can apply for hardship waiver and have the debt forgiven, if the hardship criteria are met.

**THE STATE DIDN'T FILE A LIEN, CAN THEY STILL FILE AN ESTATE CLAIM?**

Yes. There are times when the Department does not have the authority to place a lien but may file a claim. Additionally, because a lot can happen between application for assistance and death, there will be situations where a lien is not filed, but an estate claim is appropriate, and vice-versa.

Filing an estate claim is based on circumstances existing at the time of the recipient's death.

You should contact an attorney for more information on how liens and estate claims might apply to your situation.

**WHAT IF MY ESTATE DOES NOT HAVE ENOUGH FUNDS TO REPAY THE STATE?**

The State will collect on the funds that are available in your estate even if there is not enough to pay the claim in full.

Once your estate is properly probated and closed:

- any remaining debt for OAA, ANB, or APTD **cash** assistance can be collected from your spouse's estate when (s)he dies. If you do not have a spouse when you die, any remaining debt is forgiven; and/or
- any remaining debt for OAA, ANB, MEAD, or APTD **medical** assistance is forgiven. The State will only take the available funds in your estate to pay for a medical assistance debt. The state will not collect from your spouse's estate when (s)he dies.



**Department of Health & Human Services District Offices**

**BERLIN**

650 Main St., Ste. 200  
Berlin, NH 03570-2496  
752-7800 or  
800-972-6111

**CLAREMONT**

17 Water Street, Suite 301  
Claremont, NH 03743-2280  
542-9544 or  
800-982-1001

**CONCORD**

40 Terrill Park Drive  
Concord, NH 03301-9955  
271-6201  
800-322-9191

**CONWAY**

73 Hobbs Street  
Conway, NH 03818-6188  
447-3841 or  
800-552-4628

**KEENE**

809 Court Street  
Keene, NH 03431-1712  
357-3510 or  
800-624-9700

**LACONIA**

65 Beacon Street West  
Laconia, NH 03246-9988  
524-4485 or  
800-322-2121

**LITTLETON**

80 North Littleton Road  
Littleton, NH 03561-3841  
444-6786 or  
800-552-8959

**MANCHESTER**

195 McGregor Street, Suite 110  
Manchester, NH 03102-3762  
668-2330 or  
800-852-7493

**SOUTHERN**

3 Pine St. Ext., Ste. Q  
Nashua, NH 03060-3213  
883-7726 or  
800-852-0632

**SEACOAST**

50 International Dr.  
Portsmouth, NH 03801-2862  
433-8300  
800-821-0326

**ROCHESTER**

150 Wakefield Street, Suite 22  
Rochester, NH 03867-1309  
332-9120 or  
800-862-5300

TTY/TDD Access: Relay NH 1-800-735-2964  
or 7-1-1

Form 77s  
04/06 Rev. 07/11  
SR 06-06

**WHAT ARE LIENS AND ESTATE CLAIMS?**



*The law requires all recipients of Old Age Assistance (OAA), Aid to the Needy Blind (ANB), and Aid to the Permanently and Totally Disabled (APTD) cash assistance as well as many recipients of OAA, ANB, APTD, and Medicaid for Employed, Adults with Disabilities (MEAD) medical assistance to repay the State for the benefits they receive. The State collects payment for past assistance in two ways:*

- *liens against real property; and/or*
- *estate claims after a recipient dies.*

NH Department of Health and Human Services  
129 Pleasant Street  
Concord, NH 03301-3857  
[www.dhhs.nh.gov/DFA](http://www.dhhs.nh.gov/DFA)





# New Jersey



# New Jersey (NJ)

**Governing Law:**

New Jersey's estate recovery is found in the collection of statutes starting at N.J.S.A. 30:4D-7.1 through N.J.S.A. 30:4D-7.8 and New Jersey's Administrative Code at 10:49-14.1.

**Estate Scope:**

New Jersey defines "estate" as all real and personal property and other assets included in the patient's estate under probate,<sup>1</sup> as well as other real and personal property and other assets that the patient had any legal title to or interest in at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the patient through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.<sup>2</sup> The administrative code, however, tailors such a broad definition by delineating several exceptions.<sup>3</sup> Estates shall not include:

- i. A life estate in which the beneficiary held an interest during his or her lifetime but which expired upon the Medicaid beneficiary's death;
- ii. A living trust established by a third party for the benefit of the now-deceased patient, provided that it was a discretionary trust that Medicaid could not compel distributions from and the trust contained no assets that the patient had any interest in within five years of applying for Medicaid or five years before death; or
- iii. A testamentary trust established by a third party, including the spouse of the patient for the benefit of the patient, provided that the trust is a discretionary trust and the trust contains no assets that the patient held any interest in within either five years of applying for Medicaid or five years before death.<sup>4</sup> Assets of the Community Spouse, other than those forming the CSRA, are considered assets of the patient if any interest was acquired from the patient within the five-year window preceding application and/or preceding death.<sup>5</sup>

Estate recovery may be sought from trusts and annuities, even if established by a third party.<sup>6</sup> This applies to living trusts and testamentary trusts if the assets in the trust belonged to the Medicaid

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<sup>1</sup> N.J.S.A. 3B:1-1.

<sup>2</sup> N.J.S.A. 30:4D-7.2.

<sup>3</sup> N.J.A.C. 10:49-14.1(n).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> N.J.A.C. 10:49-14.1(l).

beneficiary as of five years prior to the beneficiary's death.<sup>7</sup> In a reported opinion, the New Jersey Superior Court has gone so far as to allow for recovery from a testamentary trust created by a community spouse.<sup>8</sup>

The administrative code further clarifies that the term "life estate" in the estate definition means a life estate created on the death of the patient and the term "other arrangement" includes, without limitation, trusts or annuities in which the beneficiary had an interest to at the time of death, including ones established by third parties, subject to the exclusions discussed above.<sup>9</sup>

Recovery is prohibited against an estate if the amount sought is less than \$500 or the gross estate of the deceased recipient is less than \$3,000.<sup>10</sup>

**Spousal Recovery:**

No encumbrance or recovery shall be imposed against or sought from the estate of the deceased Medicaid recipient if there is a surviving spouse, or a child under 21, blind or permanently and totally disabled.<sup>11</sup> For estate property that any family member of a deceased patient resided in that was also the patient's primary residence and remains the family member's primary residence, the state can record a lien against the property but not enforce the lien until the property is sold or the resident family member dies or vacates the property.<sup>12</sup> For all estate recoveries, no lien of any kind and no right of recovery can either exist or be pursued until the absence of any surviving spouse or any minor, blind, or permanently and totally disabled children.<sup>13</sup>

**Liens:**

New Jersey authorizes the use of liens to be filed against the estate of a deceased Medicaid recipient.<sup>14</sup> Because of the expansive estate definition, the statute provides for the state to file liens against property owned by third parties that may be subject to a claim because of the patient's ownership interest at death.<sup>15</sup> Liens against the estate are considered preferred claims under and N.J.A.C. 3B:22-2.<sup>16</sup> Unlike the traditional lifetime TEFRA lien which can be put on a Medicaid recipient's property while he or she is alive, provided there is a determination that the patient will not return home, New Jersey

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<sup>7</sup> N.J.A.C. 10:49-14.1(n).

<sup>8</sup> *ESTATE OF DeMARTINO, v. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES*, 373 N.J.Super. 210, 219, 861 A.2d 138 (App.Div.2004), certif. denied, 182 N.J. 425, 866 A.2d 982 (2005).

<sup>9</sup> N.J.A.C. 10:49-14.1(l)(2).

<sup>10</sup> N.J.A.C. 30:4D-7.2a.

<sup>11</sup> *Ibid.*

<sup>12</sup> N.J.A.C. 10:49-14.1(g).

<sup>13</sup> N.J.A.C. 10:49-14.1(j).

<sup>14</sup> N.J.A.C. 10:4D-7.2(a).

<sup>15</sup> N.J.A.C. 10:4D-7.2(b).

<sup>16</sup> N.J.A.C. 10:4D-7.2(d).

does not authorize or make any provisions for such a lien. The liens in New Jersey are not a viable tool until the death of the patient and only then are ostensibly used to secure recovery against non-probate assets or to solidify a claim in probate where assets are temporarily exempt from recovery because of one of the exemptions provided by law.<sup>17</sup>

When the lien is filed, it must specifically describe the extent of the deceased patient's interest that the lien attaches to, if it is known by the state when the lien is filed.<sup>18</sup> The rules presume that, if ownership was tenants in common, then the decedent owned fifty percent; but if the property is held as tenancy by the entirety or joint tenancy with right of survivorship, the lien covers a hundred percent of the property.<sup>19</sup>

**Partnership Program:** New Jersey expressly recognizes that, when a Medicaid recipient has been afforded asset protection under a partnership policy, the state is prohibited from subsequently recovering from the estate an amount up to the value of the assets disregarded at the time of the eligibility determination.<sup>20</sup>

**Hardship Waiver:** For a waiver of recovery based on undue hardship, hardship can only be demonstrated in New Jersey if the estate subject to recovery is or would become the sole income-producing asset of the survivors, and pursuit of recovery is likely to result in one or more of the survivors becoming eligible for public assistance.<sup>21</sup> There is a rebuttable presumption that no undue hardship exists if the hardship resulted from estate-planning methods under which assets were divested in order to avoid estate recovery.<sup>22</sup> Once the state makes its claim, anyone seeking a waiver has 20 days to file a request.<sup>23</sup> Once the timely request is received by the state, the state has 45 days to grant or deny the request.<sup>24</sup> If the request is denied, a written request for hearing must be submitted by the person seeking the waiver within 20 days of receiving the denial.<sup>25</sup>

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<sup>17</sup> N.J.S.A. 30:4D-7.2a.

<sup>18</sup> N.J.A.C. 10:49-14.1(m).

<sup>19</sup> Ibid.

<sup>20</sup> N.J.S.A. 30:4D-7.2a(a)(3).

<sup>21</sup> N.J.A.C. 10:49-14.1(h).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.



## **The New Jersey Medicaid Program and Estate Recovery-What You Should Know**

### **What is Estate Recovery?**

Under federal and New Jersey law, the Division of Medical Assistance and Health Services (DMAHS) is required to recover funds from the estates of certain deceased medical assistance clients or former clients for all payments provided through the Medicaid program for services received on or after age 55.

### **Why Estate Recovery?**

The State pursues recovery from estates to supplement funds available for medical assistance programs and limit the burden upon taxpayers caused by rising medical costs. Funds recovered help provide assistance to others in need.

### **Who is Affected?**

The estates of clients or former clients who were 55 years of age or older at the time they received services may be affected.

### **Will the State Seek Recovery Immediately Upon Death?**

Yes, if the deceased has no surviving spouse and has no surviving child under age 21 and no surviving child who is blind or permanently and totally disabled. The only time that recovery will not be pursued is:

1. If it would not be cost-effective to do so; or
2. If property in the estate is the sole source of income for one or more of the survivors and pursuit of recovery is likely to result in one or more of those survivors becoming eligible for public assistance and/or Medicaid benefits; or
3. If a family member of a deceased Medicaid client has, prior to the client's death, continuously resided in a home owned by the client at the time of the client's death, and that home was the client's primary residence, and was, and remains, the family member's primary residence, the Division may record a lien against the property, but will not enforce the lien until the property is voluntary sold, or the resident family member either dies or vacates the property.

### **When will the State *not* seek recovery immediately upon death?**

The State will not seek recovery if there is a surviving spouse or a surviving child who is under the age of 21, or is blind or permanently and totally disabled. In that case, repayment would be postponed until:

1. The child reached the age of 21, or
2. The time of the spouse or child's death.

When any of these exceptions to DMAHS' right to recover from an estate no longer apply (i.e., as a result of the death of a surviving spouse, attainment of age 21 by a surviving child, and/or death of a blind or permanently and totally disabled child), DMAHS has a right to recover from any remaining estate assets at that time.

### **What is an Estate?**

An estate includes any property that belonged to the deceased at the time of death. By law, estates include property such as the decedent's home or share of a home, bank accounts (whether solely or jointly held), trusts and annuities, stocks and bonds, and any other real or personal property. It is important to understand that even though the deceased's share of property may pass to the survivor(s), it continues to be considered as part of the estate for New Jersey Medicaid recovery purposes.

### **What About Life Insurance Policies?**

Proceeds from life insurance policies are considered the assets of the named beneficiaries. Proceeds will be considered recoverable only when they are paid to the client's estate as the named beneficiary or as a default beneficiary when another named beneficiary predeceases (dies before or at the same time as) the client.

### **What About Annuities ?**

Annuities which are determined not to be subject to asset liquidation prior to eligibility, must name the State of New Jersey as the remainder beneficiary in the first/primary position for the total amount of medical assistance paid on their behalf at any age. In the case where there is a community spouse and/or a minor or disabled child, the State must be named in the second/secondary position as remainder beneficiary. The State or its eligibility agencies shall require verification of the State being irrevocably named as the remainder beneficiary in the correct position. As the beneficiary of the annuity the State is paid any remaining income/principal upon the death of the client per the primary or secondary terms of the annuity contract.

### **What About Burial Trusts?**

Under New Jersey law, P.L. 1999 Chapter 193, funeral directors and insurers issuing policies covering funeral expenses are required to forward to DMAHS any dollars remaining in a Medicaid client's irrevocable funeral trust fund or burial insurance policy after reasonable funeral expenses have been paid, but only if the deceased was receiving Medicaid or public assistance benefits at the time of death.

### **What About Medicare Cost-Sharing Benefits?**

Effective January 1, 2010, Medicare cost-sharing benefits paid by Medicaid under the Medicare Savings Programs are not subject to estate recovery.

### **What Should I Know About Medicaid Liens? Will the Medicaid Program File a Lien Against My Home and Property?**

A Medicaid lien is a claim placed against a deceased person's property to ensure that the estate pays a debt.

When you apply for Medicaid, a lien is not filed against your property. A lien is placed on property after the death of a Medicaid client or former client who received services on or after age 55 if there is no surviving spouse, no surviving child under 21 years old, and no surviving child who is blind or totally and permanently disabled. The amount claimed as a lien will be equal to the amount of all assistance DMAHS provided to a Medicaid client for services received on or after age 55, including any capitation payments made to an HMO on the client's behalf by the Medicaid program.

### **What Expenses Can Be Paid With Assets of the Deceased Before Paying Medicaid?**

Reasonable funeral expenses, costs and expenses related to the administration of the estate, and debts owed to the Office of the Public Guardian for Elderly Adults can be paid with the assets of the deceased. DMAHS' claim is next in line, together with debts and taxes with preference under federal or New Jersey law.

### **How Will the Estate Know Money is Owed?**

Those involved in handling the estate must contact DMAHS in writing as soon as possible after the death of the Medicaid client or former client. It is their responsibility to notify DMAHS to find out if DMAHS has a claim against the estate before any funds from the estate are spent (exception: reasonable funeral expenses may be paid). Distributions to any creditors or heirs cannot be made until the estate reimburses DMAHS if there is a Medicaid claim. Whoever is handling the estate should write to:

DMAHS  
Office of Legal and Regulatory Affairs  
Attn: Estates  
PO Box 712 - Mail Code #6  
Trenton, NJ 08625.

DMAHS by law has 90 days from the date of receipt of the estate representative's letter to advise if it will be seeking recovery.

**If you have any questions regarding estate recovery or need more information about estate recovery, please call 609-588-2900.**



(Use Eligibility Agency Letterhead)

**ESTATE RECOVERY ACKNOWLEDGEMENT FORM**

I, (Name of applicant, client or legal representative), do acknowledge notice that the Division of Medical Assistance and Health Services has the authority to file a claim and lien against the estate of a deceased Medicaid client or former client to recover all Medicaid payments for services received on or after age 55, including all capitation payments to any managed care organization, when there is no surviving spouse, no surviving children under the age of 21, and no surviving children of any age who are blind or permanently and totally disabled.

I also acknowledge notice that my estate may be required to pay back the Division of Medical Assistance and Health Services for those benefits.

I do hereby acknowledge receipt of the estate recovery notice provided by the Authorized Eligibility Agency for the NJ Division of Medical Assistance and Health Services this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Signature of applicant/representative**

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**Printed name of applicant/representative**



# New Mexico

# New Mexico (NM)

<b>Governing Law:</b>	New Mexico's estate recovery is authorized by the Medicaid Estate Recovery Act codified at N.M.S.A. §27-2A-1 to §27-2A-9 and New Mexico Administrative Code § 8.200.430.20.
<b>Estate Scope:</b>	<p>New Mexico's version of "estate" is limited to the real and personal property and other assets of the patient which are subject to probate or administration pursuant to the provisions of the New Mexico's Uniform Probate Code.<sup>1</sup></p> <p>Certain income, resources, and property are exempted from estate recovery for Native Americans: (a) interest in and income derived from tribal land and other resources held in trust status and judgment funds from the Indian claims commission and the United States claims court; (b) ownership interest in certain trust or non-trust property, including real property and improvements; (c) income left as a remainder in an estate derived from protected property; (d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally-protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to native Americans derived from these sources as long as the individual can clearly trace the ownership interest as coming from protected sources; and (e) ownership interest in or usage of rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.<sup>2</sup></p>
<b>Spousal Recovery:</b>	Any recovery from an estate in New Mexico can only be made after the death of the patient's spouse, if any, and only at a time when the deceased patient has no surviving child who is under 21, blind, or disabled per SSI rules. <sup>3</sup>
<b>Liens:</b>	New Mexico does not use liens to secure estate recovery.
<b>Partnership Program:</b>	On April 3, 2013 Governor Martinez signed SB 196 into law which created New Mexico's Long-Term Care Partnership Program. As part of the law, the estate recovery statute was amended. The change includes a provision that limits recover for those who

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<sup>1</sup> NMSA §27-2A-3(B); NMAC §8.200.430.20(A)(1).

<sup>2</sup> NMAC §8.200.430.20(C)(2).

<sup>3</sup> NMSA §27-2A-7; NMAC §8.200.430.20(D).

participate in the partnership program to only those assets in excess of the disregard.<sup>4</sup>

**Hardship Waiver:**

When the Human Services Department decides to recover from an estate, it is required to give notice of its intent to the personal representative or successor in interest of the estate of the deceased patient.<sup>5</sup> The department can compromise, settle, or waive recovery when it deems doing so in the state's best interest.<sup>6</sup> The department must waive recovery if recovery would work an undue hardship.<sup>7</sup> Recovery is presumptively waived for hardship on the showing that an asset subject to recovery is a sole income-producing asset or a homestead of modest value.<sup>8</sup>

Additionally, hardship is presumed if:

(a) the deceased recipient's heir would become eligible for a needs-based assistance program such as Medicaid or Temporary Assistance to Needy Families (TANF) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(b) the deceased eligible recipient's heir would be able to discontinue reliance on a needs-based program (such as Medicaid or TANF) if he or she received the inheritance from the estate;

(c) the deceased recipient's assets which are subject to recovery are the sole income source for the heir;

(d) the homestead is worth fifty (50%) percent or less than the average price of a home in the county where the home is located based on census data compared to the property tax value of the home; or

(e) there are other compelling circumstances as determined by department or its designee.<sup>9</sup>

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<sup>4</sup> NMSA § 27-2A-4(b).

<sup>5</sup> NMSA §27-2A-8.

<sup>6</sup> NMSA §27-2A-5(C); NMAC §8.200.430.20(F)(1).

<sup>7</sup> NMSA §27-2A-6.

<sup>8</sup> NMSA §27-2A-6.

<sup>9</sup> NMAC §8.200.430.20(F)(2).





# New York (NY)

<b>Governing Law:</b>	New York's estate-recovery program is authorized under NY SOC SERV §369 and can be found in more detail in the Medicaid Resource Guide §680.1 – §680.9.
<b>Estate Scope:</b>	<p>New York defines the term “estate” as meaning all real and personal property and other assets included within the patient’s estate and passing under the terms of a valid will or by intestacy.<sup>1</sup> The New York 2012-2013 budget bill repealed the legislation that expanded the definition of “estate” beyond the probate estate. Non-probate assets may not be considered as part of the decedent’s estate for recovery purposes. Recovery is only against the probate estate of a decedent who received Medicaid benefits during his or her lifetime.</p> <p>Additionally, there is judicial support for the proposition in New York that the state can proceed in an action under its Debtor and Creditor Law to set aside certain fraudulent transfers of real and personal property and compel such property to be returned to the estate of the recipient of Medicaid to constitute estate assets against which a future claim could be asserted for recovery.<sup>2</sup></p>
<b>Liens:</b>	<p>Lifetime liens are allowed with respect to any real property of the patient who is not reasonably expected to be discharged from the medical institution and return home.<sup>3</sup> No lien can be imposed upon the home if any of the following are lawfully residing in the home: the patient’s spouse; the patient’s child who is under 21, blind, or permanently and totally disabled; or the patient’s sibling with an equity interest of the home who resided in the home for one year prior to the patient’s institutionalization.<sup>4</sup> Recovery is only allowed upon the sale of the property or from the estate of the patient.<sup>5</sup> Recovery of liened assets and estates is only allowed after there is no surviving spouse, if any, and at a time when the patient has no surviving child under 21, blind, or permanently and totally disabled.<sup>6</sup> Additionally, in the case of a lien on the patient’s home, recovery is delayed until there is no sibling of the individual who lived in the home for a year before the patient’s admission, who has continuously lived in the home henceforth, and is residing in the home, or a child of the patient who lived in the home for two years immediately prior to the patient’s institutionalization, who provided</p>

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<sup>1</sup> NY SOC SERV §369(6).

<sup>2</sup> *Bandas v. Emperor*, 1983, 121 Misc.2d 192, 467 N.Y.S.2d 749.

<sup>3</sup> NY SOC SERV §369(2)(a)(ii).

<sup>4</sup> *Ibid.*

<sup>5</sup> NY SOC SERV §369(2)(b)(i).

<sup>6</sup> NY SOC SERV §369(2)(b)(ii).



care to the patient that delayed such institutionalization, and is also residing in the home.<sup>7</sup>

**Spousal Recovery:**

Recovery is merely delayed until the death of the surviving spouse and so long as there is no child under 21, blind, or permanently disabled.<sup>8</sup> The New York Court of Appeals has held that, although the federal law did not expressly provide for recovery of Medicaid payments from the “secondarily dying spouse’s estate,” the 1993 changes gave the power to the states to recover against the spouse’s estate for certain categories of assets.<sup>9</sup> The surviving spouse’s estate is only liable for recovery against the patient’s assets that were conveyed to the surviving spouse through joint tenancy and other specified forms of survivorship.<sup>10</sup> The principle that the DSS is entitled to reimbursement of the Medicaid benefits from the surviving spouse’s estate has been reaffirmed numerous times.<sup>11</sup> New York has also taken the position that the existence of any qualified persons for which delay of recovery is mandated (i.e., spouse, minor child, blind child, or disabled child) also prohibits the state from attempting to recover assets paid to someone else not in that category.<sup>12</sup>

**Partnership Program:**

New York, of course, has one of the four original partnership programs. The program is found at NY SOC SERV §367-f. The partnership program expressly provides for a disregard of assets for recovery through estates or liens on the home, equal to the resources exempted under the partnership program during eligibility.<sup>13</sup>

**Hardship Waiver:**

New York universally adopts the federal criteria established by the Secretary of the U.S. Department of Health and Human Services as its criteria for the waiver of recovery based on undue hardship.<sup>14</sup>

Examples of undue hardship provided by the state include: the sole income-producing asset of the beneficiary(ies), such as the family farm or family business and income produced by the asset is limited; real property of modest value (i.e., having a value no higher than fifty (50%) percent of the average selling price in the county where the home is located, as of the decedent’s date of death) and the home is the primary residence of the beneficiary(ies); or other complying circumstances.<sup>15</sup>

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<sup>7</sup> NY SOC SERV §369(2)(b)(iii).

<sup>8</sup> NY SOC SERV §369(2)(b)(ii).

<sup>9</sup> *In re Estate of Craig*, 82 N.Y.2d 388, 604 N.Y.S.2d 908, 624 N.E.2d 1003, 1006 (1993).

<sup>10</sup> *Ibid.*

<sup>11</sup> *In re Estate of Klink*, 278 A.D.2d 883, 718 N.Y.S.2d 758, 759, 2000 N.Y. Slip Op. 11582.

<sup>12</sup> *Matter of Estate of Andrews* (3 Dept. 1996), 234 A.D.2d 692, 650 N.Y.S.2d 470.

<sup>13</sup> NY SOC SERV §367-f(1)(a).

<sup>14</sup> NY SOC SERV §369(5).

<sup>15</sup> MRG §680.2.

Undue hardship is not considered to exist based on the inability of the beneficiaries to maintain a pre-existing lifestyle or when the alleged hardship is the result of Medicaid or estate planning methods involving divestiture of assets. The estate claim may be waived in whole or in part if the recovery against the decedent's interest in the asset will result in undue hardship.<sup>16</sup>

Recovery against a deceased Medicaid recipient's estate must be deferred: during the lifetime of the recipient's surviving spouse; during any period in which the recipient has a surviving child under 21 years of age; or during the lifetime of a recipient's surviving child of any age who is certified blind or certified disabled; or with respect to the home of a deceased Medicaid recipient, when one of the relatives, adult child or sibling as described above, is lawfully residing in the home.<sup>17</sup>

Upon the death of the surviving spouse, or blind or disabled child, or upon the minor child reaching 21 years of age, or in the case of a decedent's home, upon the adult child or sibling ceasing to reside in the home or the home being put up for sale, the estate claim against the estate that was previously prohibited must be pursued. The claim against such individual for the receipt of such property by distribution or survival is limited to the value of the property received from the estate of the deceased Medicaid recipient or the amount of medical assistance otherwise recoverable, whichever is less.<sup>18</sup>

Deferral of estate recovery on real property is subject to a post death lien if: undue hardship has not been found to exist; the heir or survivor has lawfully and continuously resided in the real property, beginning prior to the deceased Medicaid recipient's death, and is unwilling to sell the real property; the Medicaid claim cannot be paid in full unless the property is liquidated; the heir or survivor is able to demonstrate the inability to obtain financing to pay the estate claim; and a written agreement has been entered into between the Medicaid program and the dependent, heir or survivor whereby the Medicaid program holds a lien on such real property and the dependent, heir or survivor agrees to pay the amount of the claim in accordance with a reasonable payment schedule, subject to reasonable interest.<sup>19</sup>

When such deferrals of estate recovery are made, a lien is filed in the county clerk's office in the county where the property is located and remain on file to protect the interest of the Medicaid program to the

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<sup>16</sup> MRG §680.6.

<sup>17</sup> Ibid.

<sup>18</sup> MRG §680.7.

<sup>19</sup> Ibid.

extent of the claim against the recipient's estate, less any payments actually received toward such claim. Recovery is deferred until: the death of the dependent, heir or survivor; or the sale, refinance, transfer or change in title of the real property; or the determination by the Medicaid program that the dependent, heir or survivor is in breach of the repayment agreement.<sup>20</sup>

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<sup>20</sup> Ibid.

To be reproduced on district letterhead

**MEDICAID ESTATE RECOVERY QUESTIONNAIRE**  
**PLEASE COMPLETE AND RETURN THIS FORM**

ATTENTION: Survivor, heir or person responsible for the estate of \_\_\_\_\_

Name

Address

Under Section 369 of the Social Services Law, recovery must be pursued from the estate of deceased Medicaid recipients who were 55 years of age or older or permanently institutionalized when he/she received such assistance. Our records indicate the above named decedent received medical assistance benefits under the Medicaid program.

According to our records, you are the beneficiary and/or the surviving owner of assets owned jointly with the decedent or are the person responsible for the distribution of assets in which the decedent had interest at the time of death. If you are not the person described above, please provide the name and address of any person(s) who meets this description.

1. Is the decedent survived by a legal spouse? YES \_\_\_ NO \_\_\_

If yes, spouse's name \_\_\_\_\_

Spouse's social security number \_\_\_\_-\_\_\_\_-\_\_\_\_ Spouse's date of birth \_\_\_\_/\_\_\_\_/\_\_\_\_

2. Is the decedent survived by a child under age 21? YES \_\_\_ NO \_\_\_  
(If yes, include copy of child's birth certificate.)

Is the decedent survived by a certified blind child of any age? YES \_\_\_ NO \_\_\_  
(Provide copy of certification of blindness from the Commission for the Blind and Visually Handicapped.)

Is the decedent survived by a certified disabled child of any age? YES \_\_\_ NO \_\_\_  
(Provide copy of certification of disability by the Social Security Administration or Medicaid program.)

Please answer the following questions, even if the decedent had no assets or interest in assets, and return this form and a copy of the death certificate to the above address. **Please include verification of value of assets at the time of death, i.e. copies of bank statement(s).** For assets owned singly and/or jointly with other owners, include the name of any surviving owner and/or beneficiary. Attach a separate page if more space is needed.

3. Bank accounts: (e.g. checking, savings, credit union account, certificates of deposit, etc.):

Bank Name: \_\_\_\_\_ Account Balance: \_\_\_\_\_

Surviving Joint Owner/Beneficiary Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Stocks, bonds, securities (including annuities, retirement accounts, etc.):

Institution Name/Asset Type: \_\_\_\_\_ Asset Value: \_\_\_\_\_

Surviving Joint Owner/Beneficiary Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Real Property (e.g. home, rental, vacation and property in which the decedent had life estate interest):

Name(s) on Deed: \_\_\_\_\_

Surviving Joint Owner/Beneficiary/Remainder Person \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Property Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Is there a trust? YES\_\_\_ NO\_\_\_ **If yes, provide copy of trust document.**

7. Is the estate being probated? YES\_\_\_ NO\_\_\_

8. Were the decedent's burial expenses paid? YES\_\_\_ NO\_\_\_

I certify under penalty of perjury that the information provided is correct to the best of my knowledge.

Print Name \_\_\_\_\_ Relationship to Decedent \_\_\_\_\_  
(Person completing this form)

Your Address \_\_\_\_\_ Telephone \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_





# North Carolina (NC)

<b>Governing Law:</b>	North Carolina's Medicaid Estate Recovery Plan is codified at N.C.G.S.A. §108A-70.5 and articulated through regulations found at 10A NCAC 21D.0101 to 10A NCAC 21D.0103.
<b>Estate Scope:</b>	North Carolina limits the scope of the estate to all real and personal property considered assets of the patient's estate available for the discharge of debt under its probate code. <sup>1</sup> However, if a patient qualified for asset disregard under a partnership program policy (see Partnership Program below), then the state adopts the broader definition to include any other real and personal property or any other assets that the patient had any legal title to or interest in at the time of death (to the extent of such interest), including assets conveyed to a survivor, heir, or assign through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. <sup>2</sup> The North Carolina Department of Health and Human Services serves as a fifth-class creditor in the patient's estate. <sup>3</sup>
<b>Spousal Recovery:</b>	North Carolina is required to provide notice to Medicaid applicants that the state will file a claim for payments made on the patient's behalf; but the notice must also explain that trust recovery will not be claimed if the patient is survived by a legal spouse, or a child who is under 21, blind, or disabled. <sup>4</sup> The existence of any of these persons presents a full bar for recovery.
<b>Liens:</b>	Recovery applies to a patient who cannot be reasonably expected to be discharged and return home. <sup>5</sup> There are two circumstances that give rise to a presumption that the patient is not expected to return home: the patient's actual medical condition, based upon the level of care of the patient's admission, the physician's written statement or plan of care that indicates care needs are not temporary, or six months of continuous institutionalization. <sup>6</sup> Before a property can be encumbered by a TEFRA lien, the state must give the patient notice of the state's determination within three working days, <sup>7</sup> and provide the patient with an opportunity to request a reconsideration review. <sup>8</sup>
<b>Partnership Program:</b>	North Carolina's partnership program is codified at N.C.G.S.A. §58-55-55 through N.C.G.S.A. §58-55-80. Qualified policies, under the

<sup>1</sup> N.C.G.S.A. §108A-70.5(b)(2); probate code: N.C.G.S.A. §28 A-15-1.

<sup>2</sup> N.C.G.S.A. §108A-70.5(b)(2).

<sup>3</sup> N.C.G.S.A. §108A-70.5(c); probate code: N.C.G.S.A. §28 A-19-6.

<sup>4</sup> 10A NCAC 21D.0101(b)(2).

<sup>5</sup> 10A NCAC 21D.0102(a).

<sup>6</sup> 10A NCAC 21D.0102(c).

<sup>7</sup> 10A NCAC 21D.0102(d).

<sup>8</sup> 10A NCAC 21D.0102(e).

partnership program, provide the patient with asset disregard equal to the amount of long-term care insurance benefits paid out and protection from any subsequent recovery up to the amount of those same asset levels.<sup>9</sup> However, for anyone who is eligible for such protection, North Carolina uses the enhanced definition of “estate” to pursue assets over and above the protected assets disregarded by the partnership policy.

**Hardship Waiver:**

North Carolina provides full waiver of recovery based on an undue hardship.<sup>10</sup> Examples of undue or substantial hardship *per se* provided by state regulation include: Real or personal property included in the estate is the sole source of income for a survivor and the net income derived is below seventy-five (75%) percent of the federal poverty level for the dependents of the survivor(s) claiming hardship, or recovery would result in forced sale of the residence of a survivor who lived in the residence for at least twelve (12) months immediately prior to and on the date of the decedent's death and who would be unable to obtain an alternate residence because the net income available to the survivor and his spouse is below seventy-five (75%) percent of the federal poverty level and assets in which the survivor or his spouse have an interest are valued below twelve thousand dollars (\$12,000).<sup>11</sup>

Undue hardship shall not include loss of a pre-existing standard of living or the establishment of a source of maintenance that did not exist prior to the decedent's death.<sup>12</sup>

A claim of undue hardship to a survivor shall be made in writing to the North Carolina Division of Medical Assistance estate recovery administrator within thirty (30) days after the surviving heir claiming undue hardship has been notified of the Medicaid claim. The claim of hardship shall describe the financial circumstances of the heir and the basis for his dependence on assets in the decedent's estate.<sup>13</sup>

The North Carolina estate recovery administrator is required to evaluate each claim of hardship within sixty (60) calendar days of the request to make a determination to waive recovery of the claim in part or in full. In making this determination, the administrator can request documentation to support the survivor's claim of hardship including prior year's income tax returns, bank statements, wage and earnings files, real and personal property records, utility records, tax

<sup>9</sup> N.C.G.S.A. §58-55-60(7) and N.C.G.S.A. §108A-70.4(c)(2).

<sup>10</sup> N.C.G.S.A. §108A-70.5(d).

<sup>11</sup> 10A NCAC 21D.0502(b).

<sup>12</sup> 10A NCAC 21D.0502(c).

<sup>13</sup> 10A NCAC 21D.0502(d).

records, medical bills, or other documents offered by the survivor to support his claim.<sup>14</sup>

If documentation necessary to evaluate the claim of hardship is not provided or the survivor requests additional time to obtain the documentation, the administrator can extend the review for an additional thirty (30) days.<sup>15</sup> The claim of hardship will be denied if the necessary documentation is not provided within the required time frames.<sup>16</sup>

The administrator is required to notify in writing the survivor claiming hardship within ten (10) calendar days after completing the review of the request and documentation supporting the claim of hardship. The notice shall explain the right to appeal to the Office of Administrative Hearings (OAH) and the time limit and procedure for doing so.<sup>17</sup> If the survivor disagrees with the decision, he or she may appeal it to the Office of Administrative Hearings (OAH) within sixty (60) calendar days of receipt of the decision. If no appeal to OAH is filed, the decision is considered final.<sup>18</sup>

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<sup>14</sup> 10A NCAC 21D.0503(a).

<sup>15</sup> 10A NCAC 21D.0503(b).

<sup>16</sup> 10A NCAC 21D.0503(c).

<sup>17</sup> 10A NCAC 21D.0503(d).

<sup>18</sup> 10A NCAC 21D.0503(e).



# North Dakota

# North Dakota (ND)

**Governing Law:**

NDCC §50-24.1-07 to §50-24.1-08 mandates the recovery of assets from the estate of the patient.

**Estate Scope:**

Although not specifically adopted by statute, North Dakota uses the enhanced definition of estate provided under federal law.<sup>1</sup> Claims can be presented in the patient's estate or the estate of the surviving spouse (see Spousal Recovery below).<sup>2</sup> Every personal representative, upon granting of letters of administration are testamentary, is required to forward to the North Dakota Department of Human Services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of legatees, devisees, surviving joint tenants, and/or heirs at law of the estate.<sup>3</sup> If the claim is not paid in full, the personal representative is required to provide the department with a statement of assets and disbursements in the estate.<sup>4</sup> Claims against the estate are considered preferred claims, superseded by expenses such as funeral expenses, expenses of the last illness not covered by Medicaid, and estate administration expenses.<sup>5</sup> The state's claim is considered a claim against the decedent arising before death and subject to the three-year statute of limitations provided in the probate code.<sup>6</sup>

According to the state's Medicaid website, if a decedent leaves only cash and limited personal property, the county social service board, or the Department of Human Services, will usually collect the amount that must be paid for assistance claims using an Affidavit for Collection of Personal Property. Sometimes family members will be asked to help sell personal property that has value so claims can be paid. If there is real property that is worth the cost of probate or if there is some other reason a probate is necessary, the person named in a will or some other family member can be appointed personal representative and properly distribute the decedent's estate. Attorney's fees and other reasonable costs of administration can be paid from the estate. The county social service office will usually initiate probate only if there is no family member willing or able to do so.<sup>7</sup>

<sup>1</sup> *Estate of Wirtz*, 2000 N.D. 9, 607 N.W.2d 882; *Estate of Thompson*, 1998 N.D. 226, 586 N.W.2d 847.

<sup>2</sup> *Ibid.*

<sup>3</sup> NDCC, §50-24.1-07(3).

<sup>4</sup> *Ibid.*

<sup>5</sup> NDCC, §50-24.1-07(1).

<sup>6</sup> NDCC, §30.1-19-03; *Estate of Movey*, 1994, 521 N.W.2d 85.

<sup>7</sup> <http://www.nd.gov/dhs/services/medicalserv/medicaid/recovery.html>



**Spousal Recovery:**

A claim cannot be required to be paid or interest begin to accrue during the lifetime of the patient's surviving spouse, nor while there is a surviving child under 21, blind, or permanently and totally disabled.<sup>8</sup> Claims brought timely to the deceased patient's estate are not to be disallowed because of this delay.<sup>9</sup> The obligation to repay benefits arises during the recipient's receipt of such benefits, even though the Department of Human Services' ability to recover is suspended by statute until the death of the recipient's surviving spouse.<sup>10</sup> The Department of Human Services is authorized to trace assets formerly held by a Medicaid recipient and to recover from the estate of the recipient's surviving spouse assets in which the deceased recipient once had an interest.<sup>11</sup> The department bears the initial burden when a claim is made of showing traceability.<sup>12</sup>

Without ambiguity, the recovery statute presumes that all assets in the deceased non-recipient spouse's estate are assets in which the Medicaid recipient had an interest at the time of the recipient's death.<sup>13</sup> Such a presumption is, of course, rebuttable. Case law appears to be a bit more selective as to which assets in the surviving spouse's estate are considered recoverable when the federal law is superimposed on the state mandate. Separately owned assets in the surviving spouse's estate or assets in which the deceased patient never held an interest are precluded from recovery.<sup>14</sup> Recovery from the surviving spouse's entire estate, including assets not traceable from the recipient, is not allowed.<sup>15</sup> However, the *Wirtz* court and its progeny did allow the enhanced definition of the estate to be read to allow recovery against the surviving spouse's estate if it is composed of property that was at any time held jointly with the recipient spouse, regardless of whether the Medicaid recipient had an interest in the property at the time of his or her death, an interest that is known and referred to under North Dakota law as an "equitable interest."<sup>16</sup>

**Liens:**

If the Department of Human Services determines that the patient is not expected to be discharged from the medical institution and return home, the state is considered to have a claim.<sup>17</sup> Presumably, the state is then allowed to levy a lien to secure its claim, since the statute uses the lifetime-discharge language usually associated with the precedent requirements for a TEFRA lien. Rather than expressly stating such,

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<sup>8</sup> NDCC, §50-24.1-07(2).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Estate of Thompson*, 1998, 586 N.W. 2d 847.

<sup>11</sup> *Estate of Bergman*, 2004, 688 N.W.2d 187.

<sup>12</sup> *Estate of Fisk*, 2010, 780 N.W.2d 697.

<sup>13</sup> NDCC, §50-24.1-07(5).

<sup>14</sup> *Estate of Wirtz*, 2000, 607 N.W.2d 882.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*; See also: *Estate of Bergman*, 688 N.W.2d 187 (N.D.2004) and *Redfield v. Bitterman*, 620 N.W.2d 570 (N.D. 2000).

<sup>17</sup> NDCC, §50-24.1-07(1).



the statute lumps all of the claim triggers together and states that any claims arising from such triggers “must be allowed as a preferred claim against the decedent’s estate.”<sup>18</sup>

**Partnership Program:** The North Dakota partnership program provides asset disregard at the time of eligibility and recovery disregard in both the patient’s estate and the patient’s spouse’s estate.<sup>19</sup> The amount of assets protected from recovery is equal to the amount that the state demonstrates was paid by a partnership policy for long-term care provided to the patient.<sup>20</sup>

**Undue Hardship:** North Dakota has no formal regulations concerning undue hardship and only follows the federal guidelines.

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<sup>18</sup> Ibid.

<sup>19</sup> NDCC, §50-24.1-07(6).

<sup>20</sup> Ibid.

## **WHAT IS MEDICAID ESTATE RECOVERY?**

State and federal law requires the Department of Human Services to make claims against the estates of some Medicaid recipients. A claim will be made against the estate of: (1) any recipient who was age 55 or older when the Medicaid benefits were provided; (2) any recipient who has been permanently institutionalized and received services, regardless of age; or (3) against the estate of a spouse of any Medicaid recipient who was age 55 or older or permanently institutionalized when the Medicaid benefits were provided. The claim is for the amount of Medicaid benefits issued to a person age 55 or older or if permanently institutionalized. State law controls the distribution of a decedent's estate. It limits the kinds of claims that can be paid before any Medicaid claim. Funeral expenses are limited. A claim is not made if the only Medicaid benefit provided was help with "Medicare cost sharing" provided on or after January 1, 2010. Assets under BIA jurisdiction are not subject to recovery. Assets under tribal jurisdiction are subject to recovery only if permitted by tribal law. Estate recovery may take place in a court case, or may be done more informally by collecting funds and property that belonged to the person who has died.

## **WHAT IF THERE IS A SURVIVING SPOUSE OR CHILDREN?**

No claim for Medicaid benefits correctly issued must be paid during the lifetime of a Medicaid recipient's surviving spouse or while the recipient's surviving child is under age 21 or blind or disabled.

## **WHAT IF THE DECEDENT LEAVES A WILL?**

A decedent's estate must first pay the decedent's debts. A will does not change that. Unless an estate has sufficient cash to pay all claims, estate property is sold to pay the claims. Family members can purchase estate property at fair market value.

## **CAN FUNERAL EXPENSES BE PAID FROM AN ESTATE?**

An applicant for Medicaid benefits may designate up to \$9,000, which would include \$3,000 of their Medicaid benefits asset limit and a \$6,000 pre-need funeral service set-aside, along with any earnings on the designated funds to be used for funeral expenses. If there are no funds designated for funeral expenses, the estate can spend no more than \$3,000

to meet the expenses. Any funds designated for funeral expenses must be reported to the county social service office before the recipient's death.

Family and friends may use their own money to help pay for the funeral expenses. Additional amounts may not be paid from assets in the decedent's estate before Medicaid claims are paid in full.

## **WHAT OTHER CLAIMS CAN BE PAID BEFORE THE MEDICAID CLAIM IS PAID?**

The decedent's estate can pay funeral expenses, expenses of the sickness or condition that caused the decedent's death, the necessary and reasonable costs of administration, certain other assistance claims, and claims on behalf of the state hospital. The Medicaid claims must then be paid in full before other creditors or claims can be paid.

## **WHAT IF AN ACCOUNT IS PAYABLE TO SOMEONE ELSE AT THE DECEDENT'S DEATH?**

Unless all estate claims are paid in full, money a decedent left in a joint account, an "i268

for” (ITF) account, or any other payable on death (POD) account must be made available to pay claims and costs of probate. If the money was properly designated as a deposit for funeral expenses, the money can be used for that purpose.

## **HOW IS THE MEDICAID CLAIM MADE?**

If a decedent leaves only cash and limited personal property, the county social service board or the Department of Human Services will usually collect the amount that must be paid for Medicaid claims using an Affidavit for Collection of Personal Property. Sometimes family members will be asked to help sell personal property that has value so claims can be paid. If there is real property that is worth the cost of probate, or if there is some other reason a probate is necessary, the person named in a will or some other family member can be appointed personal representative and properly distribute the decedent’s estate. Attorney fee and other reasonable costs of administration can be paid from the estate. The county social service office will usually initiate probate only if there is no family member willing or able to do so.

## **WHAT SHOULD I DO IF I NEED HELP REVIEWING THIS INFORMATION**

This brochure provides only general information about estates and Medicaid claims. If you have questions about probate or wills, or if you are the personal representative for an estate, please ask your private attorney. If you need assistance in reviewing this brochure, contact your county social service office.

# **MEDICAID ESTATE RECOVERY**



N.D. Department of Human Services  
State Capitol - Judicial Wing  
600 East Boulevard Avenue  
Bismarck, ND 58505





# Ohio (OH)

**Governing Law:**

Ohio's estate-recovery program is collectively comprised of R.C. §5111.11 to §5111.20 of the Public Welfare Code, R.C. §2113.041 and R.C. §2117.061 of the Probate Code, and R.C. §5302.221 of the Real Property Code. Medicaid Estate Recovery is found in the Ohio Administrative Code at 5160:1-2-10.

**Estate Scope:**

Estates subject to recovery in Ohio are comprised of all real and personal property and other assets to be administered under Ohio's probate code and any other real and personal property and other assets in which the patient had any legal title to or interest in at the time of death – to the extent of that interest – including assets conveyed to a survivor, heir, or assign of the patient through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.<sup>1</sup>

For non-probate estates subject to recovery, the state may present its claim directly to a financial institution via an affidavit that requests the financial institution to turn over recoverable assets.<sup>2</sup> For non-probate real property which transfers to a beneficiary by transfer-on-death designation, the beneficiary's interest must be reported to the state by statute in order for the state to stake its claim.<sup>3</sup> For probate estates of the patient or the patient's spouse, the administrator or executor is required to file a reporting form with the state thirty (30) days after the granting of letters testamentary.<sup>4</sup> The estate administrator is required to fill out and return to the state a reporting form listing the decedent's assets, or in the case of a surviving spouse's estate, the assets in the surviving spouse's estate that were also part of the deceased patient's estate.<sup>5</sup> The state has either ninety (90) days after the state receives the reporting form or one year after the decedent's death, whichever is later, to make a valid claim upon the decedent's estate for recovery.<sup>6</sup>

Within thirty (30) days after notice of the estate recovery claim is mailed by the Attorney General's office, a person with an interest in assets of the estate (or a representative of any such person) can present a claim showing evidence that certain assets of the estate are exempt assets under one of the following categories:<sup>7</sup>

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<sup>1</sup> R.C. §5111.11; OAC 5160:1-2-10(B)(1).

<sup>2</sup> R.C. §2113.041.

<sup>3</sup> R.C. §5302.221.

<sup>4</sup> R.C. §2117.061(B).

<sup>5</sup> R.C. §2117.061(D).

<sup>6</sup> R.C. §2117.061(E).

<sup>7</sup> OAC 5160:1-2-10(J).

- Government reparation payments to special populations are exempt from Medicaid estate recovery.<sup>8</sup>
- Certain American Indian and Alaska native income and resources, including:<sup>9</sup>
  - American Indian and Alaska native income and resources which are exempt from Medicaid estate recovery by other laws and regulations;<sup>10</sup>
  - Ownership interest (when ownership would pass from an Indian to one or more relatives; to a tribe or tribal organization; and/or to one or more Indians) in trust or non-trust property, including real property and improvements;<sup>11</sup>
    - ❖ Located on a reservation (any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska native regions established by Alaska native claims settlement act and Indian allotments) or near a reservation as designated and approved by the bureau of Indian affairs of the U.S. department of the interior; or
    - ❖ For any other federally-recognized tribe, land located within the most recent boundaries of a prior federal reservation; or
  - Income left as a remainder in an estate derived from property protected by this rule, that was either collected by an Indian, or by a tribe or a tribal organization and distributed to an Indian, as long as the income clearly comes from protected sources;<sup>12</sup>
  - Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally-protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian derived

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<sup>8</sup> OAC 5160:1-2-10(J)(1).

<sup>9</sup> OAC 5160:1-2-10(J)(2).

<sup>10</sup> OAC 5160:1-2-10(J)(2)(a).

<sup>11</sup> OAC 5160:1-2-10(J)(2)(b).

<sup>12</sup> OAC 5160:1-2-10(J)(2)(c).



from these sources the income or ownership interest clearly comes from protected sources; and<sup>13</sup>

- Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.<sup>14</sup>

**Spousal Recovery:**

No recovery can be made from the deceased patient's estate while any of the following are alive: the patient's spouse; or the patient's child who is under 21, blind or disabled per SSI rules.<sup>15</sup> As the probate procedure delineated above more than hints to, the cost of Medicaid services provided to a deceased recipient can be recovered from the property that passes through the estate of the recipient's surviving spouse.<sup>16</sup> Recovery is only limited to the extent of assets that flowed into the surviving spouse's estate from the Medicaid recipient.<sup>17</sup>

**Liens:**

Ohio authorizes the use of TEFRA liens to secure recovery.<sup>18</sup> To institute a lifetime lien against the patient's property, the state must determine that the patient cannot be expected to be discharged from the institution and return home.<sup>19</sup> A lien cannot be placed on the property if the following persons are living in the property: the patient's spouse; the patient's child who is under 21, blind or disabled per SSI rules; or the patient's sibling with an equity interest in the home and who also resided in the home for a full year immediately prior to the patient's institutional admission.<sup>20</sup> No recovery can be made from the sale of property while a spouse or child who is under 21, blind or disabled are alive.<sup>21</sup> Additionally, no recovery can be made from the patient's home subject to lien if either a sibling who resided in the home for a year before the patient's admission and continues to live in the home since or a child who delayed admission and resided in the home for two years before admission and continues to live in the home since are lawfully residing in the home.<sup>22</sup> Ohio's estate recovery statute creates a rebuttable presumption of permanent institutionalization if the

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<sup>13</sup> OAC 5160:1-2-10(J)(2)(d).

<sup>14</sup> OAC 5160:1-2-10(J)(2)(e).

<sup>15</sup> R.C. §5111.11(C).

<sup>16</sup> *Ohio Dept. of Job & Family Serv. v. Tultz*, (Ohio App. 9 Dist., 03-31-2003) 152 Ohio App.3d 405, 787 N.E.2d 1262, 2003-Ohio-1597.

<sup>17</sup> R.C. §2117.061(D).

<sup>18</sup> R.C. §5111.111.

<sup>19</sup> R.C. §5111.11(AX4(c)).

<sup>20</sup> R.C. §5111.111(C).

<sup>21</sup> R.C. §5111.11(C)(1).

<sup>22</sup> R.C. §5111.11(C)(2).

patient has been in an institution for at least six months or declares no intention to return home.<sup>23</sup>

**Partnership Program:** Ohio established its partnership program under R.C. §5111.18. The estate-recovery program calls for the reduction of recovery by the amount of benefits received by the patient pursuant to the partnership policy.<sup>24</sup>

**Undue Hardship:** Ohio provides for the waiver of recovery for undue hardship.<sup>25</sup> Waiver may not be absolute. Ohio can limit its waiver to the period of time where undue hardship exists.<sup>26</sup> The director of the Ohio Department of Job and Family Services, or the director's designee, are authorized to grant an undue hardship waiver on a case-by-case basis when there are compelling circumstances.<sup>27</sup> Examples of undue hardship are found in the state's administrative code include the following:

- The estate subject to recovery is the sole income-producing asset of the survivor, such as a family farm or other family business, which: produces a limited amount of income, or is the sole asset of the survivor.<sup>28</sup>
- Without receipt of the estate proceeds, the survivor would become eligible for public assistance.<sup>29</sup>
- Recovery against the estate would deprive the survivor of necessary food, shelter or clothing. Deprivation does not include situations in which the survivor is merely inconvenienced but would not be at risk of serious harm.<sup>30</sup>
- The survivor provides clear and convincing evidence of substantial personal financial contributions to the deceased individual, creating an equity interest in the property that the state is attempting to recovery against.<sup>31</sup>
- The survivor is age sixty-five or older and financially dependent upon receipt of the estate proceeds.<sup>32</sup>

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<sup>23</sup> R.C. §5111.11(F).

<sup>24</sup> R.C. §5111.11(D).

<sup>25</sup> R.C. §5111.11(E).

<sup>26</sup> Ibid.

<sup>27</sup> OAC 5160:1-2-10(H).

<sup>28</sup> OAC 5160:1-2-10(H)(1)(a).

<sup>29</sup> OAC 5160:1-2-10(H)(1)(b).

<sup>30</sup> OAC 5160:1-2-10(H)(1)(c).

<sup>31</sup> OAC 5160:1-2-10(H)(1)(d).

<sup>32</sup> OAC 5160:1-2-10(H)(1)(e).

- The estate proceeds are preserved for the benefit of a survivor who: Is totally and permanently disabled and is financially dependent upon receipt of the estate proceeds.<sup>33</sup>

The administrative code also provides certain circumstances that do not create *per se* undue hardship without additional evidence: When recovery will prevent heirs from receiving an anticipated inheritance or when recovery results in the loss of a pre-existing standard of living, or prevents the establishment of a source of maintenance that did not exist prior to the individual's death.<sup>34</sup>

An undue hardship waiver will not be granted if the individual created the hardship by using estate planning methods under which the individual divested, transferred, or otherwise encumbered assets in whole or in part to avoid estate recovery or if an undue hardship waiver will result in the payment of claims to other creditors with lower priority standing under Ohio's probate law.<sup>35</sup>

Within thirty (30) calendar days after notice of the estate recovery claim is mailed by the Attorney General's office, an undue hardship waiver may be requested by an heir or potential heir who would suffer an undue hardship if a waiver is not granted, a person with an interest in assets of the estate, or a representative of such persons. An undue hardship waiver cannot be requested by a creditor of the estate, unless the creditor is also a potential heir of the estate.<sup>36</sup>

Within sixty (60) calendar days of receipt of the request for an undue hardship waiver, the state must notify the applicant whether the waiver request has been approved (in full, in part, or for a limited time) or denied. Failure to meet this sixty (60) day deadline does not result in an automatic decision on the request.<sup>37</sup>

If the waiver request was not approved in full, or if the approval was time-limited, the applicant can, within thirty calendar days, request that the department's director, or director's designee, review the undue hardship waiver decision.<sup>38</sup> The review is restricted to only those portions of the undue hardship waiver request that were denied or time-limited.<sup>39</sup> The review must occur within sixty calendar days; however, failure to meet this sixty day deadline does not result in an automatic decision on the request.<sup>40</sup>

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<sup>33</sup> OAC 5160:1-2-10(H)(1)(f).

<sup>34</sup> OAC 5160:1-2-10(H)(2).

<sup>35</sup> OAC 5160:1-2-10(H)(3).

<sup>36</sup> OAC 5160:1-2-10(I)(1).

<sup>37</sup> OAC 5160:1-2-10(I)(2).

<sup>38</sup> OAC 5160:1-2-10(I)(3).

<sup>39</sup> OAC 5160:1-2-10(I)(3)(a).

<sup>40</sup> OAC 5160:1-2-10(I)(3)(b).

Ohio Department of Medicaid  
**OHIO MEDICAID ESTATE RECOVERY**

**What is estate recovery?**

Estate recovery seeks to obtain repayment for the cost of Medicaid benefits once a Medicaid recipient is deceased. This happens after the death of a Medicaid recipient who was either permanently institutionalized or age 55 and older.

**What is an estate?**

An estate is all of the real and personal property owned by a Medicaid recipient at the time of death, whether or not it passed through probate court.

**What Medicaid benefits are subject to estate recovery?**

Medicaid payments for services received since January 1995 are subject to estate recovery. Medicare premium assistance payments made after January 1, 2010, are subject to recovery only when the Medicaid recipient was permanently institutionalized.

**How does estate recovery work?**

The estate's executor is responsible for notifying the Ohio Attorney General's Office (AGO) of a Medicaid recipient's death, if the consumer was permanently institutionalized or age 55 or older. Once the AGO has been notified, the AGO will present a claim to the estate.

**When does estate recovery take place?**

Recovery from the estate will only be made:

- ✓ After the death of the Medicaid recipient's surviving spouse.
- ✓ When the deceased Medicaid recipient has no surviving child younger than age 21.
- ✓ When the deceased Medicaid recipient has no surviving child of any age who is considered blind or disabled under Medicaid regulations.

**Does a will protect assets from estate recovery?**

No. Ohio's Medicaid program and other creditors are paid before any assets are distributed to heirs or other beneficiaries.

**Are there exceptions to estate recovery?**

If there is an undue hardship to a survivor, the right to immediate recovery may be delayed or waived. Undue hardship is determined on a case-by-case basis.

**Is a person's house subject to estate recovery?**

Yes. A Medicaid recipient's house may be subject to estate recovery. If the recipient was permanently institutionalized, any claim from the sale of a house may be delayed while the recipient's sibling or child resides in the home, if specific conditions are met.

**Will the Attorney General's Office contact the family of the deceased?**

After a Medicaid recipient dies, the AGO will send a notice of claim to the estate's executor requesting repayment for the cost of Medicaid benefits. It is the estate executor's responsibility to notify any family members or other heirs who might be affected by the estate recovery. If the estate executor has not been identified to the AGO, the AGO may need to contact the Medicaid recipient's family members.

**How can the Attorney General's Office be reached?**

The Medicaid Estate Recovery Unit of the AGO can be contacted at:

Medicaid Estate Recovery Unit  
150 E. Gay Street, 21st Floor  
Columbus, Ohio 43215-3130

Information can be obtained online at [http://www.ag.state.oh.us/business/estate\\_recovery.asp](http://www.ag.state.oh.us/business/estate_recovery.asp), or by calling the Ohio Medicaid Consumer Hotline at 1-800-324-8680, or by calling your local County Department of Job & Family Services.

*Instructions to CDJFS: In CLRC, record the date that this form was given or mailed to the consumer.*

# NOTICE TO MEDICAID ESTATE RECOVERY OF PENDING TRANSFER OF PROPERTY BY TRANSFER ON DEATH DEED

*This notice is to be completed by the decedent's beneficiary, or authorized representative of the beneficiary, and provided to the County Recorder along with the affidavit and certified copy of the death certificate required under the Ohio Revised Code for transfer of the deceased owner's interest. **Prior to recording the transfer, the County Recorder shall attach a copy of the deed and mail it with a copy of the signed notice to :***

**Administrator, Medicaid Estate Recovery Program  
c/o: Attorney General, Collections Enforcement  
150 East Gay Street, 21<sup>st</sup> Floor  
Columbus, Ohio 43215**

**The County Recorder shall also ensure that this notice is NOT recorded or publicly shared.** The Medicaid recipient information and personal data provided herein is confidential under federal and state law, including 5 USC 552a, 42 CFR 431.300 through 42 CFR 431.307, 45 CFR Parts 160 and 164 and ORC Sections 5101.27 and 1347.12. Therefore, county personnel must take precautions to keep the information secure and to keep access to the minimum necessary to accomplish Medicaid estate recovery.

*The Administrator of the Medicaid Estate Recovery Program will respond to a properly completed notice within thirty (30) days of receipt of the notice to either release or encumber the property under the Medicaid Estate Recovery Program. Incomplete or incorrect notices will delay this process.*

## SECTION 1 - DECEASED PROPERTY OWNER NAME AND PROPERTY ADDRESS

Name of Decedent		
Property Address of Decedent		
City	State (2-letter abbreviation)	Zip Code

## SECTION 2 - INFORMATION REGARDING THE DECEASED PROPERTY OWNER

<input type="checkbox"/> The deceased property owner was not a Medicaid recipient.	
<input type="checkbox"/> The deceased property owner may have been a Medicaid recipient	Social Security number*
<input type="checkbox"/> The deceased property owner was a Medicaid recipient	12-digit Medicaid billing number
If a Medicaid recipient, was the deceased property owner aged 55 or older at the time they received Medicaid benefits?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

## SECTION 3 - INFORMATION REGARDING THE DECEASED PROPERTY OWNER'S PRE-DECEASED SPOUSE

<input type="checkbox"/> The deceased owner's pre-deceased spouse was not a Medicaid recipient.	
<input type="checkbox"/> The deceased owner's pre-deceased spouse may have been a Medicaid recipient	Social Security number*
<input type="checkbox"/> The deceased owner's pre-deceased spouse was a Medicaid recipient	12-digit Medicaid billing number
If a Medicaid recipient, was the deceased property owner's pre-deceased spouse aged 55 or older at the time they received Medicaid benefits?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

**SECTION 4 - INFORMATION REGARDING BENEFICIARY**

If the beneficiary is a son or daughter of the Decedent: (1) Is the beneficiary a child under the age of twenty-one (21) ☐ Yes ☐ No ;  
 (2) Is the beneficiary age twenty-one (21) and over, AND "blind" or "disabled" under the definition contained in 42 USC 1382c? ☐ Yes ☐ No

**SECTION 5 - CERTIFICATION OF BENEFICIARY OR BENEFICIARY'S REPRESENTATIVE**

By my status selection and signature below, I certify that I am the beneficiary, or the beneficiary's authorized representative, of the property listed in Section 1 of this notice, and as described in the attached transfer-on-death deed. I further certify that the information provided in this notice is complete and accurate to the best of the beneficiary's, and beneficiary's authorized representative's knowledge. (NOTE: For beneficiaries who have authorized representatives, only the name of the beneficiary is required in the left column, as all of the authorized representative's details will be provided in the right hand column).

	<u>Information about Beneficiary</u>	<u>Information about Beneficiary's Authorized Representative</u>
Name		
Address		
City, State Zip		
Home/Work Phone Cell/Fax (specify)		
Status Selection (check one) <input type="checkbox"/> <b>Beneficiary</b> <input type="checkbox"/> <b>Authorized Representative of the Beneficiary</b>		
Signature of Beneficiary OR Beneficiary's Authorized Representative		Date Signed

\* Social Security Numbers:

- Are only required to be provided when the decedent or the decedent's pre-deceased spouse is believed to have received Medicaid.
- Are required for purposes of identifying former recipients of Medicaid, and to determine if any estate recovery is warranted. The Ohio Department of Medicaid is authorized to collect the social security numbers of Medicaid applicants and recipients, and to pursue recovery of any sums owed to Ohio Medicaid, pursuant to 42 CFR 431.302, 42 CFR 431.305; Ohio Revised Code (ORC) Sections 5101.181, 5101.182 and 5111.01; and, Ohio Administrative Code (OAC) Rule 5101:1-38-02.1.
- Will be treated as confidential, and will only be used for purposes directly connected with the administration of the Medicaid program, which includes overpayment recovery and collection.
- Must be provided for any decedent or decedent's spouse believed to have received Medicaid; and, if not provided, could result in incorrect matches, as well as the potential for setting aside of the real estate transfer, upon subsequent discovery of the Medicaid recipient's ownership interest in the estate.



A white outline map of the state of Oklahoma is centered on the page. The word "Oklahoma" is written in a large, white, serif font across the middle of the map.

# Oklahoma

# Oklahoma (OK)

<b>Governing Law:</b>	Oklahoma's estate-recovery program is covered by statute in OK ST T. 63 §5051.3 and in the OK Admin Code §317:35-9-15.
<b>Estate Scope:</b>	Oklahoma limits its recovery to the homestead of the recipient. <sup>1</sup> The claim against the home is limited to the extent of the patient's ownership at the time the patient began receiving assistance. <sup>2</sup>
<b>Spousal Recovery:</b>	The home cannot be recovered against until after the death of the surviving spouse and only when any of the following are no longer living in the home: a child of the patient by blood or marriage under 20; an adult related to the patient by blood or marriage who is incapacitated; or a sibling of the patient who lived in the home for one year immediately prior to the patient's institutionalization, who has also resided there continuously since such admission. <sup>3</sup>
<b>Liens:</b>	Oklahoma's primary mechanism for recovery is a lien on the patient's home. <sup>4</sup> A lien can only be filed and enforced once the patient is determined not to be expected to be discharged and return home. <sup>5</sup> A one-year period of compensated care in a nursing home constitutes a determination that the patient is not expected to be discharged and return home. <sup>6</sup> In a departure from most states, Oklahoma limits its claim against the homestead for all payments of assistance after the expiration of one year from the date the patient became eligible for Medicaid assistance in the nursing home. <sup>7</sup> The state must provide the patient notice and opportunity for a hearing. <sup>8</sup> No lien is to be filed on a patient's home while it is the lawful residence of: the patient's surviving spouse; patient's child by blood or marriage under 20; the patient's adult child by blood or marriage who is incapacitated; or the patient's sibling who has an equity interest in the property and resided in the home for one year immediately preceding patient's admission to the nursing home has remained there since. <sup>9</sup> If the lien is foreclosed against, then \$6,000 (less the value of any prepaid burial or burial insurance policies already owned by the patient) is to be set aside in an irrevocable trust to be used for the patient's funeral expenses. <sup>10</sup>

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<sup>1</sup> OK ST T. 63 §5051.3(A).

<sup>2</sup> OK ST T. 63 §5051.3(F)(5).

<sup>3</sup> OK ST T. 63 §5051.3(F)(1).

<sup>4</sup> OK ST T. 63 §5051.3(A).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> OK ST T. 63 §5051.3(B)(2).

<sup>8</sup> OK ST T. 63 §5051.3(B)(3) and §5052.

<sup>9</sup> OK ST T. 63 §5051.3(D).

<sup>10</sup> OK ST T. 63 §5051.3(J).

**Partnership Program:** Oklahoma's partnership program is found in OK ST T. 63 §1-1955.1 to §1-1955.6. Upon exhaustion of benefits from a partnership policy, the total amount of benefits paid for covered services becomes the amount of assets disregarded from the eligibility determination and any subsequent recovery by the state.<sup>11</sup> Because the home is the only asset available for recovery in Oklahoma, the legal structure of the home's ownership and its equity value would dictate the amount of coverage that would be necessary with a partnership policy.

**Undue Hardship:** When enforcing a lien or a recovery from an estate [would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that the individual's health or life would be endangered or when recovery would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, when the individual or his/her family is merely inconvenienced or when their lifestyle is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual is entitled to receive a written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual is sent a written notice of the process under which an adverse determination can be appealed.<sup>12</sup>

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<sup>11</sup> OK ST T. 63 §1-1955.3(B) and (C).

<sup>12</sup> OK Admin Code §317:35-9-15(b)(3).





# Oregon (OR)

**Governing Law:**

Oregon's estate-recovery statute is found in the "Recovery from Estates" subchapter of the Human Services Code found in O.R.S. §416.350 to O.R.S. §416.351. Additionally, Oregon law creates an obligation for an estate at O.R.S. §416.310 and §416.320 proscribes the manner in which the state is to file a claim. Estate recovery is governed by the Estate Administration provisions contained in the Oregon Administrative Rules found at §461-135-0832 through §461-135-0844.

**Estate Scope:**

Under Oregon's statute, the term "estate" is defined as including all real and personal property and other assets in which the deceased patient had any legal title or interest in at the time of death including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement.<sup>1</sup> Transfers of real or personal property made by recipients of medical assistance are voidable and may be set aside.<sup>2</sup>

When the state has a claim against the estate of a deceased Native American Indian or Alaskan Native Village tribal member, certain exemptions from recovery apply.<sup>3</sup> The following income, resources and property are exempt from recovery for this special population:

- Income and resources that are specifically exempt by law from Medicaid estate recovery, such as Interests in and income derived from tribal land and other resources currently held in trust status; and judgment funds from the Indian Claims Commission and the United States Court of Federal Claims.<sup>4</sup>
- Ownership interest in trust or non-trust property, including real property and improvements: located on a reservation (any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act and Indian allotments); located near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or for any federally

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<sup>1</sup> O.R.S. §416.350(5).

<sup>2</sup> O.R.S. §416.350(2) and O.R.C. §411.620(2).

<sup>3</sup> OAR 461-135-0837(1).

<sup>4</sup> OAR 461-135-0837(1)(a).

recognized tribe, located within the most recent boundaries of a prior federal reservation.<sup>5</sup>

- Income left as a remainder in an estate, derived from property that would have been exempt.<sup>6</sup>
- An ownership interest left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights; and income derived from these sources that is collected by an Indian, a tribe, or a tribal organization and distributed to one or more Indians.<sup>7</sup>
- Ownership interest in and usage rights to items that have unique religious, spiritual, traditional or cultural significance. Rights that support subsistence or a traditional life style according to applicable tribal law or custom.<sup>8</sup>

**Spousal Recovery:**

Claims for recovery may be established against the patient's estate; but there shall be no recovery until after the death of the surviving spouse and only at such time when the patient has no child under 21, or who is blind or permanently and totally disabled.<sup>9</sup> Recovery is expressly authorized by statute "from any recipient of property or other assets held by the individual at the time of death including the estate of the surviving spouse."<sup>10</sup>

**Liens:**

Oregon makes no provision for the use of real property liens (TEFRA or otherwise) in recovery.

**Partnership Program:**

Oregon administers a Long-Term Care Insurance Partnership Program that offers partnership policies.<sup>11</sup> In determining the extent of the estate resources subject to the claim of the Department for correctly paid benefits, the Department must disregard resources in an amount equal to the of resources excluded in the most recent eligibility determination, based on payments received under a qualified partnership policy.<sup>12</sup> There is no disregard of resources if the Medicaid recipient, or the spouse of the Medicaid recipient, at any time transferred the value of the qualified partnership policy

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<sup>5</sup> OAR 461-135-0837(1)(b).

<sup>6</sup> OAR 461-135-0837(1)(c).

<sup>7</sup> OAR 461-135-0837(1)(d).

<sup>8</sup> OAR 461-135-0837(1)(e).

<sup>9</sup> O.R.S. §416.350(1).

<sup>10</sup> Ibid.

<sup>11</sup> OAR 836-052-0531.

<sup>12</sup> OAR 461-135-0835(4)(a).



excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.<sup>13</sup>

**Hardship Waiver:**

The Oregon Department of Human Services is authorized to waive recovery when it deems it prudent to do so.<sup>14</sup> A denial of a request for a hardship waiver can be the basis to request a fair hearing.<sup>15</sup> In determining whether an undue hardship exists, the Department considers the following: Whether enforcement of the claim would cause the waiver applicant to become eligible for assistance; and whether enforcement of the claim would cause the waiver applicant, who would otherwise be eligible for assistance, to become homeless.<sup>16</sup>

Waiver of an estate recovery claim may include, but is not limited to, the following: forgiveness of all or part of the claim, or any other relief the Department deems fit; or taking a mortgage or trust deed in lieu of enforcement of the claim.<sup>17</sup>

Oregon will not grant a waiver if the Department finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid estate recovery.<sup>18</sup> Additionally, it will not grant a waiver if the Department finds that the undue hardship will not be remedied by the grant of the waiver.<sup>19</sup>

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<sup>13</sup> OAR 461-135-0835(4)(b).

<sup>14</sup> O.R.S. §416.340.

<sup>15</sup> O.R.S. §411.095.

<sup>16</sup> OAR 461-135-0841(2).

<sup>17</sup> OAR 461-135-0841(3).

<sup>18</sup> OAR 461-135-0841(4).

<sup>19</sup> OAR 461-135-0841(5).



# Pennsylvania (PA)

**Governing Law:**

Pennsylvania's estate-recovery statute is 62 P.S. §1412. However, the bulk of Pennsylvania's estate recovery rules are contained in Pennsylvania's Administrative Code 55 Pa. Code §258.1 to §258.14. Estate recovery rules are also published in Chapter 495 of the Pennsylvania Department of Welfare Long-Term Care Handbook.

**Estate Scope:**

The definition of property which is liable for recovery by the Department of Public Welfare is outlined in at length in 55 Pa. Code §258.3. In general, all estate property is subject to a claim and estate property includes all real personal property of the deceased patient which is subject to administration by a decedent's personal representative whether actually administered or not.<sup>1</sup> To clarify, the code states that property held by a decedent and another at the time of death as joint tenants with rights of survivorship, or as tenants by the entireties, is not subject to a recovery claim.<sup>2</sup> Life insurance paid to a beneficiary other than the decedent's estate is excluded; but if the insurance proceeds are payable to the estate, they will be subject to a claim.<sup>3</sup> Assets placed in trust prior to a patient's death are excluded from recovery, provided that the trust's assets are not payable to the decedent's estate.<sup>4</sup> Assets in the decedent's estate directed to a testamentary trust are available for recovery because they are within the decedent's estate.<sup>5</sup> Pennsylvania also provides a considerably generous exemption for Native Americans and anyone having received reparation payments which have been paid to special populations.<sup>6</sup> The estate's personal representative has a duty to determine if the decedent received medical assistance from the commonwealth within the five years before the patient's death and, if so, give the Department of Public Welfare notice of the death by requesting a claim be presented.<sup>7</sup> The five-year timeframe is for notification purposes and does not limit the claim.<sup>8</sup> The address to be used to request a claim or for service of legal papers is: Third Party Liability Section, Department of Public Welfare, Estate Recovery Program, P. O. Box 8486, Harrisburg, PA 17105- 8486.<sup>9</sup>

A statement of the claim must be submitted to the personal representative within 45 days from the Department's receipt of the

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<sup>1</sup> 55 Pa. Code §258.3(a).

<sup>2</sup> 55 Pa. Code §258.3(b).

<sup>3</sup> 55 Pa. Code §258.3(c).

<sup>4</sup> 55 Pa. Code §258.3(d).

<sup>5</sup> Ibid.

<sup>6</sup> 55 Pa. Code §258.3(g).

<sup>7</sup> 55 Pa. Code §258.4(a).

<sup>8</sup> Ibid.

<sup>9</sup> 55 Pa. Code §258.14.

request.<sup>10</sup> The recovery claim is divided when the priority of claim payment is determined.<sup>11</sup> Any amount of the claim for the six months of care preceding death is treated as a third-class claim which is only preempted by the cost of estate administration and the family exemption.<sup>12</sup> The remainder of the claim is treated as a miscellaneous claim with the lowest priority of all enumerated classes of claims.<sup>13</sup> The personal representative of the estate is held personally liable for failure to properly pay the claim or for making a distribution when the claim is postponed without adequately securing the Department's claim.<sup>14</sup>

**Spousal Recovery:**

Pennsylvania postpones collection of its claim until the last of the following occurs: the death of the surviving spouse; the death of any child who is blind or permanently disabled, per SSI standards; the date any surviving child turns 21; or the death of, property transfer by, or vacating of the property by any sibling who has an equity interest in the property and who has also been living in the home for at least a year prior to the patient's death.<sup>15</sup> The personal representative must protect the commonwealth's claim during the period of postponement.<sup>16</sup> The claim is considered protected if: the personal representative makes a distribution of the real property subject to a lien or mortgage in favor of the Department; perfects a security interest in favor of the Department in any item of personal property distributed by the estate worth over \$10,000; or places any liquid assets in excess of \$50,000 in a trust for the use of the appropriate heir(s) with the remainder payable to the state upon the trust beneficiary's death.<sup>17</sup> The Department is not allowed to charge interest on the claim during the postponement period.<sup>18</sup> The claim is subject to collection at the end of the postponement period.<sup>19</sup>

**Liens:**

Pennsylvania does not employ lifetime TEFRA liens to secure the commonwealth's interests. As discussed in the previous paragraph, when a qualified heir of the decedent survives, the state postpones recovery.<sup>20</sup> A personal representative's duty is to distribute the net estate after current expenses to the appropriate heirs and in doing so is authorized to use a lien, encumbrance, or mortgage of real property to secure the commonwealth's ultimate claim.<sup>21</sup>

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<sup>10</sup> 62 P.S. §1412(b) and 55 Pa. Code §258.4(b).

<sup>11</sup> 55 Pa. Code §258.6(a).

<sup>12</sup> 55 Pa. Code §258.6(a) and 20 P.S. §3392(3).

<sup>13</sup> 55 Pa. Code §258.6(a) and 20 P.S. §3392(6).

<sup>14</sup> 55 Pa. Code §258.8.

<sup>15</sup> 55 Pa. Code §258.7(a).

<sup>16</sup> 55 Pa. Code §258.7(b).

<sup>17</sup> 55 Pa. Code §258.7(c).

<sup>18</sup> 55 Pa. Code §258.7(d).

<sup>19</sup> 55 Pa. Code §258.7(f).

<sup>20</sup> 55 Pa. Code §258.7(a).

<sup>21</sup> 55 Pa. Code §258.7(b).

**Partnership Program:** Pennsylvania's partnership program is found at 40 P.S. §991-1110a and §991.1111. The program provides asset disregard for both eligibility and recovery.<sup>22</sup>

**Hardship Waiver:** The Department of Public Welfare must waive its claim in cases of undue hardship.<sup>23</sup> Pennsylvania has one of the most generous undue hardship provisions in the country, which provides numerous presumptive situations which automatically classify as undue hardship. The following situations give rise to a mandatory finding of an undue hardship in Pennsylvania:

- With respect to the primary residence of the decedent, if the person requesting the waiver has continuously resided in the home for the two years immediately preceding the patient's receipt of nursing facility services, and the person has no other residence, and the person provided care or supported to the deceased patient for two years or lived with the deceased patient for two years during which time the patient received Medicaid-funded home and community-based services and also provided care to the patient for those two years or more;<sup>24</sup>
- The person requesting the waiver can get a waiver in an amount equal to any money spent by the person that was reasonable and necessary to maintain the patient's home while the patient was receiving home and community-based services or in a nursing facility, including moneys spent for real estate taxes, utility bills, home repairs and home maintenance such as lawn care and snow removal necessary to keep the property in habitable or sellable condition;<sup>25</sup>
- With respect to an income-producing asset, such as a family farm, family business, or rental property,<sup>26</sup> if a spouse, child, parent, sibling, or grandchild of the deceased patient uses the asset to generate the primary source of income for the household and there would be a gross family income of less than 250% of the federal poverty guideline without use of the asset;<sup>27</sup> or
- If the estate's gross value is \$2,400 or less, provided there is an heir.<sup>28</sup>

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<sup>22</sup> 40 P.S. §991.1110a(b).

<sup>23</sup> 55 Pa. Code §258.10(a).

<sup>24</sup> 55 Pa. Code §258.10(b).

<sup>25</sup> 55 Pa. Code §258.10(e).

<sup>26</sup> 55 Pa. Code §258.10(d).

<sup>27</sup> 55 Pa. Code §258.10(c).

<sup>28</sup> 55 Pa. Code §258.10(f).

To request a hardship, a written request it may be sent to the Estate Recovery Program at the address listed above.<sup>29</sup> If the Department denies the request, the affected person has 30 days from being notified in order to request a hearing.<sup>30</sup> An appeal must be mailed to Bureau of Hearings and Appeals, Department of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105.<sup>31</sup>

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<sup>29</sup> 55 Pa. Code §258.10(i)

<sup>30</sup> 55 Pa. Code §258.13(a).

<sup>31</sup> 55 Pa. Code §258.13(b).





# Medical Assistance ESTATE RECOVERY PROGRAM

Questions and Answers

## 1. What is the Medical Assistance Estate Recovery Program?

Established under federal law, this program requires the Department of Public Welfare to recover the Medical Assistance costs from the estates of individuals who have died. Repayment is required for the amount the state paid, even if the individuals paid part of the bill themselves or through insurance. If an individual 55 years of age or older received certain Medical Assistance benefits and dies, the department will reimburse the Medical Assistance program by recovering these costs from the assets of the person's estate. An estate exists when a person dies and his or her assets are distributed by will or state law. All monies collected by the Medical Assistance Estate Recovery Program are returned to the Department of Public Welfare's long-term care programs to assist others in need of long-term care services.

## 2. Who is affected?

Only individuals age 55 years and older who were receiving Medical Assistance benefits for the following services:

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

## 3. When does Medical Assistance Estate Recovery occur?

Medical Assistance Estate Recovery happens only after the death of a person receiving nursing facility care, home and community based services, or related hospital and prescription drug services.

#### 4. How does Medical Assistance Estate Recovery work when a recipient dies?

When a recipient dies, the personal representative of the deceased recipient's estate shall give notice to the department requesting a statement of claim, which is an accounting of all Medical Assistance payments made for the decedent for nursing home services, home and community based services and related hospital and prescription drug services.

The notice shall be sent by certified mail return receipt or fax, with the deceased's name, deceased's last known address, deceased's Social Security number, deceased's date of birth, deceased's date of death, and written documentation of the gross value of the deceased's estate to:

**Division of Third Party Liability  
Department of Public Welfare  
Estate Recovery Program  
P.O. Box 8486  
Harrisburg, PA 17105-8486  
Fax # (717) 772-6553**

**Please be sure to include the personal representative's name, address, and telephone number in the letter so the Medical Assistance Estate Recovery staff can respond.**

Within 45 days of receipt of an accurate and complete notice, the Department of Public Welfare must send to the personal representative of the estate, a statement of claim listing the amount of Medical Assistance paid. If the personal representative of the estate has questions about the amount owed or disagrees with it, he or she should contact the Medical Assistance Estate Recovery Program by telephone or letter. The Medical Assistance Estate Recovery Program will address any issues regarding the claim with the personal representative of the estate.

#### 5. A. What property is subject to estate recovery?

Any property or assets that are part of the deceased's estate are subject to Medical Assistance Estate Recovery.

#### B. What is an estate?

An estate includes property or assets owned entirely or in part by the deceased. Medical Assistance Estate Recovery only recovers estate property or assets.

## FREQUENTLY ASKED QUESTIONS

### **6. What happens if the spouse or a dependent child is still living after the Medical Assistance recipient dies?**

If the spouse is still living and the property passes to the surviving spouse outside of the estate, there is no recovery by the Department of Public Welfare (refer to #13). If there is a dependent child who is under age 21, recovery will be postponed until the child reaches age 21. For an adult child who is blind or totally and permanently disabled, recovery will be postponed until the adult child dies.

### **7. We never really “got married,” but we lived together as husband and wife. Do the Medical Assistance Estate Recovery regulations still apply to us?**

Yes. If you have any questions, talk with a lawyer.

### **8. Once the estate is settled, in what order are the proceeds distributed?**

Proceeds are to be distributed in the following order when there is not enough money to pay all debts:

1. Costs of administration;
2. Family exemption;
3. Cost of funeral and burial and the cost of any of the following furnished within six months of death:
  - medicines,
  - nursing services,
  - medical services,
  - hospital services,
  - services performed by any employees of the deceased;
4. Cost of a grave marker;
5. Rent for any residence occupied by the deceased for six months prior to his death;

- 5.1. Claims by the commonwealth and the political subdivisions of the commonwealth;
6. All other claims, including claims of the commonwealth.

Medical Assistance Estate Recovery claims fall within numbers 3, 5.1 and 6.

If you have questions concerning distribution of the estate proceeds, talk with a lawyer, the local bar association, or your local legal services office.

## QUESTIONS CONCERNING PROPERTY

### **9. What happens if someone has been paying taxes and upkeep expenses for maintaining the deceased's vacant home?**

An amount equal to the necessary and reasonable expenses for maintaining the vacant home will be deducted from the department's estate recovery amount. Necessary and reasonable expenses include, real estate taxes, utility bills, home repairs and home maintenance.

### **10. Is it true that I have to turn my home over to the state when I move to the nursing facility or begin receiving home and community based services?**

No. You do not have to sign over the deed to your home to receive nursing facility care or home and community based services through the Medical Assistance program. If the state is going to help pay for your nursing care through the Medical Assistance program, you may have to give some or most of your income toward the cost of your nursing facility care each month.

### **11. Will the state try to take my home while I am in the nursing facility or receiving home and community based services?**

No. You may own a home while you are living in the nursing facility or receiving home and community based services.

**12. I do not own anything but my home, and I want to leave that to my children. Will the state still take it?**

The department's claim for Medical Assistance Estate Recovery takes precedence over any bequest to a beneficiary of the estate. This may include your house.

**13. What if both my name and my spouse's name are on the deed?**

If the deed says "tenancy by the entireties" or "joint tenancy with right of survivorship," your spouse will get the home free and clear of Medical Assistance claims when you die. If the deed is in both of your names but does not have these words written on it, talk to a lawyer.

**14. What if only my spouse's name is on the deed?**

If the deed is only in your spouse's name, you do not legally own the home. If your spouse received nursing facility care or home and community based services, the Medical Assistance Estate Recovery Program will postpone recovery of its claim until you either vacate or sell the property or die. If you later gain ownership of the home and then receive nursing facility care or home and community based services, the state will recover its claim from the fair market value of the home after you die.

## **TRANSFERRING PROPERTY**

**15. Can I give my home away before I enter the nursing facility or receive home and community based services?**

The law limits to whom you can give your home without the transfer affecting your eligibility for payment from Medical Assistance toward the cost of nursing facility care or home and community based services. You can transfer ownership of the property to your husband or wife, your child who is under 21 years old, or your adult child who is blind or totally and permanently disabled without affecting your eligibility for Medical Assistance.



If you have questions about how transferring property may affect your eligibility for Medical Assistance payment for nursing facility care or home and community based services, contact your local county assistance office or the Welfare Helpline at 1-800-692-7462. You may also want to talk with a lawyer.

## **16. How do I transfer the deed to the property?**

It is very important that you talk with a lawyer before you try to transfer the deed.

## **17. I am not sure who owns the home because it was passed down by family members. Can I still give the home to my children who have been taking care of me?**

Your children will not legally own the home unless the deed to the home has been legally transferred to them. Talk with a lawyer about how to do this. If they do not legally own the home when you die, the state will recover its claim against the fair market value of the home or any other property through the Medical Assistance Estate Recovery Program.

## **18. Can I give my home to anyone else so the state will not take it?**

No. The law does not allow you to avoid Medical Assistance Estate Recovery by transferring the deed to a relative (except as explained in #15) or anyone else, unless they pay fair market value for it. Talk with a lawyer if you have questions about this.

## MEDICAL ASSISTANCE ESTATE RECOVERY WAIVER INFORMATION

### 19. What are the criteria for a hardship waiver?

If the gross value of the estate is \$2,400 or less, and the estate is administered, and there is an heir to the estate, the Department of Public Welfare will permanently waive its claim for Medical Assistance Estate Recovery.

A hardship waiver, with respect to a primary residence of the deceased, will be granted if all of the following criteria are met:

- The person has continuously resided in the primary residence of the decedent for at least two years immediately preceding the decedent's receipt of nursing facility services, or, for at least two years during the period of time which Medical Assistance-funded home and community based services were received; and
- The person has no other alternative permanent residence; and
- The person has provided care or support to the decedent for at least two years during the period of time that Medical Assistance-funded home and community based services were received by the decedent, or for at least two years prior to the decedent's receipt of nursing facility services during which time the decedent needed care or support to remain at home.

A hardship waiver will be granted with respect to an income-producing asset (for example, a working farm) for a spouse, child, parent, sibling, or grand-child of the deceased if they meet both of the following criteria:

- The asset is used to generate the primary source of income for the household; and
- There would be a gross family income of less than 250 percent of the federal poverty guideline\* without use of the asset.

\*These amounts change every year. For example, in 2013, a single person could earn up to \$2,394 per month, while a couple could earn up to \$3,232 per month.

## 20. How do I ask for a hardship waiver?

After the decedent dies, write a letter explaining the situation and the compelling reasons why the Department of Public Welfare should not recover against the fair market value of the home or property. Give as many details as possible about how Medical Assistance Estate Recovery would cause a hardship. Make a copy of the letter for yourself and mail the original letter certified mail return receipt, to:

**ESTATE RECOVERY PROGRAM  
P. O. Box 8486  
Harrisburg, PA 17105-8486**

A hardship waiver form is available to assist you in requesting a waiver. The form can be obtained by contacting the Estate Recovery Program at the above address or by calling them at 1-800-528-3708. Information is also available at the Estate Recovery Program Web site at [http://www.dpw.state.pa.us/foradults/estaterecoveryprogram/S\\_001025](http://www.dpw.state.pa.us/foradults/estaterecoveryprogram/S_001025).

## 21. What if I want to appeal any departmental decision?

Appeals should be mailed to:

**Division of Third Party Liability  
Department of Public Welfare  
Estate Recovery Program  
P.O. Box 8486  
Harrisburg, PA 17105-8486**



## WHAT IF I HAVE MORE QUESTIONS?

Questions concerning Medical Assistance Estate Recovery should be directed to:

**ESTATE RECOVERY PROGRAM**

**P. O. BOX 8486**

**Harrisburg, PA 17105-8486**

Or

**Estate Recovery Program Hotline**

**1-800-528-3708**

Or

**Welfare Helpline**

**1-800-692-7462**

Or

**Long Term Care Helpline**

**1-866-286-3636**

**Estate Recovery Program Web site: [http://www.dpw.state.pa.us/foradults/estaterecoveryprogram/S\\_001025](http://www.dpw.state.pa.us/foradults/estaterecoveryprogram/S_001025)**

If you have legal questions or need additional help, talk with a lawyer, the local bar association or your local legal services office.

If you have questions about eligibility for Medical Assistance services, contact your local county assistance office or the Welfare Helpline.

## **Glossary of Terms**

**Deed:** a document that shows ownership of property

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

**Estate Recovery Waiver:** the department's consent to abandon or relinquish its claim and recovery rights to an estate

**Fair Market Value:** the price which property would sell for on the open market in the geographic area in which it is located

**Heir:** one who inherits or is entitled to inherit property

**Home:** for the purposes of this brochure the word home includes the physical structure and any land described by the deed

**Home and Community Based Services:** services under a Medical Assistance Waiver established by the state, with the approval of the Federal government, to provide services in the home to individuals who would otherwise require nursing facility services

**Medical Assistance (Medicaid):** a jointly funded, Federal-State health insurance program for eligible low-income people

**Personal Representative:** a court-approved executor or administrator of an estate, includes executors or administrators of any type or description

**Property:** for the purpose of this brochure, property includes, but is not limited to, a home, land, insurance policies, stocks, bonds, bank accounts, personal care account monies, and any monies remaining in a burial account

**Statement of Claim:** a computation of the amount of Medical Assistance paid for all nursing facility services, home and community based services and related hospital and prescription drug services provided from the time the decedent was 55 years of age and thereafter

Prepared in conjunction with  
Pennsylvania Intra-Governmental Council  
On Long-Term Care



**pennsylvania**  
DEPARTMENT OF PUBLIC WELFARE



## STATEMENT OF CLAIM REQUEST FORM

DECEDENT'S NAME:	
DECEDENT'S LAST KNOWN ADDRESS: <i>(Prior to entering nursing home)</i>	
	(CITY, STATE, ZIP CODE)
DECEDENT'S SOCIAL SECURITY NUMBER:	/ /
DECEDENT'S DATE OF BIRTH:	
DECEDENT'S DATE OF DEATH:	
GROSS AMOUNT OF DECEDENT'S ESTATE: <i>(Written documentation must be included)</i>	
PERSONAL REPRESENTATIVE'S NAME:	
PERSONAL REPRESENTATIVE'S ADDRESS:	
	(CITY, STATE, ZIP CODE)
PERSONAL REPRESENTATIVE'S PHONE NUMBER:	( )
ATTORNEY'S NAME:	
ATTORNEY'S ADDRESS:	
	(CITY, STATE, ZIP CODE)
ATTORNEY'S PHONE NUMBER:	( )

SEND TO:

DEPARTMENT OF PUBLIC WELFARE  
DIVISION OF THIRD PARTY LIABILITY

**ESTATE RECOVERY PROGRAM**

P.O. Box 8486  
Harrisburg, PA 17105-8486

**Estate Recovery Hotline**  
1-800-528-3708

**Facsimile #:** (717) 772-6553

# Rhode Island



# Rhode Island (RI)

<b>Governing Law:</b>	The Rhode Island estate recovery plan is found in RI ST §40-8-15 and the Code of Regulations at §0312.
<b>Estate Scope:</b>	The term “estate” in Rhode Island includes all real and personal property and other assets included or includable in the deceased patient’s probate estate. <sup>1</sup> The total sum of medical assistance paid on behalf of a patient becomes a lien upon the estate but does not become effective or does not attach to estate property unless the Department of Human Services files a claim in the probate court. <sup>2</sup> The claim is subject to the probate code’s six-month window from the first publication of notice to creditors in which the claim must be filed or be forever barred. <sup>3</sup> The estate must provide the Department with reasonable notice of the death of the patient and the property subject to administration as well as the names and addresses of all persons entitled to take a share of the estate. <sup>4</sup> In a case where the state did not learn about the death for three years after the estate was opened, it was able to still timely file its claim even though the six-month window had long since expired. <sup>5</sup> The amount of the claim, in addition to becoming a lien on the estate, also becomes a debt owed by the decedent’s estate as any other creditor would present. <sup>6</sup>
<b>Spousal Recovery:</b>	The lien which forms the basis of the state’s claim against the estate is not allowed to attach against any estate of a Medicaid recipient survived by a spouse, child under 21, or child who is blind or permanently and totally disabled under SSI rules. <sup>7</sup> The claim does not even appear to be held in abeyance or postponed, just strictly prohibited by the survival of an excepted heir.
<b>Liens:</b>	Rhode Island does not employ lifetime TEFRA liens of property in the classical sense to secure estate assets prior to the recipient’s death. Liens attach against probate estate assets but only at death and only if the recipient is not survived by the excepted heirs outlined above. <sup>8</sup> Liens, in that sense, essentially become synonymous with the state’s recovery claim.

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<sup>1</sup> RI ST §40-8-15(a).

<sup>2</sup> Ibid.

<sup>3</sup> RI ST §40-8-15(a) and RI ST §33-11-5(a).

<sup>4</sup> RI ST §40-8-15(b).

<sup>5</sup> *In re Estate of May Manchester*, Rhode Island Supreme Court, Case No. 2012–85–Appeal (May 20, 2013).

<sup>6</sup> RI ST §40-8-15(c).

<sup>7</sup> RI ST §40-8-15(a).

<sup>8</sup> Ibid.

**Partnership Program:** Rhode Island provides asset disregard for eligibility and estate recovery equal to the amount of qualifying long-term care insurance benefit payments provided pursuant to a partnership policy.<sup>9</sup>

**Hardship Waiver:** The Department of Human Services (DHS) may make adjustments to and settle estate liens to obtain the fullest amount practicable. An estate lien may be postponed in whole or in part when the Department determines execution of the lien would work an undue hardship. An undue hardship may be found to exist and execution of the lien may be postponed if a sale of real property, in the case of an individual's home, would be required to satisfy a claim, if all of the following conditions are met:

- an individual was using the property as a principal place of residence on the date of the Medicaid recipient's death;
- that individual resided in the decedent's home on a continual basis for at least twenty-four (24) months immediately prior to the date of the deceased Medicaid recipient's death; and
- that individual has, from the time the Department first presented its claim for recovery against the deceased recipient's estate and after, annual gross income in an amount not to exceed two hundred fifty (250%) percent of the then applicable federal poverty level (FPL) income standard based on the same family size, and assets not to exceed the then applicable Medically Needy resource standards.<sup>10</sup>

In addition to the foregoing, the Department considers undue hardship on a case-by-case basis and provides the following examples as potential undue hardship: being rendered homeless without the resources to find suitable housing; losing his/her means of livelihood; or being deprived of food, clothing, shelter, or medical care such that life would be endangered should a finding of undue hardship be denied.<sup>11</sup>

Requests for consideration of undue hardship are reviewed by a team of three (3) members designated by the Director of the Department of Human Services, of which one member must be from the DHS Office of Legal Services. The review team renders a decision by giving due consideration to the equities involved as well as the obligations of the parties involved.<sup>12</sup>

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<sup>9</sup> RI ST §40-8-22(a).

<sup>10</sup> Code R.I. Reg. §0312.40.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.





# South Carolina (SC)

<b>Governing Law:</b>	South Carolina's estate recovery statute is SC ST §43-7-460.
<b>Estate Scope:</b>	South Carolina defines "estate" to mean the real property, personal property, and other assets included in an individual's probate estate. <sup>1</sup> Estate claims are limited to exclude any recovery for home and community-based services, provided it is allowed by federal law. <sup>2</sup> Claims against the estate are given priority as established by the probate code found at SC ST §62-3-805(a)(2)(ii). <sup>3</sup>
<b>Spousal Recovery:</b>	Estate recovery can only be made after the death of the patient's surviving spouse, if any, and only at a time when the decedent has no surviving child who is under 21 or who is blind or permanently and totally disabled under SSI rules. <sup>4</sup>
<b>Liens:</b>	South Carolina does not use liens (TEFRA or otherwise) to secure the state's recovery claim.
<b>Partnership Program:</b>	If an individual covered under a long-term care insurance policy received benefits for which assets or resources were disregarded as provided for by the South Carolina Long-Term Care Insurance Partnership, the state does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded. <sup>5</sup>
<b>Hardship Waiver:</b>	<p>South Carolina adopts the federal criteria issued by the Secretary of the U. S. Department of Health in Human Services for determining hardship waivers claimed by heirs or devisees of the deceased patient.<sup>6</sup> The state law requires that the undue hardship criteria be posted on the department's website.<sup>7</sup></p> <p>The state will grant a hardship waiver with respect to the decedent's home property, if the decedent could have transferred the home property on or after the date of his or her Medicaid application without incurring a divestment penalty to a surviving sibling of the decedent who possessed an equity interest in the property and who lived in the home for a period of at least one year immediately prior to the date the decedent was institutionalized or to a surviving child of the deceased who lived in the home for a period of at least two</p>

<sup>1</sup> SC ST §43-7-560(F)(1) and SC ST §62-1-201(11).

<sup>2</sup> SC ST §43-7-460(G).

<sup>3</sup> SC ST §43-7-460(E).

<sup>4</sup> SC ST §43-7-460(B).

<sup>5</sup> South Carolina Medicaid State Plan, p. 53b

<sup>6</sup> SC ST §43-7-460(C).

<sup>7</sup> Ibid.



years immediately before the decedent became institutionalized and who provided care, which allowed the decedent to delay institutionalization. This hardship waiver does not apply to transfers to a child under the age of 21, or a child who is blind or disabled.<sup>8</sup>

This hardship exception is only applicable if the person requesting hardship is actually living in the home when hardship is claimed and the hardship status only protects a homestead of modest value. A homestead of modest value is defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located as of the date of the beneficiary's death. To the extent the value of the home property exceeds this modest value, the excess portion is subject to recovery by the department.<sup>9</sup>

With respect to the decedent's home and one acre of land surrounding the house, if an immediate family member: has resided in the home for at least two years immediately prior to the recipient's death; is actually residing in the home at the time the hardship is claimed; owns no other real property or agrees to sell all other interest in real property and give the proceeds to the department; and has annual gross family income that does not exceed one hundred eighty-five (185%) percent of the federal poverty guidelines.<sup>10</sup>

With respect to an undue hardship waiver to protect a sole income producing asset, an immediate family member's annual gross family income would fall below the federal poverty guidelines or immediate family member agrees to pay all income in excess of one hundred eighty-five percent (85%) of the federal poverty guidelines to the department.<sup>11</sup>

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<sup>8</sup> <https://www.scdhhs.gov/organizations/estate-recovery>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.



# South Dakota (SD)

<b>Governing Law:</b>	South Dakota's estate recovery statutes are found from SDCL §28-6-23 through §28-6-27.
<b>Estate Scope:</b>	The amount to be recovered is a debt due to the South Dakota Department of Social Services by the decedent's probate estate or the estate of a surviving spouse of the decedent. <sup>1</sup> This includes real and personal property or other assets which the decedent had a legal title or interest in at the time of death. This includes assets conveyed to a survivor, heir, or assignee through tenancy; not excluding funds remaining in a prepaid burial trust or account after the burial expenses have been paid. <sup>2</sup> The term estate explicitly includes any funds remaining in an individual's prepaid burial trust after the individual's burial expenses are paid. <sup>3</sup> A nursing home must notify the state of the death of a Medicaid patient within fifteen (15) days of the date of death of the patient. <sup>4</sup>
<b>Spousal Recovery:</b>	The estate recovery statute explicitly states that the Department of Social Services may file a claim against the estate of the surviving spouse of a medical-assistant recipient to satisfy the debt owed the state. <sup>5</sup> However, a subsequent statute provides a mechanism for the surviving spouse to petition the Department for the purposes of limiting the financial responsibility of the surviving spouse's estate. <sup>6</sup> The financial responsibility of the estate of the surviving spouse may not exceed the value of the estate of the surviving spouse as of the date of death of the medical-assistance recipient. <sup>7</sup> The petition to limit liability must be filed within six months from the patient's death. <sup>8</sup>
<b>Liens:</b>	Any payment of medical assistance creates a debt and also creates a medical assistance lien against any real property in which the patient had any ownership interest. <sup>9</sup> The DSS must perfect the lien by filing it with the register of deeds in the county where the real property is located; the lien remains in effect for twenty (20) years unless foreclosed or released. <sup>10</sup> Real estate deemed available to a Community Spouse under North Dakota's CSRA rules <sup>11</sup> is not

<sup>1</sup> SDCL §28-6-23.

<sup>2</sup> SDCL §29A-1-201.

<sup>3</sup> ARSD §67:48:02:01(2).

<sup>4</sup> <https://apps.sd.gov/SS51EstRecovery/Default.aspx>

<sup>5</sup> SDCL §28-6-23.

<sup>6</sup> SDCL §28-6-23.1.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> SDCL §28-6-24; ARSD §67:48:02:03.

<sup>10</sup> SDCL §28-6-25.

<sup>11</sup> SDCL §28-6-17 and §28-6-22.

subject to a medical-assistance lien.<sup>12</sup> The lien takes priority behind any prior recorded encumbrances against the property.<sup>13</sup>

**Partnership Program:** The South Dakota partnership program provides explicitly for asset disregard by reducing countable assets during the eligibility process<sup>14</sup> but does not directly provide for offset during recovery. The statute does provide for “asset protection up to the maximum as provided by federal law,” which could reasonably be interpreted to include protection for assets in recovery or lien applications.<sup>15</sup>

**Hardship Waiver:** The state statute authorizing estate recovery directs the secretary of the Department of Social Services to establish hardship limitations on recovery.<sup>16</sup> The South Dakota state Medicaid plan merely adopts the federal rules on hardship waiver. Neither the state’s statutes, administrative code<sup>17</sup>, nor the state’s website<sup>18</sup> on recovery have any further guidance on hardship waiver criteria. The administrative code does explicitly allow for a community spouse to challenge a decision pertaining to a petition to limit liability.<sup>19</sup>

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<sup>12</sup> SDCL §28-6-26; ARSD §67:48:02:04.

<sup>13</sup> SDCL §28-6-27.

<sup>14</sup> SDCL §28-6-37; ARSD §67:48:02:05.

<sup>15</sup> SDCL §28-6-38.

<sup>16</sup> SDCL §28-6-23.

<sup>17</sup> ARSD §67:48:02:05.

<sup>18</sup> <http://dss.sd.gov/benefitfraud/estate/>

<sup>19</sup> ARSD §67:48:02:07.

STATE OF SOUTH DAKOTA	)	PETITION TO LIMIT THE FINANCIAL
	: SS	RESPONSIBILITY OF THE ESTATE OF
COUNTY OF HUGHES	)	A SURVIVING SPOUSE(SDCL 28-6-23)

I, \_\_\_\_\_ HEREBY PETITION THE DEPARTMENT OF SOCIAL SERVICES FOR AN ASSET ASSESSMENT, AND AUTHORIZE ANY PERSON, AGENCY OR INSTITUTION TO SUPPLY INFORMATION REQUESTED BY THE DEPARTMENT OF SOCIAL SERVICES, AND ALLOW INSPECTION AND REPRODUCTION OF SUCH RECORDS WHEN REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPARTMENT.

I UNDERSTAND THAT IF I KNOWINGLY FAIL TO DISCLOSE ASSETS OR MAKE ANY FALSE STATEMENTS TO THE STATE OF SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES CONSTITUTES A CRIME AND THAT I COULD BE PROSECUTED UNDER SOUTH DAKOTA CRIMINAL LAWS AND ANY FAILURE ON MY PART TO PROVIDE CURRENT VERIFICATION OF MY STATEMENTS MAY CAUSE MY PETITION TO BE REJECTED OR DELAYED.

\_\_\_\_\_  
YOUR SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
YOUR REPRESENTATIVE'S SIGNATURE

\_\_\_\_\_  
DATE

-----PLEASE PRINT-----

YOUR NAME \_\_\_\_\_  
FIRST MIDDLE LAST BIRTH DATE

YOUR ADDRESS \_\_\_\_\_  
STREET& # OR BOX CITY COUNTY ZIP

YOUR SOCIAL SECURITY NUMBER \_\_\_\_\_ PHONE \_\_\_\_\_

YOUR CURRENT MARITAL STATUS: MARRIED \_\_\_\_\_ WIDOW/WIDOWER \_\_\_\_\_

-----  
DECEASED SPOUSE

NAME \_\_\_\_\_  
FIRST MIDDLE LAST BIRTH DATE

LAST RESIDENCE \_\_\_\_\_  
STREET&# OR BOX CITY COUNTY ZIP

SOCIAL SECURITY NUMBER \_\_\_\_\_ DATE OF DEATH \_\_\_\_\_

DSS-RE-840-07/97

**DOES YOUR NAME OR YOUR DECEASED SPOUSE'S NAME APPEAR ON THE TITLE TO ANY LAND, BUILDINGS, HOUSES OR MOBLE HOMES? YES NO**

**For all property you must provide the county assessed value and legal description by providing the real estate notice from the Director of Equalization or a copy of the property card from the Director of Equalization**

FIRST NAME	LAST NAME	TYPE OF PROPERTY	VALUE
CO-OWNER		LOCATION OF PROPERTY	
-----			
FIRST NAME	LAST NAME	TYPE OF PROPERTY	VALUE
CO-OWNER		LOCATION OF PROPERTY	

**DID YOU OR YOUR DECEASED SPOUSE HAVE ANY CASH AT HOME, WITH YOU OR ANY WHERE ELSE? (CASH HELD ALONE OR JOINTLY) YES NO**

FIRST NAME	LAST NAME	FIRST NAME	LAST NAME
\$		\$	
AMOUNT		AMOUNT	
FIRST NAME	LAST NAME	FIRST NAME	LAST NAME
\$		\$	
AMOUNT		AMOUNT	



**YOU MUST PROVIDE VERIFICATION IF YOU ANSWER “YES” TO ANY OF THE FOLLOWING QUESTIONS:**

**DID YOUR NAME APPEAR (EITHER ALONE, WITH YOUR DECEASED SPOUSE, OR WITH ANY OTHER PERSON) ON ANY INDIVIDUAL OR JOINT: CHECKING, SAVINGS, CREDIT UNION, CHRISTMAS CLUB, INDIVIDUAL RETIREMENT ACCOUNT(IRA) KEOGH PLAN, INDIVIDUAL INDIAN MONEYS (IIM), MONEY MARKET FUNDS, OR CERTIFICATE OF DEPOSIT? YES NO**

NAME/ ADDRESS OF BANK	ACCOUNT#	OWNERS	BALANCE
			\$
			\$
			\$
			\$

**DID YOUR NAME OR YOUR DECEASED SPOUSE’S NAME APPEAR ON ANY LIFE INSURANCE POLICIES, TRUSTS FUNDS, ACCOUNTS SET UP FOR BURIAL EXPENSES, STOCKS, BONDS, US GOV’T BONDS, MORTGAGE NOTES, CONTRACT FOR DEED, SAFETY DEPOSIT BOXES, LIVE ESTATES, OR OTHER ITEMS OF VALUE? YES NO**

FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME
TYPE OF RESOURCE		CASH VALUE	FACE VALUE
FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME
TYPE OF RESOURCE		CASH VALUE	FACE VALUE

**DID YOU OR YOUR DECEASED SPOUSE OWN OR JOINTLY OWN FARM EQUIPMENT, LIVE STOCK, OR ANY OTHER ITEMS OF VALUE? ( TRACTOR, HORSES, ANTIQUES, GUNS, HOBBIES, FURS, JEWELRY, PAINTINGS, VALUABLE COLLECTIONS) YES NO**

FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME	AMOUNT OWED
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TYPE OF ITEM	VALUE
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FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME	AMOUNT OWED
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TYPE OF ITEM	VALUE
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**DID YOUR NAME OR THE NAME OF YOUR DECEASED SPOUSE APPEAR ON THE TITLE OF A CAR, TRUCK, MOTORCYCLE, BOAT, RECREATIONAL VEHICLE (CAMPER, SNOWMOBILE), OR ANY OTHER VEHICLE? YES NO**

OWNER FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME
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YEAR, TYPE, MAKE & MODEL OF VEHICLE	VALUE
	AMOUNT OWED \$

OWNER FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME
------------------	-----------	---------------------	-----------

YEAR, TYPE, MAKE & MODEL OF VEHICLE	VALUE
	AMOUNT OWED \$

OWNER FIRST NAME	LAST NAME	CO-OWNER FIRST NAME	LAST NAME
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YEAR, TYPE, MAKE & MODEL OF VEHICLE	VALUE
	AMOUNT OWED \$

**PLEASE ATTACH ALL COPIES OF VERIFICATION**



# Tennessee

# Tennessee (TN)

**Governing Law:**

Tennessee's estate-recovery statute is T.C.A. §71-5-116.

**Estate Scope:**

The statute provides only for recovery from the decedent's probate estate.<sup>1</sup> Before any probate estate may be closed, with respect to a decedent who received assistance from TennCare, the personal representative of the estate must file with the probate clerk a release from TennCare that evidences that payment has been made, the bureau waives its claim, or that no amount is due.<sup>2</sup> Additionally, the personal representative must provide notice of death of a deceased patient to TennCare within 60 days from the issuance of letters of administration or letters testamentary, provide the court notice whether the decedent was a TennCare recipient, and provide the notice to creditors specified in T.C.A. §30-2-306 to the Bureau of TennCare, which will prompt the bureau to file a claim.<sup>3</sup> Case law indicates that the state uses the expanded definition of estate to pursue spousal recovery, discussed below, without the state having actually formally adopted such by statute.<sup>4</sup>

Before the state extended the one-year requirement for filing of claims by the estate<sup>5</sup>, the Tennessee Supreme Court ruled that the state had more rights than an average creditor and could file its claim after the standard one-year limit if the estate's personal representative did not seek to have the state's claim waived.<sup>6</sup>

**Spousal Recovery:**

Recovery can only be pursued from the deceased recipient's estate after the death of the surviving spouse, if any, and only at a time when the deceased patient has no surviving child under 18, or no surviving child who is blind or permanently and totally disabled under SSI rules, or no child who has become blind or permanently disabled after reaching majority if the Bureau of TennCare and the personal representative of the estate agree repayment would constitute an undue hardship to the blind or disabled child.<sup>7</sup> If the two cannot agree, the court can determine undue hardship after *de novo* review.<sup>8</sup>

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<sup>1</sup> T.C.A. §71-5-116(c).

<sup>2</sup> T.C.A. §71-5-116(c)(2).

<sup>3</sup> T.C.A. §71-5-116(d).

<sup>4</sup> *In Re Estate of Smith*, 2006 WL 3114250 (Tenn. Ct. App.).

<sup>5</sup> SENATE BILL NO. 3067, enacted May 12, 2006.

<sup>6</sup> *In Re Estate of Tanner*, 2009, No. M2006-02640-SC-R11-CV (Tenn. Sc. Ct.).

<sup>7</sup> T.C.A. §71-5-116(c)(1).

<sup>8</sup> *Ibid.*

<b>Liens:</b>	Tennessee prohibits the use of TEFRA liens for recovery from a nursing home patient. <sup>9</sup>
<b>Partnership Program:</b>	A person who requests TennCare payment of long-term care services after exhausting some or all benefits of a qualified partnership policy may have certain assets “disregarded” equal to the benefits paid by the qualified partnership policy at the time the person is determined eligible for TennCare. These assets are not counted when the persons’ TennCare eligibility is determined and will not be recovered against during estate recover when the TennCare recipient dies. <sup>10</sup>
<b>Hardship Waiver:</b>	<p>Tennessee defines undue hardship in its Medicaid state plan.<sup>11</sup> The state defines undue hardship as follows: "Undue hardship" is constituted to be any of the following three circumstances:</p> <ul style="list-style-type: none"> <li>• The property of the estate subject to recovery is the sole income-producing asset of survivors, such as a family farm or other family business. There is no value limitation on the sole income producing asset.<sup>12</sup></li> <li>• A sibling of the individual meets all of the following criteria: he was lawfully residing in the individual's home for a period of one year immediately before the individual's admission to the medical institution; he provided care to such individual for that one year, which permitted the individual to reside at home rather than in an institution; and he has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution. The undue hardship shall be considered to no longer exist when such person no longer resides in such home.<sup>13</sup></li> <li>• A child of the individual meets all of the following criteria: He was lawfully residing in the individual's home for a period of two years immediately before the individual's admission to the medical institution; He provided care to such individual for those two years, which permitted the individual to reside at home rather than in an institution; and He has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.<sup>14</sup></li> </ul>

<sup>9</sup> T.C.A. §71-5-116(a) and (b).

<sup>10</sup> Tennessee Long-Term Care Partnership Training Guidelines, p. 2.

<sup>11</sup> Tennessee State Plan— Liens and Adjustments or Recoveries, p. 2-3.

<sup>12</sup> Tennessee State Plan— Liens and Adjustments or Recoveries, p. 2, ¶4(1).

<sup>13</sup> Tennessee State Plan— Liens and Adjustments or Recoveries, p. 2, ¶4(2).

<sup>14</sup> Tennessee State Plan— Liens and Adjustments or Recoveries, p. 2, ¶4(3).



The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

The TennCare agency submits a request<sup>15</sup> for approval of a compromise or settlement such as a waiver of an estate recovery claim (complete or partial). The request is submitted to the Attorney General, Comptroller, and Governor for their approval. If the request is denied, the requesting party may move the Probate Court for an order to waive (either completely or partially) or defer recovery.<sup>16</sup>

Collection of any estate recovery claim is presumed to be cost-effective. Estate recovery claims are pursued through the Probate Court and are classified as third priority claims. After payment of the first priority claims (administrative costs) and second priority claims (funeral expenses), TennCare receives the balance of the value of the estate recovery claim. Any remaining value of the estate after payment of the estate recovery claim is then disbursed in accordance with Tennessee probate law.<sup>17</sup>

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<sup>15</sup> Submitted pursuant to T.C.A. §20-13-103.

<sup>16</sup> T.C.A. §71-5-116; Tennessee State Plan— Liens and Adjustments or Recoveries, p. 3, ¶5.

<sup>17</sup> Tennessee State Plan— Liens and Adjustments or Recoveries, p. 3, ¶6.



Please Allow 20  
Business Days  
for Response



As Required by TCA 71-5-116(c)(2)

Si usted necesita esta forma en Español,  
por favor llame al 1-866-389-8444

STATE OF TENNESSEE  
BUREAU OF TENNCARE  
TPL Division  
310 Great Circle Road, 4<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243  
Toll Free: 866-389-8444 • FAX: 615-413-1941

## **REQUEST FOR RELEASE OF ESTATE RECOVERY COST CLAIM**

### **A COPY OF THE DEATH CERTIFICATE MUST ACCOMPANY THIS REQUEST**

\_\_\_\_\_  
Probate Case No.

\_\_\_\_\_  
County of Probate

\_\_\_\_\_  
Date Probate Opened

#### **Decedent's Information:**

\_\_\_\_\_  
Decedent's Last Name

\_\_\_\_\_  
Decedent's First Name

\_\_\_\_\_  
Decedent's Middle Name or Maiden Name

[Married] [Divorced] [Single] [Never Married]

\_\_\_\_\_  
Decedent's Social Security No.

\_\_\_\_\_  
Decedent's Marital Status

\_\_\_\_\_  
Decedent's Date of Birth

\_\_\_\_\_  
Decedent's Date of Death

#### **YOU MUST PROVIDE INFORMATION REGARDING THE DECEDENT'S SPOUSE IF APPLICABLE:**

Is the Decedent's Spouse Pre-Deceased

Yes ☐ No ☐

Spouse's Date of Death if Pre-Deceased \_\_\_\_\_

[mm-dd-yyyy]

\_\_\_\_\_  
Spouse First Name

\_\_\_\_\_  
Spouse Last Name

\_\_\_\_\_  
Spouse Middle Name  
or Maiden Name

\_\_\_\_\_  
Spouse Date of Birth

\_\_\_\_\_  
Spouse Social Security No.

The person completing this document is the:

[\_\_\_\_\_] Executor

[\_\_\_\_\_] Representative

[\_\_\_\_\_] Legal Counsel for the Estate.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
**Signature of Person Completing This Document**

1. ARE YOU REQUESTING AN EXEMPTION DUE TO SURVIVING SPOUSE. IF YOU ARE, YOU MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENTATION IN ADDITION TO WHAT IS INDICATED ABOVE:

\_\_\_\_\_ A copy of your marriage license.

2. ARE YOU REQUESTING AN EXEMPTION DUE TO A CHILD 18 YEARS OF AGE ?

\_\_\_\_\_ A copy of the birth certificate of the minor child.

3. ARE YOU REQUESTING AN EXEMPTION FOR A DISABLED CHILD? IF YOU ARE, YOU MUST PROVIDE:

\_\_\_\_\_ A copy of the Social Security Administration determination of permanent total disability prior to the age 18.

\_\_\_\_\_ A copy of the birth certificate of the disabled child.

**Notice:**

**CONFIDENTIAL INFORMATION REGARDING A TENNCARE RECIPIENT AND/OR DECEASED TENNCARE RECIPIENT WILL NOT BE RELEASED WITHOUT PRIOR AUTHORIZATION FROM THE EXECUTOR/EXECUTRIX, ESTATE REPRESENTATIVE and/or LEGAL COUNSEL FOR THE ESTATE.**

**INSTRUCTIONS**

1. PROVIDE ALL REQUESTED INFORMATION AND **SIGN** THE RELEASE REQUEST.

You must provide information about the deceased person and the deceased person's spouse even though the spouse may have pre-deceased the decedent and the executor or estate representative must sign the request..

2. PROVIDE ALL REQUESTED DOCUMENTATION **IF YOU ARE REQUESTING AN EXEMPTION** TO RECOVERY.
3. PROVIDE A COPY OF THE DECEDENT'S DEATH CERTIFICATE OR OTHER DOCUMENTATION AS INDICATED ON THE RELEASE.
4. PROVIDE AN ADDRESS FOR RETURN OF THE RELEASE FORM. THE RELEASE FORM WILL **NOT** BE FAXED.
5. THE FORM MAY BE RETURNED WITHOUT A COVER LETTER BUT YOU MUST PROVIDE A RETURN ADDRESS.
6. IF YOU HAVE QUESTIONS REGARDING THE COMPLETION OF THE REQUEST FOR RELEASE FORM PLEASE CALL (866) 389-84444 OR (615) 532-7085.

**INFORMATION YOU SHOULD BE AWARE OF**

**WHO IS SUBJECT TO RECOVERY?**

ANY PERSON OVER 55 YEARS OF AGE FOR WHOM TENNCARE HAS PAID FOR NURSING FACILITY SERVICES OR CARE RECEIVED FROM HOME & COMMUNITY BASED SERVICES.

IF THE ESTATE IS **NOT BEING PROBATED**, YOU DO NOT HAVE TO PROVIDE THE PROBATE COURT INFORMATION BUT **YOU MUST OBTAIN A RELEASE** OF TENNCARE'S CLAIM PRIOR TO DISBURSEMENT OF FUNDS AND/OR ASSETS.

**HOW MUCH WILL THE PERSON'S ESTATE HAVE TO PAY BACK TO TENNCARE?**

THE ACTUAL VALUE OF ALL FUNDS EXPENDED BY TENNCARE FOR THE PERSON'S COST OF SERVICES IN A NURSING FACILITY AND/OR HOME & COMMUNITY BASED SERVICES.

**WHAT ARE THE EXEMPTIONS?**

IF THERE IS A SURVIVING SPOUSE, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE TIME OF THE SURVIVING SPOUSE'S DEATH IF:

1. THE SURVIVING SPOUSE REQUESTS AN EXEMPTION; **AND**
2. THE SURVIVING SPOUSE PROVIDES DOCUMENTATION OF PROOF OF MARRIAGE, .

IF THERE IS A MINOR CHILD UNDER THE AGE OF 18, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE MINOR CHILD REACHES THE AGE 18 IF:

1. THE CHILD OR THE CHILD'S REPRESENTATIVE REQUESTS AN EXEMPTION TO RECOVERY; **AND**
2. THE CHILD OR THE CHILD'S REPRESENTATIVE PROVIDES A COPY OF THE CHILD'S BIRTH CERTIFICATE AS PROOF OF RELATIONSHIP.

IF THERE IS A DISABLED CHILD WHO BECAME DISABLED PRIOR TO THE AGE OF 18, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE DEATH OF THE DISABLED CHILD IF:

1. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE REQUESTS AN EXEMPTION; **AND**
2. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE PROVIDES A COPY OF THE SOCIAL SECURITY DISABILITY DETERMINATION PROVING DISABILITY AND ONSET PRIOR TO THE AGE OF 18; **AND**
3. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE PROVIDES A COPY OF A BIRTH CERTIFICATE PROVING RELATIONSHIP.

**WHAT HAPPENS WHEN THE SURVIVING SPOUSE, MINOR CHILD OR DISABLED CHILD DIES?**

AT THE TIME OF THE DEATH OF THE SURVIVING SPOUSE, TENNCARE WILL RECOVER FROM THE ESTATE ASSETS THE VALUE OF ALL EXPENSES PAID UP TO THE TOTAL AMOUNT EXPENDED FOR CARE IN A NURSING FACILITY OR HOME & COMMUNITY BASED SERVICES.

**HOW MAY I OBTAIN A RELEASE OF TENNCARE'S INTEREST IN AN ESTATE?**

1. COMPLETE THE REQUEST FOR RELEASE FORM; **AND**
2. PROVIDE ALL DOCUMENTATION REQUESTED; **AND**
3. IF THE ESTATE IS SUBJECT TO RECOVERY, YOU MUST PAY TENNCARE'S CLAIM TO OBTAIN A RELEASE.

Please Allow 20  
Business Days  
for Response



As Required by TCA 71-5-116(c)(2)

STATE OF TENNESSEE  
BUREAU OF TENNCARE  
TPL Division

310 Great Circle Road, 4<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243  
Toll Free: 866-389-8444 • FAX: (615) 413-1941

Si usted necesita esta forma en Español,  
por favor llame al 1-866-389-8444

**TENNCARE ELIGIBILITY VERIFICATION/  
REQUEST FOR RELEASE OF ESTATE RECOVERY COST CLAIM**

**A COPY OF THE DEATH CERTIFICATE MUST ACCOMPANY THIS REQUEST**

\_\_\_\_\_  
Probate Case No.      County of Probate      Date Probate Opened

**Decedent's Information:**

\_\_\_\_\_  
Decedent's Last Name      Decedent's First Name      Decedent's Middle Name or Maiden Name  
\_\_\_\_\_  
[Married] [Divorced] [Single] [Never Married]  
\_\_\_\_\_  
Decedent's Social Security No.      Decedent's Marital Status      Decedent's Date of Birth      Decedent's Date of Death

**YOU MUST PROVIDE INFORMATION REGARDING THE DECEDENT'S SPOUSE IF APPLICABLE:**

Is the Decedent's Spouse Pre-Deceased    Yes ☐ No ☐    Spouse's Date of Death if Pre-Deceased \_\_\_\_\_  
[mm-dd-yyyy]

\_\_\_\_\_  
Spouse First Name      Spouse Last Name      Spouse Middle Name or Maiden Name      Spouse Date of Birth

\_\_\_\_\_  
Spouse Social Security No.

The person completing this document is the: [ ☐ ] Executor  
[ ☐ ] Representative  
[ ☐ ] Legal Counsel for the Estate.

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature of Person Completing This Document**

**1. ARE YOU REQUESTING AN EXEMPTION DUE TO SURVIVING SPOUSE. IF YOU ARE, YOU MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENTATION IN ADDITION TO WHAT IS INDICATED ABOVE:**

\_\_\_\_\_ A copy of your marriage license.

**2. ARE YOU REQUESTING AN EXEMPTION DUE TO A CHILD 18 YEARS OF AGE ?**

\_\_\_\_\_ A copy of the birth certificate of the minor child.

**3. ARE YOU REQUESTING AN EXEMPTION FOR A DISABLED CHILD? IF YOU ARE, YOU MUST PROVIDE:**

\_\_\_\_\_ A copy of the Social Security Administration determination of permanent total disability prior to the age 18.

\_\_\_\_\_ A copy of the birth certificate of the disabled child.

The person completing the Request for Release of Cost Claim is executing the request as the estate representative and TennCare is relying upon this representation when advising the value of TennCare's claims and/or executing a release or deferral of TennCare's claim. TennCare shall be held harmless of any action brought by heirs or other interested parties due to the payment of TennCare's claim by the person presenting themselves as the estate representative.

#### **Notice:**

**CONFIDENTIAL INFORMATION REGARDING A TENNCARE RECIPIENT, DECEASED TENNCARE RECIPIENT AND/OR NON-TENNCARE DECEASED PERSON WILL NOT BE RELEASED WITHOUT PRIOR AUTHORIZATION FROM THE EXECUTOR/EXECUTRIX, ESTATE REPRESENTATIVE and/or LEGAL COUNSEL FOR THE ESTATE.**

### **INSTRUCTIONS**

1. PROVIDE **ALL REQUESTED INFORMATION** AND **SIGN** the TENNCARE ELIGIBILITY VERIFICATION/REQUEST FOR RELEASE FORM.

You must provide information about the deceased person and the deceased person's spouse even though the spouse may have pre-deceased the decedent and the executor or estate representative must sign the request..

2. PROVIDE **ALL REQUESTED DOCUMENTATION IF YOU ARE REQUESTING AN EXEMPTION** TO RECOVERY.
3. PROVIDE A COPY **OF THE DECEDENT'S DEATH CERTIFICATE** OR OTHER DOCUMENTATION AS INDICATED ON THE RELEASE.
4. PROVIDE **AN ADDRESS FOR RETURN OF THE RELEASE FORM**. THE RELEASE FORM WILL NOT BE FAXED.
5. THE FORM MAY BE RETURNED WITHOUT A COVER LETTER BUT YOU MUST PROVIDE A RETURN ADDRESS.
6. IF YOU HAVE QUESTIONS REGARDING THE COMPLETION OF THE REQUEST FOR RELEASE FORM PLEASE CALL (866) 389-8444.

### **INFORMATION YOU SHOULD BE AWARE OF**

#### **WHO IS SUBJECT TO RECOVERY?**

ANY PERSON OVER 55 YEARS OF AGE FOR WHOM TENNCARE HAS PAID FOR NURSING FACILITY SERVICES OR CARE RECEIVED FROM HOME & COMMUNITY BASED SERVICES.

IF THE ESTATE IS **NOT BEING PROBATED**, YOU DO NOT HAVE TO PROVIDE THE PROBATE COURT INFORMATION BUT **YOU MUST OBTAIN A RELEASE** OF TENNCARE'S CLAIM PRIOR TO DISBURSEMENT OF FUNDS AND/OR ASSETS.

#### **HOW MUCH WILL THE PERSON'S ESTATE HAVE TO PAY BACK TO TENNCARE?**

THE ACTUAL VALUE OF ALL FUNDS EXPENDED BY TENNCARE FOR THE PERSON'S COST OF SERVICES IN A NURSING FACILITY AND/OR HOME & COMMUNITY BASED SERVICES.

#### **WHAT ARE THE EXEMPTIONS?**

IF THERE IS A SURVIVING SPOUSE, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE TIME OF THE SURVIVING SPOUSE'S DEATH IF:

1. THE SURVIVING SPOUSE REQUESTS AN EXEMPTION; **AND**
2. THE SURVIVING SPOUSE PROVIDES DOCUMENTATION OF PROOF OF MARRIAGE, .

IF THERE IS A MINOR CHILD UNDER THE AGE OF 18, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE MINOR CHILD REACHES THE AGE 18 IF:

1. THE CHILD OR THE CHILD'S REPRESENTATIVE REQUESTS AN EXEMPTION TO RECOVERY; **AND**
2. THE CHILD OR THE CHILD'S REPRESENTATIVE PROVIDES A COPY OF THE CHILD'S BIRTH CERTIFICATE AS PROOF OF RELATIONSHIP.

IF THERE IS A DISABLED CHILD WHO BECAME DISABLED PRIOR TO THE AGE OF 18, TENNCARE WILL NOT RECOVER FROM THE ESTATE UNTIL THE DEATH OF THE DISABLED CHILD IF:

1. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE REQUESTS AN EXEMPTION; **AND**
2. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE PROVIDES A COPY OF THE SOCIAL SECURITY DISABILITY DETERMINATION PROVING DISABILITY AND ONSET PRIOR TO THE AGE OF 18; **AND**
3. THE DISABLED CHILD OR THE DISABLED CHILD'S REPRESENTATIVE PROVIDES A COPY OF A BIRTH CERTIFICATE PROVING RELATIONSHIP.

#### **WHAT HAPPENS WHEN THE SURVIVING SPOUSE, MINOR CHILD OR DISABLED CHILD DIES?**

AT THE TIME OF THE DEATH OF THE SURVIVING SPOUSE, TENNCARE WILL RECOVER FROM THE ESTATE ASSETS THE VALUE OF ALL EXPENSES PAID UP TO THE TOTAL AMOUNT EXPENDED FOR CARE IN A NURSING FACILITY OR HOME & COMMUNITY BASED SERVICES.

#### **HOW MAY I OBTAIN A RELEASE OF TENNCARE'S INTEREST IN AN ESTATE?**

1. COMPLETE THE REQUEST FOR RELEASE FORM; **AND**
2. PROVIDE ALL DOCUMENTATION REQUESTED; **AND**
3. **IF THE ESTATE IS SUBJECT TO RECOVERY, YOU MUST PAY TENNCARE'S CLAIM TO OBTAIN A RELEASE.**



A white outline map of the state of Texas is centered on a dark blue background. The word "Texas" is written in a white serif font across the middle of the state's outline.

Texas

# Texas (TX)

**Governing Law:**

Texas uses a simple statute authorizing the Commissioner of Health and Human Services Commission to ensure the state Medicaid program implements estate recovery. The authorization statute is found at TX GOVT §531.077. Texas implemented its estate-recovery program by the enactment of Texas Administrative Code Rules §§373.103 to 373.307, which took effect on March 1, 2005. The result was the creation of the Medicaid Estate Recovery Program (MERP)<sup>1</sup> which is managed by the Texas Department of Aging and Disability Services (DADS).

**Estate Scope:**

The state is authorized to file a claim against the estate of a deceased Medicaid recipient, age 55 and older,<sup>2</sup> who applied for certain long-term care services on or after March 1, 2005.<sup>3</sup> The services that trigger recovery are: nursing facility services, intermediate care facility services for the mentally retarded, home and community-based services (HCBS), community attendant services (CAS), and the related cost of hospital and prescription drug services.<sup>4</sup> Estate is defined to include the real and personal property of a deceased Medicaid recipient as further defined by the Texas Probate Code at §3(I).<sup>5</sup> The acceptance of Medicaid assistance by the patient provides the basis for a Class 7 probate claim, as defined in §322 of the Texas Probate Code, in favor of MERP as an interested party in the estate of the deceased Medicaid recipient.<sup>6</sup> MERP is then authorized to present its claim, under §298 of the Texas Probate Code, against the estate of the deceased Medicaid recipient in accordance with the priority established by §322 of the Texas Probate Code.<sup>7</sup> Unsecured claims are allowed to be presented at any time before the estate is closed or within four months of receipt of notice from the estate's administrator pursuant to §298 of the Texas Probate Code.<sup>8</sup> MERP is required to file a claim within 70 days of receiving actual notice of death of the deceased Medicaid recipient.<sup>9</sup> However, within 30 days of the notification of death of a Medicaid recipient, MERP is required to provide a Notice of Intent to File a claim to the estate representative, the decedent's guardian, the decedent's agent under a durable power of attorney, the decedent's agent under a medical power of attorney, or any family members who have acted on behalf

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<sup>1</sup> Texas Admin. Code, Rule §373.101.

<sup>2</sup> Texas Admin. Code, Rule §373.103(a)(1).

<sup>3</sup> Texas Admin. Code, Rule §373.103(a)(2).

<sup>4</sup> Texas Admin. Code, Rule §373.103(c).

<sup>5</sup> Texas Admin. Code, Rule §373.105(6).

<sup>6</sup> Texas Admin. Code, Rule §373.201.

<sup>7</sup> Texas Admin. Code, Rule §373.203(a).

<sup>8</sup> Texas Admin. Code, Rule §373.203(b).

<sup>9</sup> Texas Admin. Code, Rule §373.205(b).



of the decedent if MERP is aware of the person and has his or her address.<sup>10</sup> All payments on estate-recovery claims must be made payable to the “Texas Medicaid Account for Long-Term Care,” and must be mailed to: MERP, P.O. Box 13247, Austin, TX 78711.<sup>11</sup>

Texas provides generous exemptions from recovery. The state provides deductions against recovery for home maintenance and care costs. Necessary and reasonable expenses for maintaining the home (e.g., taxes, utilities, insurance, repairs, etc.) may be deducted from the state’s claim if proper documentation can be provided.<sup>12</sup> Any care costs, including payment of personal-attendant care that delayed the patient’s institutionalization, are allowable offsets from the state’s recovery claim.<sup>13</sup> Medicaid rules also provide a litany of exempt assets protected for American Indians and Alaska Natives, in addition to the general class of exemptions discussed below under the Spousal Recovery discussion.<sup>14</sup> Texas goes one step further and prohibits recovery if it is not cost effective.<sup>15</sup> To determine if a claim is not cost effective, the rules provide for the following three criteria: the value of the recoverable estate is \$10,000 or less;<sup>16</sup> the recoverable amount of Medicaid costs is \$3,000 or less;<sup>17</sup> or the cost involved in the sale of the property would be equal to or greater than the value of the property.<sup>18</sup>

**Spousal Recovery:**

Texas does not attempt recovery beyond the estate of the patient. Claims are only pursued after the death of the patient and only if there is no: surviving spouse; surviving child or children under 21 years of age; surviving child of any age who is blind or disabled as defined by 42 U.S.C. §1382c; or unmarried adult child residing continuously in the decedent’s homestead for at least one year prior to the date of the Medicaid recipient’s death.<sup>19</sup> The existence of any of these classes of people presents a full bar to recovery in the decedent’s estate.

**Liens:**

Texas does not use liens (TEFRA or otherwise) to secure its estate recovery claim.

**Partnership Program:**

The Texas partnership program is contained in V.T.C.A., Insurance Code §1651.101 to §1651.107 and V.T.C.A., Human Resource Code

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<sup>10</sup> Texas Admin. Code, Rule §373.307(a).

<sup>11</sup> Texas Admin. Code, Rule §373.219(a).

<sup>12</sup> Texas Admin. Code, Rule §373.213(a).

<sup>13</sup> Texas Admin. Code, Rule §373.307(a).

<sup>14</sup> Texas Admin. Code, Rule §373.207(b).

<sup>15</sup> Texas Admin. Code, Rule §373.215.

<sup>16</sup> Texas Admin. Code, Rule §373.215(1).

<sup>17</sup> Texas Admin. Code, Rule §373.215(2).

<sup>18</sup> Texas Admin. Code, Rule §373.215(3).

<sup>19</sup> Texas Admin. Code, Rule §373.207(a).

§32.251 to §32.257. Asset disregard is provided for eligibility and any subsequent recovery.<sup>20</sup>

**Hardship Waiver:**

MERP is prohibited from recovering against an estate if it would cause an undue hardship.<sup>21</sup> MERP is required to provide an undue hardship waiver request form along with the required Notice of Intent to File a claim.<sup>22</sup> An undue hardship will not be deemed to exist solely because recovery would deny heirs on anticipated inheritance or the circumstances giving rise to the hardship were created by, or are the result of, estate planning methods that sheltered or divested assets in order to avoid estate recovery.<sup>23</sup>

Waivers are automatically provided if:

- The estate property subject to recovery is a family business, farm, or ranch which was in existence for at least 12 months before the patient's death, is the primary income-producing asset of an heir, and produces half or more of the heir's livelihood which would be lost;<sup>24</sup>
- Recovery would cause an heir to be eligible for public and/or medical assistance;<sup>25</sup>
- Allowing one or more survivors would enable him or her or them to discontinue eligibility for public and/or medical assistance;<sup>26</sup>
- The Medicaid recipient received medical assistance as a result of a crime committed against the recipient;<sup>27</sup> or
- Other compelling reasons.<sup>28</sup>

Homesteads are provided additional criteria upon which an exclusion from recovery can be claimed under the undue hardship waiver rules. A homestead can be protected from estate recovery based on hardship if:

- The tax appraisal district value of the homestead is less than \$100,000; but if the property exceeds this value, only the equity in excess of \$100,000 is subject to estate recovery;<sup>29</sup> or

<sup>20</sup> V.T.C.A., Human Resources Code §32.253(b).

<sup>21</sup> Texas Admin. Code, Rule §373.209(a).

<sup>22</sup> Ibid.

<sup>23</sup> Texas Admin. Code, Rule §373.209(b).

<sup>24</sup> Texas Admin. Code, Rule §373.209(c)(1).

<sup>25</sup> Texas Admin. Code, Rule §373.209(c)(2).

<sup>26</sup> Texas Admin. Code, Rule §373.209(c)(3).

<sup>27</sup> Texas Admin. Code, Rule §373.209(c)(4).

<sup>28</sup> Texas Admin. Code, Rule §373.209(c)(5).

- One or more siblings or direct descendants of the deceased patient will inherit the homestead, provided that each person inheriting the homestead has gross family income below 300 percent of the Federal Poverty Level;<sup>30</sup> however, if not all heirs qualify for the hardship waiver, only the percentage of the homestead corresponding to the qualifying heir or heirs' share of the homestead is exempt from recovery.<sup>31</sup>

Undue hardship waiver requests must be submitted to: MERP, Hardship Waiver Request, P.O. Box 13247, Austin, TX 78711.<sup>32</sup> MERP is required to make a ruling on the hardship waiver request within forty (40) days after receipt of the request.<sup>33</sup> If MERP denies the request, an applicant can request review of the denial within sixty (60) days of receiving the notice of denial, but the review is considered an informal process and not a hearing.<sup>34</sup> MERP is required to review a request within forty (40) days of receiving the request.<sup>35</sup>

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<sup>29</sup> Texas Admin. Code, Rule §373.209(d)(1).

<sup>30</sup> Texas Admin. Code, Rule §373.209(d)(2).

<sup>31</sup> Texas Admin. Code, Rule §373.209(d)(3).

<sup>32</sup> Texas Admin. Code, Rule §373.209(f).

<sup>33</sup> Texas Admin. Code, Rule §373.209(e).

<sup>34</sup> Texas Admin. Code, Rule §373.211.

<sup>35</sup> Texas Admin. Code, Rule §373.211(b).

**TEXAS MEDICAID ESTATE RECOVERY PROGRAM (MERP)  
AUTHORIZATION AND MERP CERTIFICATION**

**FROM: Name:** \_\_\_\_\_  
**Company/Firm:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**RE: Deceased Owner's Name:** \_\_\_\_\_ **Date of Death:** \_\_\_\_\_  
**Deceased Owner's Medicaid ID and/or Social Security Number:** \_\_\_\_\_  
**Complete Property Address:** \_\_\_\_\_  
\_\_\_\_\_

**SECTION 1:**  
**Authorization to Obtain MERP Claim Information**  
*(To be Completed by Heirs/Beneficiaries or Estate Representative)*

The undersigned heir/beneficiaries or Estate Representative of the Deceased Owner are unable to certify that the estate of the Deceased Owner is exempt or is not subject to a MERP claim, and hereby authorizes MERP to complete Section 2 of this form below and provide same or any other information related to a MERP claim against Deceased Owner to the requestor above.

**By:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Signature) (Signature)

**Printed Name:** \_\_\_\_\_ **Printed Name:** \_\_\_\_\_

**SECTION 2**  
**CERTIFICATION BY MERP**  
*(To be Completed by MERP)*

<input type="checkbox"/>	initial	Based on the Social Security Number provided, there is no pending MERP Claim against the Deceased Owner's estate and the State of Texas does not intend to file a MERP Claim against the Deceased Owner's estate.
<input type="checkbox"/>	initial	There is a MERP Claim filed against the Deceased Owner's estate in amount of \$_____, as evidenced by the attached document.
<input type="checkbox"/>	initial	MERP intends to file a MERP claim against the Deceased Owner's estate in the amount of \$_____.

*This is not a dismissal of any other claim the State may have against this estate. Estate representatives of deceased Medicaid recipients whose estates may include assets such as, but not limited to, qualified income trusts, other trusts, annuities, torts, or private insurance policies, should also check with the DADS' Third Party Recovery unit by calling: (512) 438-2200, #4 to determine if the Department of Aging and Disability Services may have other claims on this estate.*

**TEXAS MERP REPRESENTATIVE**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**FAX OR MAIL COMPLETED FORM TO:**

HMS – The Texas Medicaid Estate Recovery Contractor  
5615 High Point Drive, Suite 100  
Irving, Texas 75038  
Phone: 1-800-641-9356 **Fax: 214-560-3918**

Name of Applicant or Individual	Medicaid ID or Social Security No.
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**To Persons Applying for Long-Term Care Services Paid by Medicaid**

**This is an informational notice only. The case manager or eligibility specialist will ask you to sign this form to show the state has met its obligation to inform you about Medicaid estate recovery. You do not have to sign this form. If you choose not to sign it, your application for Medicaid services will not be denied for that reason. However, the state may still file a claim against your estate after you die, unless certain exemptions or hardships exist at that time.**

**Medicaid Estate Recovery Program**

Medicaid is a government program that pays for health care services. Some of these services are for people as they grow older. Medicaid pays for services that help people stay in their own home. It also pays for people to move to a facility, such as a nursing home, if that is what they need.

To help pay for these long-term care services, every state must have a Medicaid Estate Recovery Program (MERP). If you receive long-term care services paid for by Medicaid, the state of Texas has the right to ask for some money back from your estate after you die. In some cases, the state may not ask for anything back. The state will never ask for more money back than it paid for your services.

**How does this program work?**

You are receiving this notice because you are applying for long-term care services covered by MERP. When you die, the state will send a notice to your estate representative or heirs to remind them that the state may file a MERP claim. The notice will ask them for information so that the state can decide whether it should file a claim, or whether your estate meets one of the exceptions described below.

If the state files a claim, Texas law sets out which claims will be paid first. The state's MERP claim will be paid **after** the following expenses are paid first, if there are any:

- unpaid expenses for your funeral and any expenses of your final illness, up to \$15,000;
- unpaid expenses from your estate administrator for managing your estate, or for keeping your estate intact, and any expenses of a guardian who is appointed for you while you are alive;
- unpaid secured claims and tax liens filed against your home;
- unpaid child support debts you owe;
- unpaid state and local taxes you owe; and
- unpaid expenses from any correctional institution.

**What is an estate?**

An estate is property, such as money, a house or other things of value that a person leaves to family members or others (heirs) when he or she dies. MERP does not apply to all property that a person may own. Here are some examples of property that the state will not collect on:

- Life insurance policies that name a person to receive the payment.
- Bank accounts that are paid on death to another person.

**Does MERP affect you?**

This program will affect only long-term care services you receive after the age of 55 and only if you first apply for these services after March 1, 2005. If you applied for these services before March 1, 2005, MERP does not affect you. If you were on an interest list for services before that date but did not complete an application for services until after March 1, 2005, MERP does affect you.

The following services and programs are affected by MERP:

- Nursing Facility Care (nursing homes)
- Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)
- The following Medicaid Waiver Programs:
  - Home and Community-based Services (HCS)
  - Community Living Assistance and Support Services (CLASS)
  - Texas Home Living (TxHML) Waiver
  - Deaf Blind with Multiple Disabilities (DBMD) Waiver
  - Consolidated Waiver Programs (CWP)
  - Community Based Alternatives (CBA)
  - STAR+PLUS Waiver (SPW)
  - Integrated Care Management Waiver (ICMW)
  - Community Attendant Services (CAS)

MERP also affects the costs of certain hospital and prescription drug services you receive. Primary Home Care (PHC) is **not** affected by MERP.

If you are not sure whether MERP applies to the services you will be receiving, you should ask your Department of Aging and Disability Services (DADS) case manager. If you are a Medicaid managed care enrollee, you should ask your service coordinator with the health plan from which you receive your services.

**Are there any times when the state will not ask for money back?**

Yes, the state will not ask for money back after you die if:

- Your spouse is still alive.
- You have a child under age 21.
- You have a child of any age who is blind or permanently and totally disabled.
- Your unmarried adult child lives full-time in your home for at least one year before you die.
- The value of your estate is \$10,000 or less.
- The amount of your Medicaid costs was \$3,000 or less.
- The cost of selling your property is more than the property is worth.



### Does the state make any exceptions for hardship?

Yes, the state may not file a MERP claim to ask for money back when this would cause an undue hardship for the heirs. The state may grant a hardship waiver when:

- The estate property is a family business, farm or ranch for at least 12 months before you die and is the main source of income for your heirs.
- Your heirs would need financial assistance from the government if the state files a MERP claim.
- Your heirs will be able to stop getting financial assistance from the government if the state does not file a MERP claim.
- You are receiving services as the result of being a crime victim.

There are other circumstances that may create a hardship.

One type of hardship applies just to your home. If one or more of your heirs has a family income under a certain amount, MERP may grant a hardship waiver for up to \$100,000 of your home value.

In 2011, this income limit for one person is \$32,670. For a family of four, it is \$67,050. These figures are adjusted each year. To get a waiver based on an undue hardship, your heirs must ask for it and provide proof of the hardship.

### Will the state ever reduce the amount owed?

Yes, if you or someone else spends money to maintain your home while you are in a nursing facility, these costs can be deducted from the MERP claim. If you or someone else spends money to pay for care that helps you live at home longer before entering a nursing home, those costs can be deducted as well. Your heirs must have receipts to show what was spent on your home or services when they ask the state to deduct these amounts from the MERP claim.

If your estate has debts such as funeral costs, legal costs or a home mortgage, those costs are paid first before MERP is paid.

### What happens if I give away or transfer my assets before moving into a nursing home?

Giving away resources for no compensation, or refusing to accept income, or reducing income you could receive before moving into a nursing home may result in:

- a penalty against you for not paying for nursing facility or ICF/IID facility services when you were able to do so, or
- a decision by the state that you are ineligible for waiver program services or state supported living center services.

The state may "look-back" up to 60 months before you applied for nursing home, ICF/IID or waiver services to determine when your income was reduced and resources were transferred. To determine how long you may be penalized (or prevented from receiving nursing home care paid for by Medicaid), the state will divide the value of your transferred assets by the average cost of nursing home care paid for by a private-pay patient. The state will calculate the penalty period in terms of how long ago you transferred assets and how long you refused to accept income or reduced your income.

### How can I get more information on Medicaid estate recovery?

For more detailed information on this program, call the agency's toll-free number at 1-800-641-9356. This line is answered from 8:00 a.m. through 5:00 p.m., Monday through Friday. Voicemail is available 24 hours a day.

You may also email your questions to

[merp@dads.state.tx.us](mailto:merp@dads.state.tx.us).

You may also visit the DADS website at:

[www.dads.state.tx.us/services/estate\\_recovery/](http://www.dads.state.tx.us/services/estate_recovery/).

Medicaid ID or Social Security No. \_\_\_\_\_

☐ I have received and understand the information about MERP.

\_\_\_\_\_  
Printed Name – Individual

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name – Responsible Person

\_\_\_\_\_  
Relationship to Individual  
(if not individual)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name – Case Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

☐ Form 8001, MERP Receipt Acknowledgement, was provided to the individual or responsible person and the person chose not to sign the form.



## Hardship Waiver Application

As stated in the Notice of Intent to File a Claim Against the Estate, the Medicaid Estate Recovery Program (MERP) will waive, in whole or in part, its claim against the estate when recovery would cause an undue hardship for a legatee or heir. A hardship applicant cannot qualify for a hardship waiver if they are not an heir or legatee (named in the Will).

An undue hardship does not exist solely because recovery would prevent applicants from receiving an inheritance or when the hardship was created by using estate planning methods in order to avoid estate recovery.

In order to complete the review of the hardship application, supporting documents will need to be provided. Failure to provide the required information will result in a denial of the waiver.

A separate application must be submitted for each person requesting hardship consideration. The hardship waiver applicant must complete the appropriate section(s) of this application and return it **with supporting documents** within 60 calendar days from the date stated on the Texas Department of Aging and Disability Services (DADS) Notice of Intent to File a Claim Against the Estate.

**Applications returned later than 60 days from this date will not be reviewed.**

A letter will be sent to the applicant with an explanation of the decision. If the request is denied, the applicant has 60 calendar days to submit a written request for review of the denial.

The criteria for a hardship waiver, as outlined in the Texas Administrative Code, are as follows.

1. The estate property has been the site of a family business, farm or ranch for at least 12 months before the death of the decedent; is the primary income-producing asset of the heirs; produces 50% or more of their livelihood; and recovery by the state would result in the heirs losing their primary source of income; **or**
2. The heirs would become eligible for public and/or medical assistance if the state were to recover the claim; **or**
3. The heirs would be able to discontinue public and/or medical assistance if the state did not recover the claim; **or**
4. The decedent had received Medicaid as the result of being a crime victim; **or**
5. Other compelling reasons.

There is one additional type of hardship that applies just to the homestead:

A homestead waiver is considered when one or more siblings or lineal heirs has gross family income below 300% of the federal poverty guidelines. Up to \$100,000 of the homestead value may be exempt from recovery. When there are multiple heirs and not all qualify for this hardship waiver, only the share of a qualifying heir(s) will be waived, not to exceed a total exemption of \$100,000.

Mail or fax the completed application form and supporting documents to the contact information below. DADS contracts with Health Management Systems (HMS) Inc. to conduct its estate recovery program operations.

**If you have any questions about the claim against the estate or how to complete this form, contact HMS toll-free at 1-800-641-9356.**

**HMS—Texas MERP  
P.O. Box 166889  
Irving, Texas 75016-6889  
Fax: 214-560-3918**

## Hardship Waiver Application

It is the applicant's responsibility to provide complete information to DADS. The hardship waiver request will be denied if the applicant does not submit the necessary supporting documentation demonstrating to the state how recovery would result in an undue hardship.

### Deceased Medicaid Member Information

All applicants must complete the general information requested on this page. Please fill out this form in blue or black ink.

Decedent's Name (First, Middle, Last)		MERP Case No.
Decedent's Medicaid ID Number	Decedent's Social Security Number	Decedent's Date of Birth (mm/dd/yyyy)
List the estate assets that are subject to the probate ( <b>For example</b> , list real property, bank accounts, cash and automobiles.)		

### Heir/Legatee Information

Applicant's Name (First, Middle, Last)		Relationship to Decedent	
Applicant's Primary Residence	City	State	ZIP Code
Area Code and Telephone Number	Social Security Number	Date of Birth (mm/dd/yyyy)	
Applicant's Employer		Employer Area Code and Telephone Number	
Employer Address	City	State	ZIP Code

Spouse's Name (First, Middle, Last)		Spouse's Area Code and Telephone Number	
Spouse's Address (if different from Applicant's)	City	State	ZIP Code
Spouse's Employer		Spouse's Employer Area Code and Telephone Number	
Spouse's Employer Address	City	State	ZIP Code

Answer all of the questions and provide documentation for each of the sections that apply to you.

**Section I: Has the estate property been the site of a family business, farm or ranch for at least 12 months before the death of the decedent and the proceeds provide at least 50% of your income?** ☐ Yes ☐ No

1. If yes, give a description of the family business, farm or ranch:

2. When was the property first used as a family business, farm or ranch?.....

Include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.

- ☐ The most recent two years of your filed federal income tax return, including supporting schedules, and any other documents for other income you may receive.
- ☐ The Will or an Affidavit or Heirship filed in County Court.

**Section II: Would you become eligible for public assistance if the claim were collected?** ☐ Yes ☐ No

1. Explain how recovery of the estate claim would cause you to become eligible for public assistance.

2. Does the estate property include a home? ..... ☐ Yes ☐ No

If yes, how many homes are on the property? .....

3. Do you currently reside on the property?..... ☐ Yes ☐ No

If yes, what length of time have you resided in the home? .....

If no, what is the address where you live? .....

Do you own another residence in full or in part? ..... ☐ Yes ☐ No

If yes, provide documents including proof of ownership. ....

4. List all sources of income and monthly income amounts.

5. List all other assets that you own and their total value.

Include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.

- ☐ Your most recently filed federal income tax return.
- ☐ Your last three months of pay stubs and any other income that you receive or expect to receive.
- ☐ Your bank statements for the past three months.
- ☐ The Will or an Affidavit of Heirship filed in County Court.

**Section III: Would you be able to discontinue public assistance if the claim were not collected?** ☐ Yes ☐ No

1. Explain how you would be able to discontinue public and/or medical assistance if the state did not recover the claim.

2. List the types of public and/or medical assistance you receive (subsidized housing, Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), etc.).

Do you own a residence?..... ☐ Yes ☐ No

If no, what is the address where you live? \_\_\_\_\_

**Include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.**

- ☐ Benefits Award Letter for public assistance received.
- ☐ The Will or an Affidavit of Heirship filed in County Court.

**Section IV: Did the decedent receive Medicaid as the result of being a crime victim?** ☐ Yes ☐ No

If yes, what happened to cause the decedent to receive medical assistance paid my Medicaid for injuries caused by the crime committed against them? When did this happen? **Note: This section is for information on the deceased Medicaid member.**

**Include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.**

- ☐ All medical reports regarding the injuries the decedent received as a result of the crime committed against them.
- ☐ The police report.

**Section V: Other Compelling Reasons**

The state has limited discretion to waive recovery of the estate claim for reasons other than those specified in the MERP rule. Two instances in which the state may waive recovery of its estate claim are the following:

- Are you a sibling or parent who has equity interest in the decedent's home, who was residing there for at least one year before the recipient's date of admission to the institution, who has been residing in the home on a continuous basis, **and**, who has no financial means for an alternative residence? ..... ☐ Yes ☐ No
- Are you an adult child or grandchild who was residing in the home for at least two years before the recipient's date of admission to the institution, who can prove that he or she provided necessary care to the recipient that delayed institutionalization, **and**, who has no financial means for an alternative residence? ..... ☐ Yes ☐ No
- Are there other reasons why the recovery of the estate claim would cause an undue hardship for you? ..... ☐ Yes ☐ No

If yes, explain.

**Include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.**

- ☐ Proof of ownership (if applicable), proof of residence in the home for the time frame considered, and a statement from the decedent's physician or social worker indicating the care provided.
- ☐ The Will or an Affidavit of Heirship filed in County Court.
- ☐ Your most recently filed federal income tax return and earnings statement for the last three months.

## Section VI: Qualification for homestead exemption.

Note: When there are multiple heirs and not all qualify for this hardship waiver, only the share of a qualifying heir(s) will be waived, not to exceed a total exemption of \$100,000.

1. How many heirs does the estate have? .....
2. What is the tax appraisal district value of the homestead? .....
3. Is there a mortgage or any other encumbrances on the homestead? ..... ☐ Yes ☐ No  
If yes, what is the amount of the debt owed? .....

Heirs requesting this waiver must provide the following information about all family members living full time in the household.

Applicant	Family Members <i>Residing</i> in the Household Means:
If you are an adult age 18 or younger, if legally emancipated, then provide the information to the right.	Applicant Spouse Applicant's biological or legally adopted minor children or stepchildren <b><i>under age 18</i></b>
If you are a minor younger than age 18 and not legally emancipated, then provide information to the right.	Applicant Parent(s) or stepparent(s) Minor siblings, including half, step and legally adopted siblings <b><i>under age 18</i></b>

Name of Applicant	Relationship to the Decedent	Gross Family Income	Number of Family Members
Family Member Name	Social Security Number	Date of Birth (mm/dd/yyyy)	Relationship to Applicant

\*If you need additional space, add information to another sheet and include it with the application.

For consideration of a homestead exemption, include a copy of the following documents with this application. You may also contact HMS for questions related to these documents.

- ☐ The Will or an Affidavit of Heirship filed in County Court.
- ☐ Your last three months of pay stubs, Social security award/benefit letter, and documents for any other income you expect to receive.
- ☐ Your bank statements for the past three months.
- ☐ Your most recent federal income tax return.
- ☐ Your marriage certificate, if applicable.
- ☐ The birth certificate of minor children or adoption papers, if applicable.

I certify that the information I have provided is true and complete to the best of my knowledge. I authorize persons, organizations or other entities having records, concerning my circumstances to furnish such information to the Texas Department of Aging and Disability Services (DADS) or to its contract agent for the estate recovery program. I grant permission to DADS or its contract agent to obtain information that may have a bearing on my eligibility for a hardship waiver.

\_\_\_\_\_  
Signature – Applicant

\_\_\_\_\_  
Date



# Your Guide to the Medicaid Estate Recovery Program



TEXAS

Department of Aging and Disability Services

DADS Media Services 11P410 \* June 2011  
Publication No. DADS-121



# **Your Guide to the Medicaid Estate Recovery Program**

## ***Medicaid Estate Recovery Program***

Medicaid is a government program that pays for healthcare for people with limited incomes. Some of these services are provided to people as they grow older. Medicaid pays for services that help people stay in their own homes. It also pays for people to move to a nursing home, if that is what they need.

To help pay for these long-term services, every state must have a Medicaid Estate Recovery Program (MERP). If you received Medicaid long-term services and supports, the state of Texas has the right to ask for money back from your estate after you die. In some cases, the state may not ask for anything back, and the state will never ask for more money back than it paid for your services.

## ***Who does MERP affect?***

This program will affect only long-term care services and supports you receive after the age of 55, and only if you first applied for these services after March 1, 2005. If you applied for these services before March 1, 2005, MERP does not affect you. If you were on an interest list for services before that date but did not complete an application for services until after March 1, 2005, MERP does affect you.

The following services and programs are affected by MERP:

- Nursing facility care (nursing homes)
- Intermediate Care Facility for Persons with Mental Retardation (ICF/MR)
- The following Medicaid Waiver Programs:
  - ✓ Home and Community-based Services (HCS)
  - ✓ Community Living Assistance and Support Services (CLASS)
  - ✓ Texas Home Living Waiver (TXHmL)
  - ✓ Consolidated Waiver Program (CWP)
  - ✓ Deaf-Blind with Multiple Disabilities (DBMD) Waiver
  - ✓ Community Based Alternatives (CBA)
  - ✓ STAR+PLUS Waiver (SPW)
  - ✓ Integrated Care Management Waiver (ICMW)
  - ✓ Community Attendant Services (CAS)

MERP also affects the costs of certain hospital and prescription drug services you receive. Primary Home Care (PHC) is not affected by MERP.

If you are not sure whether MERP applies to the services you currently receive or will be receiving, you should ask your Department of Aging and Disability Services (DADS) case manager. If you are a Medicaid managed care enrollee, you should ask your service coordinator with the health plan from which you receive your services.

### ***How does this program work?***

When a person applies for Medicaid and long-term services and supports, the state provides a notice that explains MERP. When the person dies, the state sends a different notice to the estate representative or heirs to let them know that the state intends to file a claim. The notice will ask the representative for information so the state can decide whether to file a MERP claim.

### ***What is an estate?***

An estate is property, such as money, a house, or other things of value, that a person leaves to family members or others (heirs) when he or she dies. MERP does not apply to all property that a person may own.

Here are some examples of property that the state will not collect on:

- Life insurance policies that name a person to receive the payment.
- Bank accounts that are paid on death to another person.

## ***Are there times when the state will not ask for money back?***

Yes, the state will not ask for money when:

- There is a spouse who is still alive.
- There is a child under 21 years of age.
- There is a child of any age who is blind or permanently and totally disabled.
- The value of the estate is \$10,000 or less.
- The amount of Medicaid costs is \$3,000 or less.
- There is an unmarried adult child who lived full-time in the Medicaid person's home for at least one year before this person died.
- The cost of selling the property is more than the property is worth.

Also, the state will not ask for money when this would cause an undue hardship for the heirs.

## ***How does the state define undue hardship?***

The state may consider it a hardship when:

- The estate property was a family business, farm, or ranch for at least 12 months before the person on Medicaid dies, and is the main source of income for the heirs.
- The heirs would need financial help from the government if the state filed a MERP claim to get money back.
- The heirs could stop getting financial help from the government if the state did not file a MERP claim.
- The person who died received services because he or she was a crime victim.
- There are other circumstances that may create a hardship.

One type of hardship applies just to the home. If the value of the homestead is under \$100,000, and if one or more of the heirs have family income under a certain amount, the state may not ask for money back. In 2011, this income limit for one person is \$32,670. For a family of two, it is \$44,130. These figures are adjusted each year.

The state will not grant a hardship request unless the person's heirs ask for it, and provide the requested proof of the hardship.

If the estate has debts, such as funeral costs, legal costs, or a home mortgage, those costs are paid before a MERP claim is paid.

### ***Will the state ever reduce the amount owed?***

Yes, if money is spent to maintain a person's home while he or she is in the nursing facility, these costs can be deducted from the MERP claim. If money is spent to pay for care that helps keep the person living at home for as long as possible before entering the nursing home, those costs can be deducted as well.

The heirs must have receipts to show what was spent on the person's home or services when they ask the state to deduct these amounts from the MERP claim. The state may allow deductions from an estate recovery claim for necessary and reasonable expenses, such as:

1. home maintenance costs, such as real estate taxes, utility bills, insurance, home repairs, and home maintenance expenses, such as lawn care for recipients receiving Medicaid-covered services in a nursing facility; and
2. the direct payment of the costs of care (including payment of personal attendant care) provided for a deceased Medicaid recipient that enabled the recipient to remain in his or her home and thereby delayed institutionalization.

## ***What happens if I give away or transfer my assets before moving into a nursing home?***

Giving away resources for no compensation, or refusing to accept income, or reducing income you could receive before moving into a nursing home may result in:

- a penalty against you for not paying for nursing facility or ICF/MR facility services when you were able to do so; or
- a decision by the state that you are ineligible for waiver program services or state supported living center services.

The state may “look back” up to 60 months before you applied for nursing home, ICF/MR or waiver services to determine when your income was reduced and resources were transferred.

## ***How can I get more information on Medicaid estate recovery?***

For more detailed information on this program, call the **Texas Department of Aging and Disability Services (DADS)** toll-free at **1-800-458-9858**. This line is answered 8 a.m. – 5 p.m., Monday through Friday. Voicemail is available 24 hours a day. You may also visit the DADS website at **[www.dads.state.tx.us/services/estate\\_recovery/](http://www.dads.state.tx.us/services/estate_recovery/)**.

You may e-mail questions to **[merp@dads.state.tx.us](mailto:merp@dads.state.tx.us)**. Estate representatives of deceased Medicaid recipients should contact the DADS Third Party Recovery unit by calling 512-438-2200 to determine if there are other outstanding Medicaid claims against the estate.





TEXAS

Department of Aging and Disability Services

DADS Media Services 11P410 \* June 2011  
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Utah

# Utah (UT)

<b>Governing Law:</b>	Utah's estate-recovery program is instituted under U.C.A. 1953 §26-19-13.5.
<b>Estate Scope:</b>	Recovery is authorized against the deceased patient's estate and expanded to also include any trust when the Medicaid recipient is both the grantor and beneficiary of the trust, <sup>1</sup> which is later referred to in the statute as the "recipient's inter vivos trust." <sup>2</sup> Claims against the estate are to be brought like all regular claims of an estate and treated as reasonable and necessary medical expenses of the last illness under Utah's Uniform Probate Code U.C.A.1953 §75-3-805. <sup>3</sup> Claims against a trust are brought under U.C.A. 1953 §75-7-509 and §75-7-510. <sup>4</sup> It should be noted that the amount due only becomes a "lien" against the estate, but the use of the term lien is akin to a creditor claim against the estate and treated as such and not as a TEFRA lien as the use of the term may imply. <sup>5</sup>
<b>Spousal Recovery:</b>	The estate-recovery statute provides that the state may recover from the recipient's estate or trust only if, at the time of death, the recipient has no surviving spouse; or child under 21; or child who is blind or permanently and totally disabled. <sup>6</sup> The existence of any such qualified survivor is a full bar for recovery but not necessarily to the imposition of a lien, discussed below.
<b>Liens:</b>	Utah makes no provision for the use of TEFRA liens to secure a patient's assets in anticipation of death but does provide that the debt becomes a lien against the estate or trust said the decedent patient. <sup>7</sup> The lien is filed in the same manner as a creditor's claim in probate court. <sup>8</sup>
<b>Partnership Program:</b>	Utah's governor signed S.B. 14 into law on March 29, 2014 to create a long-term care partnership program. The program has yet to implement formal rules.
<b>Hardship Waiver:</b>	Utah's hardship waiver definitions are contained in its state plan. <sup>9</sup> The State defines undue hardship as the presence of any of the following conditions: the survivor is the spouse of the deceased

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<sup>1</sup> U.C.A. 1953 §26-19-13.5(2)(a).

<sup>2</sup> U.C.A. 1953 §26-19-13.5(4).

<sup>3</sup> U.C.A. 1953 §26-19-13.5(2)(b) and (3)(a).

<sup>4</sup> U.C.A. 1953 §26-19-13.5(4).

<sup>5</sup> U.C.A. 1953 §26-19-13.5(2).

<sup>6</sup> U.C.A. 1953 §26-19-13.5(1).

<sup>7</sup> U.C.A. 1953 §26-19-13.5(2)(a).

<sup>8</sup> U.C.A. 1953 §26-19-13.5(3)(a).

<sup>9</sup> Utah State Plan— Liens and Adjustments or Recoveries, p. 1-4.

recipient; the survivor is a minor child of the deceased recipient; the survivor is a blind or disabled child of the deceased recipient; income is limited, and the property is the sole income-producing asset and source of support for the survivors (such as a family farm or other family business, which produces a limited amount of income); or an individual who has an equity interest in the decedent's home and who resides in the home as his or her primary residence. The exemption provided for each only applies to the person's proportionate share of the decedent's estate or property that passes to that individual.<sup>10</sup>

Utah notifies the person handling the decedent's estate by letter of the right to apply for an estate recovery hearing. The person handling the decedent's estate must request a hearing in writing within thirty (30) days of the date recorded on the state's notice. The hardship applicant can submit the written request and all supporting documentation, or the applicant may request an estate hearing before the Hearing Officer. The Associate Director serves as the Hearing Officer. If a hearing is requested, the state provides at least thirty (30) days' notice of the date, time, and place of the hearing. The Hearing Officer hears all of the evidence and reviews all of the documentation. The Hearing Officer renders a written decision within thirty (30) days of the closing of the hearing. A copy of the decision is mailed by certified mail to the person handling the decedent's estate.

The person handling the decedent's estate can request a review by a higher authority if he/she does not agree with the Hearing Officer's decision. The request must be in writing and must be received within 30 days of the date stated in the written decision. If the person handling the decedent's estate requests an appeal, the Office Director serves as the authority for appeal. The state courts provide the ultimate avenue for appeal.<sup>11</sup>

Utah employs the following procedure to waive estate recovery when recovery is not cost-effective: Expenses and claims having priority to the state's claim are subtracted from the assets in the estate to determine if enough recoverable assets remain in the estate to make recovery cost-effective. Where expenses having priority leaves less than five hundred (\$500.00) dollars in recoverable assets, estate recovery is waived.<sup>12</sup>

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<sup>10</sup> Ibid at P. 2, ¶4.

<sup>11</sup> Ibid at p. 2-3, ¶5.

<sup>12</sup> Ibid at p. 3, ¶6.



## What is Estate Recovery?



The state recovers funds from a recipient's estate for Medicaid expenses paid after age 55, provided that there is no child who is blind, or disabled, or under age 21. Recovery takes place **only after** the death of both the recipient **and** the surviving spouse.

There is no recovery if there is a surviving spouse and the surviving spouse has not been a Medicaid recipient. If there is a surviving spouse who has been or is a Medicaid recipient recovery takes place only for that spouse after his/her death.

## Why Estate Recovery?

- To comply with Federal law. Section 1917 of the Social Security Act makes estate recovery mandatory.
- Estate Recovery funds are returned to medical programs to help provide assistance to others in need.
- Utah State law provides for Estate Recovery in Section 26-19-13.5.

## How does ORS define “estate”?

“Estate” means, regarding a deceased recipient, all real and personal property or other assets included within a decedent's estate (as defined in Utah Code, Section 75-1-201); and a decedent's augmented estate (as defined in Section 75-2-202.)

## What medical costs will ORS recover?

ORS recovers costs paid by Medicaid when the recipient was age 55 or older, such as:



- Pharmacy charges.
- Doctor and Hospital charges.
- Ambulance charges.
- Insurance premiums.
- Medical equipment.
- Long-term care costs (both in-home and nursing home).
- Qualified Medicare Beneficiary expenses.
- All other costs paid under the State Plan.

## How does ORS proceed with Estate Recovery?

ORS does not initiate **any** recovery until after the death of the Medicaid recipient. There is no recovery if there is a surviving spouse who has not been a Medicaid recipient.

- ORS contacts a representative of the heirs after the death of the recipient.
- ORS may record a lien against real property of a **deceased** recipient for purposes of Estate Recovery.
- ORS may file a claim with the probate court for the amount of the medical assistance provided.

## Will I be required to sign a lien against my home?

No, a lien is placed on real property only **after** the death of the recipient and the recipient's spouse.

If there is no surviving spouse, a lien is placed on real property **after** the death of the Medicaid recipient.

### **If my home is exempt from eligibility, will it also be exempt from Estate Recovery?**

No, while your home may be exempt for purposes of determining Medicaid eligibility, it will not be exempt from Estate Recovery. However, recovery takes place only after the death of both the recipient and the recipient's spouse. If there is a spouse who has not been a Medicaid recipient, there will be no recovery.

### **What about burial costs and other claims against the estate?**

- Burial costs are paid first from the estate of the recipient.
- The state's claim for reimbursement has the same priority as reasonable and necessary medical expenses of the last illness under the Utah Uniform Probate Code.
- The state's claim is paid before other creditors and before the heirs.

### **Can ORS waive Estate Recovery if it would cause undue hardship?**

- Recovery is deferred while there is a surviving spouse. If the spouse has not been on Medicaid, there is no recovery.
- If a child of the recipient is under 21, blind, or disabled, estate recovery is waived.
- ORS may waive recovery when the property is the sole income-producing asset and source of support for the survivors (such as a family farm or other family business, which produces a limited amount of income).
- ORS offers the opportunity to apply for an undue hardship waiver in every case.

### **Whom can I call for information on Estate Recovery?**

- ORS Medical Section  
536-8806
- Toll-Free Long Distance  
1-800-821-2237

We do not discriminate because of race, color, handicap, national origin, age, sex, political beliefs, or religion.

## **Estate Recovery Information Bulletin**

Department of Health  
Division of Health Care Financing  
288 N. 1460 W.  
Salt Lake City, UT 84116

BES PM 994  
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24 30 345





# Vermont (VT)

<b>Governing Law:</b>	Vermont's recovery statute is contained in 33 V.S.A. §1909 and §1906a.
<b>Estate Scope:</b>	Vermont limits recovery to the probate estate of the deceased patient and further provides an exemption for recovery against the homestead if it would pass to one or more lineal heirs or siblings of the deceased patient who either has income below 300 percent of the federal poverty level or who has contributed significantly, monetarily or otherwise, to the decedent so as to have allowed the decedent to delay or avoid nursing home placement. <sup>1</sup> The department exempts homes in trust prior to December 1, 1997. <sup>2</sup> The state will not seek recovery where the estate inventory filed with the probate court consists only of personal property that does not exceed \$2,000 in value, such as home furnishings, apparel, personal effects, and household goods. <sup>3</sup>
<b>Spousal Recovery:</b>	Vermont prohibits recovery against a deceased patient's estate if he or she is survived by: a spouse, a child under 21, or a child who is blind or permanently and totally disabled. <sup>4</sup>
<b>Partnership Program:</b>	Vermont recognizes a partnership program at 33 V.S.A. §1908a, which provides a total disregard of all assets and all recovery if a partnership policy is used. <sup>5</sup> Such policies must provide coverage for at least three years of care. <sup>6</sup>
<b>Hardship Waiver:</b>	The Vermont Department of Prevention, Medicaid Rules Assistance, Transition, and Health Access will file a claim with the probate court as a creditor of the estate to recover its expenditures for long-term care services only after the death of an individual's surviving spouse, if any, and when the individual has no surviving child who is under age 21, or blind, or permanently and totally disabled as defined by the Social Security Administration. <sup>7</sup> Recovery from an income-producing asset can be made only if the asset, alone or in combination with other related assets, is sold and either or both of the following conditions are met: the assets sold are the sole source of income for the decedent's spouse, parents, children, or siblings;

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<sup>1</sup> 33 V.S.A. §1906(a).

<sup>2</sup> Vermont Medicaid Rules, Rule M159.2(a).

<sup>3</sup> Vermont Medicaid Rules, Rule M159.2(c).

<sup>4</sup> 33 V.S.A. §1906.

<sup>5</sup> 33 V.S.A. §1908a(b).

<sup>6</sup> Ibid.

<sup>7</sup> Vermont Medicaid Rules, Rule M159.1.

and as a result of the sale, the decedent's spouse, parents, children, or siblings would qualify for public assistance (e.g., Reach Up benefits, SSI/AABD, general or emergency assistance, or TANF or TANF/MOE benefits from another state).<sup>8</sup>

At any time before closure of the probate estate, an heir may assert that adjustment or recovery against the homestead would be an undue hardship and that the homestead should be exempt from adjustment or recovery for the costs of Medicaid long-term care services.

The state is required to a home from recovery based on undue hardship when one or more of the following three conditions have been established to the department's satisfaction:

- A sibling has been living in the home continuously for at least one year immediately before the date the decedent began receiving long-term care services.<sup>9</sup>
- A son or daughter has been living in the home continuously for at least two years immediately prior to the date the decedent began receiving long-term care services and provided care that allowed the decedent to remain at home.<sup>10</sup>
- The fair market value of the homestead is less than two hundred fifty thousand (\$250,000) dollars. If the fair market value of the homestead exceeds this amount, the first two hundred fifty thousand (\$250,000) dollars in fair market value shall be exempt from estate recovery and any equity value in excess of two hundred fifty thousand (\$250,000) dollars shall be subject to recovery; a sibling or lineal heir (e.g., direct descendant, such as a child or grandchild) of the deceased Medicaid beneficiary will inherit the homestead; or the heir has gross family income below three hundred (300%) percent of the federal poverty level without income exclusions or deductions are allowed and the heir demonstrates that significant services or financial support was provided to the deceased person by heirs or such heirs or their spouses enabled the person to avoid long-term care or delay it at least six months.<sup>11</sup>

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<sup>8</sup> Vermont Medicaid Rules, Rule M159.2(b)(1).

<sup>9</sup> Vermont Medicaid Rules, Rule M159.21(a).

<sup>10</sup> Vermont Medicaid Rules, Rule M159.21(b).

<sup>11</sup> Vermont Medicaid Rules, Rule M159.21(c).





# Virginia (VA)

<b>Governing Law:</b>	Virginia authorizes its Department of Medical Assistance Services (DMAS) to operate an estate-recovery program in Va. Code Ann. §32.1-326 and §32.1-327. The program's definitive terms are contained in Virginia's Administrative Code at 12VAC30-20-141 and 12VAC30-20-560.
<b>Estate Scope:</b>	Virginia seeks recovery from the estate of an individual who was age 55 or older when that person has received medical assistance from the commonwealth. <sup>1</sup> The administrative code defines the estate to include, with respect to the deceased recipient, all real and personal property and other assets held by the individual at the time of death and any other assets the individual had any legal title or interest (only to the extent of that interest) at the time of death. <sup>2</sup> Extended exemptions are provided for American Indians and Alaskan Natives. <sup>3</sup> Annuities are specifically referenced as recoverable assets within the definition of the meaning of estate. <sup>4</sup> Estate recovery will not be pursued by DMAS if it is not cost effective. <sup>5</sup> The cost-effective threshold takes into account the following costs: staff time, litigation costs, expert witness fees, deposition expenses, travel expenses, office supplies, postage, advertising, and publishing costs. <sup>6</sup>
<b>Spousal Recovery:</b>	Virginia does not authorize recovery against the Community Spouse's estate. The regulations only provide for recovery after the death of the patient's surviving spouse, if any, and only at a time when the patient has no surviving child under age 21, or blind or disabled child as defined by the Social Security Act. <sup>7</sup>
<b>Partnership Program:</b>	Virginia seeks recovery from individuals with long-term care insurance policies. <sup>8</sup> However, no recovery is sought from an individual's estate to the extent payments have been made by a qualified long-term care partnership insurance policy. <sup>9</sup> Va. Code Ann. §32.1-325 establishes Virginia's partnership program. <sup>10</sup> Virginia provides asset disregard for eligibility determinations based upon the benefits provided to the patient from a qualified partnership

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<sup>1</sup> 12VAC30-20-141(C)(1).

<sup>2</sup> 12VAC30-20-141(A).

<sup>3</sup> 12VAC30-20-141(C)(5).

<sup>4</sup> 12VAC30-20-141(C)(8).

<sup>5</sup> 12VAC30-20-141(F).

<sup>6</sup> 12VAC30-20-141(F)(2).

<sup>7</sup> 12VAC30-20-141(C).

<sup>8</sup> 12VAC30-20-141(C)(3).

<sup>9</sup> Ibid.

<sup>10</sup> 12VAC30-10-560(A)(3).

policy.<sup>11</sup> Virginia also disregards the same amount of assets when seeking recovery from a patient's estate.<sup>12</sup>

**Liens:**

Virginia does not impose liens for estate recovery.<sup>13</sup>

**Hardship Waiver:**

Whenever recovery would work an undue hardship on the deceased patient's heirs, Virginia provides a waiver of recovery.<sup>14</sup> Anyone affected by estate recovery can apply for a waiver.<sup>15</sup> When determining the merit of an application, special consideration is shown if an asset to be recovered against is the sole income-producing asset of the survivors (e.g., a family farm or other family business).<sup>16</sup> A hardship waiver will also be granted if the homestead to be recovered against is of modest value.<sup>17</sup> Modest value is defined, in reference to the homestead, as a home that is worth 50% or less of the average or median price, as contained in the most recent U.S. census data or any other such source of home value information relied on by the agency, of homes in the county or city, as appropriate, where the homestead is located as of the date of the patient's death.<sup>18</sup> Heirs are allowed to establish a reasonable payment schedule to avoid recovery against non-liquid assets.<sup>19</sup> A hardship waiver may be limited to the time period during which the undue hardship circumstances existed or continue to exist.<sup>20</sup> An undue hardship shall not be deemed to exist if the beneficiary created the hardship by estate planning methods that include divestment.<sup>21</sup> Any adverse determination made by DMAS can be appealed to its Appeals Division for a fair hearing pursuant to 12VAC30-110.<sup>22</sup>

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<sup>11</sup> 12VAC30-40-290(G).

<sup>12</sup> 12VAC30-10-560(A)(3).

<sup>13</sup> 12VAC30-10-560(C); See also: 12VAC30-20-130.

<sup>14</sup> 12VAC30-20-141(D).

<sup>15</sup> Ibid.

<sup>16</sup> 12VAC30-20-141(D)(1).

<sup>17</sup> Ibid.

<sup>18</sup> 12VAC30-20-141(A).

<sup>19</sup> 12VAC30-20-141(D)(3).

<sup>20</sup> 12VAC30-20-141(D)(4).

<sup>21</sup> 12VAC30-20-141(D)(5).

<sup>22</sup> 12VAC30-20-141(G).



A white outline map of the state of Washington is centered on a dark blue background. The word "Washington" is written in a white serif font across the middle of the state's outline.

# Washington

# Washington (WA)

**Governing Law:**

Washington's estate-recovery program is contained in R.C.W.A. 43.20B.080, 43.20B.090, 43.20B.750 and 74.39A.170 and in the administrative code at W.A.C. 182-527-2700.

**Estate Scope:**

Washington provides for recovery against the patient's estate and from non-probate assets defined by RCWA 11.02.005.<sup>1</sup> The estate exempts tribal artifacts and other assets held by individual Native Americans.<sup>2</sup> Additionally, the statute mentions explicit recovery against life estates or joint tenancy interest in real property, as it is held by the patient prior to death.<sup>3</sup> The value of the life estate subject to recovery is the value of patient's interest in the life estate immediately before death.<sup>4</sup> The value of joint tenancy interest subject to recovery is the value of the patient's fractional interest had the patient and the joint tenants owned the property as tenants in common on the date of the patient's death.<sup>5</sup>

Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death the deceased recipient was enrolled in a federally recognized tribe; and the estate or heir documents the deceased recipient's ownership interest in trust or non-trust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located either within the most recent boundaries of a prior federal reservation or within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.<sup>6</sup>

**Spousal Recovery:**

Recovery is not provided when the patient is survived by a spouse, but Washington goes one step further and provides an undue hardship to be automatically applied to recovery attempted against assets transferring to a "surviving domestic partner" whenever recovery would not have been permitted if the domestic partner had been an actual spouse.<sup>7</sup>

**Liens:**

The Department of Social and Health Services is authorized to file TEFRA liens before the patient's death and to seek recovery from

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<sup>1</sup> R.C.W.A. 43.20B.080(3).

<sup>2</sup> R.C.W.A. 43.20B.080(5)(b).

<sup>3</sup> R.C.W.A. 43.20B.080(7).

<sup>4</sup> R.C.W.A. 43.20B.080(7)(a).

<sup>5</sup> R.C.W.A. 43.20B.080(7)(b).

<sup>6</sup> W.A.C. 182-527-2754(4).

<sup>7</sup> R.C.W.A. 43.20B.080(5)(a).

the patient's estate or upon the sale of the property.<sup>8</sup> Liens can be foreclosed upon in either of these situations.<sup>9</sup> A lien authorized by statute relates back to any real property that the deceased patient had an ownership interest in immediately before death and is effective as of that date or the date of recording, whichever is earlier.<sup>10</sup> Liens against life estates and joint tenancy property are limited as described above and only enforceable against a property right that vested after July 1, 2005.<sup>11</sup> The state must provide the record titleholder and/or purchaser under land contract with prior notice and a hearing appointment before a lien is recorded.<sup>12</sup> A patient deemed eligible for a TEFRA lien notice must be provided an opportunity for a hearing on the state's determination that the patient is not expected to be discharged and return home.<sup>13</sup>

**Partnership Program:** Assets designated as protected by a qualified long-term care partnership policy issued on or after December 1, 2011, may be disregarded for estate recovery purposes if: the insured individual's estate is the recipient of the estate recovery exemption; or the insured individual holds title to property which is potentially subject to a pre-death lien and that individual asserts the property is protected under the long-term care partnership policy.<sup>14</sup> An individual must provide clear and convincing evidence that the asset in question was designated as protected to the office of financial recovery including proof of a valid partnership policy; verification from the insurance company of the dollar amount paid out by the policy; and a current asset designation form when the partnership policy paid out more than was previously designated.<sup>15</sup>

**Hardship Waiver:** The Medicaid agency delays recovery when it determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.<sup>16</sup>

Undue hardship exists when:

- The estate subject to adjustment or recovery is the sole income-producing asset of one or more heirs and income is limited;<sup>17</sup>

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<sup>8</sup> R.C.W.A. 43.20B.080(8).

<sup>9</sup> R.C.W.A. 43.20B.080(2).

<sup>10</sup> R.C.W.A. 43.20B.080(6).

<sup>11</sup> R.C.W.A. 43.20B.080(7).

<sup>12</sup> R.C.W.A. 43.20B.080(1).

<sup>13</sup> R.C.W.A. 43.20B.080(8)(a)(ii).

<sup>14</sup> W.A.C. §182-527-2754(9).

<sup>15</sup> W.A.C. §182-527-2754(10).

<sup>16</sup> W.A.C. §182-527-2750.

<sup>17</sup> W.A.C. §182-527-2750(1)(a).

- Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter;<sup>18</sup> or
- The Medicaid recipient is survived by a domestic partner.<sup>19</sup>

Undue hardship does not exist when:

- The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle;<sup>20</sup> or
- The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.<sup>21</sup>

When a delay in recovery is not granted, the agency provides notice to the person who requested the delay of recovery. The agency's notice includes information on how to request an administrative hearing to contest the agency's denial.<sup>22</sup>

The agency may revoke the delay of recovery if the heir(s): Fails to supply timely information and resource declaration when requested by the agency; sells, transfers, or encumbers title to the property; fails to reside full-time on the premises; fails to pay property taxes and utilities when due; fails to identify the state of Washington as the primary payee on the property insurance policies and the person granted the delay of recovery must provide the agency or its designee with documentation of the coverage status on an annual basis; have a change in circumstances for which the delay of recovery due to undue hardship was granted; or dies.<sup>23</sup>

When a delay of recovery is granted due to undue hardship, the agency has the option to apply a lien and/or accept a payment plan.<sup>24</sup>

A person may request an administrative hearing to contest the agency's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.<sup>25</sup> A request for an administrative hearing must be in writing and provide the

<sup>18</sup> W.A.C. §182-527-2750(1)(b).

<sup>19</sup> W.A.C. §182-527-2750(1)(c).

<sup>20</sup> W.A.C. §182-527-2750(2)(a).

<sup>21</sup> W.A.C. §182-527-2750(2)(b).

<sup>22</sup> W.A.C. §182-527-2750(3).

<sup>23</sup> W.A.C. §182-527-2750(4).

<sup>24</sup> W.A.C. §182-527-2750(5).

<sup>25</sup> W.A.C. §182-527-2750(6).

basis for contesting the agency's denial of the request for a delay of recovery due to an undue hardship; include a copy of the agency's or its designee's denial; be signed by the requester and include the requester's address and telephone number; and be served on the office of financial recovery within twenty-eight (28) calendar days of the date that the agency or its designee sent the decision denying the request for a delay of recovery.<sup>26</sup> Upon receiving a request for an administrative hearing, the agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.<sup>27</sup>

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<sup>26</sup> W.A.C. §182-527-2750(7).

<sup>27</sup> W.A.C. §182-527-2750(8).



A white outline map of the state of West Virginia is centered on the page. The map shows the state's irregular borders, including its northern panhandle and mountainous terrain. The text "West Virginia" is superimposed over the map.

# West Virginia



# West Virginia (WV)

<b>Governing Law:</b>	After attempts to exempt itself from the requirement to institute estate recovery, <sup>1</sup> West Virginia codified its estate recovery program at W.Va. Code §9-5-11c and in the West Virginia Administrative Rules at 78-CSR-17.
<b>Estate Scope:</b>	The West Virginia Department of Health and Human Resources is authorized to pursue a recovery claim against the probate estate of the deceased patient. <sup>2</sup> Such claims for recovery are classified, for prioritization purposes, in the class of debts due the state. <sup>3</sup> West Virginia also allows the state to pursue actions against fraudulent conveyances in order to set them aside for inclusion in the recoverable estate. <sup>4</sup>
<b>Spousal Recovery:</b>	The state can only recover after the death of the patient's surviving spouse, if any, and only after such a time as the individual has no surviving children under twenty-one (21) or who meet the SSI definition of blindness or permanent and total disability. <sup>5</sup> The state does not recover when a joint-owner sibling lived in the property at least one year before the patient was admitted to the nursing facility. <sup>6</sup> West Virginia delays recovery until such a time when the condition for delay no longer exists. <sup>7</sup>
<b>Liens:</b>	The state is both authorized to file a lien against the patient's estate <sup>8</sup> and to place a lien upon the patient's property when, after notice and opportunity for a hearing, the state determines the patient is permanently institutionalized. <sup>9</sup> No lien may be imposed on such individual's home when the home is the lawful residence of: the patient's spouse; the patient's child under 21; the patient's child who meets the SSI definition of blindness and permanent and total disability; or the patient's sibling who has an equity interest in the home and resided there for a year immediately before the patient's admission to a medical institution. <sup>10</sup>
<b>Partnership Program:</b>	West Virginia's partnership program is codified at W.Va. Code §9-4E-1 to §9-4E-3. The partnership program provides a dollar-for-dollar

<sup>1</sup> *West Virginia v. U.S. Dept. of Health and Human Services*, 289 F.3d 281 (2002).

<sup>2</sup> W. VA. Code, §9-5-11c(a).

<sup>3</sup> *Ibid.*

<sup>4</sup> W. VA. Code, §9-5-11c(e).

<sup>5</sup> W. VA. Code, §9-5-11c(b).

<sup>6</sup> CSR 78-17-6.1.4.

<sup>7</sup> CSR 78-17-6.2.

<sup>8</sup> W. VA. Code, §9-5-11c(a).

<sup>9</sup> W. VA. Code, §9-5-11c(c).

<sup>10</sup> W. VA. Code, §9-5-11c(d).

asset disregard for determining eligibility and any subsequent recovery.<sup>11</sup>

**Hardship Waiver:**

The Department of Health and Human Resources is authorized to compromise or reduce the amount of any TEFRA lien<sup>12</sup> or any claim against the estate<sup>13</sup> where such would cause substantial hardship to the surviving dependents of the deceased patient.

The state administrative code provides several examples of situations which it would consider automatic undue hardship.<sup>14</sup> A hardship exists automatically if an adult child resided in the home being recovered against for a period of two (2) years prior to the date the parent became a Medicaid recipient and caused the parent to delay the need for assistance by at least that two-year period.<sup>15</sup> A hardship also exists if an adult child maintains continuous employment in the family business for a period of time beginning at least three (3) years before the parent became a Medicaid recipient until the time of the parent's death and if the property, which would otherwise be subject to an estate recovery lien, is an integral part of the business and is required for the continued viability of the business.<sup>16</sup>

West Virginia's administrative code also describes several situations which are considered undue hardship but only provide a limited exclusion from estate recovery.<sup>17</sup> An adult child, regardless of whether he or she was living in the family home, is able to present proof of monetary support to his or her parent for medical care and other necessities prior to the date the parent became a Medicaid recipient. Such support shall reduce the medical assistance lien on a dollar-for-dollar basis.<sup>18</sup> An adult grandchild whose parents are both deceased prior to the date the grandparent became a Medicaid recipient is also able to present proof of monetary support to his or her grandparent for medical care and other necessities prior to the date the grandparent became a Medicaid recipient and similarly reduce the medical assistance lien.<sup>19</sup> A sibling is also able to present proof of monetary support and similarly reduce the medical assistance lien.<sup>20</sup> Any application to waive estate recovery of wedding rings is required to be granted without presentation of justification.<sup>21</sup>

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<sup>11</sup> W. VA. Code, §9-4E-3(e).

<sup>12</sup> W. VA. Code, §9-4E-3(c).

<sup>13</sup> W. VA. Code, §9-4E-3(f).

<sup>14</sup> CSR 78-17-7.

<sup>15</sup> CSR 78-17-7.1.1.

<sup>16</sup> CSR 78-17-7.1.1.

<sup>17</sup> CSR 78-17-7.2.

<sup>18</sup> CSR 78-17-7.2.1.

<sup>19</sup> CSR 78-17-7.2.2.

<sup>20</sup> CSR 78-17-7.2.3.

<sup>21</sup> CSR 78-17-7.3.

**WEST VIRGINIA ESTATE RECOVERY PROGRAM**  
**Department of Health and Human Resources**  
**Bureau for Medical Services**

**The information in this brochure is intended to provide only a general description of the State of West Virginia Department of Health and Human Resources Medicaid Estate Recovery Program. No information in this brochure is intended as legal advice and is not be construed as such. Individual circumstances may vary how the Medicaid Estate Recovery Program affects you; therefore, you should obtain legal council regarding the impact it may have on your specific situation. In the case of any inconsistencies between this brochure and the State law, W. Va. Code §9-5-11(c) et. seq. shall prevail.**

**Background**

Most people pay for their nursing home care out of their own pocket until they have exhausted their savings, and then rely on Medicaid to pay for their remaining medical expenses.

The federal government requires states to seek recovery, from estates, of the monies disbursed to Medicaid beneficiaries under certain circumstances. This brochure identifies and answers some of the most frequently asked questions about Estate Recovery Programs.

***When was the Medicaid Estate Recovery Law passed?***

The Omnibus Reconciliation Act (OBRA) of 1993 was enacted on August 10, 1993. Its effective date was October 1, 1993, which allowed the states time to adopt OBRA. As a result of OBRA, **the state of West Virginia passed legislation to implement Medicaid Estate Recovery in March 1995. Under this legislation the West Virginia Department of Health and Human Resources is required to recover Medicaid payments made after June 6, 1995 from the estates of individuals aged 55 or older.**

***What is the difference between Medicaid and Medicare?***

**Medicaid** is funded by the federal and state government to pay for the medical care of certain individuals who are unable to finance their own medical expenses. To qualify for **Medicaid**, an individual must have limited income and resources. The state of West Virginia operates the Medicaid program according to federal law. Medicaid will only pay for services covered by the program.

**Medicare** is a federal program under the Social Security Administration designed to assist the payment of medical bills of senior citizens and certain disabled individuals. **Medicare** subsidizes the cost of medical care and recipients must pay their share of medical bills not covered by this program.

**ESTATE RECOVERY**

***What is estate recovery and how does it work?***

Under the West Virginia Probate Code, the State of West Virginia Department of Health and Human Resources as a state agency has priority over certain other private creditors. The personal representative or the attorney probating the estate will use the proceeds from the sale of

estate property to reimburse the Medicaid Program for medical expenses paid on the recipient's behalf.

*Example: Mr. Roberts, a widower, left his only property, a house valued at \$75,000, to his son. Following his death, his estate incurred a total of \$4,000 in funeral and administrative expenses. In addition, West Virginia Medicaid had provided \$24,000 for Mr. Robert's care and other related medical services. If Mr. Roberts' son sold the home, he would receive the proceeds from the sale of the house (i.e. \$75,000), less \$4,000 for funeral and administrative expenses and \$24,000 for Medicaid costs. Consequently, Mr. Roberts' son would only receive the remaining \$47,000 from the sale. Alternately, he could retain ownership of the house by reimbursing the state for \$24,000 provided for his father's medical services.*

#### ***What is an estate?***

Under West Virginia Probate Code, an estate is comprised of any real and personal property owned by an individual at the time of his/her death, including any partial ownership interests. This includes personal property conveyed from a deceased recipient to an heir by will or by the rules of intestate succession (i.e. no will).

If the recipient jointly owns any property with others, then the state may only recover the portion of any sale proceeds equal to the recipient's ownership interest.

#### ***Whose estates will be affected?***

Recipients, age 55 or older, whose nursing home and/or community based waiver services were paid by Medicaid.

#### ***What costs will be recovered?***

Any payments by Medicaid for:

Nursing home, ICF/MR care or home and community based waiver care (this is a special program that allows recipients to receive medical services in the home or a community – based setting instead of a nursing home):

Related hospital or prescription drug services provided while recipient was in one of the listed programs.

NOTE: Food stamps, emergency assistance and cash grants, however, are not deemed Medicaid costs, and are exempt from the Estate Recovery Program.

#### ***How will the State recover the cost?***

When a recipient whose nursing home, or home and community based waiver costs were paid by Medicaid dies, the State will file a proof of claim against the recipient's estate. This claim is filed with the probate court in the county in which the recipient lived. This claim applies to all of the property subject to probate (personal, real, and intangible) owned by the recipient at the time of his/her death. In addition, this claim will prevent the transfer of any estate assets prior to satisfying creditor's claims.

***Are there circumstances in which estate recovery may be deferred or exempted?***

There are exemptions which delay recovery for a period of time, including situations where your home is the lawful residence of a spouse, minor child, adult, blind or legally disabled child; therefore, it is important for the administrator or executor to respond to all documents received.

Recovery may occur when the condition upon which the delay was based no longer exists (i.e. the surviving spouse passes away or the child becomes age 21). Consequently, the State may impose a property lien after the recipient's death, which will be executed only if the condition no longer exists that deferred recovery. As in other estate recoveries, only the portion of the proceeds which represents the recipient's interest in the property is subject to recovery.

***Are there any exemptions if estate recovery would cause a hardship?***

Full recovery may not be pursued if there is a finding by the State of undue hardship on the recipient's heirs. If action is taken to recover Medicaid expenses from the recipient's estate, (i.e. a creditor's claim) the heirs may ask to have the recovery waived or comprised based on hardship. All undue hardship requests will be carefully considered and decisions will be based on guidelines as set forth in Medicaid's regulations.

If the recipient's heirs fail to qualify for an undue hardship exemption, they may provide documentation of financial support given to the recipient for medical care prior to Medicaid eligibility. In such instances, Medicaid may, if appropriate, reduce its claim in an amount equal to all payments made by the recipient's heirs.

**Please note:** It is important for the administrator or executor to respond to all documents received including the request for a hardship waiver and the request for an appraisal of the property in the estate.

***Can a recipient's heirs keep the estate property by repaying the state of West Virginia?***

The recipient's heirs may have the state's claim withdrawn by paying the lesser of: the formal appraised value of the estate, the fair market value of the estate property, or the amount of the medical assistance claim.

***Are recipients required to sell his/her home?***

The program does not require a recipient to sell his/her home to be eligible to receive Medicaid while he/she is alive.

Some of the information contained within this pamphlet is based on a publication of the Public Policy Institute on behalf of the AARP entitled:

**“Questions and Answers on Medicaid Estate Recovery for Long-Term Care Under OBRA '93”**



For more information, Please Contact:

**THE RECOVERY UNIT**  
**ATTN: ESTATE DIVISION**  
**405 Capitol Street Suite 503**  
**Charleston WV 25301**  
**(304) 342-1604**  
**[www.wvrecovery.com](http://www.wvrecovery.com)**

**WEST VIRGINIA ESTATE RECOVERY PROGRAM  
NOTIFICATION OF DEATH**

***THE NURSING FACILITY ADMINISTRATOR OR COMMUNITY WAIVER PROGRAM  
ADMINISTRATOR SHOULD COMPLETE THE FOLLOWING INFORMATION AND RETURN  
THIS FORM WITHIN 3 DAYS OF DEATH.***

**\*\*\*\*\*Please only fill this out if the decedent had Medicaid at time of death. \*\*\*\*\***

**RECIPIENT INFORMATION**

\*NAME OF DECEASED MEDICAID RECIPIENT: \_\_\_\_\_

\*DATE OF BIRTH: \_\_\_\_\_

\*DATE OF DEATH: \_\_\_\_\_

\*DATE OF ADMISSION: \_\_\_\_\_

\*DATE OF DISCHARGE: \_\_\_\_\_

\*PLACE OF DEATH: \_\_\_\_\_

\*SOCIAL SECURITY NUMBER: \_\_\_\_\_

\*MEDICAID NUMBER: \_\_\_\_\_

\*MEDICAID START DATE: \_\_\_\_\_

\*DID THE DECEDENT HAVE ASSETS? \_\_\_\_\_ IF YES, PLEASE INDICATE TYPE/ AMOUNT

\*IF KNOWN \_\_\_\_\_

PREVIOUS ADDRESS: \_\_\_\_\_

**\*\*\*\*\* PLEASE FILL OUT SECTIONS BELOW COMPLETELY. THE ADDRESS MUST BE  
COMPLETE INCLUDING ZIP CODE\*\*\*\*\***

(1) DECEDENT'S POWER OF ATTORNEY OR LEGAL REPRESENTATIVE:

\*NAME: \_\_\_\_\_

\*ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

\*RELATION TO DECEDENT: \_\_\_\_\_

(2) DECEDENT'S SURVIVING SPOUSE OR SURVIVING MINOR/DISABLED CHILDREN:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PHONE #: \_\_\_\_\_

\_\_\_\_\_

(3) DECEDENT'S NEXT OF KIN:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PHONE #: \_\_\_\_\_

\_\_\_\_\_

RELATION TO DECEDENT: \_\_\_\_\_

\_\_\_\_\_  
\*PREPARER'S NAME (PRINT) TITLE POSITION

\_\_\_\_\_  
\*PREPARER'S SIGNATURE \*DATE

\_\_\_\_\_  
\*NURSING FACILITY NAME \*PHONE NUMBER

\_\_\_\_\_  
\*COMMUNITY WAIVER PROGRAM NAME

\_\_\_\_\_  
\*ADDRESS

*\*If marked with an asterisk the information is required*

**PLEASE RETURN THIS FORM TO:  
DHHR/ESTATE RECOVERY UNIT  
405 CAPITOL STREET  
SUITE 503  
CHARLESTON, WV 25301  
PHONE: (304) 342-1604  
FAX: (304) 342-1605**

# West Virginia Estate Recovery Program



***Department of Health and  
Human Resources  
Bureau for Medical Services***

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## BACKGROUND

Most people pay for their nursing home care out of their own pocket until they have exhausted their savings, and then rely on Medicaid to pay for their remaining medical expenses.

The federal government requires states to seek recovery, from estates, of the monies disbursed to Medicaid beneficiaries under certain circumstances. This brochure identifies and answers some of the most frequently asked questions about Estate Recovery Programs.

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*Example: Mr. Roberts, a widower, left his only property, a house valued at \$75,000, to his son. Following his death, his estate incurred a total of \$4,000 in funeral and administrative expenses. In addition, West Virginia Medicaid had provided \$24,000 for Mr. Robert’s care and other related medical services. If Mr. Roberts’ son sold the home, he would receive the proceeds from the sale of the house (i.e. \$75,000), less \$4000 for funeral and administrative expenses and \$24,000 for Medicaid costs. Consequently, Mr. Roberts’ son would only receive the remaining \$47,000 from the sale. Alternatively, he could retain ownership of the house by reimbursing the state for the \$24,000 provided for his father’s medical services.*

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***Are there circumstances in which estate recovery may be deferred or exempted?***

There are exemptions which delay recovery for a period of time, including situations where your home is the lawful residence of a spouse, minor child, adult blind or legally disabled child; therefore, it is important for the administrator or executor to respond to all documents received

Recovery may occur when the condition upon which the delay was based no longer exists (i.e., the surviving spouse passes away or the child becomes age 21). Consequently, the State may impose a property lien after the recipient’s death, which will be executed only if the condition no longer exists that deferred recovery. As in other estate recoveries, only the portion of the proceeds which represents the recipient’s interest in the property is subject to recovery.

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For more information, Please Contact:

**THE RECOVERY UNIT  
ATTN: ESTATE DIVISION  
405 Capitol Street Suite 503  
Charleston WV 25301  
(304) 342-1604**

www.wvrecovery.com







# Wisconsin (WI)

<b>Governing Law:</b>	In 2013, Wisconsin passed the Estate Recovery and Divestment Provisions Act (Act 20) which fundamentally altered Wisconsin's estate recovery program. The estate recovery statute is found at W.S.A. 49.496. Additional recovery rules are found in the Wisconsin Administrative Code at DHS §108.02(10) through (12).
<b>Estate Scope:</b>	Under Act 20, all property in which the recipient had an interest at death is subject to recovery, to the extent of that interest. This can include life estates, property held in trust, property that passes by beneficiary designation, joint tenancy property, and survivorship marital property. Prior to Act 20, recovery was mostly limited to property in the recipient's probate estate. Act 20 includes a procedure to allow DHS to monitor transfers of real property in which an individual who is eligible for public assistance has an interest, which includes filing a document in the property's chain of title. Also, under certain circumstances, DHS may commence an action to void a transfer of real property that was made to hinder, delay, or defraud DHS from recovering benefits. <sup>1</sup> The Department will only recover from life estates, joint tenancy property (other than checking and savings accounts), life insurance policies payable to a beneficiary, and revocable trusts that were established on or after August 1, 2014. The court is required to reduce the amount of a claim by up to the amount, if necessary, to allow the decedent's heirs or the beneficiaries of the decedent's will to retain the following personal property: the decedent's wearing apparel and jewelry held for personal use; household furniture, furnishings and appliances; or other tangible personal property not used in trade, agriculture or other business. <sup>2</sup>
<b>Spousal Recovery:</b>	In a case where the recipient was survived by a spouse, Act 20 authorizes DHS to recover all property of the recipient that is included in the estate of the non-recipient surviving spouse, upon the spouse's death, including one hundred (100%) of all former marital property. <sup>3</sup> Act 20 creates a presumption that all property in the estate of the non-recipient surviving spouse is former marital property. Any lien placed on the property by the probate court may not be enforced as long as any of the following survive the patient: a spouse; a child under twenty-one (21); or a child who is disabled. <sup>4</sup>

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<sup>1</sup> W.S.A. 49.496(3)(am).

<sup>2</sup> W.S.A. 49.496(3)(am).

<sup>3</sup> W.S.A. 49.496(3)(aj)2; note, however, that the state's own Legislative Fiscal Bureau claims that this amount may exceed the federal authority and the state's Medicaid Estate Recovery handbook states that the marital assets are subject to only 50% recovery.

<sup>4</sup> W.S.A. 49.496(3)(d).

**Liens:**

In addition to post-death liens when a claim is not allowable, Wisconsin's statute explicitly authorizes TEFRA liens on a patient's home if the patient cannot reasonably be expected to be discharged and return home.<sup>5</sup> The state is precluded from obtaining a lien if any of the following are lawfully residing in the home: patient's spouse; patient's child under twenty-one (21) or disabled; or patient's sibling with an ownership interest and who lived in the home for a year prior to the patient's admission to the nursing home or hospital.<sup>6</sup> Before a lien can be obtained on a patient's home, the state is required to notify the patient in writing and provide the patient with an opportunity for a fair hearing.<sup>7</sup> Liens are properly obtained by filing a lien in the register of deeds office in the county where the property is located.<sup>8</sup> During the patient's lifetime, the state may not enforce a TEFRA lien unless the patient sells the home and does not have a living child under twenty-one (21) or disabled or a living spouse.<sup>9</sup> The state is also precluded from enforcing a lien after the patient's death as long as any of the following survives the patient: a spouse; a child under twenty-one (21) or disabled; a child who resides in the home, if that child lived there for twenty-four (24) months before the patient's admission to the nursing home or hospital and provided care that delayed such admission; or a sibling who lives in the home who lived there for a full year before the patient was admitted to the nursing home.<sup>10</sup>

**Partnership Program:**

Wisconsin's partnership program is contained in W.S.A. 49.45. The estate recovery statute expressly requires recovery from estates to be offset by the exclusion amounts provided by the partnership-program policy.<sup>11</sup>

**Hardship Waiver:**

Wisconsin waives claims upon the finding of an undue hardship.<sup>12</sup> If recovery does not work an undue hardship and if the heirs wish to satisfy a claim without selling a non-liquid asset that is subject to recovery, Wisconsin also allows the heir to establish a payment schedule, subject to reasonable interest.<sup>13</sup>

A beneficiary or heir of a decedent may apply to the state for a waiver of an estate claim. The state must review an application for a waiver and determine whether the applicant meets the undue

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<sup>5</sup> W.S.A. 49.496(2)(a).

<sup>6</sup> W.S.A. 49.496(2)(b).

<sup>7</sup> W.S.A. 49.496(2)(c).

<sup>8</sup> W.S.A. 49.496(2)(d).

<sup>9</sup> W.S.A. 49.496(2)(e).

<sup>10</sup> W.S.A. 49.496(2)(f).

<sup>11</sup> W.S.A. 49.496(3)(a).

<sup>12</sup> W.S.A. 49.496(6m); see also *Gorchals v. Wisconsin Department of Health and Family Services*, Wisconsin Court of Appeals, No. 98-0212, January 27, 1999.

<sup>13</sup> W.S.A. 49.496(7).

hardship criterion. If the state determines that the criterion is met, the state must waive its claim as to that applicant.<sup>14</sup>

Any of the following situations constitutes a presumptive undue hardship on the waiver applicant: The waiver applicant would become or remain eligible for Supplemental Security Income (SSI), food stamps, Aid to Families with Dependent Children (AFDC), or medical assistance if the department pursued its claim; a decedent's real property is used as part of the waiver applicant's business, which may be a working farm, and recovery by the department would affect the property and would result in the waiver applicant losing his or her means of livelihood; or the waiver applicant is receiving general relief, Relief to Needy Indian Persons (RNIP) or veterans benefits based on need.<sup>15</sup>

A waiver applicant shall mail his or her application for a waiver in writing to the department within forty-five (45) days after the date the department mailed its claim or affidavit, whichever is later. The application must include the following information: the relationship of the waiver applicant to the decedent and copies of documents establishing that relationship; and the basis for the application and documentation supporting the waiver applicant's position.<sup>16</sup>

The state must review each application and issue a written decision within ninety (90) days after the application was received. The state must all information received within sixty (60) days following receipt of the application. The decision must include information regarding the waiver applicant's right to a hearing.<sup>17</sup>

If a waiver applicant wants to contest a decision denying a waiver, the waiver applicant must serve the state's department with a request for a hearing within forty-five (45) days of the date the decision was mailed. The hearing request must be in writing and identify the basis for contesting the decision. The request must be submitted to the division of hearings and appeals. The date on which the division of hearings and appeals receives the request is considered the date of service. The mailing address of the division of hearings and appeals is P.O. Box 7875, Madison, Wisconsin 53707.<sup>18</sup>

If a waiver applicant wants to introduce information at the hearing that he or she did not originally submit, the applicant must provide that information by mailing it to the state's department with a

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<sup>14</sup> Wisconsin Administrative Code, DHS §108.02(12)(b)(1).

<sup>15</sup> Wisconsin Administrative Code, DHS §108.02(12)(b)(2).

<sup>16</sup> Wisconsin Administrative Code, DHS §108.02(12)(d)(1).

<sup>17</sup> Wisconsin Administrative Code, DHS §108.02(12)(d)(2).

<sup>18</sup> Wisconsin Administrative Code, DHS §108.02(12)(e)(1).

postmark of at least seven (7) working days prior to the hearing date.<sup>19</sup>

The issue for hearing shall be whether the department's decision was correct based on the information submitted to the department by the waiver applicant within the time periods. No other information may be considered by the hearing examiner unless the hearing examiner finds that the applicant did not timely provide the information to the department for good cause. The hearing decision shall be the final decision of the department.<sup>20</sup>

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<sup>19</sup> Wisconsin Administrative Code, DHS §108.02(12)(e)(2).

<sup>20</sup> Wisconsin Administrative Code, DHS §108.02(12)(e)(3).

## ESTATE RECOVERY FOR MEDICAID AND OTHER PROGRAMS

The Wisconsin Estate Recovery Program seeks repayment for the cost of certain long term care services paid for on behalf of members by Medicaid, BadgerCare Plus, Community Options Program (COP), or non-Medicaid Family Care; or any services provided by the Wisconsin Chronic Disease Program (WCDP). Recovery is made from the estates of members, from the estates of their surviving spouses, from certain non-probate property, and from liens filed on their homes. Recovery is made when a member and the member's dependents no longer need those assets.

Wisconsin spends approximately 50 percent of its total Medicaid budget to provide long term care services. The money recovered is returned to the programs and used to pay for care for other members. Long term care services for which the program seeks repayment include nursing home services, home care services and community-based long term care program services.

**Note:** Members who are age 55 or older, living in the community and who are not receiving services related to long term care or any services through the WCDP will not be affected by estate recovery.

Wisconsin is required by state and federal laws to recover some of the money used to pay for services for Medicaid members. These laws are designed to recover from the assets of those who received benefits from the Medicaid program.

The Estate Recovery Program may recover from the deceased person's assets, up to the cost of recoverable services paid for by, but not limited to, the following programs:

- Medicaid;
- BadgerCare Plus;
- Community Options Program (COP);
- COP-Waiver;
- Community Integration Programs (CIP) IA, IB, II;
- Brain Injury Waiver;
- Community Supported Living Arrangements;
- Community Opportunities and Recovery;
- Family Care / Family Care Partnership;
- Wisconsin Chronic Disease Program (WCDP);
- Include, Respect, I Self-Direct (IRIS); and
- Program for All-Inclusive Care for the Elderly (PACE).

This pamphlet explains how the Estate Recovery Program recovers money from some estates through the use of the Transfers by Affidavit process.

## TRANSFERS BY AFFIDAVIT

The Transfers by Affidavit process may be used to close a person's estate when the deceased has \$50,000 or less in assets subject to administration. It is an alternative for smaller estates rather than using a court process. If this process is used, an heir, guardian, trustee of a revocable trust created by the deceased, or the Wisconsin Department of Health Services (DHS) may collect assets of the deceased member by submitting an affidavit to the person, bank or other institution possessing the deceased's assets.

The Estate Recovery Program may recover assets and property up to the cost of health and long term care recoverable benefits paid out. An affidavit is used if the deceased has no surviving spouse, surviving child who is either under age 21, blind, or disabled.

Assets that may be recovered include, but are not limited to:

- Money at a bank, savings and loan, or credit union that is in an account, including joint and payable on death (POD) accounts.
- Nursing home personal accounts.
- Certificates of deposit (CDs) and Money Market accounts.
- Refunds payable to the decedent, his/her estate or owed to the decedent.
- Property transferred by Transfer on Death (TOD) deed.
- Joint property and other non-probate property of the decedent.
- Life insurance and annuities.
- Money left over from a burial fund after reasonable funeral costs have been paid.
- Savings bonds and stocks.
- Any interest in real property held by the deceased immediately before death may be

subject to a lien, even if there is a surviving spouse, disabled or minor child.

The Estate Recovery Program may not recover:

- Personal property (automobiles, furniture, jewelry, appliances, etc.) until sold.
- Cash donated or given to the family after the member's death, such as memorial money.

DHS will submit an affidavit to any person or institution possessing funds or real property of the deceased. The affidavit will include the Department's claim against the estate and the rights available to heirs, beneficiaries and co-owners of the deceased's property. The person possessing the funds or real property must pay all available funds to the Department up to the amount of recoverable services. The person handling the estate may pay reasonable funeral costs, cost of administering the estate, such as attorney fees, from the estate prior to paying the Department (see "Allowable Expenses"). If real property is being transferred, a lien may be placed on the property for up to the amount of recoverable services paid by the Department, even if there is a surviving spouse, disabled or minor child.

After transferring all remaining funds to DHS and notifying the Department of any real property transferred, the person is released from any obligation to other creditors or heirs of the deceased for the assets of which the Department was notified.



### Allowable Expenses

Reasonable funeral and burial costs, including but not limited to:

- Necessary funeral home charges.
- Necessary cemetery charges.
- One headstone/vase/marker and engraving.
- One funeral meal.
- Flowers.
- Telephone calls related to the funeral.
- Postage related to the funeral.
- Stipend for clergy, organist and soloist (does not include donations made in memory of the deceased).
- Obituary and Death Certificates.
- Transportation of the deceased's remains.
- Funeral clothing for the deceased.

Estate administration costs, which include:

- Attorney fees.
- Personal representative fee (2% of the total estate assets).
- Postage and telephone calls.
- Copying and forms costs.
- Mileage (at the Internal Revenue Service rate) related to administration of the estate.

Other allowable expenses include:

- Guardian fees approved by the court.
- The last month's nursing home patient liability amount.

**Please keep receipts/canceled checks as a record of any expenses paid.**

### Lower Priority Expenses

The Estate Recovery Program does not allow the deceased's funds to be used for the following expenses (lower priority under §859.25, Wis. Stats.) prior to payment of the Department's claim. This includes, but is not limited to:

- Travel to attend the funeral (including airfare, hotels, car rental, meals, etc.).
- Gifts; will bequests.
- Masses; memorials.
- Autopsy.
- Payment for services you provided prior to the death, or purchases prior to the death. These should have been collected at the time the service was provided.
- Any amount due to a hospital or nursing home for a private room.
- Medical bills. If the deceased was on Medicaid at the time of death, tell the provider to bill the Medicaid Program. If the deceased was NOT on Medicaid at the time of death, you will need to send copies of the bills, including the dates of service, to the Estate Recovery Program for review and approval **PRIOR TO MAKING PAYMENT.**

If you have questions about the Estate Recovery Program:

- Call Member Services at 1-800-362-3002 (voice) or 711 (TTY).
- Call the Estate Recovery Program at (608) 264-6755.
- Go to [dhs.wisconsin.gov/medicaid/erp](https://dhs.wisconsin.gov/medicaid/erp).
- Contact your *local agency*.

This brochure is also available at

[dhs.wisconsin.gov/publications/p1/p13009.pdf](https://dhs.wisconsin.gov/publications/p1/p13009.pdf)

## Wisconsin Estate Recovery Program

TRANSFERS  
BY  
AFFIDAVIT



Wisconsin  
Department of Health Services

Division of Health Care Access and Accountability  
Estate and Casualty Recovery Section

P-13009 (08/14)



# Wisconsin Estate Recovery Program

## Policy Changes Effective August 1, 2014 Fact Sheet

### What is the Estate Recovery Program?

The Wisconsin Estate Recovery Program seeks repayment for the cost of certain long term care services paid for on behalf of members by Medicaid, BadgerCare Plus, Community Options Program (COP), or non-Medicaid Family Care; or any services provided by the Wisconsin Chronic Disease Program (WCDP). Recovery is made from the estates of members, from the estates of their surviving spouses, from certain non-probate property, and from liens placed on their homes. Recovery is made when a member and the member's dependents no longer need those assets.

Wisconsin spends approximately 50 percent of its total Medicaid budget to provide long term care services. The money recovered is returned to the programs and used to pay for care for other members. Long term care services for which the program seeks repayment include nursing home services, home care services and community-based long term care program services.

**Note:** Members who are age 55 or older, living in the community and who are not receiving services related to long term care or any services through the WCDP will not be affected by estate recovery.

Wisconsin is required by state and federal laws to recover some of the money used to pay for services for Medicaid members. These laws are designed to recover from the assets of those who received benefits from the Medicaid program.

### What is changing?

Beginning August 1, 2014, due to changes in state law certain new assets and services will now be part of the Estate Recovery Program.

#### Assets

These assets will now be part of the Estate Recovery Program:

- **Joint Tenancy Property**

Repayment will be made after the member passes away from joint tenancies created on and after August 1, 2014. Repayment will be made from the interest in the property the member has at the time the member passes away. TEFRA liens will continue to be filed on joint tenancy homes and repayment will be made from joint accounts at financial institutions, no matter when the joint tenancy was created.

- **Life Estates**

Repayment will be made from a life tenant's interest in life estates that are created on and after August 1, 2014.

- **Life Insurance Policies**

Repayment will be made from a member's life insurance policy, no matter who is named as the beneficiary, for life insurance policies created on and after August 1, 2014.

- **Marital Property**

Repayment will be made from 50 percent of the surviving spouse's estate.

- **Revocable Trusts**

Repayment will be made after the member passes away from revocable trusts created on and after August 1, 2014. TEFRA liens will continue to be filed on homes in revocable trusts regardless of when the trust was created.

- **Tax Equity and Fiscal Responsibility Act (TEFRA) Liens**

Repayment will be made through TEFRA liens placed on life estates that are created on and after August 1, 2014.

- **Other Non-Probate Property**

Repayment will be made from non-probate property not listed above for any member who passes away on or after August 1, 2014.

These assets will be used as repayment for members who pass away on and after August 1, 2014.

#### Services

The cost of these services will now be included in the amount that the Estate Recovery Program will seek repayment for:

- **All Services Received While Participating in a Long Term Care Program**

Repayment will be made for all services received on or after August 1, 2014 by a member age 55 years and older participating in a long term care program. This includes members participating in home and community-based waiver programs, and the Program of All-Inclusive Care for the Elderly (PACE).

- **Capitation Payments**

Repayment will be made from the entire capitation payment made to a managed care organization (MCO) beginning August 1, 2014 for a member participating in a long term care program.

Repayment of these services applies to services received and capitation payments made on or after August 1, 2014 for any member age 55 and older participating in a long term care program. Long term care programs include all home and community-based programs and PACE.



### Who do these changes affect?

- All Wisconsin Chronic Disease Program members,
- Institutionalized members of any age enrolled in Medicaid or BadgerCare Plus, and
- Members age 55 years of age and older enrolled in Medicaid or BadgerCare Plus.

Institutionalized members are members who have been, or are expected to be, inpatients in a hospital for 30 or more days, and who are required to pay their monthly income toward their cost of care.

### Does the Estate Recovery Program pursue repayment from estates for other Medicaid services besides long term care services?

No. Only services related to long term care are recovered from an estate for repayment.

### When do the changes start?

The policy changes will begin August 1, 2014.

### What if my estate is not able to repay Medicaid?

The legal process known as probate settles an individual's solely owned property by distributing the estate to creditors, heirs, and beneficiaries. Creditors file claims in estates to ensure payment of a debt owed them. By law, the Department of Health Services is paid before most other creditors. The Department and other creditors are paid before any assets are distributed to heirs or beneficiaries whether or not there is a will.

Recovery will also be made from the member's non-probate assets, including joint property interests, marital property interests, life estate interests, revocable trusts, real estate transferred by transfer on death deeds, and the proceeds of life insurance policies and annuities.

If there are insufficient estate and non-probate assets to pay the Department's claim, the Department is paid what is available and the recovery is ended.

### Are there any exemptions if recovery would cause a hardship to an heir, beneficiary, or co-owner?

There are standards (DHS 108.02(12), Wis. Admin. Code) for determining whether the Department's recovery would result in an undue hardship for an heir, beneficiary, or co-owner. An heir, beneficiary, or co-owner may apply for a waiver of the Department's claim on their portion of the estate or non-probate property for one of the following reasons:

- The heir, beneficiary, or co-owner would become or remain eligible for Supplemental Security Income (SSI), FoodShare, BadgerCare Plus, or Medicaid, if the Department pursued its claim.
- The deceased's estate contains real estate used as part of the heir, beneficiary, or co-owner's business, which

may be, but is not limited to, a working farm, and recovery by the Department would affect the property and would result in the heir, beneficiary, or co-owner losing his or her means of a livelihood.

- The heir, beneficiary, or co-owner is receiving general relief or veterans benefits based on need under s. 45.40 (1m), Wis. Stats.

The person handling the estate will be notified of these rights and how an heir, beneficiary, or co-owner may apply for a hardship waiver when the estate is being probated through a court or through an affidavit process. That individual is responsible for notifying the heir, beneficiary, or co-owner of these rights. An heir, beneficiary, or co-owner can apply to the Department for a waiver of the recovery of his or her portion of the estate or non-probate property.

### Where can I get more information?

- Go to [dhs.wisconsin.gov/medicaid/erp](https://dhs.wisconsin.gov/medicaid/erp), or
- Contact your local agency.

Information provided in this document is general. To find more detailed information regarding the Estate Recovery Program, please contact your agency. To find the address of your agency go to [dhs.wi.gov/em/customerhelp](https://dhs.wi.gov/em/customerhelp) or call Member Services at 1-800-362-3002.

DHS is an equal opportunity service provider. If you have a disability and need to access this information in an alternate format, or need it translated to another language, contact (608) 266-3356 or 1-888-701-1251 TTY. All translation services are free of charge.



Wisconsin  
Department of Health Services

Division of Health Care Access and Accountability  
Estate and Casualty Recovery Section  
P-00694 (08/14)



# Wyoming

# Wyoming (WY)

<b>Governing Law:</b>	Wyoming's estate-recovery program is found in W.S. 1977 §42-4-206 and §42-4-207. Recovery is also outlined in Wyoming Department of Health – Wyoming Medicaid Rules, Chapter 35 – Medicaid Benefit Recovery. While the state is required to provide notification of estate recovery, state courts have ruled that failure to do so or a Medicaid caseworker providing contrary information is not sufficient to stop the state from recovering. <sup>1</sup>
<b>Estate Scope:</b>	Wyoming's statute defines "estate" to include all real and personal property and other assets included in the patient's probate estate, as well as other real and personal property and other assets in which the patient had any legal title or interest at the time of the death to the extent of the interest, including assets conveyed to a survivor, heir, or assign through joint tenancy, tenancy in common, survivorship life estate, living trust, or other arrangement. <sup>2</sup> Additionally, Wyoming provides for any transfers of real or personal property to be set aside by an action in district court if done on or after the lookback date. <sup>3</sup> The state's claim is considered an expense of the last illness and not restricted by any statute of limitations. <sup>4</sup>
<b>Spousal Recovery:</b>	Wyoming provides for broad recovery against the estate of either the recipient spouse or the surviving spouse. If a decedent who was single, or who was the surviving spouse of a married couple, is survived by a child under 21, blind or permanently and totally disabled under SSI rules, no claims shall be filed against the estate. A claim for medical assistance rendered to a predeceased spouse, filed against the estate of the surviving spouse who did not receive assistance, is limited to the value of the assets of the estate that were considered marital property or jointly owned property at any time during the marriage. <sup>5</sup>
<b>Liens:</b>	Wyoming authorizes TEFRA liens on real property of a patient who the state determines, after notice and opportunity for hearing, cannot reasonably be expected to return home. <sup>6</sup> Additionally, Wyoming authorizes liens against the property of the deceased patient's estate to secure recovery where it is delayed. <sup>7</sup> Both pre-death and post-death liens can be recovered against upon the sale of the property. <sup>8</sup>

<sup>1</sup> *Knori v. State* (Wyo., No. 04-189), April 14, 2005.

<sup>2</sup> W.S. 1977 §42-4-206(g).

<sup>3</sup> W.S. 1977 §42-4-207(h).

<sup>4</sup> W.S. 1977 §42-4-206(b).

<sup>5</sup> W.S. WY Stat §42-4-206(c).

<sup>6</sup> W.S. WY Stat §42-4-207(c).

<sup>7</sup> W.S. WY Stat §42-4-207(j).

<sup>8</sup> W.S. WY Stat §42-4-207(h).



No pre-death lien can be imposed on a patient's home if any of the following are living in it: the patient's spouse; the patient's child under 21, blind or disabled per SSI rules; or a sibling of the patient with an equity interest in the home who lived in the house for at least a year prior to the patient's admission to the medical institution.<sup>9</sup> Furthermore, no pre-death lien can be recovered against if either the following are lawfully residing in the home on a continuous basis since the patient's admission: a sibling of the patient who resided in the home for a year before the patient's admission or child of the patient who resided in the home for at least two years prior to the patient's admission and who establishes that he or she provided care to the patient that permitted the patient to live at home instead of being institutionalized.<sup>10</sup>

**Partnership Program:** Wyoming operates a partnership program.<sup>11</sup> For every dollar that a partnership-qualified policy pays out in benefits, one dollar of personal assets can be protected should the consumer qualify and apply for long-term care covered-services under the state's Medicaid program.<sup>12</sup> An amount equal to the benefits received under the partnership policy is exempt from Medicaid estate recovery provisions.<sup>13</sup>

**Hardship Waiver:** The Department of Family Services is required to waive recovery claims if they work an undue hardship on the basis of criteria established by the Secretary of the U.S. Department of Health and Human Services.<sup>14</sup> An undue hardship presumptively exists if the decedent's home is part of the estate and that home is part of a business, including a working farm or ranch, and recovery of the home would result in the heirs or beneficiaries losing their means of making a living.<sup>15</sup>

Any individual who receives notice of estate recovery can request an undue hardship waiver. A request for an undue hardship waiver must be mailed to the Department by certified mail, return receipt requested, within thirty (30) days of the date the individual or entity receives notice. The request must include documentation that the decedent's home is part of the estate, that the decedent's home is part of a business, including a working farm or ranch, and show that recovery of the home would result in the heirs or beneficiaries losing their means of making a living. The failure to provide that

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<sup>9</sup> W.S. WY Stat §42-4-207(d).

<sup>10</sup> W.S. WY Stat §42-4-207(e).

<sup>11</sup> W.S. WY Stat § 42-7-103.

<sup>12</sup> W.S. WY Stat § 42-7-103(e)(i).

<sup>13</sup> W.S. WY Stat § 42-7-103(e)(iii).

<sup>14</sup> W.S. 1977 §42-4-206(f).

<sup>15</sup> Wyoming Department of Health – Wyoming Medicaid Rules, Chapter 35 – Medicaid Benefit Recovery, §4(xx).

information with the request results in the dismissal with prejudice of the undue hardship waiver request.<sup>16</sup>

Upon receipt of a request for an undue hardship waiver, the Department must consider whether the information furnished shows an undue hardship. The Department may request additional information before making a final decision. The Department's decision must be in writing, and delivered by certified mail, return receipt requested. If the request is denied, the Department's must provide notice of the opportunity to request that the Department reconsider the decision.<sup>17</sup>

A party can request that the Department reconsider a decision to deny an undue hardship waiver.<sup>18</sup> The party opposing Medicaid benefit recovery bears the burden of showing an undue hardship by a preponderance of the evidence.<sup>19</sup>

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<sup>16</sup> Ibid at §12(c).

<sup>17</sup> Ibid at §12(d).

<sup>18</sup> Ibid at §12(e).

<sup>19</sup> Ibid at §12(f).

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## CONTACTS

If you have questions regarding eligibility for EqualityCare benefits, please contact your local Department of Family Services Offices.

If you have questions regarding the Estate Recovery Program, please submit your questions in writing to:

Program Integrity Unit,  
Office of Healthcare Financing  
6101 Yellowstone Rd., Suite 210  
Cheyenne, WY 82002

***Please be advised that although the law is outlined in this brochure, it does not contain all relevant information. You should consult your own attorney for advice concerning estate planning and/or Medicaid planning.***



## Wyoming Department of Health

Office of Healthcare Financing  
6101 Yellowstone Rd., Suite 210  
Cheyenne, WY 82002  
Phone (307) 777-7531  
Fax (307) 777 6964

<http://www.wdh.state.wy.us>



## Your Guide to Estate Recovery



A Publication of

Wyoming Department of Health

Office of Healthcare Financing

September 2007

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## WHAT IS ESTATE RECOVERY?

Estate Recovery helps the State of Wyoming generate funds to pay medical care costs, through the EqualityCare program, for the increasing number of people in need of care.

The federal government requires state Medicaid programs to seek repayment from the estates of certain deceased recipients who have received benefits from the EqualityCare Program. The state will pursue recovery of medical care costs paid by the EqualityCare program from the estate of an EqualityCare recipient, age 55 years or older, when he or she received medical assistance, or if the person was an inpatient in a medical institution when he or she received medical assistance.

## WHAT IS AN ESTATE?

An EqualityCare recipient's estate includes all assets owned by the recipient at the time of death, including any savings or checking accounts (whether solely-owned, joint, or payable on death to a beneficiary), stocks, savings bonds, personal property, and real estate, including such assets transferred to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship life estate, living trust

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## RECOVERY PROCESS

or other arrangement. Any assets that become part of the estate after the death of the recipient are also subject to the Estate Recovery Program, including inheritances and proceeds from life insurance policies, annuities, or death benefits if those proceeds are payable to the estate rather than a living beneficiary.

## HOW DOES ESTATE RECOVERY WORK?

At the time of an EqualityCare recipient's death the state seeks repayment for benefits paid by the EqualityCare program by filing a claim against the deceased recipient's estate. EqualityCare benefits include home and community based services, nursing home services, inpatient hospital services, and other services covered by the program. If the recipient's estate includes a home, the state will also file a lien on the home.

By filing the claim the state becomes a creditor in probate court. The state will work with the estate's attorney to insure that the property passes to the heirs either through probate or summary distribution subject to the state's claim.

If the value of an EqualityCare recipient's estate is less than the statutory probate amount, or no probate is filed, the Department will

RECOVERY PROCESS,  
CONTINUED

record a lien against the property. The lien is the amount of EqualityCare payments made on behalf of the person and/or persons receiving care. If a lien exists, the property holder must first pay off the lien before title to the property can be sold or transferred. The lien limits the ability to transfer clear title of the property until the lien is released by the Department.

ARE THERE TIMES WHEN ESTATE  
RECOVERY DOES NOT TAKE  
EFFECT AFTER THE RECIPIENT'S  
DEATH?

Yes. The state cannot begin recovery efforts during the life of a surviving spouse, or while a surviving child is under age 21, or blind or disabled. This means, for example, that the state will not place an estate recovery lien against a home or other real property in a deceased recipient's estate while the recipient's spouse is living or while there is a child of the recipient who is under 21 or blind or disabled.

OTHER RECOVERY

Wyoming Statute section 42-4-207 also allows the Department to place a lien on the home of a recipient, in the amount of

benefits paid on their behalf, when the recipient has been admitted to a medical care facility or nursing home and it has been determined by notice and opportunity for a hearing that the recipient is not likely to return home.

BONA FIDE EFFORT TO SELL

If a recipient determines that it is necessary or they choose to sell their home, they will continue to receive EqualityCare benefits, if they enter into an agreement with the Department under the following circumstances:

1. The recipient must have been on the EqualityCare program for at least six (6) months;
2. They must provide a fair market analysis, deed to the property and/or power of attorney notice;
3. They will enter into a Stipulation and Consent to Placement of Lien with the Department;
4. The property is actively on the market for sale;
5. The sale price of the property is not less than eighty percent (80%) of its fair market value; and
6. The net proceeds of the sale are paid to the Department to the extent that Medicaid benefits were paid on their behalf.

TRANSFER OF PROPERTY

If property is transferred less than 60 months prior to application for eligibility (60 months if the recipient has an established trust) a person may be denied initial eligibility for a period of time determined by the value of the assets that were transferred.

If exempt assets (for example, the home) of a recipient are sold after eligibility has been determined, the recipient may become ineligible for benefits. The way to avoid ineligibility is to enter into a Bona Fide Effort to Sell Agreement with the Department.

ESTATE RECOVERY EXEMPTIONS

1. If there is a surviving spouse living in the home, the Department will not seek recovery as long as the spouse is living. Upon death of the spouse, The Department will seek recovery from the estate, specifically addressing the deceased recipient's interest, regardless of whether or not the surviving spouse was a Medicaid recipient.
2. If a recipient, who is single or the surviving spouse of a married couple, is survived by a child who is under the age of twenty-one (21) or who is blind or totally disabled.
3. If a recipient is survived by a sibling, who has an equity interest in the home and was residing in the home for at least one (1) year immediately before the

date of the recipient's admission to the medical institution.

4. **Medicaid Rules, Chapter 35** allows for an undue hardship waiver. If recovery from an estate would create an undue hardship, the Department may waive a portion or all of its claim.

DELAYED ESTATE RECOVERY

**As long as the following individuals reside in the home estate recovery is delayed until they leave or sell the home.**

1. If a recipient who was single or the surviving spouse of a married couple is survived by a brother or sister who resided in the recipient's home at least one year prior to their admittance to a medical institution.
2. If there is a child of the recipient who resided with the recipient for at least two years before they entered a medical care facility and provided care to the recipient.

*Please see final page of this brochure for contact information regarding EqualityCare eligibility and the Estate Recovery Program.*