

Department of Public Health and Human Services	Section: LIENS & ESTATES RECOVERY
MEDICAL ASSISTANCE	Subject: Estates Recovery

Supersedes: MA 1401-1 (07/01/10)

References: MCA 53-6-165 through -169, 171; ARM 37.82.101, and .431; P.L. 110-275

GENERAL RULE--The Montana Medicaid Lien & Estate Recovery Program was adopted to recover costs of medical services from the estates of deceased Medicaid recipients. One component of the program is Estates Recovery.

ESTATE

A deceased individual's estate consists of all property (both real and personal) which:

1. the decedent owned at the time of death; and/or
2. automatically transferred to beneficiaries upon death.

This property includes property:

1. reported in probate;
2. owned in joint tenancy; and
3. owned in tenancy-in-common.

NOTE: DPHHS does not normally recover on property owned by joint tenants unless the property is being sold. At the time of Medicaid application, property held in joint tenancy should be evaluated to make sure both names were on the property prior to the look back period.

ESTATES RECOVERY

To help pay Medicaid-covered expenses for individuals needing medical care, Medicaid will file a creditor's claim against the estate of a deceased Medicaid recipient. Collection will only be pursued for medical expenses Medicaid paid while the individual was:



1. a resident of a nursing home or other medical institution;
2. a resident of an intermediate care facility for the mentally retarded;
3. a resident of an institution for mental disease; or
4. age 55 or older (determined from the actual date the person attains age 55).

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▶ **All institutional applicants and recipients must read and sign HCS-120, "Estate Recovery for Nursing Home Residents" as a condition of eligibility.** The applicant receives the original and a copy must be retained in the county file.

▶ Medicaid applicants and recipients age 55 and older who are not institutionalized must be provided with a copy of HCS-122, although signing and returning the form is not a condition of eligibility.

MEDICARE SAVINGS PROGRAMS

Effective January 1, 2010, the Medicare Improvements for Patients and Providers Act (MIPPA) requires that benefits received through any Medicare Savings Program (QMB, SLMB or QI) or the Qualified Disabled Working Individuals (QDWI) program on or after 1/1/2010 are excluded from estate recoveries.

ESTATE RECOVERY EXEMPTION

If probate is opened and Medicaid files a claim against the estate, Medicaid will not collect if the recipient has a surviving:

1. spouse;
2. child under age 21; or
3. child who is blind or disabled according to the Social Security Administration's criteria.

RECOVERABLE EXPENSES

Recoveries from a deceased recipient's estate will include all expenses paid by Medicaid, including but not limited to:

1. health insurance premiums (including Medicare);
2. hospital services;
3. prescription drug services;
4. nursing home services;
5. home and community based services.

NOTE: Total recovered amount cannot exceed the total expenses paid by Medicaid.

RECOVERY

When the Medicaid Program becomes aware of recoverable assets, a claim will be filed against the deceased recipient's estate. The personal representative or the attorney handling the estate will be responsible for paying creditor's claims from the estate property sale proceeds.

NOTE: The Medicaid Program is considered a general creditor in any probate action.

► **INDIAN TRUST
PROPERTY**

The Medicaid Program cannot recover from Indian trust property, including real property and improvements, and income derived from trust resources or Indian trust property.

**EXCESS BURIAL
FUNDS**

Anyone who holds funds in excess of \$5,000 which were specifically designated to pay for the disposition of a decedent's remains shall, after paying for the disposition, pay **all remaining funds** to the Department of Public Health & Human Services within thirty (30) days after the disposition.

**CHECKING/
SAVINGS
ACCOUNT
BALANCES**

Whether the checking or savings account balance(s) may be applied toward the deceased recipient's funeral expenses is contingent on where the individual was residing at the time of death.

- 1. If the recipient was **not** residing in a residential medical facility, account balance(s) may be applied toward funeral expenses (subject to probate laws).
- 2. If the recipient was residing in a residential medical facility, account balance(s) may **not** be applied toward funeral expenses.

► **NOTE:** When a recipient resided in a residential medical facility at the time of death, checking and savings account balances are considered to have been 'personal needs funds'.

► **PERSONAL
NEEDS FUNDS**

Personal needs funds are monies set aside for a residential medical facility resident's personal needs and medical expenses that are not covered by Medicaid. **After the resident's death, the balance must be paid to the Medicaid Program within thirty days.**

NOTE: After the resident's death, personal needs funds may be used to satisfy an outstanding debt to the nursing home.

County Burial: The County Director may request a waiver to the requirement that deceased nursing home residents' personal needs funds automatically be paid to the Medicaid

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Program (see form, page 5). Requests will be approved when:

1. the request does not exceed \$1,200;
2. all other assets and resources of the deceased have been applied toward burial expenses prior to use of personal funds; and
3. except for use of the deceased's personal needs funds, burial expenses would be borne by the county.

NOTE: This waiver is **not** available to assist surviving relatives in paying the deceased's final expenses.

**HEIR WISHES TO
RETAIN ESTATE**

When a Medicaid recipient's heir(s) wishes to retain ownership of estate property, the individual(s) may do so by paying the lesser of the:

1. total amount Medicaid is entitled to recover; or
2. fair market value of the estate property.

**HARDSHIP
EXEMPTION**

Recovery will not be pursued if it would cause an undue hardship for the heir(s). After action has been taken to recover Medicaid paid expenses, the heir(s) may request recovery be waived or compromised based on a hardship. The Estate Recovery Unit will consider all requests and arrangements will be made if a true hardship exists.

**ESTATES
RECOVERY
UNIT**

The Estates Recovery Program can be reached at:

DPHHS
Estates Recovery Program
PO Box 202953
Helena, MT 59620-2953
Phone: 1-800-694-3084
Fax: 1-800-457-1978

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REQUEST FOR WAIVER OF MEDICAL RECOVERY FROM DECEASED INSTITUTIONAL RESIDENT'S PERSONAL FUNDS

I. RECIPIENT'S INFORMATION:

Name:
Date of Death:
Social Security Number:
Last Known Address:

II. MEDICAL RECOVERY WAIVER INFORMATION:

Amount of recovery waiver requested: \$
Amount of personal funds remaining at death: \$
Specific allocated burial cost: \$
List any other assets at death: \$

III. BURIAL COSTS:

Who is financially responsible? Family County Other
Amount to be paid by family: \$
Explain:

IV. COUNTY DIRECTOR INFORMATION:

Date:

Name (Please Print)

County

Signature

Phone Number

PLEASE FORWARD THIS MEDICAL RECOVERY WAIVER REQUEST FORM TO:
DPHHS
Estates Recovery Program
PO Box 202953
Helena, MT 59620-2953
Phone: 1-800-694-3084 FAX: 1-800-457-1278

THIS REQUEST FOR MEDICAL RECOVERY WAIVER MUST BE APPROVED PRIOR TO THE USE OF THE RECIPIENT'S PERSONAL FUNDS FOR BURIAL COSTS.

TO BE COMPLETED BY ESTATES RECOVERY:

Date:

The medical recovery waiver request has been: Approved Denied

Comments:

Estate Recoveries Representative

KQ/nc

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