



## AGED, BLIND AND DISABLED MEDICAID 404-5 Pursuing Claims on Property and Estates

**Supersedes:** MA 404-6 (07/01/08)

**Reference:** 72-2-221, MCA; ARM 37.82.101

**Overview:** Medicaid clients who receive or request institutional or waiver coverage are required to pursue all legal claims to income or assets to which they are entitled. Failure or refusal to pursue these claims is evaluated as an uncompensated asset transfer.

### **RESOURCES CONSIDERED AVAILABLE IMMEDIATELY:**

All resources the Medicaid client owned with the deceased spouse as “joint tenants with right of survivorship” or other joint tenancy are immediately considered available to the Medicaid client.

Resources the community spouse owned solely at the time of their death are not automatically considered available to the Medicaid client.

### **RESOURCES WILLED TO A MEDICAID CLIENT:**

If a deceased person willed all or part of their estate to a Medicaid client, the resources are not considered available/countable until the estate has been probated and otherwise settled. The Medicaid client/their authorized representative must take action to begin settling the estate within a reasonable time. This timeframe varies from case to case, but 60 days is normally considered reasonable to begin this process.

### **RESOURCES WILLED TO PERSONS OTHER THAN AN INSTITUTIONALIZED SPOUSE:**

If a community spouse wills all or part of their estate to anyone other than their institutionalized spouse, the institutionalized spouse is entitled to an elective share. The elective share percentage will vary depending on how long the couple was married, but for those married 15 or more years, the elective share is 50%. If pursuit of their elective share causes a hardship to the institutionalized spouse, they are not required to pursue their elective share. However, if no hardship exists, the institutionalized spouse must pursue their elective share.

After Medicaid eligibility is established, the community spouse can transfer assets without an asset transfer penalty being imposed against the institutionalized spouse. The community spouse can will up to 50% of their personal assets to someone other than their spouse and the spouse is not subject to

transfer penalty. There is also no requirement to pursue the elective share as the surviving spouse will have received at least 50% of the estate. **NOTE:** If the community spouse later requests institutional or waiver Medicaid, any assets they transferred must be evaluated for an uncompensated asset transfer/penalty.

**COMMUNITY SPOUSE DIES WITH NO WILL:**

When a community spouse dies and doesn't leave a will, the institutionalized spouse is entitled to all or a large portion of the estate.

**FAMILY ALLOWANCES:**

A Medicaid client who is or may be entitled to a "family allowance" from a deceased family member's estate, or any other inheritance/allowance, must pursue their claim.

**OTHER ENTITLEMENTS:**

If a Medicaid client is entitled to other assets over and above their family allowance or elective share, they must pursue those assets.

**Effective Date:** July 01, 2016