



## COMBINED MEDICAID 304-4 Lien and Estate Recovery

**Supersedes:** FMA 307-4 (01/01/08); MA 1401-1 (04/01/11); FMA 307-5 (07/01/05); MA 1402-1 (01/01/08)

**Reference:** MCA 53-6-165 through -169, 171, 175; ARM 37.82.101, .431 and .438; P.L. 110-275

**Overview:** The Medicaid Lien and Estate Recovery Program is the mechanism used to recover the cost of medical services. Medicaid Lien & Estate Recovery information is provided with each Medicaid application approval for individuals aged 55 or older.

### **LIEN:**

Liens may be placed against real property owned by Medicaid clients who reside in a nursing home, intermediate care facility for the mentally retarded or institution for mental disease and who are not expected to return home. **All institutionalized applicants and recipients must complete and sign Form HCS-121, "Real Property Liens for Nursing Home Residents" as a condition of eligibility.**

### **ESTATE RECOVERY:**

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 owned in tenancy-in-common

Collection is only pursued for medical expenses Medicaid paid while the individual was:

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

**All institutionalized applicants and recipients must read and sign an HCS-120, "Estate Recovery for Nursing Home Residents" as a condition of eligibility.** All Medicaid applicants and recipients aged 55 and older must be provided with a copy of HCS-122, "Estate Recovery for Individuals 55 and older"

although signing and returning the form is not a condition of eligibility. A signed HCS-120 on file meets this requirement.

### **MEDICARE SAVINGS PROGRAM**

Effective January 1, 2010, the Medicare Improvements for Patients and Providers Act (MIPPA) requires that premiums paid 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.

### **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 (30) 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 Field Operation Manager may request a waiver to the retirement that deceased nursing home resident's personal funds automatically be paid to the Medicaid 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 the 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.

### **LIEN and ESTATE RECOVERY UNIT:**

Direct all questions related to Medicaid liens or estate recovery to the Lien and Estate Recovery Program at:

DPHHS  
Lien and Estate Recovery Program  
PO Box 202953  
Helena, Montana 59620-2953  
Phone: 1-800-694-3084  
Fax: 1-800-444-1829

**Effective Date:** July 01, 2023