

# *Wisconsin Medicaid Estate Recovery Program*

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# *Wisconsin Medicaid*

## **Estate Recovery Program**

### **What is Medicaid?**

Medicaid is a joint federal/state program that provides health care services to persons who have limited income and resources. The services paid for by Medicaid include the long term care services provided to some elderly persons and persons who are disabled.

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

The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long term care services paid for by Medicaid on behalf of members. Recovery is made from the estates of members and from liens placed on their homes. The money recovered is returned to the Medicaid Program and used to pay for care for other Medicaid members.

Long term care services for which the program seeks repayment mainly include nursing home services and community-based waiver services. (For information on other programs that are subject to Estate Recovery, see page 18.) Wisconsin spends approximately 50 percent of its total Medicaid budget to provide these long term care services.

The U.S. Congress and the State Legislature passed Estate Recovery Program laws to recover some of the money used to pay for services for other Medicaid members. Those laws are designed to recover from the assets of those who received benefits

from the Medicaid program. Recovery is made when a member and the member's dependents no longer need those assets.

### **Which Medicaid members are affected by the Estate Recovery Program?**

- **Medicaid members of any age who live in nursing homes** may have the cost recovered for all benefits that were paid by Medicaid while they lived in a nursing home on or after October 1, 1991. Recovery is made by filing claims in estates and by filing liens against homes.
  
- **Medicaid members of any age who received inpatient hospital benefits** on or after July 1, 1995, **and who are considered institutionalized members**, may have the cost recovered for all benefits paid by Medicaid that were received during such stays. 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. Recovery is made by filing liens against homes for all recoverable costs incurred after April 1, 2000, and by filing claims in estates for costs incurred after July 1, 1995, not recovered through a lien.
  
- **Medicaid members age 55 or older** may have the cost recovered for only certain benefits **received while they lived in the community**. The benefits received on or after July 1, 1995, that may be recovered are:
  - ✓ Skilled nursing services.
  - ✓ Home health aide services.
  - ✓ Home health therapy and speech pathology services.
  - ✓ Private duty nursing services.
  - ✓ Personal care services received on or after April 1, 2000.

- **Medicaid members age 55 or older who reside in the community and receive services through a home and community-based waiver program** (Community Options Program Waiver [COP Waiver], Community Integration Programs IA, IB, and II, Brain Injury Waiver, Community Supported Living Arrangements, and Family Care) may have the cost recovered for certain benefits received on or after July 1, 1995. The cost of Family Care Waiver services received on or after February 1, 2000, by enrollees are recovered as home and community-based Medicaid waiver program services. The benefits recovered from waiver members are:
  - ✓ All services received through a home and community-based waiver program.
  - ✓ All inpatient hospital services received while the member was eligible for a waiver program.
  - ✓ All prescription drugs received while the member was eligible for a waiver program.

An individual who receives all or a combination of the services listed above may have the cost of those services recovered from his or her estate or through a lien.

### **How does the state recover the cost of benefits?**

The Estate Recovery Program uses two methods, claims in probate estates and liens, to recover the cost of Medicaid benefits.

The state seeks repayment by filing claims in *probate estates* to recover the cost for community-based services, services received while a member lived in a nursing home, and services received while a member was considered an institutionalized member in an inpatient hospital. If the member's estate includes a home, the state may, in certain circumstances, receive a lien on the home

rather than immediate repayment. (For more information on these types of liens see the Probated Estates section [page 7] regarding situations when the state's estate claim will be delayed.)

*Liens* may also be filed on homes of members who live in inpatient hospitals and are required to contribute to their cost of care, or who live in nursing homes. Liens are filed only when members are not expected to return to their homes to live. (For more information on these types of liens see Liens for Hospital and Nursing Home Residents section [page 15]).

### **When does the state not recover benefits?**

The state may not seek recovery of any Medicaid benefits from a member's estate while the member's spouse or a minor, disabled, or blind child survives the member. **However**, if the member's estate includes a home, the state will receive a lien. Repayment from the lien will be delayed until after the death of the surviving spouse and any minor, disabled, or blind children. Although the state is granted a lien by the court on the home of a surviving spouse or any minor, disabled, or blind child of a Medicaid member, if that property is sold for fair market value while the spouse or minor, disabled, or blind child lives, the state will release its lien and no recovery will be made.

The state may **not** file a claim on the estate of the surviving spouse to recover Medicaid benefits paid on behalf of the member.

There are similar protections in the lien portion of the program that apply to nursing home and hospital inpatient residents. The state may only place a lien on the home of a member who lives in a nursing home or in an inpatient hospital. In addition, the state may not place a lien on the home of a nursing home or hospital resident if there is a spouse or minor, disabled, or blind child residing in the home. The state may not place a lien on the home of a member

living in the community. (For more information on liens see Liens for Hospital and Nursing Home Residents section [page 15]).

## **Probated Estates**

### **How does the state recover the cost of benefits through estates?**

A Medicaid member's estate includes all assets owned by the member 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. Any assets that become part of the estate after the death of the member 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. (See page 9 for more information about personal property.)

The legal process known as probate settles an individual's estate by distributing the estate to creditors and heirs and beneficiaries. Creditors file claims in estates to ensure payment of a debt owed them. The state is paid before most other creditors. Both the state and other creditors are paid before any assets are distributed to heirs or beneficiaries whether or not there is a will.

There are two ways in which the state recovers benefits through estates. When probate is proceeding through a court, the state will file a claim for payment with the court and with the individual handling the estate. When there is no court proceeding, the state generally recovers benefits by filing a claim for payment with the individual handling the estate using a statutory probate process called Transfer by Affidavit. (For more information, see the Recovery Through Transfers by Affidavit section [page 12]).

## **When can the state file a claim in an estate and what constitutes the claim amount?**

The state can file a claim in the estate of a member, if the member received care paid for by Medicaid in any or all of the following situations:

- While the member resided in a nursing home on or after October 1, 1991. The claim amount is for the cost of all services received while residing in a nursing home that were paid for by Medicaid.
- While the member was an inpatient in a hospital for a period of 30 days or longer on or after July 1, 1995, and was required to pay a patient liability amount. The claim amount is for the cost of all Medicaid-covered services received while an inpatient, on or after July 1, 1995.
- While the member was age 55 or older and resided in the community on or after July 1, 1995. The claim amount is for the cost of Medicaid-covered home health services and private duty nursing services received on or after July 1, 1995, and personal care services received on or after April 1, 2000. For home and community-based waiver members, the claim amount also includes waiver services, inpatient hospital services, and prescription drugs received on or after July 1, 1995. The state's claim amount for Family Care enrollees in pilot counties, as home and community-based waiver members, will include the cost of services as reported by the Care Management Organization (CMO) to the Department of Health Services, inpatient hospital services, and prescription drugs received on or after February 1, 2000.

## **How and when will a claim in an estate be paid?**

The state's claim will usually be paid by the personal representative of the estate according to standard probate procedures. The state's claim is paid after certain other expenses. Costs paid prior to the state's claim are:

- Costs of administering the estate, including attorney fees.
- Funeral costs.
- Costs of the last illness, if any, that were not paid by Medicaid.

If there are insufficient assets in the estate to pay the state's claim, the state is paid what is available and the recovery is ended. This applies to both claims in court probate proceedings and to the state's recoveries using affidavits.

## **Are the heirs allowed to keep anything from the member's estate?**

Yes. In the recovery of a claim against an estate, the court shall allow the heirs and beneficiaries to retain up to a total of \$5,000 in value of the following personal property:

- The decedent's wearing apparel and jewelry held for personal use.
- Household furniture, furnishings, and appliances.
- Other tangible personal property not used in trade, agriculture, or other business, not to exceed \$3,000 in value.

**NOTE:** *This does **not** allow heirs to retain liquid assets (cash or assets readily convertible to cash), only personal property.*

## **Are there situations when the state's estate claim will not be paid or payment will be delayed?**

Yes, the state's claim will **not** be paid if there is any of the following:

- A surviving spouse.
- A disabled or blind child.
- A child under age 21.

Surviving spouses and minor, disabled, or blind children and their estates are completely immune from recovery of Medicaid benefits paid on a member's behalf.

**However**, if there is a surviving spouse, a disabled or blind child, or a child under age 21 **and** there is an ownership interest in a home in the member's estate, payment will be delayed because the court will place a lien on the home on behalf of the state. A lien placed during probate will not require payment as long as there is a surviving spouse, a child under 21 or a disabled or blind child regardless of the property being sold.

### **IMPORTANT NOTE:**

**Although the state is granted a lien by the court on the home of a surviving spouse, or a disabled, blind or minor child of a Medicaid member, if that property is sold for fair market value while the spouse and/or the disabled, blind or minor child lives, the state will release its lien and no recovery will be made.**

Payment of the state's claim may also be delayed in other instances. The state will receive a lien as full or partial satisfaction

of its estate claim if there is a home in the estate and any of the following resides in the home:

- A son or daughter of the member who continuously lived in the home beginning at least 24 months before the member began receiving nursing home services, or services provided while considered institutionalized in an inpatient hospital, or home and community-based waiver services and who provided care to the member that delayed the member's receipt of such services.
- A brother or sister of the member who continuously lived in the home beginning at least 12 months prior to the member receiving nursing home services, or services provided while considered institutionalized in an inpatient hospital, or home and community-based waiver services.

The state may recover on one of these liens when the caretaker child or brother or sister dies or sells/transfers the home.

The placement of a lien through an estate may be done for nursing home members, institutionalized inpatient hospital members, and community-based members. The reason being that this type of lien is a result of an estate claim.

### **Claims in Probate Court Proceedings**

#### **How does the state file a claim in a probate proceeding in a court?**

When an estate is being probated through a court proceeding, the personal representative or attorney handling the estate is required to notify the Department of Health Services of the estate and of the time period in which a claim may be filed. The Department then

calculates the amount of its claim and submits the claim to the court with a copy sent to the personal representative or the attorney.

The personal representative is responsible for the administration of the estate. The personal representative must make an inventory of the assets of an estate and determine what claims the estate must pay. Claims must be paid in accordance with standard probate laws and procedures.

### **Recovery through Transfers by Affidavit**

#### **What is the Transfer by Affidavit process?**

This is a process that can be used to close a person's estate when the deceased has \$50,000 or less in assets subject to administration in Wisconsin. It is an alternative to using a court process for very small estates. If this process is used, an heir, guardian, trustee of a revocable trust created by the deceased, or the Department of Health Services may collect the deceased's assets by submitting an affidavit to the person or institution possessing those assets. If an heir, guardian or trustee submits an affidavit to a person or institution, he or she must send a copy of that affidavit to the Department if the deceased received any Medicaid benefits. If a piece of real property is being transferred through the use of an affidavit, the Department may place a lien on the property. The lien would be satisfied at the time the property is sold. The Department may not use the transfer by affidavit process to recover against wearing apparel, jewelry, household furniture, furnishings and appliances.

### **When can the state recover the cost of Medicaid benefits by use of an affidavit?**

The state can recover the cost of benefits by use of an affidavit if all of the following are true:

- The member has no surviving spouse or minor, disabled, or blind child.
- The member's property subject to administration in Wisconsin is valued at \$50,000 or less after funeral costs have been paid.
- 20 days have passed since death and no one has petitioned the court to probate the deceased's estate.

### **How does the state recover Medicaid benefits by use of an affidavit?**

If the three conditions listed above are met, the Department, generally within thirty to sixty days of the receipt of the copy of the heir, guardian or trustee's affidavit, will send an affidavit to the heir, guardian or trustee presenting the state's claim. Normally, the Department allows the heir, guardian or trustee to receive the property of the deceased. The heir, guardian or trustee can then use the property to pay any funeral costs, costs of administering the estate, and related attorney fees. Any property remaining after those expenses are paid must be paid to the state. Receipts of the expenses must be kept and sent to the Department. Any medical bills (including those from ambulance companies) should not be paid until after the charges are reviewed and approved by the Estate Recovery Program staff. Upon transferring all the remaining funds to the Department, the heir, guardian or trustee is released from any obligation to other creditors or heirs of the

deceased for the property transferred to the heir, guardian or trustee by the use of the affidavit.

### Waiver of Claim Due to Hardship

#### **Are there any exemptions if recovery would cause a hardship to an heir or beneficiary?**

The Department of Health Services has set standards in DHS 108.02(12), Wis. Admin. Code, for determining whether the state's recovery would result in an undue hardship for an heir or beneficiary. An heir or beneficiary may apply for a waiver of the state's claim on **their portion** of the estate for one of the following reasons:

- The heir or beneficiary would become or remain eligible for Supplemental Security Income (SSI), food stamps (FoodShare program), Aid to Families with Dependent Children (AFDC), or Medicaid, if the Department pursued its claim. (AFDC ended March 31, 1998.)
- The deceased's estate contains real estate used as part of the heir or beneficiary'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 or beneficiary losing his or her means of a livelihood.
- The heir or beneficiary 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 or beneficiary 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 heirs and

beneficiaries of these rights. An heir or beneficiary can apply to the Department for a waiver of the recovery of his or her portion of the estate.

## **Liens for Hospital and Nursing Home Residents**

### **What is a lien and what effect does it have?**

A lien is evidence of a debt or obligation that is filed against a particular piece of property with the Register of Deeds. It is similar to a mortgage in that it represents a debt that must be satisfied when the property is sold. It does not affect the ownership of the property. It **does not** require the member to sell his or her home.

### **When can the state place a lien on a home?**

Under some circumstances, the state may place a lien on the home of an inpatient hospital resident who is required to contribute to the cost of care, or of a nursing home resident who is not reasonably expected to return home. **The state cannot place a lien on the home of a member in the community.**

Before placing a lien, the Medicaid program must notify the member (or his or her responsible party) in writing and inform the member of the right to an administrative hearing concerning the lien process.

The state may place a lien on the home of a hospital or a nursing home resident **only** if the member cannot reasonably be expected to return home **and** none of the following people reside in the home:

- The member's spouse or minor, disabled, or blind child.

- A brother or sister of the member who has an ownership interest in the home and has continuously lived in the home beginning at least a year prior to the hospital or nursing home admission of the Medicaid member.

If a lien is placed on the home, it must be removed when a member returns home. If the member returns home, the local economic support worker or the member should contact the state and the lien will be removed.

### **When will payment of a lien be made?**

A lien will be paid when the home is sold. The lien is paid from the sale amount after the costs of the real estate transaction are paid such as the realtor's fee and any closing costs, and any mortgages on the home which pre-date the Estate Recovery Program lien.

A lien will **not** be paid at the sale of a home, before or after the member's death, if the member has a living spouse or a minor, disabled, or blind child. In addition, a lien will not be enforced after the member's death as long as either of the following resides in the home:

- A son or daughter of the member who continuously lived in the home beginning at least 24 months before the member was admitted to the hospital or nursing home and who provided care to the member that delayed the member's admission to the hospital or nursing home.
- A brother or sister of the member who continuously lived in the home beginning at least 12 months before the member was admitted to the hospital or nursing home.

## **What constitutes the amount paid by a lien?**

At the time a property is sold, a lien enables the state to recover specific amounts paid for Medicaid benefits. The Department may recover funds for:

- All Medicaid services received while living in a nursing home on or after October 1, 1991.
- All Medicaid services received while a member is institutionalized in an inpatient hospital on or after April 1, 2000.
- Home health care services received by members age 55 or older on or after April 1, 2000, consisting of:
  - ✓ Skilled nursing services.
  - ✓ Home health aide services.
  - ✓ Home health therapy and speech pathology services.
  - ✓ Private duty nursing services.
  - ✓ Personal care services.
- All home and community-based waiver services (COP Waiver, CIP IA, CIP IB, CIP II, Brain Injury Waiver, Community Supported Living Arrangements) received by members age 55 or older on or after April 1, 2000, and
  - ✓ Prescription/legend drugs received by waiver participants.
  - ✓ Benefits associated with a waiver participant's inpatient hospital stay.
- All pilot program Family Care services received on or after February 1, 2000, and

- ✓ Prescription/legend drugs received by Family Care participants.
- ✓ Benefits associated with a Family Care participant's inpatient hospital stay.

A lien only recovers for the amount paid by Medicaid for benefits up to the date of sale. If more benefits are provided after the lien is paid, or if all of the benefits already provided were not payable from the sale, the state may file a claim in the member's estate to recover additional amounts.

### **What if I have questions about Medicaid or the Estate Recovery Program?**

If you have any questions, you may contact your agency or Medicaid Member Services at 1-800-362-3002.

### **Does the Estate Recovery Program apply to programs other than Medicaid?**

Yes, the state also recovers:

- The cost of benefits paid by the Wisconsin Chronic Disease Program (WCDP) for participants of any age for services that were provided on or after September 1, 1995.
- The cost of benefits paid by the Community Options Program (COP) for participants who are age 55 or older for services that were provided on or after January 1, 1996.
- The actual costs of non-Medicaid Family Care services provided on or after February 1, 2000, as reported to the Department for enrollees age 55 or older and living in

the community; or that are any age and who live in an inpatient hospital and are required to contribute to their cost of care; or who live in a nursing home.

In the case of the COP and Family Care, any amount recovered is returned to the program and used for the benefit of other participants.

Liens are **never** placed on the homes of COP and/or WCDP participants during their lifetime because of receiving those services. Besides recovering from the estate of the COP or WCDP participant, the State may also recover from the estate of the participant's spouse. For more information about the Estate Recovery Program and these programs, contact your COP, WCDP, or Family Care caseworker.

For further information, please write to:

Department of Health Services  
Estate Recovery Program  
PO Box 309  
Madison, WI 53701-0309

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