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**Laotian** — ຜູ້ອຸຊ່ວຍໃນການແປ ຫລື ເຂົ້າໃຈເນື້ອຫາໃນນີ້, ກະລຸນາ ໂທຮະສັບຫາ 1-800-362-3002 (V/TTY).

**Affected Programs:** BadgerCare Plus, Medicaid, Wisconsin Chronic Disease Program

**To:** All Wisconsin Chronic Disease Program Members, BadgerCare Plus and Medicaid Members over Age 55, and All Nursing Home Residents

## Changes to the Estate Recovery Program Begin August 1, 2014

Some important changes are taking place in the Estate Recovery Program as a result of the 2013-2015 biennial budget that was passed by the Wisconsin State Legislature in 2013. These changes will begin August 1, 2014.

You are receiving this *ForwardHealth Update* because these changes may affect you. You should read this *Update* carefully because some information is new or has changed.

### Background

Through the Estate Recovery Program, the state seeks repayment for the cost of **certain** long term care services paid for by Medicaid and BadgerCare Plus, and all services paid for by the Wisconsin Chronic Disease Program (WCDP). Repayment is made from the member's property after they pass away or from liens placed on their homes. The money recovered from the member's estate is returned to the program and used to pay for care for other members.

It is important to remember that the state does not seek repayment from a member's property while the member is survived by a:

- Spouse.

- Child under age 21.
- Disabled or blind child of any age.

Repayment is made only after the member or the surviving spouse passes away or, in some situations, from a lien on the member's home. Liens are not filed against homes of members while they are living in the community.

The Estate Recovery Program is paid after certain other expenses are paid according to standard probate procedures. Costs paid prior to the Estate Recovery Program include:

- The costs of administering the estate, including attorney fees.
- Reasonable funeral costs.
- The costs of the last illness, if any, that were not paid by Medicaid, BadgerCare Plus, or WCDP.

### Policy Changes

Beginning August 1, 2014, certain new assets and services will now be part of the Estate Recovery Program.

Definitions are located on page 3 of this *Update*.

## **Assets**

The assets below 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 that the member has at the time the member passes away. Tax Equity and Fiscal Responsibility Act of 1982 (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. A TEFRA lien will continue to be filed on a home in revocable trust regardless of when the trust was created.
- **Tax Equity and Fiscal Responsibility Act of 1982 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 the services below 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 and 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 for 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 and 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.

## **Program Disenrollment**

Members should contact the source listed below for their program **before July 18, 2014**, for benefit counseling if they do not want the new services recovered and will need to disenroll from their program. This will allow for case closure and disenrollment from Wisconsin Medicaid, BadgerCare Plus, or WCDP prior to the new rules taking effect:

- Medicaid — Contact your local Aging and Disability Resource Center (ADRC).
- BadgerCare Plus — Contact your agency.
- WCDP — Contact Member Services at 1-800-362-3002.

## **For More Information**

This *Update* provides information about the most recent changes to the Estate Recovery Program. The booklet, titled "Wisconsin Medicaid Estate Recovery Program," provides more information and can be found on the Department of Health Services (DHS) Web site at

[www.dhs.wisconsin.gov/medicaid/recpubs/erp/p\\_13032.htm](http://www.dhs.wisconsin.gov/medicaid/recpubs/erp/p_13032.htm). If you have questions, contact Member Services at 1-800-362-3002.

## **Definitions**

### **Capitation Payments**

Capitation payments are based on a payment per member, rather than a payment per service provided. Managed care organizations receive a fixed monthly payment for a member enrolled in a health plan. If a member is enrolled in a long term care program such as a home and community-based waiver program or PACE, the MCO receives a monthly capitation rate payment for each enrolled member.

### **Joint Property**

There are two main types of joint property:

1. Joint Tenancy.
2. Tenancy in Common.

Under joint tenancy, if two people take title of the property as joint tenants on a deed, each person has 100 percent ownership of that piece of property. Regardless of the number of joint tenants on a deed, each tenant has equal ownership rights and interest. When one joint tenant passes away, the surviving tenants automatically own the property. Joint tenancy automatically gives each tenant a “right of survivorship” where the surviving tenants receive 100 percent of the property. When only one joint tenant remains living, he or she receives the entire estate and the joint tenancy is dissolved.

Tenancy in common provides for multiple percentages of ownership interest and inheritance rights for the heirs of each tenant. These ownership percentages may be equal, such as 50/50, or unequal, such as 60/40. Unlike joint tenancy, tenancy in common grants no “right of survivorship” to the other tenants. Thus, no other tenant in common is entitled to receive a share of the property when the tenant in common passes away; instead, the percentage share of the property becomes part of the deceased’s estate.

### **Life Estates**

A life estate is created when a property holder transfers ownership of the property to someone else (known as the remainderer) and retains the right to reside in and benefit from the real estate, such as receiving rent. The life tenant’s percentage interest is determined using the Medicaid life expectancy tables at the time the life estate was created. The rest of the interest is owned by the remainderer (for example, a child or children). When the life tenant passes away, the entire property interest passes to the remainderer.

### **Long Term Care Program**

Long term care programs include home and community-based waiver programs, such as:

- Brain Injury Waiver Program.
- Community Integration Program(s).
- Community Opportunities and Recovery Program.
- Community Options Program — Waiver.
- Community Supported Living Arrangements.
- Family Care.
- Family Care Partnership.
- Include, Respect, I Self-Direct (IRIS).
- Program of All-Inclusive Care for the Elderly.

This is not an exhaustive list of long term care programs and is subject to change without notice.

### **Lien**

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.

### **Life Insurance Policies**

A life insurance policy is a contract with an insurance company. In exchange for premiums (payments), the insurance company provides a lump-sum payment, known as a death benefit, to beneficiaries in the event of the insured's death.

## ***Marital Property***

Marital property is property owned by a legally married couple. A member's ownership in marital property immediately before passing away is limited to one-half. This is consistent with the classification of property of spouses under state law (s. 766.31, Wis. Stats.).

## ***Non-probate Property***

Non-probate property is property that passes outside an individual's estate. This means that non-probate property does not go through probate before it is transferred to those who inherit it. Non-probate property includes, but is not limited to, life estates, property held in joint tenancy, life insurance proceeds, most property held in trusts, and property that is payable-on-death or transfer-on-death to a beneficiary.

## ***Probate***

The legal process known as probate settles an individual's estate by distributing the estate to creditors, 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.

## ***Revocable Trusts***

A trust is a legal document in which a property interest is held by one person for the benefit of another. Sometimes referred to as a living trust, a revocable trust is created by an individual who wants the ability to change the terms of their trust.

Repayment cannot be made from irrevocable trusts, with the exception of those assigned to a funeral home. State law (s. 49.47(4)(cm), Wis. Stats.) provides that irrevocable trusts must specify that the DHS is the secondary beneficiary of any funds remaining after burial costs.

## ***TEFRA Liens***

The Estate Recovery Program uses two types of liens:

1. Pre-death liens are imposed on the homes of living Medicaid members determined to be permanently institutionalized and are not expected to return home to live. These types of liens are called TEFRA liens since they must follow rules set out in the Tax Equity and Fiscal Responsibility Act of 1982.
2. Post-death liens, which are often part of the probate process.