



Estate Recovery Changes Income Maintenance Advisory Committee

Jennifer Wickey-Chief
State of Wisconsin
Estate Recovery Section
June 2014



Agenda

- What governs the program changes?
- Recovery from life estates
- Recovery from joint property
- Recovery from non-probate property
- Recovery from TEFRA Liens
- Recovery from the estate of surviving spouses
- Recovery from revocable trusts (living trusts)
- Recovery from life insurance policies
- Recovery of all services while participating in a long-term care program
- Capitation payments
- Recovery of all Long-term Care
- Questions



What is Estate Recovery?

The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long-term care services paid for by Medicaid and BadgerCare Plus on behalf of members and all services received by the Wisconsin Chronic Disease Program (WCDDP) members.



How does the Department recover benefits?

- Certain non-probate assets;
- The estates of members; and
- Liens placed on their homes

The funds recovered are returned to the Wisconsin Medicaid program, where they benefit other members.



Estate Recovery Authority

- Authorized by Social Security Act, Title XIX, Sec. 1917
- Authorized by Wis. Stat §. 49.496, 49.682 and 49.849



Why the changes?

- The 2013-15 State Budget, also referred to as Act 20, made changes to the Estate Recovery Program to ensure the long-term financial sustainability of the Medicaid program. Under Act 20, the Department was given the necessary tools to collect the health care costs that were funded by taxpayers from the estates of former Medicaid beneficiaries.
- In September 2013, the Wisconsin Legislature's Joint Committee on Finance approved the implementation of most of the changes.
- On December 14, 2013, Wisconsin Act 92 modified the Estate Recovery Program provisions included in Act 20 to codify the action taken by the Joint Committee on Finance.



Members affected by these changes

- Medicaid members of any age who live in nursing homes.
- Medicaid members of any age living in an inpatient hospital and are required to contribute to their cost of care.
- Medicaid members age 55 or older may have the cost recovered for only certain benefits received while they live in the community.
- Medicaid members age 55 or older who reside in the community and receive services through a home and community-based waiver program, or through the Program of All-Inclusive Care for the Elderly (PACE).



Affected members (cont.)

- Wisconsin Chronic Disease Program (WCDP) participants of any age for services that were provided on or after September 1, 1995.
- Community Options Program (COP) participants who are age 55 or older for services that were provided on or after January 1, 1996, and
- 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.



Notification to those affected

- Medicaid and WCDP members, and members who are considered institutionalized will be mailed a letter in late June informing them of the changes effective **August 1, 2014**.
- The letter will be available on the Estate Recovery Program website at dhs.wisconsin.gov/medicaid/erp
- New members will be made aware of the program rules when they enroll in Medicaid and reach the age of 55 or become institutionalized members and will receive the Estate Recovery Program handbook.



How will this affect the consortia?

- Once these notices are mailed to the members there may be an increase in call volume.
 - Each notice will direct the member to contact Member Services, who will then refer members to Estate Recovery for detailed questions.
 - The notice will state that contact should be made with ADRCs for benefit counselling and possible case closure by **July 18, 2014**. This will allow for case closure if members would like to opt out of Medicaid/WCDP services.



If calls are received with questions specifically relating to the policy changes in the Estate Recovery Program they should be directed to the Estate Recovery Section at (608) 264-6755 or (608) 264-7739.



CARES/CWW Changes

- There are no CARES/CWW updates.
- There are no new or changes to any CARES/CWW screens.



What is a life estate?

- A life estate is created when a property holder transfers ownership of the property to someone else (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 life expectancy tables at the time the life estate is created.
- The rest of the interest is owned by the remainderer. (for example a child or children)
- When the life tenant dies, the entire property interest passes to the remainderer.



Life Estate

- **Prior to August 1, 2014**
 - Estate Recovery did not pursue recovery from life estates.
- **Effective August 1, 2014**
 - The Department will recover only the life tenant's interest remaining at the time of death of life estates **created on or after August 1, 2014.**



What are joint property deeds?

- Joint tenancy

- Under joint tenancy, if two people take title of the property as joint tenants on a deed, each person has a 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 dies, the surviving tenants automatically own the property.
- Joint tenancy automatically gives each tenant a “right of survivorship” where the surviving tenants receive 100% of the property.
- When only one joint tenant is left alive, he or she receives the entire estate and the joint tenancy is dissolved.



Joint property deeds cont.

- Tenancy in common
 - Tenancy in common provides for multiple percentages of ownership interest and inheritance rights for the heirs of each tenant.
 - Unlike joint tenancy, tenancy in common grants no “right of survivorship.” Thus, no other tenant in common is entitled to receive a share of the property upon a tenant in common’s death; instead, the property becomes part of the deceased’s estate.



Joint Property Deeds

- **Prior to August 1, 2014**
 - Only joint accounts at financial institutions were recovered.
- **Effective August 1, 2014**
 - All joint property and joint property deeds created on or after **August 1, 2014** will be subject to recovery.



Non-probate property

- Property that is held in joint tenancy or as tenants by the entirety.
- Bank or brokerage accounts held in joint tenancy or with payable on death (POD) or transfer on death (TOD) beneficiaries.
- Property held in a trust.



Non-probate property

- **Prior to August 1, 2014**
 - Only POD accounts at a financial institution were recovered.
- **Effective August 1, 2014**
 - Recovery will be made from all non-probate assets for any member who passes away on or after **August 1, 2014**.



TEFRA Liens

- Estate recovery uses two types of liens:
 - TEFRA Liens
 - Must follow rules set out in the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982;
 - Pre-death liens are imposed on the homes of living Medicaid recipients determined to be permanently institutionalized and not likely to return home to live.
 - Post-death liens which are often part of the probate process.



TEFRA Liens

- **Prior to August 1, 2014**
 - Estate Recovery did not pursue TEFRA liens on life estates.
- **Effective August 1, 2014**
 - Estate Recovery will now pursue recovery through TEFRA liens placed on life estates **created on or after August 1, 2014.**



Surviving Spouse's Estate (Marital Property)

Property acquired by either spouse during the course of a marriage is considered marital property.



Surviving Spouse's Estate

- **Prior to August 1, 2014**
 - Recovery has not been sought from a surviving spouse's estate since 1995.
- **Effective August 1, 2014**
 - Consistent with Wis. Stat. § 766.31, recovery will now be pursued from 50% of the surviving spouse's estate.



Revocable Trusts (living trusts)

A revocable trust is a trust created by an individual who wants the ability to change the terms of their trust. Assets in the trust are considered the individual's personal assets for Medicaid planning purposes.



Revocable Trusts (living trusts)

- **Prior to August 1, 2014**
 - The authority for Estate Recovery to recover from revocable trusts (“living trusts”) was unclear.
- **Effective August 1, 2014**
 - Since Act 92 specifically granted this authority, Estate Recovery will now pursue recovery from only those revocable trusts **created on or after August 1, 2014**.
 - Recovery cannot be made from irrevocable trusts, with the exception of those assigned to a funeral home, SNT, and pooled trusts.



Life Insurance

- **Prior to August 1, 2014**
 - Recovery was made only from policies designating the estate as the beneficiary or if the beneficiary pre-deceased the insured.
- **Effective August 1, 2014**
 - Recovery will be made from all life insurance policies **created on or after August 1, 2014**, regardless of the beneficiary.



Capitation Rate Payment

- **Prior to August 1, 2014**
 - Estate Recovery recovered the costs of services provided as reported by the MCO.
- **Effective August 1, 2014**
 - Estate Recovery will now pursue recovery of the entire capitation payment to Managed Care Organizations (MCOs) made for all services for a member participating in a long-term care program.



Services Received While Participating in a Long-term Care Program

- **Prior to August 1, 2014**
 - Waiver services, drugs and inpatient-related costs were recovered for anyone age 55 and older participating in a home and community-based waiver
 - Program of All-Inclusive Care for the Elderly (PACE) costs were not recovered
- **Effective August 1, 2014**
 - Repayment will be made for **all services received** on or 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).



Questions?



Contact Information

Wisconsin Estate Recovery Program
(608) 264-6755 or (608) 264-7739

Jennifer Wickey
Estate Recovery Section Chief
Jennifer.Wickey@wisconsin.gov
(608) 261-7831