

Wisconsin Estate Recovery Program

Policy Changes Effective August 1, 2014 Fact Sheet

What is the Estate Recovery Program?

The Wisconsin Estate Recovery Program seeks repayment for the cost of certain long term care services paid for on behalf of members by Medicaid, BadgerCare Plus, Community Options Program (COP), or non-Medicaid Family Care; or any services provided by the Wisconsin Chronic Disease Program (WCDP). Recovery is made from the estates of members, from the estates of their surviving spouses, from certain non-probate property, and from liens placed on their homes. Recovery is made when a member and the member's dependents no longer need those assets.

Wisconsin spends approximately 50 percent of its total Medicaid budget to provide long term care services. The money recovered is returned to the programs and used to pay for care for other members. Long term care services for which the program seeks repayment include nursing home services, home care services and community-based long term care program services.

Note: Members who are age 55 or older, living in the community and who are not receiving services related to long term care or any services through the WCDP will not be affected by estate recovery.

Wisconsin is required by state and federal laws to recover some of the money used to pay for services for Medicaid members. These laws are designed to recover from the assets of those who received benefits from the Medicaid program.

What is changing?

Beginning August 1, 2014, due to changes in state law certain new assets and services will now be part of the Estate Recovery Program.

Assets

These assets 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 the member has at the time the member passes away. 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. TEFRA liens will continue to be filed on homes in revocable trusts regardless of when the trust was created.

- **Tax Equity and Fiscal Responsibility Act (TEFRA) 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 these services 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 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).

- **Capitation Payments**

Repayment will be made from 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 or 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.

Who do these changes affect?

- All Wisconsin Chronic Disease Program members,
- Institutionalized members of any age enrolled in Medicaid or BadgerCare Plus, and
- Members age 55 years of age and older enrolled in Medicaid or BadgerCare Plus.

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.

Does the Estate Recovery Program pursue repayment from estates for other Medicaid services besides long term care services?

No. Only services related to long term care are recovered from an estate for repayment.

When do the changes start?

The policy changes will begin August 1, 2014.

What if my estate is not able to repay Medicaid?

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

Recovery will also be made from the member's non-probate assets, including joint property interests, marital property interests, life estate interests, revocable trusts, real estate transferred by transfer on death deeds, and the proceeds of life insurance policies and annuities.

If there are insufficient estate and non-probate assets to pay the Department's claim, the Department is paid what is available and the recovery is ended.

Are there any exemptions if recovery would cause a hardship to an heir, beneficiary, or co-owner?

There are standards (DHS 108.02(12), Wis. Admin. Code) for determining whether the Department's recovery would result in an undue hardship for an heir, beneficiary, or co-owner. An heir, beneficiary, or co-owner may apply for a waiver of the Department's claim on their portion of the estate or non-probate property for one of the following reasons:

- The heir, beneficiary, or co-owner would become or remain eligible for Supplemental Security Income (SSI), FoodShare, BadgerCare Plus, or Medicaid, if the Department pursued its claim.
- The deceased's estate contains real estate used as part of the heir, beneficiary, or co-owner'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, beneficiary, or co-owner losing his or her means of a livelihood.

- The heir, beneficiary, or co-owner 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, beneficiary, or co-owner 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 heir, beneficiary, or co-owner of these rights. An heir, beneficiary, or co-owner can apply to the Department for a waiver of the recovery of his or her portion of the estate or non-probate property.

Where can I get more information?

- Go to dhs.wisconsin.gov/medicaid/erp, or
- Contact your local agency.

Information provided in this document is general. To find more detailed information regarding the Estate Recovery Program, please contact your agency. To find the address of your agency go to dhs.wi.gov/em/customerhelp or call Member Services at 1-800-362-3002.

DHS is an equal opportunity service provider. If you have a disability and need to access this information in an alternate format, or need it translated to another language, contact (608) 266-3356 or 1-888-701-1251 TTY. All translation services are free of charge.



Wisconsin
Department of Health Services

Division of Health Care Access and Accountability
Estate and Casualty Recovery Section
P-00694 (08/14)