



Responding to Customers' Questions about Estate Recovery

This document provides guidance to Wisconsin Aging and Disability Resource Centers (ADRCs) in handling customers' questions about estate recovery. It identifies informational resources and describes the role of key partners including the Estate Recovery Program office, Income Maintenance consortia (IM), benefit specialists and private attorneys.

Introduction

Estate recovery seeks repayment for the costs of certain long-term care services paid for by Medicaid and BadgerCare Plus, and all services paid for by the Wisconsin Chronic Disease Program, following a care recipient's death. Estate recovery is conducted by the Wisconsin Department of Health Services (DHS). Recovery methods include liens against a home and claims against an estate. The money recovered from an estate is used to pay for care for other people under these programs. Special rules protect surviving spouses, children and other family members in some situations, and only certain expenses are recoverable.

Staff at ADRCs may field questions about estate recovery when talking to people who need help to pay for long-term care. The ADRC staff may also receive questions from people who have received a notice of intent to file a lien or a notice of estate recovery and are unsure how to respond to the notice.

Staff at ADRCs should have a basic familiarity with estate recovery policies and processes, in order to answer general questions and make appropriate referrals. They should understand the roles of key partners, including DHS, IM, benefit specialists, and private attorneys.

When an ADRC customer poses questions about estate recovery, ADRC staff must respond carefully. Staff must be aware of the complexity of estate recovery rules in order to avoid the risk of providing inaccurate or misleading information.

Questions about the Potential for Future Estate Recovery

Many people who are seeking help to pay for long-term care have questions and concerns about estate recovery.

The staff of the IM consortia is required to inform people about estate recovery at the time of initial application for help with long-term care, as well as when an existing Medicaid or BadgerCare Plus member enters a nursing home or inpatient hospital or reaches the age 55 years. The IM staff gathers information about certain assets for disclosure to the DHS Estate Recovery Program. The IM staff also determines whether a lien will be filed on the home property and, if so, will issue a Notice of Intent to the person.



People who wish to disenroll from FamilyCare, IRIS, PACE or Partnership due to concerns about estate recovery are referred to the ADRC for disenrollment counseling.

The ADRC staff should be prepared to respond to basic questions about estate recovery during long-term care counseling. Staff members are encouraged to review the DHS Estate Recovery Program fact sheet and brochure available online at www.dhs.wisconsin.gov/medicaid/erp.htm. These materials are routinely provided by IM, the Social Security Administration and Medicaid Member Services to people who have questions about estate recovery. The ADRC staff may refer their customers to these publications for answers to many of the most commonly asked questions.

Effective August 1, 2014, Wisconsin will seek repayment for the capitation payment made to a managed care organization (MCO), rather than the actual cost of a person's care. ADRC staff may provide customers who have questions about this policy with information about MCO capitation rates, available at www.dhs.wisconsin.gov/lcicare/StateFedReqs/CapitationRates.htm. ADRC staff must not attempt to make predictions about future liability for long-term care costs. Customers should be cautioned that capitation payments change over time, and additional amounts may be recovered for Medicaid services outside the waiver benefit. Furthermore, any amount recovered for services provided through IRIS or other programs that do not employ managed care will be based on the actual cost of care, rather than a capitation rate.

During long-term care counseling, customers' questions about estate recovery are often interspersed with questions about other aspects of Medicaid financial eligibility such as income and asset limits, allowable expenditures, exempt assets, cost share and spousal impoverishment protections. The ADRC staff must be clear that the rules governing Medicaid eligibility and cost share for a person who needs services are distinct from the rules that govern estate recovery after a person's death.

All ADRC staff, including benefit specialists, are limited in their ability to respond to a person's specific concerns about their estate and may not discuss strategies to avoid estate recovery. ADRC staff may refer customers with specific questions about their estate to the DHS Estate Recovery Program office at (608) 264-6755. ADRC customers may wish to contact a private attorney for advice about specific legal arrangements related to property or other assets.

Questions about Estate Recovery Notices and Actions

People who contact the ADRC with concerns about an estate recovery notice they received regarding a lien or recovery action should receive prompt information and assistance. There are strict deadlines for requesting a hearing to dispute these actions, and special exemptions protect spouses, adults with disabilities and some other family members from hardship as a result of estate recovery.



If a customer with concerns about an estate recovery action is at least 60 years old or has a disability, then a benefit specialist can help the customer to understand and, occasionally, to pursue an appeal. These situations are considered by benefit specialists on a case-by-case basis with support from the program attorneys. If a benefit specialist is unable to provide direct advocacy, then they will suggest the customer locate a qualified attorney.

If a customer with concerns about an estate recovery notice does not meet the criteria for benefit specialist services, then the ADRC should refer the customer directly to the DHS Estate Recovery Program office.

Referring to a Qualified Medicaid Attorney

If a customer with long-term care needs has legal questions or concerns related to their property or other assets, then ADRC staff should refer the customer to seek a qualified attorney. Medicaid law differs from state to state; therefore, customers will want to locate an attorney who is well-versed in Wisconsin Medicaid estate recovery law. The ADRC staff may advise customers to inquire about an attorney's training and experience specific to long-term care and planning for incapacity or disability in Wisconsin, including issues such as divestment and spousal impoverishment.

ADRCs may suggest that customers call the State Bar's toll-free Lawyer Information and Referral Service (LRIS) at 1-800-362-9082 for a list of qualified attorneys. The National Academy of Elder Law Attorneys at www.naela.org also features a search engine for locating qualified attorneys by city, state and zip code.

More Information

Detailed information about Wisconsin's estate recovery program is available online or through the DHS Wisconsin Estate Recovery Program office.

- **Wisconsin Estate Recovery Program:**
www.dhs.wisconsin.gov/medicaid/erp.htm
P.O. Box 309, Madison, WI 53701-0309
(608) 264-6755
- **DHS Operations Memo 14-20, Changes to the Estate Recovery Program Begin August 1, 2014:** www.dhs.wisconsin.gov/em/ops-memos/2014/PDF/14-20.pdf
- **Medicaid Eligibility Handbook, Section 22.1:**
www.emhandbooks.wisconsin.gov/meh-ebd/policy_files/22/meh_22.1_estate_recovery.htm

Questions and concerns about ADRC roles and responsibilities related to estate recovery may be directed to your Office for Resource Center Development (ORCD) Regional Quality Specialist.