

ESTATE RECOVERY FOR MEDICAID AND OTHER PROGRAMS

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, the Community Options Program (COP), or non-Medicaid Family Care or for 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 filed on their real property. Recovery is made after the assets of the member have been accounted for and higher priority expenses have been paid per Wis. Stat. § 859.25.

Wisconsin spends approximately 50% 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, live in the community, and are not receiving services related to long-term care or any services through WCDP will not be affected by estate recovery.

Wisconsin is required by state and federal laws to recover certain benefits paid for on

behalf of Medicaid members. These laws are designed to recover from the assets of those who received benefits.

The Estate Recovery Program may recover from the deceased person's assets up to the cost of recoverable services paid for by, but not limited to, the following programs:

- Medicaid
- BadgerCare Plus
- COP
- COP-Waiver
- Community Integration Programs (CIP) IA, IB, II
- Brain Injury Waiver
- Community Supported Living Arrangements
- Community Opportunities and Recovery
- Family Care/Family Care Partnership
- WCDP
- Include, Respect, I Self-Direct (IRIS)
- Program for All-Inclusive Care for the Elderly (PACE)

This pamphlet explains how the Estate Recovery Program recovers money from some estates through the use of the transfer by affidavit process.

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The transfer by affidavit process 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 smaller estates. If this process is used, an heir, guardian, or trustee of a revocable

trust created by the deceased may collect the deceased's assets by submitting a transfer by affidavit to the person, institution, or entity possessing those assets.

The Estate Recovery Program may recover assets and property up to the cost of health and long-term care recoverable benefits paid out.

Assets that may be recovered include, but are not limited to:

- Money at a bank, savings and loan, or credit union that is in an account, including joint and payable on death (POD) accounts.
- Nursing home accounts.
- Certificates of deposit (CDs) and money market accounts.
- Refunds payable to the decedent, his or her estate, or owed to the decedent.
- Property transferred by transfer on death (TOD) deed.
- Joint property and other non-probate property of the decedent.
- Life insurance and annuities.
- Money left over from a burial fund after reasonable funeral costs have been paid.
- Savings bonds and stocks.
- Money from the sale of an automobile or vehicle. If the automobile or vehicle is kept, a portion of the money would need to be paid into the estate based on the value of the automobile or vehicle. Limits are subject to Wis. Stat. § 861.33(1)(a)(4).

- Any interest in real property held by the deceased immediately before death may be subject to a lien, even if there is a surviving spouse or a disabled or minor child.

The Estate Recovery Program may **not** recover:

- Personal property (furniture, jewelry, appliances, etc.) until sold.
- Cash donated or given to the family **after** the member's death, such as memorial money.

DHS can submit an affidavit of the administrator to any person, institution, or entity possessing the property of a deceased member to recover the cost of benefits. The affidavit states DHS's legal claim to the remaining property of the deceased and explains the rights available to heirs, beneficiaries, and co-owners. The person possessing the funds or real property must pay all available funds to DHS up to the amount of recoverable services. The person handling the funds may pay reasonable funeral costs and costs of administering the estate, including attorney fees and other allowable expenses from the estate, prior to paying DHS (see "Allowable Expenses" on the next page). If real property is being transferred, a lien will be placed on the property for up to the amount of recoverable services paid by DHS, even if there is a surviving spouse a child under age 21, or a disabled or blind child of any age.

Upon transferring all the remaining funds to DHS, the heir, guardian, or trustee is released from any obligation to other creditors or heirs of the deceased for property transferred to the heir, guardian, or trustee by the use of the affidavit.

Allowable Expenses

Reasonable funeral and burial costs include, but are not limited to:

- Necessary funeral home charges.
- Necessary cemetery charges.
- One headstone/vase/marker and engraving for the decedent only.
- One funeral meal.
- Flowers.
- Postage related to the funeral.
- Stipend for clergy, organist, and soloist (does **not** include donations made in memory of the deceased).
- Obituary and death certificates.
- Transportation of the deceased's remains.
- Funeral clothing for the deceased.

Estate administration costs include:

- Attorney fees.
- Personal representative fee (2% of the total estate assets).
- Postage.
- Copying and forms costs.
- Mileage (at the Internal Revenue Service rate) related to administration of the estate.

Other allowable expenses include:

- Guardian fees approved by the court.
- The last month's nursing home patient liability amount.

Please keep invoices, receipts, and canceled checks as a record of any expenses paid.

Lower Priority Expenses

The Estate Recovery Program does not allow the deceased's funds to be used for the following expenses (lower priority under Wis. Stat. § 859.25) prior to payment of DHS's claim. These include, but are not limited to:

- Travel to attend the funeral (including airfare, hotels, car rental, meals, etc.).
- Gifts or will bequests.
- Keepsake items.
- DVDs or videos.
- Masses or memorials.
- Autopsy.
- Payment for services or purchases you provided to the decedent prior to his or her death. These should have been reimbursed at the time the service was provided.
- Any amount due to a hospital or nursing home for a private room.
- Medical bills. If the deceased was on Medicaid at the time of death, tell the provider to bill the Medicaid program. If the deceased was **not** on Medicaid at the time of death, you will need to send copies of the bills, including the dates of service, to the Estate Recovery

Program for review and approval **prior to making payment.**

If you have questions about the Estate Recovery Program:

- Call Member Services at 1-800-362-3002 (voice) or 711 (TTY).
- Call the Estate Recovery Program at 608-264-6755.
- Go to www.dhs.wisconsin.gov/medicaid/erp.htm.
- Contact your local agency; to find your local agency visit www.dhs.wisconsin.gov/forwardhealth/imagency/index.htm.

This brochure is also available at www.dhs.wisconsin.gov/publications/p1/p13009.pdf.

Wisconsin Estate Recovery Program

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**WISCONSIN DEPARTMENT
of HEALTH SERVICES**

Division of Medicaid Services
Estate Recovery and Wisconsin Funeral and Cemetery
Aids Section
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