



The New Jersey Medicaid Program and Estate Recovery-What You Should Know

What is Estate Recovery?

Under federal and New Jersey law, the Division of Medical Assistance and Health Services (DMAHS) is required to recover funds from the estates of certain deceased medical assistance clients or former clients for all payments provided through the Medicaid program for services received on or after age 55.

Why Estate Recovery?

The State pursues recovery from estates to supplement funds available for medical assistance programs and limit the burden upon taxpayers caused by rising medical costs. Funds recovered help provide assistance to others in need.

Who is Affected?

The estates of clients or former clients who were 55 years of age or older at the time they received services may be affected.

Will the State Seek Recovery Immediately Upon Death?

Yes, if the deceased has no surviving spouse and has no surviving child under age 21 and no surviving child who is blind or permanently and totally disabled. The only time that recovery will not be pursued is:

1. If it would not be cost-effective to do so; or
2. If property in the estate is the sole source of income for one or more of the survivors and pursuit of recovery is likely to result in one or more of those survivors becoming eligible for public assistance and/or Medicaid benefits; or
3. If a family member of a deceased Medicaid client has, prior to the client's death, continuously resided in a home owned by the client at the time of the client's death, and that home was the client's primary residence, and was, and remains, the family member's primary residence, the Division may record a lien against the property, but will not enforce the lien until the property is voluntary sold, or the resident family member either dies or vacates the property.

When will the State *not* seek recovery immediately upon death?

The State will not seek recovery if there is a surviving spouse or a surviving child who is under the age of 21, or is blind or permanently and totally disabled. In that case, repayment would be postponed until:

1. The child reached the age of 21, or
2. The time of the spouse or child's death.

When any of these exceptions to DMAHS' right to recover from an estate no longer apply (i.e., as a result of the death of a surviving spouse, attainment of age 21 by a surviving child, and/or death of a blind or permanently and totally disabled child), DMAHS has a right to recover from any remaining estate assets at that time.

What is an Estate?

An estate includes any property that belonged to the deceased at the time of death. By law, estates include property such as the decedent's home or share of a home, bank accounts (whether solely or jointly held), trusts and annuities, stocks and bonds, and any other real or personal property. It is important to understand that even though the deceased's share of property may pass to the survivor(s), it continues to be considered as part of the estate for New Jersey Medicaid recovery purposes.

What About Life Insurance Policies?

Proceeds from life insurance policies are considered the assets of the named beneficiaries. Proceeds will be considered recoverable only when they are paid to the client's estate as the named beneficiary or as a default beneficiary when another named beneficiary predeceases (dies before or at the same time as) the client.

What About Annuities ?

Annuities which are determined not to be subject to asset liquidation prior to eligibility, must name the State of New Jersey as the remainder beneficiary in the first/primary position for the total amount of medical assistance paid on their behalf at any age. In the case where there is a community spouse and/or a minor or disabled child, the State must be named in the second/secondary position as remainder beneficiary. The State or its eligibility agencies shall require verification of the State being irrevocably named as the remainder beneficiary in the correct position. As the beneficiary of the annuity the State is paid any remaining income/principal upon the death of the client per the primary or secondary terms of the annuity contract.

What About Burial Trusts?

Under New Jersey law, P.L. 1999 Chapter 193, funeral directors and insurers issuing policies covering funeral expenses are required to forward to DMAHS any dollars remaining in a Medicaid client's irrevocable funeral trust fund or burial insurance policy after reasonable funeral expenses have been paid, but only if the deceased was receiving Medicaid or public assistance benefits at the time of death.

What About Medicare Cost-Sharing Benefits?

Effective January 1, 2010, Medicare cost-sharing benefits paid by Medicaid under the Medicare Savings Programs are not subject to estate recovery.

What Should I Know About Medicaid Liens? Will the Medicaid Program File a Lien Against My Home and Property?

A Medicaid lien is a claim placed against a deceased person's property to ensure that the estate pays a debt.

When you apply for Medicaid, a lien is not filed against your property. A lien is placed on property after the death of a Medicaid client or former client who received services on or after age 55 if there is no surviving spouse, no surviving child under 21 years old, and no surviving child who is blind or totally and permanently disabled. The amount claimed as a lien will be equal to the amount of all assistance DMAHS provided to a Medicaid client for services received on or after age 55, including any capitation payments made to an HMO on the client's behalf by the Medicaid program.

What Expenses Can Be Paid With Assets of the Deceased Before Paying Medicaid?

Reasonable funeral expenses, costs and expenses related to the administration of the estate, and debts owed to the Office of the Public Guardian for Elderly Adults can be paid with the assets of the deceased. DMAHS' claim is next in line, together with debts and taxes with preference under federal or New Jersey law.

How Will the Estate Know Money is Owed?

Those involved in handling the estate must contact DMAHS in writing as soon as possible after the death of the Medicaid client or former client. It is their responsibility to notify DMAHS to find out if DMAHS has a claim against the estate before any funds from the estate are spent (exception: reasonable funeral expenses may be paid). Distributions to any creditors or heirs cannot be made until the estate reimburses DMAHS if there is a Medicaid claim. Whoever is handling the estate should write to:

DMAHS
Office of Legal and Regulatory Affairs
Attn: Estates
PO Box 712 - Mail Code #6
Trenton, NJ 08625.

DMAHS by law has 90 days from the date of receipt of the estate representative's letter to advise if it will be seeking recovery.

If you have any questions regarding estate recovery or need more information about estate recovery, please call 609-588-2900.