Estate Recovery

FREQUENTLY ASKED QUESTIONS

1. What is Medicaid Estate Recovery?

OMIG is required to seek repayment from the estates of certain deceased Medicaid recipients. This recovery applies only to recipients who were age 55 or older, or who were permanently institutionalized at a medical facility, upon their death. Medicaid payments subject to recovery include: home and community based services, nursing facility services, hospital, physician and prescription drug services, capitation payments for Medicaid Managed Care enrolled recipients, and certain other payments made by the Medicaid program. In order to preserve Medicaid's obligation for recovery against estate assets, a lien may also be placed against the property of a deceased Medicaid recipient if one wasn't already placed during the recipient's lifetime. Permanently institutionalized is defined as a recipient who is inpatient in a nursing facility, in an intermediate care facility for individuals with intellectual disabilities, or in another such medical institution, and who is not reasonably expected to be discharged from the medical institution or facility and return home.

2. What about Medicaid Managed Care enrolled recipients? What is a capitation payment?

A capitation payment is the monthly amount paid to a Medicaid Managed Care Organization (MCO) for each Medicaid recipient's care. This amount is not always reflective of the actual cost of services provided to that recipient each month. If a deceased recipient was enrolled in Medicaid through an MCO, the monthly capitation payment for that recipient is subject to recovery against the estate assets, regardless of how much the actual services cost the MCO.

3. Can the Medicaid claim be paid prior to the recipient's death?

Claim amounts against an estate can be determined only after the recipient's date of death. The Medicaid paid claims for a recipient can change, even after the date of death, as there can be adjustments to the paid amounts and providers have up to one year to submit claims for payment. The only exception to this is repayment of a lien placed on the real property of a permanently institutionalized individual.

4. How does New York State Medicaid recover in an estate case?

Medicaid is paid from disbursement of the recipient's estate assets. There is a hierarchy of creditors that are paid under the laws that govern estates in New York. In order, these are:

1. Funeral expenses.
2. Administrative costs of the estate, including taxes, accounting fees, and reasonable attorneys' fees.
3. Federal Liens (such as Medicare).
4. State Medicaid qualifies as a preferred creditor and recovers the lien amount after the costs listed above have been satisfied. Medicaid recovers only up to the lien amount or the available estate assets, whichever is less.

5. Will Medicaid recover jointly owned assets?

OMIG's Medicaid claim is against the deceased recipient's estate assets only.

6. What are Estate Recovery Deferrals and Exemptions?

Deferral of recovery means that pursuit of the recovery is put on hold until certain criteria are met. Exemption is when a circumstance exists that prohibits any recovery.

Recovery of correctly paid Medicaid expenses will be deferred if the deceased recipient has a surviving spouse, a surviving child under age 21, or surviving child of any age who is certified blind and/or disabled. Medicaid will recover correctly paid benefits only when these deferral circumstances no longer apply.

Medicaid will not recover from the estate of a recipient who received 36 months of nursing home benefits or its equivalent pursuant to a long-term care insurance policy approved under the New York State Partnership for Long Term Care, or from certain income, property, and resources of Native Americans or Alaskan Natives. These circumstances are exemptions.

7. I received a Notice of Intent to File a Claim and an Estate Questionnaire, what do I do? Am I responsible for paying the Medicaid claim?

OMIG's Medicaid claim is against the estate and pertains only to assets in the deceased recipient's name. Beneficiaries and representatives of the estate are not personally responsible for satisfying the Medicaid claim.

Notices of Intent to File a Claim and Estate Questionnaires are sent to the beneficiary or representative for the deceased recipient or addressed to the estate of the recipient. Please complete the questionnaire to the best of your ability and return it. If there are no assets in the estate or if there is a qualifying deferral or exemption, please make sure to note that in your response. After review, if additional information is needed you will be contacted.

8. How are Social Security payments impacted?

Social Security benefits received prior to the date of the recipient's death are considered income and are subject to estate recovery. However, any Social Security checks received for the month of death or after death should be returned to the Social Security Administration.

9. What happens if Medicaid places a real property lien after the recipient passes away?

If a deceased recipient held interest in real property at the time of death, a lien may be placed on the real property for the Medicaid claim amount. This is to protect Medicaid's interest to recover from the recipient's assets or estate. No action is taken on the lien until the real property is sold.

If there will not be enough proceeds from the sale to satisfy the Medicaid claim in full, the settlement or closing statement will be reviewed and a sale approval letter agreeing to accept the remaining balance in satisfaction of the lien may be issued. The lien will be released once payment is received for the approved amount. If a family member wishes to live in the real property rather than sell it, no recovery will be made until the title or deed is transferred and the recipient's name is removed.

10. What is Undue Hardship and when will it result in the waiver of Estate Recovery?

Recovery may be waived, in whole or in part, if it will result in undue hardship to the heir, survivor, or beneficiary of the estate. Undue hardship may exist when:

1. The asset subject to recovery is the sole income-producing asset of the beneficiary, such as a family farm or family business and income produced by the asset is limited; or
2. When the asset is real property of modest value (i.e. with a value no higher than 50 percent of the average selling price in the county where the home is located, as of the recipient's date of death) and the home is the primary residence of the beneficiary.

The beneficiary or representative of the estate should request consideration of undue hardship in the Estate Questionnaire when they receive the Notice of Intent to File a Claim and Estate Questionnaire. Undue hardship will not be found to exist if it's based solely on the inability of any of the beneficiaries to maintain a pre-existing lifestyle, or if the alleged hardship is the result of Medicaid or estate planning methods involving divestiture of assets.

11. What if a Probate is filed for the Estate?

Copies of any Probate documents filed with the court should be provided along with the completed Estate Questionnaire. After a review of the assets and case information, a claim against the estate may be filed. If there are not enough assets available in the estate to satisfy the Medicaid claim in full, an estate accounting should be submitted for review and approval. The estate claim will be released once payment is received for the approved amount. Deferral, Exemption, and Undue Hardship processes still apply in cases where Probate is filed.

12. How does OMIG's contract vendor assist with Estate Recovery?

OMIG's contract vendor, Health Management Systems, Inc. (HMS, a Gainwell Technologies company), will perform asset research, send letters, contact estate beneficiaries or representatives for information, provide information to support the local county attorneys who appear in court on behalf of the State, and take calls from recipient's families, their representatives, and other stakeholders about the program in general and about specific cases.

13. The Medicaid Recipient/Decedent had no assets. What should I do?

Fill out the questionnaire to the best of your ability, even if most of your answers are "No," and return it to the address specified. You will be contacted if any clarification or follow up is needed.

14. Our family can't pay the amount indicated in the Notice of Intent to File a Claim. Are we responsible for this repayment?

No. The claim is against the estate only and only pertains to assets in the Recipient's/Decedent's name. You and your other family members are NOT responsible for satisfying this claim out of your own pockets.

15. I am the deceased Medicaid recipient's spouse. Am I responsible for paying the amount specified in the Notice of Intent to File a Claim? Is this going to affect my eligibility for Medicaid?

No. You are a surviving spouse and that means the amount of the claim is deferred, which means it won't be recovered at this time. Please return the questionnaire specifying that you are a surviving spouse and include a copy of the death certificate. Please note that OMIG will review potential recovery from your estate when you pass away, as required by law.

16. There are assets in the deceased Medicaid recipient's name. What happens next?

Please complete the questionnaire and include details regarding those assets. A claim will be filed against the estate in the Surrogate's Court. You will receive a copy of that claim.

17. Why did I receive a letter from Health Management Systems (HMS), Inc.? Who are they?

New York State OMIG contracts with a vendor to perform certain casualty and estate recovery tasks. Currently, the vendor is HMS. Their main office is currently located in Texas, but they also offices in Albany, New York as well.