

Medicaid Estate Recovery

Medicaid estate recovery is mandated by federal and state law to recover Medicaid costs from the estates of certain Medicaid recipients. This includes individuals on Medicaid in nursing homes and assisted living facilities who are not expected to return home. It also includes individuals who are age 55 or older receiving Medicaid benefits, including Home and Community Based Services, medical, and prescription drug coverage.

Colorado authorizes two types of Medicaid estate recovery – the right to place a lien on any real property and/or to file a creditor’s claim against the probate estate at the time of death. The state currently contracts with a third-party agency, Health Management Systems, Inc. The state recovery agency tracks the recipient’s total amount of Medicaid costs and services. This is done on a monthly basis through a computer system.

CONDITIONS FOR RECOVERY

The State of Colorado will recover costs of Medicaid assistance if:

- Medicaid services were delivered to a person of any age who lives in a nursing home, who is not survived by a spouse, child under 21, or a blind/disabled dependent.
- Medicaid services were delivered to a person over age 55 in any living situation, who is not survived by a spouse, child under 21, or a blind/disabled dependent

CONDITIONS FOR HOME TO BE EXEMPT FROM RECOVERY

The State of Colorado will not recover Medicaid assistance costs from the home of a Medicaid recipient if:

- There is a surviving spouse, living in the home.
- There is a surviving child under the age of 21, or a disabled child of any age living in the home.
- There is a brother or sister who has an equity interest in the home, living in the home for at least one year before the recipient went to a nursing home, and whose care allowed the recipient to delay nursing home placement. The sibling must have lived in the home continuously since the date of nursing home entry.
- There is a son or daughter who lived in the home for at least two years before the recipient entered a nursing home and whose care allowed the recipient to delay nursing home placement. The son or daughter must have lived in the home continuously since the date of nursing home entry.

In this instance the same son or daughter has to have remained in the home continuously for the two-year period prior to institutionalization until the death of the Medicaid recipient. This exemption cannot be claimed if multiple children have provided caregiving on a rotating basis during the two-year period prior to nursing home placement.

In the last two instances, documentation must be submitted proving that the sibling’s or child’s sole residence was the home of the Medicaid applicant. The applicant’s physician(s) or professional health provider(s) during the year or two years must substantiate in writing that the care was provided, **and that the care prevented the applicant from requiring placement in a nursing facility or assisted living situation. Documentation is required of the child or sibling that this was their sole place of residence, i.e. bank statements, bills, etc. with a date and the mailing address.**

LIEN

The Colorado Foundation for Medical Care (CFMC) reviews cases of nursing home residents to determine if the resident will be able to return home. If this is not likely, CFMC sends a letter to the resident or responsible party. The state recovery agency mails out a “Notice of Lien Filing” to the Medicaid recipient. The lien may be updated yearly, with a new lien recorded each year for

the costs that the individual incurred while on Medicaid.

If a lien has been placed on the home of a Medicaid recipient in a nursing home and the individual leaves the nursing home setting to return home, the lien will be dissolved. If, however, the individual returns to a nursing home under Medicaid a new lien will be placed on the home retroactive to the date of the first stay in the nursing home on Medicaid.

In some instances a lien may be filed on property held in joint tenancy in the event that the non-Medicaid owner should predecease the Medicaid recipient. This can be removed by the recovery agency if the Medicaid recipient dies first.

PROBATE ESTATE RECOVERY

After the death of a Medicaid recipient the state recovery agency can file a claim against the estate even if a lien was never placed on the property. In Colorado Medicaid estate recovery is limited to the resources in the recipient's probate estate. This does not include property held in joint tenancy with right of survivorship or beneficiary-designated property, such as life insurance, or payable on death (POD) accounts.

After the death of the Medicaid recipient the recovery agency contacts the county probate clerk to see if an estate has been opened for probate. If an estate has been opened the recovery agency will file a creditor's claim against the estate. If no estate has been opened and there are real property assets (home, car, bank account, etc.), the recovery agency will send a notice to the personal representative or responsible party requesting that an estate be opened for probate. If no estate is opened the recovery agency, acting as a creditor, will open the estate and pursue recovery.

PAYMENT OF ESTATE RECOVERY

Medicaid expenses incurred by an individual must be paid back to the state upon death, either from the probate estate or payment of the lien(s). The home may have to be sold in order to pay the recovery agency. Certain items are deductible before payment to the state. These include expenses associated with the sale and maintenance of the home, reimbursement to family members for any repairs to the home, probate estate administration expenses, and burial expenses.

The state will consider waving recovery for hardship cases, with documentation. Requests for hardship are handled on a case-by-case basis. The state may also agree to a payment plan for repayment of any debt owed for recovery. Again, this is made on an individual case basis. Interest is charged on the balance.

If families believe they are exempt from estate recovery because of one of the situations discussed in this section, they should get in touch with the state recovery agency at the time the individual is approved for Medicaid.

ESTATE RECOVERY EXEMPTION

As provide for in the Colorado State Plan, the documentation required to enable the Colorado Department of Health Care Policy and Financing (DHCP&F) to make a determination whether the circumstances to meet the "son or daughter living in home and caring for recipient prior to recipient entering an institution" exclusion is outlined below.

If the son/daughter continuously lived in the recipient's home for at least two years prior to the recipient's entry into the nursing home and continues to reside there to this date, **and** provided care to the recipient that permitted the recipient to reside at home rather than in an institution, the following documents are required:

1. A written statement from the recipient's primary physician describing the type and amount of care provided by the son/daughter and the effect such care may have had on the recipient's ability to reside at home.
2. Written documentation regarding the medical condition of the parent.
3. Copies of either: documentation from the Department of Social Services, cancelled checks, bank statements, income tax forms or other documents showing that the son/daughter provided care and/or financial support to the recipient.
4. Copies of the son/daughter's Income Tax Returns for the past three years **or** bank statements **or** bills in their name showing the recipient's residence, as the son/daughter/s residence from two years prior to the date of the recipient's entry into the nursing home **and** to the present date.
5. Inventory of the Estate.

Upon receipt of the required documentation it will be reviewed by DHCP&F and the family member or agent will be notified within approximately thirty days. If the exclusion is met, DHCP&F may still recover medical assistance expenditures from assets in the estate other than the sale of the recipient's home.

RECOVERY AGENCY

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Estate Recovery Program
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