

ESTATE RECOVERY FACT SHEET

Medicaid is a medical assistance program jointly administered by the federal and state governments. Section 1917 of the Social Security Act makes it mandatory for the state Medicaid agencies to recover funds from the estates of deceased Medicaid members. Virginia State law provides for estate recovery in the Code of Virginia §32.1-326 and 32.1-327, and the Virginia Administrative Code at 12VAC30-20-141.

What is Estate Recovery?

Estate recovery is the action required by Federal law to recover funds for medical expenses paid by Medicaid after a Medicaid member turned age 55. Recovery takes place only after the death of the member.

What is Included in an Individual's Estate?

The estate of a deceased individual includes all real and personal property and other assets held by the individual, or in which the individual had any legal title or interest, at the time of his death. An estate may include the member's home even if the home was not considered in determining Medicaid eligibility. The value of an estate is reduced by certain expenses such as the administrator costs and expenses, federal debts and taxes.

When Does Estate Recovery Begin?

Following the death of a Medicaid member, the Department of Medical Assistance Services (DMAS) will take action to determine if estate recovery is appropriate. There is no estate recovery if any of the following apply:

- There is a surviving spouse and the surviving spouse has not been a Medicaid member.
- The member is survived by a child who is blind or disabled.
- The member is survived by a child under the age 21.

Once DMAS determines estate recovery is appropriate, a claim will be filed against the estate for medical assistance payments made on behalf of the individual. DMAS may collect up to the amount of the payments made or the value of the estate, whichever is less.

Are There Any Special Considerations?

Special consideration may be shown when the estate is the sole income-producing asset of survivors such as a family farm, family business, or a homestead of modest value.

Certain American Indian and Alaska Native income and resources interests or income derived from tribal land/resources are exempt from estate recovery by other laws and regulations.

The amount of assets or resources that were disregarded as a result of the individual's ownership of a long-term care partnership policy (12VAC30-40-290 G) is also not subject to estate recovery.

Heirs who want to keep the property/home instead of selling it may contact DMAS to arrange for other repayment options.

DMAS may waive all or part of its claim for estate recovery if it determines that enforcement of the claim would result in an undue hardship on the Medicaid member's dependent or heir. If an undue hardship is requested and denied, a written request for an appeal may be filed within 30 days after receipt of the DMAS denial letter or the distribution of estate assets, whichever occurs first.

If you have additional questions, please contact an eligibility worker at your local department of social services.