



## State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712  
Trenton, NJ 08625-0712

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*Director*

**MEDICAID COMMUNICATION NO. 10-08**

**DATE: November 24, 2010**

**TO:** County Welfare Agency Directors  
ISS Area Supervisors

**SUBJECT: Recoveries From Estates Of Deceased Medicaid Clients and Former Medicaid Clients**

The Division of Medical Assistance and Health Services (DMAHS) is reinforcing and updating guidelines that were issued in Medicaid Communication No. 00-16, dated August 10, 2000, governing the recovery of correctly paid Medicaid benefits from the estates of deceased Medicaid clients or former Medicaid clients. The following is a list of important points to remember when determining eligibility and discussing this topic with applicants, clients, authorized representatives and families:

- Medicaid benefits received on or after age 55 are subject to estate recovery. This is specifically stated and acknowledged on the authorization page of the PA-1G Medicaid Application Form.
- DMAHS has an immediate right to recover from the estate unless there is a surviving spouse or child(ren) who is under age 21 or who is blind or permanently and totally disabled. Should any of these exceptions to DMAHS' right to recover from an estate no longer apply (e.g., death of surviving spouse, attainment of age 21 by surviving child, or death or termination of disability of blind or permanently and totally disabled child), DMAHS has a right to recover from any remaining estate assets at that time.
- Estate recovery in New Jersey includes payments for ALL services, not merely services for institutionalized clients. There is no limitation on the type of service for which DMAHS can recover its payments from estates including managed care (HMO) capitation fees. However, effective January 1, 2010, Medicare cost-sharing benefits paid under the Medicare Savings Programs such as "Buy-in", Specified Low-Income Medicare Beneficiaries ("SLMB") or Qualified Individuals ("QI-1") are not subject to estate recovery.

- The estates of deceased clients who were enrolled in various Title XIX Waiver Programs (such as ACCAP, GLOBAL Options, CCW, etc.) ARE subject to recovery. The only current exceptions are HCEP and JACC, which are State-funded programs through other State Departments.
- The client's primary residence, while exempt for eligibility purposes, is considered part of the client's estate, and therefore is subject to recovery. It is also important to reinforce with applicants, clients and families that any interest that the client had in any property at the time of death will be considered part of the decedent's estate, and therefore subject to recovery.
- Annuities are required to be disclosed upon application and recertification for Medicaid. For those annuities which are determined not to be subject to asset liquidation, the State of New Jersey must be named as the remainder beneficiary in the first/primary position for the total amount of medical assistance paid on their behalf. 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 and the State needs to be notified of any contractual changes in the annuities' income or principal. The remaining benefits of an annuity not subject to liquidation prior to eligibility determination are payable to the State (primary or secondary position) regardless of the age of provided services
- "Estate" for Medicaid recovery purposes is now defined by law to include any real or personal property and any assets in which the client had any legal title or interest at the time of death. Included for your reference is a copy of the pertinent regulation. Please note that the definition of "estate" appears at N.J.A.C. 10:49-14.1(e)2 and is quite comprehensive; also note that the term "other arrangements" used in that subsection includes testamentary trusts and annuities.
- Please remember that in the process of estate recovery, DMAHS will file a lien against the estate to recover all payments for services received on or after age 55 (except for annuities).
- No distribution can be made to heirs or creditors from the estate other than for reasonable funeral expenses, costs associated with the administration of the estate, debts owed to the Office of the Public Guardian for Elderly Adults, and claims with preference under federal or state law (e.g., IRS liens) that may be superior to Medicaid's (e.g. filed prior in time) without first satisfying the Medicaid program's lien.
- A more detailed description of DMAHS' estate recovery authority is contained in N.J.A.C. 10:49-14.1, a copy of which is attached.

Also attached is a revised fact sheet entitled "The New Jersey Medicaid Program and Estate Recovery – What You Should Know." This information sheet can be reproduced as needed and given to applicants/clients and their families at the time of application and redetermination to assist in their understanding of Medicaid estate recovery. The acknowledgement form accompanying the fact sheet should be signed by the applicant/client or a representative and retained in the case file.

Upon the death of the Medicaid client, County Welfare Agency staff and State Eligibility Offices (ISS-Institutional Services Section) should refer the case to the Division's Office of Legal and Regulatory Affairs, P.O. Box 712, Mail Code #6, Trenton, New Jersey 08625-0712. Questions concerning DMAHS estate recovery should be directed to Maureen Brey or Mary Maloney at 609-588-2900.

Sincerely,



John R. Guhl  
Director

JRG:Pp  
Attachments

c: Jennifer Velez, Commissioner  
Department of Human Services

Kevin Martone, Deputy Commissioner  
Department of Human Services

Joseph Amoroso, Acting Director  
Division of Disability Services

Jeanette Page-Hawkins, Director  
Division of Family Development

Kenneth W. Ritchey, Assistant Commissioner  
Division of Developmental Disabilities

Allison Blake, Commissioner  
Department of Children and Families

Poonam Alaigh, M.D., Commissioner  
Kathleen M. Mason, Assistant Commissioner  
Patricia Polansky, Assistant Commissioner  
Department of Health and Senior Services

## ESTATE RECOVERY OF CORRECTLY PAID MEDICAID

### 10:49-14.1 Recovery of payments correctly made

(a) Correctly paid benefits shall only be recoverable from the estate of an individual who was 65 years of age or older when the individual received medical assistance if:

1. The individual leaves no surviving spouse;
2. For estates of individuals who died between February 1, 1984 and October 20, 1992, the individual left no surviving child;
3. For estates of individuals who died on or after October 21, 1992, the individual leaves no surviving child who is under the age of 21 or any surviving blind or permanently and totally disabled children;
4. The amount to be recovered is in excess of \$ 500.00; and
5. The gross estate is in excess of \$ 3,000.

(b) Paragraphs (a)4 and 5 above shall apply to recoveries from the estates of individuals who died on or after July 20, 1981, but prior to December 22, 1995.

(c) For estates of individuals who died on or after April 1, 1995, in addition to the recoveries authorized under (a) and (b) above, any Medicaid payments correctly made on or after October 1, 1993, on behalf of individuals who received services on or after age 55 but prior to age 65, are recoverable from the estates of those individuals, subject to the conditions set forth in (a)1, 3, 4 and 5 and (b) above.

(d) Effective for estates created on or after October 4, 1999, the Division shall file any claim or lien against an estate under this section within 90 days after receiving actual written notice from the personal representative of the estate or any other interested party of the death of the Medicaid beneficiary.

(e) For estates of individuals who died on or after December 22, 1995, Medicaid claims under this section shall be deemed preferred claims, with a priority equivalent to that under subsection c. of [N.J.S.A. 3B:22-2](#), that is, debts and taxes with preference under Federal or State law.

(f) The personal representative of the estate of a deceased Medicaid beneficiary or any other interested party, upon request to the Division, may obtain a "payoff statement" on the amount due under the claim, if that information is available to the Division at the time the request is received.

(g) Effective for estates pending on or created after October 4, 1999, if a family member of a deceased Medicaid beneficiary has, prior to the beneficiary's death, continuously resided in a home owned by the beneficiary at the time of the beneficiary's death, and that home was the beneficiary'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 voluntarily sold, or the resident family member either dies or vacates the property.

(h) For estates of individuals who died on or after October 1, 1993, which are subject to a recovery claim under this section which was either pending on or initiated after March 1,

1995, the estate representative may apply to the Division for a waiver or compromise of the claim based upon grounds of undue hardship, subject to the following policies and procedures:

1. Undue hardship can be demonstrated only if the estate subject to recovery is or would become the sole income-producing asset 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.
2. There shall be a rebuttable presumption that no undue hardship exists if the hardship resulted from estate planning methods under which assets were divested in order to avoid estate recovery.
3. Upon receipt of written notice that the estate is subject to a recovery claim by the Division, the estate representative shall have 20 days from the date of receipt of the notice to file a request for a waiver or compromise of the Division's claim based upon undue hardship, together with evidence in support of the request. If that request is not received by the Division within the time limit specified, the Division shall not grant a waiver or compromise based upon undue hardship. Upon receipt of a timely request, the Division shall evaluate the request and the evidence submitted, and shall notify the applicant in writing of its decision within 45 days from the date that the request was received. If the estate representative wishes to contest the Division's decision, a written request for a hearing shall be submitted to the Division within 20 days from the date of receipt of that decision, in accordance with the provisions of N.J.A.C. 10:49-10. This request shall be forwarded by the Division to the Office of Administrative Law (OAL), which shall notify the parties of the hearing date and venue, and shall provide a description of the hearing process. Subsequent to the hearing, the formal decision of the OAL shall include a description of the process leading to the final agency decision and the appeal rights available to both parties.

(i) The Division may elect not to pursue a claim under this section against the estate of an individual who died on or after December 22, 1995, if it determines, in its sole discretion, that to do so would not be cost-effective.

(j) For all estate recoveries pending on or initiated after October 4, 1999, no lien of any kind, inchoate or otherwise, and no right of recovery can either exist or be pursued until all of the conditions set forth in [N.J.S.A. 30:4D-7.2a](#) are met, including the absence of any surviving spouse or of any minor, blind, or permanently and totally disabled children.

(k) For all estate recoveries pending on or initiated on or after October 4, 1999, even when the statutory conditions for lien filing and recovery are met, recovery shall not be pursued against property held by any bona fide purchaser who has paid fair market value for the property, but shall be sought from the estate.

(l) For purposes of this section, the term "estate" with respect to a deceased Medicaid beneficiary shall include:

1. All real and personal property and other assets included within the individual's estate, as defined in [N.J.S.A. 3B:1-1](#); and
2. For individuals who died on or after April 1, 1995, the term "estate" shall also include any other real and personal property and other assets in which the Medicaid beneficiary had any legal title or interest at the time of death, to the extent of that interest, including assets conveyed to a survivor, heir or assign of the beneficiary through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement, as well as any proceeds from the sale of any such property which remain in the estate of the survivor, heir or assign of the beneficiary, to the extent of the beneficiary's interest;

i. Effective for future estates or estate recoveries pending on or after October 4, 1999, for purposes of this subsection, the term "life estate" shall mean a life estate created upon the death of a beneficiary;

ii. Effective for future estates or estate recoveries pending on or after October 4, 1999, for purposes of this subsection, the term "other arrangement" shall include, but not be limited to, any trust or annuity in which the beneficiary had an interest at the time of death, including a trust or annuity established by a third party, subject to the exclusions discussed in (n) below.

(m) Any lien filed on or after October 4, 1999 against an estate as described in (l)2 above shall describe the extent of the deceased Medicaid beneficiary's interest covered by the lien, if known to the Division at the time the lien is filed. For example, if a deceased Medicaid beneficiary at the time of his death owned real property as a tenant-in-common with another individual, the lien should state that it encumbers only 50 percent of the equity in the real property. If the deceased Medicaid beneficiary held a tenancy-by-the-entirety or joint tenancy with a right of survivorship, then the lien shall state that it encumbers all of the property. If the Division is not aware of the extent of the beneficiary's interest at the time that the lien is filed, the full amount of the Division's claim shall be listed on the lien.

(n) For purposes of this section, for future estates or estates pending on or after October 4, 1999, the term "estate" shall not include:

1. A life estate in which the beneficiary held an interest during his or her lifetime, but which expired upon the Medicaid beneficiary's death;

2. An inter vivos trust established by a third party for the benefit of the now-deceased Medicaid beneficiary, provided that:

i. The trust is a discretionary trust, constructed in such a way that the Medicaid beneficiary could not compel distributions from the trust; and

ii. The trust contains no assets in which the Medicaid beneficiary held any interest within either five years prior to applying for Medicaid benefits, or five years prior to the Medicaid beneficiary's death; or

3. A testamentary trust established by a third party (including the spouse of the now-deceased Medicaid beneficiary) for the benefit of the now-deceased Medicaid beneficiary, provided that:

i. The trust is a discretionary trust, constructed in such a way that the Medicaid beneficiary could not compel distributions from the trust; and

ii. The trust contains no assets in which the Medicaid beneficiary held any interest within either five years prior to applying for Medicaid benefits, or five years prior to the beneficiary's death. Assets of the community spouse which formed a part of the community spouse resource allowance shall not be considered assets of the Medicaid beneficiary. Any assets of the community spouse other than those that formed part of the community spouse resource allowance shall be considered assets of the Medicaid beneficiary if acquired from the Medicaid beneficiary within five years prior to the date of application for Medicaid benefits or five years prior to the date of death of the Medicaid beneficiary.



## **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.**

(Use Eligibility Agency Letterhead)

**ESTATE RECOVERY ACKNOWLEDGEMENT FORM**

I, (Name of applicant, client or legal representative), do acknowledge notice that the Division of Medical Assistance and Health Services has the authority to file a claim and lien against the estate of a deceased Medicaid client or former client to recover all Medicaid payments for services received on or after age 55, including all capitation payments to any managed care organization, when there is no surviving spouse, no surviving children under the age of 21, and no surviving children of any age who are blind or permanently and totally disabled.

I also acknowledge notice that my estate may be required to pay back the Division of Medical Assistance and Health Services for those benefits.

I do hereby acknowledge receipt of the estate recovery notice provided by the Authorized Eligibility Agency for the NJ Division of Medical Assistance and Health Services this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Signature of applicant/representative**

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**Printed name of applicant/representative**