



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEDICAID COMMUNICATION NO. 17-15

DATE: October 17, 2017*

TO: NJ FamilyCare Eligibility Determining Agencies

SUBJECT: Recoveries from Estates of Deceased Medicaid Beneficiaries and Former Medicaid Beneficiaries

Replaces Medicaid Communication 10-08 issued on November 24, 2010

***Updated October 25, 2017; February 12, 2020**

The Division of Medical Assistance and Health Services (DMAHS) is reinforcing and updating guidelines that were previously issued in Medicaid Communications 10-08 and 00-16 governing the recovery of correctly paid Medicaid benefits from the estates of deceased Medicaid beneficiaries or former Medicaid beneficiaries. The following is a list of important points to remember when determining eligibility and discussing this topic with applicants, beneficiaries, authorized representatives and families:

- Medicaid payments for services received on or after age 55 are subject to estate recovery. This is specifically stated on:
 - the authorization/acknowledgement page of all NJ FamilyCare applications (both online and paper version);
 - the cardstock delivering the beneficiary's health benefits identification card;
 - a separate insert included in all:
 - notices sent to beneficiary advising of the enrollment into a managed care organization
 - annual Aged, Blind and Disabled Program redetermination packets
 - redetermination notices (including administrative renewals) sent to beneficiaries
- 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 according to Social Security standards at 42 U.S.C. 1382c. 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 beneficiaries. There is no limitation on the type of

- service for which DMAHS can recover its payments from estates, including managed care (HMO) capitation fees regardless of whether services are received from a network provider. 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 beneficiaries who were enrolled in various Title XIX Waiver Programs ARE subject to recovery. The only current exceptions are the Home Care Expansion Program (HCEP) and Jersey Assistance for Community Caregiving Program (JACC), which are State-funded programs through other State Departments.
- The beneficiary’s primary residence, while exempt for eligibility purposes, is considered part of the beneficiary’s estate, and therefore is subject to recovery. It is also important to reinforce with applicants, beneficiaries and families that any interest that the beneficiary 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 defined by law to include any real or personal property and any assets in which the beneficiary 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. When there are insufficient funds to pay all estate debts, the debts are paid consistent with N.J.S.A. 3B:22-2.
- Personal Needs Allowance account amounts are part of the individual's estate and must be turned over to the estate executor/administrator and are used to satisfy creditors of the estate. Personal Needs Allowance balances can be used to satisfy any CWA or DFD claim for burial costs.
- 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/beneficiaries and their families at the time of application and redetermination to assist in their understanding of Medicaid estate recovery. The process of obtaining an applicant/beneficiary's signature on the acknowledgement form which accompanied the fact sheet, as referenced in Medicaid Communication 10-08, is no longer required.

Upon the death of the Medicaid beneficiary, County Welfare Agency (CWA) staff and State Eligibility Offices (ISS-Institutional Services Section) may 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. General information/questions concerning DMAHS estate recovery should be directed to 609-588-3016.

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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 three years 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 Medicaid beneficiaries, or former Medicaid beneficiaries, for all payments provided through the Medicaid program for services received on or after age 55. This includes, but is not limited to, capitation payments made to any managed care organization, transportation broker, PACE provider, or any other capitated provider, regardless of whether any services were received from an individual or entity that would have been reimbursed by the managed care organization, transportation broker, PACE provider, or other provider that is paid by capitation payments.

Why Estate Recovery?

DMAHS 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 beneficiaries or former beneficiaries who were 55 years of age or older at the time they received services may be affected.

What is an Estate?

For Medicaid estate recovery purposes, an estate includes any property that belonged to the deceased at the time of death or at the moment prior to their 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 survivor(s), it continues to be considered as part of the estate for New Jersey Medicaid recovery purposes.

Will DMAHS 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 according to Social Security standards at 42 USC 1382c. 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 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 client's primary residence, and was, and remains, the family member's primary residence, DMAHS 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.

When will DMAHS *not* seek recovery immediately upon death?

DMAHS 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 according to Social Security standards at 42 USC 1382c. 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 recovery from disability 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 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 beneficiary or former beneficiary 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 Medicaid assistance DMAHS provided for services received on or after age 55, including any capitation payments made to a Medicaid health plan or other entity on the beneficiary's behalf.

What about Life Insurance Policies?

Proceeds from life insurance policies are considered the assets of the named beneficiaries. Proceeds from whole life policies are subject to estate recovery if they are not liquidated prior to death as required. Proceeds from any policy are considered recoverable when the proceeds are paid to the beneficiary's estate as the named beneficiary or as a default beneficiary including when another named insurance beneficiary predeceases (dies before or at the same time as) the Medicaid beneficiary.

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 beneficiary per the primary or secondary terms of the annuity contract.

What about Burial Policies and 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 beneficiary's irrevocable funeral trust fund or burial insurance policy after reasonable funeral expenses have been paid, but only if the deceased received Medicaid or public assistance benefits.

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 expenses can be paid with assets of the deceased before paying Medicaid?

Reasonable funeral expenses, reasonable 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 beneficiary or former Medicaid beneficiary. 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

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