

Wisconsin Estate Recovery Program Handbook



Wisconsin Department of Health Services
Division of Medicaid Services
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You are getting this handbook because you are a Medicaid or BadgerCare Plus member who may get services that are subject to estate recovery. This includes members who are:

- Enrolled in long-term care services and living in an institution.
- Enrolled in a full-benefit Medicaid plan and age 55 or older.

This Wisconsin Estate Recovery Program Handbook may change without notice.

Questions?

Call Member Services at 800-362-3002, 711, or 800-947-3529 (TTY) for translation or help understanding this handbook.

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Estate Recovery Program

Introduction

This handbook provides information about the Wisconsin Estate Recovery Program. It includes who and what programs are affected, how the recovery from an estate is made to collect repayment for certain services, and situations where repayment may not be recovered from an estate.

Members enrolled in Wisconsin Medicaid, BadgerCare Plus, the Wisconsin Chronic Disease Program (WCDP), the Community Options Program (COP), or non-Medicaid Family Care may be affected by the Estate Recovery Program.

Some of the terms used here have been defined in the glossary at the back of this handbook. If you need help to understand any of this information, call Member Services at 800-362-3002.

What is the Estate Recovery Program?

The Wisconsin Estate Recovery Program seeks repayment for the cost of certain long-term care services paid for on behalf of members by Medicaid, BadgerCare Plus, COP, or non-Medicaid Family Care or any services provided by WCDP. Recovery is made from the estates of members, from the estates of their surviving spouses, from certain non-probate property, and from liens filed on their homes (Social Security Act, Title XIX, Sec. 1917, §§ 49.496, 49.682, and 49.849). Recovery is made after the assets of

the member have been accounted for and higher priority expenses have been paid as described in state law (Wis. Stat. § 859.25).

The money recovered is returned to the programs and used to pay for care for other members. Long-term care services for which the program seeks repayment include, but are not limited to, nursing home services and home care services. These services are listed in detail below.

Note: Members who are aged 55 or older, living in the community, and not getting services related to long-term care or any services through WCDP, are not subject to estate recovery.

Wisconsin is required by state and federal laws to recover the costs of certain benefits paid for on behalf of health care members. These laws are designed to recover assets from those who got benefits.

Which members and programs are affected by the Estate Recovery Program?

➤ Medicaid and BadgerCare Plus members:

- Of any age who live in nursing homes may have the cost recovered for all benefits that were paid by Medicaid or BadgerCare Plus while they lived in a nursing home. In addition to recovery from estates and from non-probate property, recovery is also made by filing liens against

homes of Medicaid or BadgerCare Plus members. For more information on liens, see the *Liens for Medicaid Hospital and Nursing Home Residents (TEFRA Liens)* section on page 22.

- Of any age who got inpatient hospital benefits and who are considered institutionalized members may have the cost recovered for all benefits paid by Medicaid or BadgerCare Plus programs that were received during such stays. Institutionalized members are members who have been, or are expected to be, inpatients in a hospital for 30 or more days and who are required to pay their monthly income toward their cost of care. In addition to recovery from estates and from non-probate property, recovery is also made by filing liens against homes of Medicaid or BadgerCare Plus members. For more information on liens, see the *Liens for Medicaid Hospital and Nursing Home Residents (TEFRA Liens)* section on page 22.
- Age 55 or older may have the cost recovered for certain benefits received while they lived in the community, including:
 - Skilled nursing services
 - Home health aide services
 - Home health therapy and speech pathology services
 - Private duty nursing services
 - Personal care services

- Age 55 or older who reside in the community may have the cost recovered for all benefits they got while participating in the following long-term care programs:
 - COP Waiver
 - Community Integration Programs IA, IB, and II
 - Brain Injury Waiver
 - Community Supported Living Arrangements
 - Community Recovery Services
 - Family Care
 - Family Care Partnership
 - Include, Respect, I Self-Direct (IRIS)
 - Program of All-Inclusive Care for the Elderly (PACE)

For members getting long-term care program services through a managed care organization (MCO), the monthly capitation payment made to the MCO will be recovered. The capitation payment is the amount the state pays to the MCO each month, and this amount is what the state recovers from the member.

- **WCDP members** of any age may have the cost of all benefits paid by WCDP recovered.
- **COP participants** who are aged 55 and older may have the cost of benefits paid by COP recovered.

- **Non-Medicaid Family Care members** may have the actual cost of services as reported to the Department of Health Services (DHS) recovered for any enrollee who is:
 - Age 55 or older and living in the community.
 - Any age who lives in:
 - An inpatient hospital and is required to contribute to the cost of care.
 - A nursing home.

Any person who gets all or a combination of the services listed above may have the cost of those services recovered from their estate or the estate of their surviving spouse, from non-probate property, or through a lien.

Which members are not subject to the Estate Recovery Program?

- A Medicaid or BadgerCare Plus member who is 55 or older, living in the community, and not getting services related to long-term care will not be affected by estate recovery.
- A member participating in a Medicare Savings Program. Medicare premium payments and any Medicare cost sharing or coinsurance costs paid by the Qualified Medicare Beneficiary program are not recoverable.

How does the Estate Recovery Program recover the cost of benefits?

The Estate Recovery Program uses claims in probated estates, affidavits in small sum estates and non-probate assets, and liens to recover the cost of Medicaid, BadgerCare Plus, WCDP, COP, and non-Medicaid Family Care benefits.

The Estate Recovery Program seeks repayment by filing claims in probate estates to recover the cost for community-based services, services gotten while participating in a long-term care program, services gotten while a member lived in a nursing home, services gotten while a member was considered an institutionalized member in an inpatient hospital, and WCDP services. If the member's estate includes real property, the Estate Recovery Program may, in certain circumstances, file a lien on the property rather than get immediate repayment. For more information on these types of liens, see the *Probate Estates* section regarding "Are there situations when the Estate Recovery Program's estate claim will not be paid, or payment will be delayed?" on page 13.

An affidavit of the administrator is used to file claims in estates valued under \$50,000 and to recover non-probate assets. As part of this process, liens may be filed on real property to secure the Estate Recovery Program's claim.

Liens may also be filed on homes of Medicaid members who live in inpatient hospitals and are required to contribute to their cost of care or who live in nursing homes. Liens are filed only when

members are not expected to return to their homes to live. For more information on these types of liens, see the *Liens for Medicaid Hospital and Nursing Home Residents (TEFRA Liens)* section on page 22. Liens are never filed on the homes of COP and/or WCDP participants during their lifetime.

When does the Estate Recovery Program not recover benefits?

The Estate Recovery Program will not seek recovery of any benefits from a member's property while the member's spouse, a minor child under age 21, or a disabled or blind child of any age survives the member. However, if the member's estate property or non-probate property includes real property, the Estate Recovery Program will file a lien. Repayment from the lien will be delayed until after the death of the surviving spouse, any minor (under age 21) children, and any children who are blind or have a disability. Although the Estate Recovery Program may file a lien on the real property of a surviving spouse, or any minor child, disabled, or blind child of a member, if the spouse or child sells that property for fair market value during their lifetime, the Estate Recovery Program will release its lien, and no repayment will be made.

There are similar protections in the lien portion of the program that apply to nursing home and hospital inpatient residents. DHS may only file a lien on the home of a member who lives in a nursing home or in an inpatient hospital. In addition, DHS may not file a lien on the home of a nursing home or hospital resident if

there is a spouse or minor, disabled, or blind child of any age residing in the home. DHS will not file a lien on the home of a member living in the community. For more information on liens, see the *Liens for Medicaid Hospital and Nursing Home Residents (TEFRA Liens)* section on page 22.

The Estate Recovery Program may not recover:

- Personal property (furniture, jewelry, appliances, etc.) until sold.
- Cash donated or given to the family after the member's death, such as memorial money.

Certain income, property, and resources of Native Americans and Alaska Natives are exempt from estate recovery. These are:

- Income and resources held in trust status.
- Trust or non-trust property located within or near a current or prior federally recognized reservation, pueblo, or colony; or other geographic areas designated by the Bureau of Indian Affairs (BIA) Secretary.
 - Other geographic areas are service areas for tribes where the BIA provides financial assistance and social services programs to Tribal members.
 - Exemptions apply only to a Tribal member's primary residence or homestead.
- Income and resources derived from reservation land. This includes income from rents, leases, usage rights, and natural

resources (the origins must be able to be clearly traced to Tribal land).

- Government reparation payments.
- Anything not included above that has unique religious, spiritual, traditional, and/or cultural significance that support survival or a traditional lifestyle according to Tribal law or custom.

Exempt non-trust property is protected when it is passed down from a Native American to a relative. It is not necessary for the relative to be a Tribal member for this non-trust property to be exempt.

Certain assets are also exempt from estate recovery for members who have long-term care insurance policies that qualify under the Wisconsin Long-Term Care Insurance Partnership (LTCIP) program.

LTCIP is a joint effort between the federal Medicaid Program, long-term care insurers, DHS, and the Wisconsin Office of the Commissioner of Insurance. The program's main purpose is to provide an incentive for people to plan for meeting their future long-term care needs, whether in a community-based setting, such as their own home, or in a nursing home.

The amount paid out by a qualified LTCIP policy on or after January 1, 2009, is not counted toward the Medicaid asset limit for eligibility, nor is it recoverable under the Estate Recovery Program.

More information on LTCIP can be found on DHS's website at www.dhs.wisconsin.gov/em/ltcip.htm.

Probate Estates

How does DHS recover the cost of benefits through estates?

A member's estate includes all assets owned by the member at the time of death, including, but not limited to, any solely owned savings or checking accounts, stocks, savings bonds, and real property. Any assets that become part of the estate after the death of the member are also subject to the Estate Recovery Program, including, but not limited to, refunds, inheritances, and proceeds from certain life insurance policies, annuities, or death benefits that are payable to the estate. See the *Recovery of Non-Probate Assets after the Member's Death* section on page 16 for more information about non-probate property, such as life insurance payable to living beneficiaries and savings or checking accounts that are jointly-owned or payable on death to a beneficiary.

The legal process known as probate settles an individual's estate by distributing the estate to creditors, heirs, and beneficiaries. Creditors file claims in estates to ensure payment of a debt owed

to them. By law, DHS is paid before most other creditors. DHS and other creditors are paid before any assets are distributed to heirs or beneficiaries, whether or not there is a will.

There are two ways in which DHS recovers benefits through estates. When probate is proceeding through a court, DHS will file a claim for payment with the court and with the individual handling the estate. When there is no court proceeding, DHS generally recovers benefits by filing a claim for payment with the individual handling the estate who uses an alternative statutory process called transfer by affidavit. For more information, see the *Recovery by Affidavit* section on page 18.

When can DHS file a claim in an estate, and what constitutes the claim amount?

DHS can file a claim in the estate of a member or the member's surviving spouse if the member received care paid for by Medicaid or BadgerCare Plus in any or all of the following situations:

- While the member resided in a nursing home. The claim amount is for the cost of all services received while residing in a nursing home that was paid for by Medicaid or BadgerCare Plus.
- While the member was an inpatient in a hospital for a period of 30 days or longer and was required to pay a patient liability amount. The claim amount is for the cost of all Medicaid or BadgerCare Plus covered services received while an inpatient.

- While the member was aged 55 or older and resided in the community. The claim amount is for the cost of Medicaid and BadgerCare Plus covered home health services, private duty nursing services, and personal care services received.
- For members aged 55 and older participating in a long-term care program. The claim amount also includes all Medicaid and BadgerCare Plus services received while participating in the program.
- For Medicaid and BadgerCare Plus members aged 55 and older receiving long-term care program services through a managed care organization (MCO). The monthly capitation payment made to the MCO will be recovered.

DHS can also file a claim in the estate of the member or the member's surviving spouse, to recover WCDP, COP, and non-Medicaid Family Care benefits.

How and when will a claim in an estate be paid?

DHS's claim will usually be paid by the personal representative of the estate according to standard probate procedures. DHS's claim is paid after certain other expenses. Costs paid before DHS's claim are:

- Costs of administering the estate, including attorney fees.
- Reasonable funeral costs.
- Costs of the last illness, if any, that were not paid by Medicaid, BadgerCare Plus, or WCDP.

If there are insufficient assets in the estate to pay DHS's claim in full, DHS is paid what is available after allowable expenses, and the recovery is ended for the assets that have been disclosed. This applies to both claims in court probate proceedings and to DHS's recoveries using affidavits.

Are the heirs allowed to keep anything from the member's estate?

Yes. In the recovery of a claim against an estate, the court allows the heirs and beneficiaries to retain up to a total of \$5,000 in value of the following personal property:

- The decedent's wearing apparel and jewelry held for personal use.
- Household furniture, furnishings, and appliances.
- Other tangible personal property not used in trade, agriculture, or other business, not to exceed \$3,000 in value.

Note: This does not allow heirs to retain liquid assets (cash or assets readily convertible to cash), only personal property.

Are there situations when DHS's estate claim will not be paid or payment will be delayed?

Yes, DHS's claim will **not** be paid if any of the following exist:

- A surviving spouse.
- A child under age 21.
- A disabled or blind child of any age.

However, if there is a surviving spouse, a child under age 21, or a disabled or blind child of any age and there is an ownership interest in real property in the member's estate, payment will be delayed because a lien will be filed on the real property on behalf of DHS. A lien filed during probate will not require repayment as long as the surviving spouse, a child under age 21, or a disabled or blind child of any age lives.

Note: DHS will file a lien on the real property of a surviving spouse, a child under age 21, or a disabled or blind child of any age of a member. But if the surviving spouse, child under age 21, or disabled, or blind child sells that property for fair market value during their lifetime, DHS will release its lien, and no recovery will be made.

Payment of DHS's claim may also be delayed in other instances. DHS will file a lien for recording a full or partial satisfaction of its estate claim if there is a home in the estate and any of the following resides in the home:

- A son or daughter of the member who continuously lived in the home beginning at least 24 months before the member began receiving nursing home services or services provided while considered institutionalized in an inpatient hospital or home and community-based waiver services and who provided care to the member that delayed the member's receipt of such services.
- A brother or sister of the member who continuously lived in the home beginning at least 12 months prior to the member

receiving nursing home services or services provided while considered institutionalized in an inpatient hospital or home and community-based waiver services.

DHS may recover on these liens when the caretaker child, brother, or sister dies or sells/transfers the home.

The filing of a lien through an estate may be done for nursing home members, institutionalized inpatient hospital members, and community-based members. The reason is that this type of lien is a result of an estate claim.

How does DHS file a claim in a probate proceeding in a court?

When an estate is being probated through a court proceeding, the personal representative or attorney handling the estate is required to notify DHS of the estate proceeding and of the time period in which a claim may be filed. DHS then calculates the amount of its claim and submits the claim to the court with a copy sent to the personal representative or the attorney.

The personal representative is responsible for the administration of the estate. The personal representative must make an inventory of the assets in the estate and determine what claims the estate must pay. Claims must be paid according to standard probate laws and procedures.

What is the transfer by affidavit process?

The transfer by affidavit process can be used to close a person's estate when the deceased has \$50,000 or less in assets subject to administration in Wisconsin. It is an alternative to using a court process for small estates. If this process is used, an heir, guardian, or trustee of a **revocable trust** created by the deceased may collect the deceased's assets by submitting a transfer by affidavit to the person, institution, or entity possessing those assets.

By accepting the deceased's assets, the heir, guardian, or trustee assumes a duty to pay the deceased's obligations under the priority of claims established by state law and to distribute any remainder to the appropriate heirs and beneficiaries. If an heir, guardian, or trustee submits a transfer by affidavit to a person, institution, or entity, he or she **must** send a copy to DHS if the deceased received any Medicaid, BadgerCare Plus, WCDP, COP, or non-Medicaid Family Care benefits. If real property is being transferred using a transfer by affidavit, DHS may file a lien on the property. The lien would be satisfied at the time the property is sold.

Recovery of Non-Probate Assets after the Member's Death

The types of recoverable assets DHS can pursue for repayment on behalf of a member include all property in which the member had an interest in immediately before death. This includes property that passes outside a person's probated estate, including assets

transferred through joint tenancy, survivorship, life estate, revocable trust, or other arrangement.

DHS will recover from jointly-owned and payable-on-death checking and savings accounts at financial institutions, no matter when the accounts were established.

DHS will recover from life estates, joint tenancy property (other than checking and savings accounts), life insurance policies payable to a living, named beneficiary, and revocable trusts that were established on or after August 1, 2014. This applies to recovery of these types of property after the death of the member.

DHS will not recover for the following created prior to August 1, 2014:

- Life estates
- Joint tenancy property (other than checking and savings accounts)
- Life insurance payable to a living, named beneficiary
- Revocable trusts

All other types of non-probate property will be subject to repayment for members who pass away on or after August 1, 2014.

An affidavit of the administrator will be used to recover non-probate property. Liens may also be filed on non-probate real property to secure DHS's claim.

Marital Property

DHS will file a claim in the estate of a member's surviving spouse. Repayment will be made from 50 percent of the marital property in the surviving spouse's estate.

Recovery by Affidavit of the Administrator

When can and can't DHS recover the cost of benefits by use of an affidavit of the administrator?

DHS can submit an affidavit of the administrator to any person, institution, or entity possessing the property of a deceased member to recover the cost of benefits. The affidavit states DHS's legal claim to the remaining property of the deceased and explains the rights of heirs, beneficiaries, and co-owners. DHS uses its affidavit to recover from estates under \$50,000 and to recover non-probate assets.

DHS does not use an affidavit to recover when there is a surviving spouse, a minor child (under age 21), or a disabled or blind child of any age and the member's property (either estate property or non-probate property) does not include real property.

DHS also does not use an affidavit to recover against wearing apparel, jewelry, household furniture, furnishings, and appliances with a total value less than \$5,000.

How does DHS recover benefits by use of an affidavit of the administrator?

In estates under \$50,000 that are settled by use of a transfer by affidavit, DHS will send its affidavit of the administrator to the heir, guardian, or trustee presenting DHS's claim. Normally, DHS allows the heir, guardian, or trustee to receive the property of the deceased. The heir, guardian, or trustee can then use the property to pay any reasonable funeral costs, costs of administering the estate, and related attorney fees. Any property remaining after those expenses are paid must be paid to the DHS. Invoices, receipts, and canceled checks of the expenses must be kept, and copies sent to DHS. Any medical bills (including those from ambulance companies) should not be paid until after the charges are reviewed and approved by the Estate Recovery Program. Upon transferring all the remaining funds to DHS, the heir, guardian, or trustee is released from any obligation to other creditors or heirs of the deceased for the property transferred to the heir, guardian, or trustee using the affidavit.

For non-probate property, DHS will use similar procedures. DHS will send its affidavit of the administrator to the co-owners and beneficiaries of a member's non-probate property.

Co-owners and beneficiaries have the right to request a fair hearing on the value of the member's interest in the property.

The value of the member's interest for jointly owned real property (with person(s) other than the spouse) is equal to the fractional interest that the member would have in the property if the property was held with the other owner(s) as tenants in common. [49.849 (5c)(a)]

The value of the member's interest for jointly owned personal property is the percentage interest attributed to the member when eligibility for assistance was determined or, if not determined at eligibility, the fractional interest the member had in the property at their death. [49.849 (5c)(b)]

For life estate interests in real property, the value is the percentage of ownership based on the member's age at the date of death, according to the life estate tables used for Medicaid eligibility. [49.849 (5c)(c)]

The value of the property is the fair market value. Fair market value is the price a willing buyer would pay to a willing seller for purchase of the property. It is the co-owners' or beneficiaries' responsibility to establish that value through a credible method, such as an appraisal by a licensed appraiser. [49.849 (5c)(d)]

When real property is included in the non-probate property, DHS can file a lien on the property.

The lien protections for a surviving spouse or minor, disabled, or blind child in the affidavit process are the same as for liens filed in probated estates.

Waiver of Claims Due to Hardship

Are there any exemptions if recovery would cause a hardship to an heir or beneficiary?

DHS has set standards in Wis. Admin. Code § DHS 108.02(12) for determining whether DHS's recovery would result in an undue hardship for an heir, beneficiary, or co-owner. An heir, beneficiary, or co-owner may apply for a waiver of the DHS's claim on their portion of the estate for one of the following reasons:

- The heir, beneficiary, or co-owner would become or remain eligible for Supplemental Security Income (SSI), FoodShare, BadgerCare Plus, or Medicaid if DHS pursued its claim.
- The deceased's estate contains real estate used as part of the heir, beneficiary, or co-owner's business, which may be, but is not, limited to a working farm, and recovery by DHS would affect the property and would result in the heir, beneficiary, or co-owner losing their means of a livelihood.
- The heir, beneficiary, or co-owner is receiving veterans benefits based on need under Wis. Stat. § 45.40(1m).

The person handling the estate will be notified of these rights and how an heir or beneficiary may apply for a hardship waiver when the estate is being probated through a court or through an affidavit process. That individual is responsible for notifying the heirs and beneficiaries of these rights. An heir or beneficiary can apply to DHS for a waiver of the recovery of their portion of the estate.

In the case of non-probate property, the co-owners or beneficiaries of the property will be notified of their rights and how to apply for a hardship waiver. Only co-owners or beneficiaries of the member's non-probate property are eligible to apply for a hardship waiver of their share in the non-probate property. Other heirs or beneficiaries of the member's probate property cannot apply for a hardship waiver of non-probate property because they have no inheritance or survivorship rights in the property. They only have an interest in property that passes through the member's estate.

Liens for Medicaid Hospital and Nursing Home Residents (TEFRA Liens)

What is a lien and what effect does it have?

A lien is evidence of a debt or obligation that is filed against a particular piece of real property with the Register of Deeds in the county where the property is located. It is like a mortgage in that it represents a debt that must be satisfied when the property is

sold. It does not affect the ownership of the property. It does not require the member to sell their home.

When can DHS file a lien on a home?

Under some circumstances, DHS may file a lien on the home of an inpatient hospital resident who is required to contribute to the cost of care or of a nursing home resident who is not reasonably expected to return home. DHS cannot file a lien on the home of a member in the community.

Liens are filed when the member has an ownership interest in the home. The member has an interest when the home is solely owned, owned with a spouse, owned jointly with someone other than the spouse, owned with a life estate interest, or owned by the member's revocable trust. For a life estate interest, a lien will only be filed if the life estate was established on or after August 1, 2014. Liens will be filed on all other types of ownership interests no matter when those interests were established.

Before filing a lien, the Medicaid program must notify the member (or the responsible party) in writing and inform the member of the right to an administrative hearing concerning the lien process.

DHS may file a lien on the home of a hospital or a nursing home resident only if the member cannot reasonably be expected to return home and none of the following people reside in the home:

- The member's spouse, a minor child (under age 21), or a disabled or blind child of any age.

- A brother or sister of the member who has an ownership interest in the home and has continuously lived in the home beginning at least a year prior to the hospital or nursing home admission of the Medicaid member.

If a lien is filed on the home, it must be removed if a member returns home. If the member returns home, the Income Maintenance worker or the member should contact DHS, and the lien will be removed.

When will payment of a lien be made?

A lien will be paid when the home is sold. The lien is paid from the sale amount after the costs of the real estate transaction are paid, such as the realtor's fee, any closing costs, and any mortgages on the home that predate the Estate Recovery Program lien.

A lien will **not** be paid at the sale of a home, before or after the member's death, if the member has a living spouse or a minor (under age 21), disabled, or blind child. In addition, a lien will not be enforced after the member's death as long as either of the following resides in the home:

- A son or daughter of the member who continuously lived in the home beginning at least 24 months before the member was admitted to the hospital or nursing home and who provided care to the member that delayed the member's admission to the hospital or nursing home.

- A brother or sister of the member who continuously lived in the home beginning at least 12 months before the member was admitted to the hospital or nursing home.

What constitutes the amount paid by a lien?

At the time a property is sold, a lien enables DHS to recover specific amounts paid for by Medicaid. DHS may recover funds for:

- All Medicaid services received while living in a nursing home.
- All Medicaid services received while a member is institutionalized in an inpatient hospital.
- Home health care services received by members aged 55 or older consisting of:
 - Skilled nursing services
 - Home health aide services
 - Home health therapy and speech pathology services
 - Private duty nursing services
 - Personal care services
- All services received by members aged 55 or older participating in a long-term care program (including COP Waiver, Community Integration Programs IA, IB, and II, Brain Injury Waiver, Community Supported Living Arrangements, Community Recovery Services, Family Care, Family Care Partnership, IRIS, and PACE).

- For members getting long-term care program services through a managed care organization (MCO). The monthly capitation payment made to the MCO will be recovered.

A lien only recovers for the amount paid by Medicaid for benefits up to the date of sale. If more benefits are provided after the lien is paid or if all of the benefits already provided were not payable from the sale, DHS may file a claim in the member's estate to recover additional amounts.

Glossary of Terms

Affidavit of the Administrator

DHS can submit an affidavit of the administrator to any person, institution, or entity possessing the property of a deceased member to recover the cost of benefits. The affidavit states DHS's legal claim to the remaining property of the deceased and explains the rights of heirs, beneficiaries, and co-owners. DHS uses its affidavit to recover from estates under \$50,000 and recover non-probate assets.

DHS does not use an affidavit to recover when there is a surviving spouse, a minor child (under age 21), or a disabled or blind child of any age and the member's property (either estate property or non-probate property) does not include real property.

DHS also does not use an affidavit to recover against wearing apparel, jewelry, household furniture, furnishings, and appliances with a total value less than \$5,000.

Capitation Payments

Capitation payments are based on a payment per member rather than a payment per service provided. Managed care organizations (MCOs) receive a fixed monthly payment for a member enrolled in a health plan. If a member is enrolled in a long-term care program, such as a home and community-based waiver program or PACE, the MCO receives a monthly capitation rate payment for each enrolled member.

Joint Property

There are two main types of joint property: (1) joint tenancy and (2) tenancy in common. Under joint tenancy, if two people take title of the property as joint tenants on a deed, each person has a 100-percent ownership of that piece of property. Regardless of the number of joint tenants on a deed, each tenant has equal ownership rights and interest. When one joint tenant passes away, the surviving tenants automatically own the property. Joint tenancy automatically gives each tenant a “right of survivorship” where the surviving tenants receive 100 percent of the property. When only one joint tenant remains living, he or she receives the entire property, and the joint tenancy is dissolved.

Tenancy in common provides for multiple percentages of ownership interest and inheritance rights for the heirs of each

tenant. These ownership percentages may be equal, such as 50/50, or unequal, such as 60/40. Unlike joint tenancy, tenancy in common grants no “right of survivorship” to the other tenants. Thus, no other tenant in common is entitled to receive a share of the property when the tenant in common passes away; instead, the percentage share of the property becomes part of the deceased’s estate.

Liens

A lien is evidence of a debt or obligation that is filed against a particular piece of property with the Register of Deeds in the county where the property is located. It is like a mortgage in that it represents a debt that must be satisfied when the property is sold. It does not affect the ownership of the property. It does not require the member to sell their home.

The Estate Recovery Program uses two types of liens:

1. Pre-death liens are imposed on the homes of living Medicaid members determined to be permanently institutionalized and are not expected to return home to live. These types of liens are called TEFRA liens since they must follow rules set out in the federal Tax Equity and Fiscal Responsibility Act of 1982.
2. Post death liens, which are often part of the probate process.

Life Estate

A life estate is created when a property holder transfers ownership of the property to someone else (known as the remainder) and retains the right to reside in and benefit from the

real estate, such as getting rent. The life tenant's percentage interest is determined using the Medicaid life expectancy tables at the time the life estate was created. The rest of the interest is owned by the remainder (for example, a child or children). When the life tenant passes away, the entire property interest passes to the remainder. Recovery will be made from the life tenant's remaining interest at the time of death.

Life Insurance Policy

A life insurance policy is a contract with an insurance company. In exchange for premiums (payments), the insurance company provides a lump-sum payment, known as a death benefit, to beneficiaries in the event of the insured's death.

Long-Term Care Program

Long-term care programs include home and community-based waiver programs, such as:

- COP – Waiver
- Community Integration Program(s) IA, IB, and II
- Brain Injury Waiver Program
- Community Supported Living Arrangements
- Community Recovery Services
- Family Care
- Family Care Partnership
- IRIS
- PACE

This is not a complete list of long-term care programs and may change without notice.

Marital Property

Marital property is property owned by a legally married couple. A member’s ownership in marital property immediately before passing away is limited to one-half. This is consistent with the classification of property of spouses under state law (Wis. Stat. § 766.31).

Medicaid

Medicaid is a joint federal-state program that provides health care services to persons who have limited income and resources. Wisconsin Medicaid is managed by DHS.

Non-Probate Property

Non-probate property is property that passes outside an individual’s estate. This means that non-probate property does not go through probate before it is transferred to those who inherit it. Non-probate property includes, but is not limited to, life estates, property held in joint tenancy, life insurance proceeds, most property held in a trust, and property that is payable on death or transfer on death to a beneficiary.

Person

Person includes all partnerships, associations, and bodies politic or corporate.

Personal Representative

Personal representative means a person, however denominated, who is authorized to administer a decedent's estate.

Personal Property

Personal property includes money, goods, chattels, things in action, evidences of debt and energy. Personal property is any property that can be moved from one location to another and can be tangible or intangible. Examples include clothing, jewelry, furniture, appliances, artwork, vehicles, livestock, money, and digital assets.

Probate

The legal process known as probate settles an individual's estate by distributing the estate to creditors, heirs, and beneficiaries. Creditors file claims in estates to ensure payment of a debt owed to them. The state is paid before most other creditors. Both the state and other creditors are paid before any assets are distributed to heirs or beneficiaries whether or not there is a will.

Real Property

Real property includes lands, tenements and hereditaments and all rights thereto and interests therein. Real property, also known as real estate, is land and any permanent structures or fixtures attached to it, along with the rights and benefits of ownership.

Real property can include:

- Land, including the surface and everything below or above it
- Buildings, such as houses and office buildings
- Natural resources, such as water, minerals, and growing crops

- Rights of ownership, such as the right to use, sell, lease, or possess the land

Revocable Trusts

A trust is a legal document in which a property interest is held by one person for the benefit of another. Sometimes referred to as a living trust, a revocable trust is created by an individual who wants the ability to change the terms of their trust.

For Further Information

- Go to dhs.wi.gov/medicaid/erp.htm.
- Contact your local agency; to find your local agency visit dhs.wi.gov/im-agency.
- Call Member Services at 1-800-362-3002 (voice) or 711 (TTY).
- Write to:

Department of Health Services
Estate Recovery Program
P.O. Box 309
Madison, WI 53701-0309

This publication is also available at
www.dhs.wisconsin.gov/collections/library/p13032.

Applicable federal and state laws and administrative code (this is not an all-inclusive list):

- Sec. 1917. [42 U.S.C. 1396p]: Liens, adjustments and recoveries, and transfers of assets
- 46.27(7g), 2017: Long-term support community options program
- 46.286(7), 2017: Family care benefit
- 49.496: Recovery of correct medical assistance payments
- 49.682: Recovery from estates; disease aids and funeral expenses
- 49.849: Recovery of correct payments under certain public assistance programs
- DHS 108.02: Department rights and responsibilities
- 632.697: Benefits subject to department's right to recover
- 859.25: Priority of payment of claims and allowances
- 867.03: Transfer by affidavit
- 867.035: Transfer by affidavit; recipients of certain benefits
- 990.01: Construction of laws; words and phrases



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