

## Undue Hardship Waiver Continued:

Estate recovery is subject to Chapter 35 of the Medicaid rules.

**Note:** Medicaid will not review a request for an undue hardship waiver from estate recovery until the Medicaid client passes away.

If you have questions regarding eligibility for Medicaid benefits please contact the Wyoming Department of Health, Long Term Care Processing Unit at (855) 203-2936.

If you have questions regarding the Estate Recovery Program, please contact the Division of Healthcare Financing at the telephone number referenced below. Ask for the Program Integrity Unit.

**Please be advised that the Department of Health does not give legal advice. This brochure is not all encompassing.**

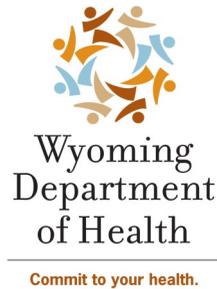


## Wyoming Department of Health

Division of Healthcare Financing  
6101 Yellowstone Road, Suite 210  
Cheyenne, WY 82002  
Phone (307) 777-7531



# Wyoming Medicaid's Estate Recovery Program



## A Publication of the Wyoming Department of Health Division of Healthcare Financing

March 2015

## What is Estate Recovery?

Estate recovery is a federally mandated program. According to the Omnibus Budget Reconciliation Act of 1993, states are required to seek repayment of costs for medical assistance from the estates of certain deceased clients.

Estate recovery helps save State of Wyoming taxpayer dollars by recovering funds from clients' estates which were sufficient to reimburse in full or in part their medical care costs, thus partially offsetting the amount of monies needed for new Wyoming Medicaid clients.

### What is an estate?

An estate is the property, both real property and personal property, owned by the Medicaid client at the time of their death, such as:

- Real estate (home)
- Savings bonds
- Stocks
- Capital credits through a co-op
- Unused burial funds from a burial contract
- Unused balances in the Medicaid client's savings or checking accounts (whether solely-owned, joint or payable on death to the beneficiary).

**Note:** This includes such assets as transferred to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship life estate, living trust

or other arrangement which would include tenants by the entirety.

### What costs will be recovered?

- Nursing home services;
- Home and community based services;
- Hospital services;
- Prescription drug services;
- All other services covered by the state Medicaid plan/program.

### How is estate recovery handled?

Recovery is made by filing a claim against the recently deceased Medicaid client's estate in an amount equal to, but not to exceed, the medical expenses paid by Medicaid while the client was residing in the community or in a medical facility. By filing the claim, the state becomes a creditor in probate court. The state also ensures that the property passing to the heirs either through probate or summary distribution is subject to the state's claim. During these legal processes the state will closely work with the estate's attorney and heirs.

If the client's estate includes real estate such as a home or real property, the Department will file a lien on the home or real property. The lien is the amount of Medicaid payments made on behalf of the person and/or persons receiving care. If a lien exists, the property holder must first pay off the lien before title to the property may be sold or transferred.

## What is a lien?

A lien is a security device that secures property to debt and puts a party on notice that someone besides the owner has an interest in the property. The lien gives notice to the public that the property is encumbered. A lien hinders an asset from being sold or transferred.

## Does a lien affect ownership of property?

No. A lien **does not** change ownership of the property. It represents a debt that must be satisfied whenever property is sold. The lien limits the ability to transfer clear title of the property until the lien is released by the Department.

## Other Recovery - TEFRA

Wyoming Statute § 42-4-207 allows the Department to place a lien (pre-death lien) as authorized by the Tax Equity Fiscal Responsibility Act of 1982 on the home of a client, in the amount of benefits paid on their behalf if:

- The client has been admitted to a medical care facility or nursing home;
- It has been determined by notice and an opportunity for a hearing that the client is not likely to return home.

## What is a bona fide effort to sell?

If a client, a family member, a power of attorney, a guardian, etc. determines that it is necessary or they choose to sell the cli-

ent's home, the client may continue to receive Medicaid benefits, if they enter into an agreement with the Department. The following conditions must be met:

- The client has been eligible for Medicaid for at least six (6) months;
- They must provide a copy of the financial and health care power-of-attorney, a comparative market analysis of the property, and a current deed to the property;
- They enter into an agreement with the Department for placement of a lien against the property. The agreement must be signed by all parties **prior to** putting the property up for sale.
- The family begins to actively sell the property;
- Sale price of the property may not be less than eighty percent (80%) of its comparative market value;
- Net proceeds from the sale are paid to the Department to the extent that Medicaid benefits were paid on the client(s)' behalf.
- If the net sale proceeds exceed the amount of Medicaid benefits paid on behalf of the client, Medicaid will be paid. Due to excess funds, Medicaid eligibility will be re-determined.

## Are there times when estate recovery does not take effect after the client's death?

Yes. The Department cannot begin recovery

during the life of a surviving spouse, or while a surviving child is under 21, or blind or disabled.

## May a client's heirs keep the property from the estate and pay the State the amount they intend to recover?

Yes. If the heirs wish to receive the property that is in the estate, they may do so, as long as they agree to pay the amount the State was going to recover.

## Does the program require a client to sell his/her home?

No. The program does not require a client receiving medical assistance to sell his/her home.

## Does the State retain ownership of property when a client passes away?

No. The Department does not take ownership of property. However, the state will pursue foreclosure.

## Does the Department pursue estate recovery if the client was only eligible for a Medicare cost savings program?

No.

## The Department will not immediately pursue recovery:

- While a surviving spouse is living in the home. Upon the death of the spouse, the Department will pursue recovery from the estate, specifically addressing the deceased client's interest, regardless of

whether or not the surviving spouse was a Medicaid client.

- Upon the death of a client, Wyoming Medicaid will review its laws and policies to determine what action to take, if a client, who was single or the surviving spouse of a married couple, is survived by a minor child under twenty-one (21) or by a blind or a disabled child.

## Medicaid will delay estate recovery:

- If the client who was single or the surviving spouse of a married couple is survived by a brother or sister who resided in the client's home at least one (1) year prior to their admittance to a medical institution.
- If there is a child of the client who resided with the client for at least two (2) years before they entered a medical care facility and provided care to the client. The caregiver child will need to prove s/he provided care for the client.

## What is undue hardship?

Under special circumstances, Wyoming Medicaid allows for an undue hardship waiver from estate recovery. The property must be part of a working farm or ranch, be the sole source of income for the heirs, and provide food, shelter for the heirs. If the heirs believe they may qualify, contact the Division of Healthcare Financing at the telephone on the back of this brochure.