

Wyoming Department of Health

Estate Recovery

Why is There an Estate Recovery Program?

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- **States were federally mandated under the Omnibus Budget Reconciliation Act of 1993 to implement an estate recovery program.**
- **Wyoming had an estate recovery program prior to OBRA 93' as a state option.**
- **The Department of Health, Division of Healthcare Financing has the authority to pursue recovery from the estates of deceased clients who:**
 - were fifty-five (55) year of age or older when they received Medicaid benefits;
 - from the estates of clients who were permanently institutionalized regardless of age, for example in a nursing facility.

Why is There an Estate Recovery Program Continued?

- **Wyoming has a comprehensive estate recovery program. We recover from any assets that the client owned or had an interest in prior to death. Medicaid has promulgated Chapter 35, Section 11 to address estate recovery.**

What is an Estate?

- **Any and all assets owned by the client at the time of death, such as:**
 - Real estate
 - Savings bonds
 - Capital credits from participating in a co-op
 - Savings and/or checking accounts
 - Stocks
 - Personal Property
 - Unused burial funds from a burial contract
- **And, any assets that become part of the estate after the death of the client, such as:**
 - Life insurance policies, annuities or death benefits payable to the estate.

What is the Estate Recovery Process?

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- **Medicaid receives notification of the death of a Medicaid client.**
- **Medicaid seeks recovery for services and benefits provided to the client from the deceased client's estate.**
- **Medicaid will place a lien against the real property such as a home that the client had an ownership interest in at the time of death.**
- **Medicaid will file a claim in a probate action and if applicable, object to the distribution of assets in a short or summary probate.**

What is a Lien?

- **A lien is a legal claim or “hold” on some type of property making it collateral against money or services owed to another person or entity. Simply stated, a lien is a legal notice on property stating that a creditor is owed money.**
- **A lien does not transfer property ownership. It represents a debt that must be satisfied when the property is sold.**
- **A lien places a “cloud” on the title to the property, meaning guaranteed title to the property cannot be made by the seller to a potential buyer until the lien is paid and/or released.**

May a Client or a Client's Family Sell Their Property Prior to Death?

- **Yes**
- **The client or client's legally authorized representative may enter into an agreement with the Agency to sell the property (more commonly known as a bona fide effort to sell.)**
- **There are some conditions that must be met in order for the Agency to enter into this agreement:**
 - The client must have been Medicaid eligible for at least six (6) months;
 - The family/power of attorney must provide Medicaid with:
 - a copy of the financial and health power of attorney or guardianship and conservatorship;
 - a current deed to the home or real estate;
 - an appraisal or a comparative market analysis/broker's price opinion;
 - a current mortgage statement, if appropriate; and
 - the name of the attorney, his or her contact information, and a signed HIPAA authorization.

Why is it Beneficial to Enter Into a Bona Fide Effort to Sell?

- **The family or client will not have the added and continued responsibility for paying for an outstanding mortgage, property insurance, property taxes, utilities, upkeep and maintenance, etc.**
- **The Medicaid client will continue to be eligible for public assistance.**
- **Medicaid will receive payment for up to what it has paid out in medical benefits from the sale of home.**

May a Client or a Client's Family Sell Their Property Prior to the Applicant/Client Being Medicaid Eligible for Six (6) Months?

- **Yes.**
- **The client or client's legally authorized representative may enter into an agreement with the Agency to sell the property (more commonly known as a conditional benefits agreement.)**
- **There are some requirements that must be met in order for the Agency to enter into this agreement:**
 - The family/power of attorney must provide Medicaid with:
 - a copy of the financial and health power of attorney or guardianship and conservatorship;
 - an appraisal or a comparative market analysis/broker's price opinion;
 - a current mortgage statement, if appropriate; and
 - the name of the attorney, his or her contact information, and a signed HIPAA authorization.

Why Enter into a Conditional Benefits Agreement?

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- **The advantages of entering into a conditional benefits agreement are similar to executing a bona fide effort to sell agreement.**
- **The family or client will not have the added and continued responsibility for paying for an outstanding mortgage, property insurance, property taxes, utilities, upkeep and maintenance, etc.**
- **The Medicaid applicant can be determined financially eligible or the client can remain eligible as long as there is a reasonable effort to sell the property.**
- **Medicaid will receive payment for medical benefits and services from the sale of home.**

How May I Assist If Asked About Medicaid Estate Recovery?

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- **You have an invaluable role. You are the front line and have direct contact with the client, family and/or power of attorney. You may direct the individual to the appropriate contacts at Medicaid and their vendors.**
- **Acknowledge the family's, client's or applicant's concern or questions about estate recovery.**
- **Have the family member, client, or applicant contact Medicaid or their vendors.**
- **Express that state employees and their vendors cannot provide legal assistance. Many of the questions asked involve arriving at a legal conclusion. The family member, client or applicant may need to seek legal assistance from an attorney. Medicaid may not provide the name of an attorney that may be contacted.**

What are Some Common Estate Recovery Questions?

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- Does Medicaid pursue estate recovery when the only program the client qualified for was a Medicare Cost Savings Program, such as QMB (Qualified Medicare Beneficiary) or SLMB (Special Low Income Medicare Beneficiary)? **No.**
- Does the State take over ownership or retain ownership of property when a Medicaid client passes away? **No. The Department does not take ownership of property. However, the state may pursue foreclosure of its lien.**
- Does the Medicaid 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.**

Frequently Asked Questions Continued?

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- **May the heirs/family keep the property in the estate and pay the State the amount of money it intends 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.**
- **Are there instances when estate recovery does not take effect after the client's death? Yes. Medicaid may not begin recovery during the life of a surviving spouse (however, the Agency can seek recovery from the surviving spouse's estate), or while a surviving child is under 21, or blind or disabled according to Social Security Administration guidelines.**

Why is Estate Recovery Necessary?

- **Medicaid is seen as long term care insurance. Nationally, the Medicaid Program pays for 46-50% of all long term care.**
- **Medicaid is the largest source of funds for institutional long term care expenses.**
- **It is a cost effective way to offset state and federal costs while promoting equitable treatment of clients. Recovered monies may be used for other Medicaid clients.**
- **Placement of post death liens on real property such as real estate or homes prevents it from being gifted, sold, or transferred to family members until Medicaid receives payment.**

Questions

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