

Medical Assistance Estate Recovery

Background

Estate recovery allows local agencies to make claims against the estates of certain deceased Medical Assistance enrollees, or the estate of the deceased enrollee's surviving spouse, to recover the amount Medical Assistance paid for certain health care services. In 2016, the legislature passed changes to the Medical Assistance estate recovery program that limited the Department of Human Services (DHS) to only the estate recovery activities required by the federal government.

- Currently, estate recovery applies to enrollees who are age 55 or older and receive Medical Assistance long-term services and supports (LTSS) or who, at any age, permanently reside in a medical institution and receive Medical Assistance services.
 - In either of these situations, a local agency must claim against an estate after the enrollee's death to recover what Medical Assistance paid for LTSS.
- If the member was permanently institutionalized, then the claim must attempt to recover the costs of all Medical Assistance services, not just LTSS, that the member received during the period of institutionalization.
- The federal government defines LTSS as:
 - Nursing home services.
 - Home and community-based services, such as services through Alternative Care (AC), Elderly Waiver (EW), or the Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI), or Developmental Disabilities (DD) waivers.
 - Home care nursing.
 - Home health aide services.
 - Medical supplies and equipment.
 - Personal care assistance (PCA).
 - Physical therapy, occupational therapy, and speech therapy when the service is provided by a home health agency.
 - Hospital and prescription drug services received during the time the enrollee was provided nursing facility services or home and community-based services.

- DHS also pursues estate recovery on all General Assistance Medical Care (GAMC) services. GAMC was a public health care program that ended in 2011.

Federal law prohibits state Medicaid agencies, DHS in Minnesota, from collecting on these services until after an enrollee's death.

DHS does have a hardship exemption from estate recovery for any business that is run by the Medical Assistance recipient's decedents, that makes up the majority of the child's income, when the child cannot afford to pay off the Medical Assistance amount. This deals with situations where a child has taken over a small business, but the Medical Assistance recipient never transferred ownership. Examples of this include small farms, mechanic shops, homes modified for home daycare, etc.

More information about estate recovery is available in the [MHCP Estate Recovery and Liens handout](#) (DHS-7273) and on the [estate recovery page](#) of the DHS website.

Methods for estate recovery

There are two primary methods for estate recovery:

- After a Medical Assistance recipient dies, DHS learns of the death via a data match with the Minnesota Department of Health. If the individual is 55 or older, the system checks for LTSS claims. If the system finds LTSS claims, it automatically produces a claims payment history of recoverable LTSS claims. This claims history is sent to the county that has financial responsibility for the case. The county then sends a letter to the family, informing the family that the Medical Assistance recipient's estate is subject to a claim and works with the family on recovery, which may involve DHS placing a lien on certain real property, the county sending an affidavit of collection, or making a claim in probate.
- The family of a Medical Assistance recipient, or a spouse of a pre-deceased Medical Assistance recipient, opens a probate court case. As part of that probate case, the person representative of the estate is required to send a notice to the Commissioner of Human Services. DHS enters this information into its system and the system determines whether or not there are recoverable LTSS claims. If there are recoverable LTSS claims, the estate and county of financial responsibility are both sent a letter stating that there are claims. When there are recoverable LTSS claims, the county files a claim in the probate case in court. If there are no recoverable LTSS claims, the personal representative and county where the court case is occurring both get sent a letter stating that there are no claims.

DHS does not place liens on the property of living Medical Assistance recipients, unless the person has moved permanently into a nursing facility.

Estate recovery information DHS currently has

For the group of enrollees who are impacted by this bill, DHS has the information that they were, or are, enrolled in Medical Assistance and claims data for any services paid for by Medical Assistance. There is no flag or other such indicator on a person's record that indicates whether or not they would be subject to estate recovery

after their death. Enrollees are able to request a claims history from DHS to see what claims Medical Assistance has paid for them, but not all claims are subject to estate recovery. DHS is also able to create a history of recoverable claims for enrollees.

Additionally, this population became eligible for Medical Assistance under the ACA expansion population. This population is not subject to an asset test. Unless we collect asset information, DHS would have no way of knowing who would have been eligible for Medical Assistance in 2014, absent the adoption of the ACA expansion. DHS would have to go back and rework a person's eligibility for all Medical Assistance recipients age 52+, which would involve gathering information about their assets, disability status, and income from that time period.

Without any specific legislation directing the agency to reinstate the previous estate recovery process, DHS is not able to collect on the estate of individuals in this group, unless they remain enrolled in Medical Assistance, or become Medical Assistance eligible again, and receive LTSS at age 55 or older.