



## ESTATE RECOVERY: What do I need to KNOW?

### What is Estate Recovery?

In 1993, the federal Omnibus Budget Reconciliation Act was signed into law, which covers "Medicaid Estate Recovery."

Federal and state law **requires** for the Division of Medicaid (DOM) to have an Estate Recovery plan in place. This estate recovery law means that DOM becomes a creditor against the estate of a Medicaid beneficiary who has passed away, **but only under certain conditions**.

DOM Estate Recovery collects Medicaid payments from estates of deceased beneficiaries for various services, a process which also involves the agency's legal staff.

### Estate Recovery and the Law

Previously, the law **permitted** states to recover Medicaid benefits paid on behalf of a beneficiary who was 65 or older when he or she received the services.

After the 1993 law was passed, states are **required** to seek recovery of payments for nursing facility services, home and community based services and related hospital and prescription drugs.

The law specifies that the person must be 55 years or older when assistance was received. The recoveries may come either from the estate (after death) or from the sale of property subject to a lien. Medicaid must be noticed as an identified creditor if an estate is opened for a deceased Medicaid recipient.

Since Mississippi has no lien law and does not act under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 lien law, recoveries are made from the estate.

### WHAT IS MEDICAID?

Medicaid provides health coverage for eligible, low income populations in Mississippi. Eligible members do not directly receive money from Medicaid for health benefits. Medicaid is separate from Medicare.

### Who does Estate Recovery Apply to?

**Estate Recovery only applies to you if you are:**

- eligible for Medicaid,
- age 55 or older and,
- a resident of a nursing facility, enrolled in a Home and Community-Based Services waiver program or receiving hospice services at the time of death, and
- have ownership of assets where the value is \$5,000 or more.

**The Estate Recovery law does not apply to you if, at the time of death:**

- you have a living husband or wife, or
- you have a living dependent under the age of 21, or
- you have a living dependent of any age who is either blind or disabled, or
- you have an undue hardship condition that causes Estate Recovery not to apply.

### Does Estate Recovery Affect You?

**If the Estate Recovery law affects you as a Medicaid recipient...**

- ▶ The Division of Medicaid can put a claim against your estate after your death. The amount of the claim can be up to the amount Medicaid paid for nursing facility services, waiver services and related hospital and drug services in your behalf.
- ▶ Your estate is made up of real and personal property you own at the time of your death. The value of your estate is based on the value of the property that you own, whether you own it in full or have a shared ownership.

It includes the value of your home and other real estate. Medicaid does not take title or assert ownership to your home. It also includes the value of personal property such as cash, stocks, bonds, automobiles and mobile homes.

## ESTATE RECOVERY: What do I need to DO?

### If the Estate Recovery Law Applies to You...

- ▶ If the Estate Recovery law applies to you, DOM will send your family a letter telling them how much Medicaid paid toward your care. Your family will be granted a chance for a fair hearing, if needed.
- ▶ Undue hardship cases are reviewed on a case-by-case basis and may include the following:
  - The property is the sole income-producing asset of the survivors (with limited income).
  - The estate is of modest value, meaning less than \$5,000.
  - An adult relative lived in the home for at least a year before you went in the nursing home or on a waiver program, and provided care to you and is now dependent on the property for a home.

### Requirements for Administrative Hearing Requests

- The estate property value is correctly stated.
- The Division of Medicaid claim figure is incorrect.

***A hearing may not be needed if the discrepancies can be resolved by a DOM attorney.***

### Requirements for Waiver of Claim on Real Property Designated as a Homestead

The Medicaid recipient claimed homestead exemption on the real property owned and a child or grandchild survived who is entitled to the continuing homestead exemption as held in the case of Medicaid v. Estate of Arlyn E. Darby, Linda Darby Stinson, Executrix (No. 2010-CA 0035-COA). If these requirements can be documented, DOM will waive its claim.

### Hardship Waiver Requests

The requirements to qualify for the Hardship Waiver include, if you have:

- A legal surviving spouse living in the home, or
- A dependent child under the age of 21 living in the home, or
- A dependent child who is blind or disabled of any age living in the home, or
- A relative is residing in the home, who:

1. Resided there for at least one year immediately prior to the date of the beneficiary's admission to the nursing home; or if the beneficiary was not in a nursing home, resided in the home for at least one year immediately prior to the date of the beneficiary's first receipt of services subject to estate recovery.
2. This relative must have provided care to the beneficiary which delayed entrance into the nursing home or allowed the beneficiary to avoid entering the nursing home.
3. Must have been there on a continuous basis since that time.
4. Must have no other residence, or the property owned by the beneficiary was a source of income for the family (for example, a family farm).

***Please consider consulting with your legal advisor to ensure that your rights are protected.***

### QUESTIONS?

If you have questions, contact the Office of Third Party Recovery.

- Phone: 601-359-6095
- Toll-free: 800-421-2408
- Website: <http://medicaid.ms.gov>