

LEGAL CITATIONS AND WEBSITES:

- Montana Code Annotated (MCA) 53-6-165, MCA 53-6-167, MCA 53-6-168, MCA 53-6-169, and MCA 53-6-171 through 53-6-189 and MCA 72-2-413
- <http://www.mtrules.org/>
(For Administrative Rules of Montana)
- <https://leg.mt.gov/bills/mca/index.html>

FOR MORE INFORMATION, PLEASE CONTACT:

Third Party Liability Unit
 Lien Recovery and/or Estate Recovery
 P.O. Box 202953
 Helena MT 59620-2953
 Telephone (toll free): 1-800-694-3084

OR CALL (TOLL FREE):

Your local Information and Assistance Program at
 1-800-551-3191,
 or
 The Senior and Long Term Care Division at
 1-800-332-2272

You can also visit our website at:

www.dphhs.mt.gov/sltc to print out this information.

Montana Medicaid Lien & Estate Recovery Programs



ESTATE RECOVERY AFTER A MEDICAID

RECIPIENT'S DEATH:

Federal law requires the State of Montana to recover Medicaid payments made on behalf of certain Medicaid recipients after the recipient's death. Those Medicaid recipients subject to recovery are:

- Residents of nursing homes;
- Residents of medical facilities or institutions such as Montana State Hospital and Montana Developmental Center; and
- Individuals age 55 and older at the time they receive Medicaid-paid services.

Note: Individuals eligible under Medicaid expansion (adults age 19-65 without children living at home who earn 0-138% FPL and parents who earn between 50-100% FPL) are not subject to recovery except for Medicaid-paid long term care such as nursing home and home and community based services, as required by federal law.

The State may recover by filing a claim against the deceased recipient's estate for the amount Medicaid paid on the recipient's behalf. Recovery may also be made by filing a claim against the estate of the deceased recipient's spouse if the spouse survives the recipient. Recovery from the estate of the recipient's spouse is limited to the value of any property the spouse received from the recipient by distribution or right of survivorship and cannot exceed the amount Medicaid paid on behalf of the deceased.

Recovery may be made from any property the Medicaid recipient had an interest in prior to the recipient's death, including both real property (real estate; land with or without improvements) and

personal property including but not necessarily limited to:

- Property that is part of the recipient's probate estate;
- Property that is not part of the recipient's probate estate; Property that was solely owned by the recipient; and
- Property that the recipient owned jointly with another or others as a joint tenant or tenant-in-common; and
- Property that was transferred by Beneficiary Deed or Quit Claim Deed.

The State may recover from any person who received property from a deceased recipient by distribution or right of survivorship. Recovery may be made during the lifetime of the person who received property by distribution or survivorship or from the person's estate after the person's death. Recovery is limited to the value of the property received from the recipient and cannot exceed the amount Medicaid paid on behalf of the deceased recipient.

The State cannot, however, recover from Tribal trust property, including real property and improvements, or from income derived from trust resources or Tribal trust property.

The State is also entitled to receive:

- Any funds of a recipient held by a financial institution at the time of the recipient's death, such as funds in a checking or savings account, if the recipient resided in a nursing facility;
- Any funds of a recipient held by a nursing facility at the time of the recipient's death, such as funds in a patient/resident account;
- Personal funds of a recipient held by any

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person at the time of the recipient's death, if the recipient resided in a nursing facility; and

- Unused funds from a burial/funeral contract or fund in excess of \$5,000. Medicaid payments that will be recovered include payments for:
- Health insurance premiums (including Medicare premiums paid before July 1, 2009);
- Nursing home services;
- Home and community based services;
- Hospital services;
- Prescription drug services, and
- All other Medicaid covered services.

The State cannot recover Medicaid payments for:

- Medicare premiums paid after 7/1/2009; and
- Medicare co-insurance, co-payments and deductibles paid after 01/1/2010 under the Qualified Medicare Beneficiary Program (QMB).

Example: Mr. Roberts left his only property, a house valued at \$75,000, to his son. At the time of his death, Medicaid had paid \$24,000 for his nursing home care. Other debts of Mr. Roberts' estate for funeral bills and the costs of probating his estate totaled \$10,000. The State received \$24,000 and Mr. Roberts' son received \$41,000 (\$75,000 - \$10,000 - \$24,000 = \$41,000) from the estate.

Example: Mrs. Jones and her husband owned their home worth \$80,000, as joint tenants. Mrs. Jones began receiving Medicaid benefits when she was 80 years old but never resided in a nursing home or other medical facility or institution. Medicaid made payments of

\$50,000 on her behalf. When she died, her one-half share in the house passed to her husband by right of survivorship. Mr. Jones died two years after his wife. The State of Montana filed a claim for \$50,000 against Mr. Jones' estate but recovered only \$40,000, the value of Mrs. Jones' property that Mr. Jones received by right of survivorship.

Example: Mrs. Black, a widow, and her daughter Mary owned a home worth \$80,000 as joint tenants. Medicaid made payments of \$30,000 for Mrs. Black's nursing home care. When Mrs. Black died, her one-half share in the house passed to her daughter by right of survivorship. The State filed an action against Mary to recover Medicaid payments made for Mrs. Black. The State recovered \$30,000 from Mary because the value of the property Mary received by right of survivorship was more than \$30,000.

Recovery is not enforced if the State is notified that the recipient:

- Has a surviving spouse, except the State can recover from the estate of the surviving spouse if the spouse dies within three years of the recipient;
- Has a surviving child who is under age 21; or
- Has a surviving child of any age who is blind or permanently and totally disabled.

HARDSHIP: A deceased recipient's heirs may ask the State to waive or reduce recovery based on undue hardship. All requests will be considered, and arrangements will be made if undue hardship exists based on criteria contained in Rule 37.82.431 of the Administrative Rules of Montana (ARM).

Note: There is no undue hardship waiver for recoveries from funds of the recipient held by a financial institution, nursing facility or other person or from unused funds in a burial/funeral contract or fund.

LIEN RECOVERY:

To secure recovery of Medicaid payments made, the State may place a lien on real property (real estate; land with or without improvements) owned by a Medicaid recipient living in a nursing home or other medical facility or institution such as the Montana State Hospital or Montana Developmental Center. A lien may be imposed only if the recipient is permanently institutionalized in the nursing home or other medical facility or institution. The amount of the lien cannot exceed the amount Medicaid paid on behalf of the recipient.

For purposes of imposing a lien, a recipient is considered to be permanently institutionalized when the recipient cannot be expected to return home.

A lien may not be imposed if the State is notified that any of the following relatives of the recipient is living in the home:

- The spouse;
- A child under 21;
- A child of any age who is blind or permanently and totally disabled;
- A brother or sister who has an ownership interest in the home and who has lived in the home for at least 18 months before the recipient entered the nursing home.

No lien may be imposed on Tribal trust property and improvements (buildings or other attachments) to Tribal trust property.

If a lien is imposed and the recipient is discharged from the facility or institution and returns to the home, the State will release its lien based on a written request from the recipient.

The State may enforce its lien after the Medicaid recipient's death or upon the sale, transfer or exchange of the real property or of any right, title and interest in the property.

Example: Ms. Perez, a single adult, lived in the nursing home for three years prior to her death. A lien was placed on her home during that time. Medicaid paid \$67,000 on Ms. Perez' behalf. After Ms. Perez' death the home is sold for \$90,000, and the State's lien in the amount of \$67,000 is satisfied from the proceeds of the sale of the home.

HARDSHIP WAIVERS AND EXEMPTIONS:

The surviving spouse of a deceased recipient who resides in and has a legal interest in a home is entitled to an exemption from lien recovery as provided in Rule 37.82.437, Administrative Rules of Montana (ARM). The State may also waive enforcement of its lien, wholly or in part, for other individuals on the basis of undue hardship according to the criteria contained in ARM 37.82.436.

Additionally, heirs, if they wish, can retain the property by paying the lesser of:

- The amount the State is entitled to recover; or
- The fair market value of the property.