

## **WHAT IS MEDICAID ESTATE RECOVERY?**

State and federal law requires the Department of Human Services to make claims against the estate of some Medicaid recipients. A claim will be made against the estate of: (1) any recipient who was age 55 or older when the Medicaid benefits were provided; (2) any recipient who has been permanently institutionalized and received services, regardless of age; or (3) a spouse of any Medicaid recipient who was age 55 or older or permanently institutionalized when the Medicaid benefits were provided. The claim is for the amount of Medicaid benefits issued to a person age 55 or older or if permanently institutionalized. State law controls the distribution of a decedent's estate. It limits the kind of claims that can be paid before any Medicaid claim. Funeral expenses are limited. A claim is not made if the only Medicaid benefit provided was help with "Medicare costs sharing" provided on or after January 1, 2010. Assets under BIA jurisdiction are not subject to recovery. Assets under tribal jurisdiction are subject to recovery only if permitted by tribal law. Estate recovery may take place in a court case, or may be done more informally by collecting funds and property that belonged

to the person who died. If you want to disenroll from Medicaid coverage because of this, please contact your local county social service office.

Effective August 1, 2015, the department CANNOT file a claim against the estate to recover payments made on behalf of recipients who received coverage through a private carrier. Individuals eligible under the Medicaid Expansion coverage receive their coverage through a private carrier.

## **WHAT IF THERE IS A SURVIVING SPOUSE OR CHILDREN**

No claim for Medicaid benefits correctly issued must be paid during the lifetime of a Medicaid recipient's surviving spouse or while the recipient's surviving child is under age 21 or blind or disabled.

## **WHAT IF THE DECEDENT LEAVES A WILL?**

A decedent's estate must first pay the decedent's debts. A will does not change that. Unless an estate has sufficient cash to pay all claims, estate property is sold to pay the claims. Family members can purchase estate property at fair market value.

## **CAN FUNERAL EXPENSES BE PAID FROM AN ESTATE?**

An applicant for Medicaid benefits may designate up to \$9,000, which would include \$3,000 of their Medicaid benefits asset limit and a \$6,000 pre-need funeral service set-aside, along with any earnings on the designated funds to be used for funeral expenses. If there are no funds designated for funeral expenses, the estate can spend no more than \$3,000 to meet the expenses. Any funds designated for funeral expenses must be reported to the county social service office before the recipient's death.

Family and friends may use their own money to help pay for the funeral expenses. Additional amounts may not be paid from assets in the decedent's estate before Medicaid claims are paid in full.

## **WHAT OTHER CLAIMS CAN BE PAID BEFORE THE MEDICAID CLAIM IS PAID?**

The decedent's estate can pay funeral expenses, expenses of the sickness or condition that caused the decedent's death, the necessary and reasonable costs of administration, certain other assistance claims, and claims on behalf of the state hospital. The

Medicaid claims must then be paid in full before other creditors or claims can be paid.

## **WHAT IF AN ACCOUNT IS PAYABLE TO SOMEONE ELSE AT THE DECEDENT'S DEATH?**

Unless all estate claims are paid in full, money a decedent left in a joint account, an "in trust for" (ITF) account, or any other payable on death (POD) account must be made available to pay claims and costs of probate. If the money was properly designated as a deposit for funeral expenses, the money can be used for that purpose.

## **HOW IS THE MEDICAID CLAIM MADE?**

If a decedent leaves only cash and limited personal property, the county social service board or the Department of Human Services will usually collect the amount that must be paid for Medicaid claims using an Affidavit for Collection of Personal Property. Sometimes family members will be asked to help sell personal property that has value so claims can be paid. If there is real property that is worth the cost of probate, or if there is some other reason a probate is necessary, the person named in a will or some other family member can be appointed

personal representative and properly distribute the decedent's estate. Attorney fees and other reasonable costs of administration can be paid from the estate. The county social service office will usually initiate probate only if there is no family member willing or able to do so.

## **WHAT SHOULD I DO IF I NEED HELP REVIEWING THIS INFORMATION**

This brochure provides only general information about estates and Medicaid claims. If you have questions about probate or wills, or if you are the personal representative for an estate, please ask your private attorney. If you need assistance in reviewing this brochure, contact your county social service office.

# **MEDICAID ESTATE RECOVERY**



N.D. Department of Human Services  
State Capitol - Judicial Wing  
600 East Boulevard Avenue Dept. 325  
Bismarck, ND 58505-0250