

# Estate Recovery Policy Manual

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## Table of Contents

<b>Section 1. General Information .....</b>	<b>4</b>
1.1 Purpose Statement:.....	4
1.2 Definitions: .....	4
1.3 Claims Subject to Estate Recovery: .....	5
<b>Section 2. Limitations on Claims .....</b>	<b>7</b>
2.1 Medicaid Assistance and Prescription Drug Assistance:..	7
2.2 Waiver of Claim: .....	9
<b>Section 3: Priority Claims Eligible for Payment before Medicaid</b>	<b>10</b>
3.1 U.S. Government Claims: .....	10
3.2 Recipient Liability: .....	10
3.3 Funeral Expenses:.....	10
3.4 Expenses of Last Illness: .....	11
3.5 Expenses of Administering the Estate: .....	11
3.6 General Assistance Claims: .....	11
3.7 Vulnerable Aged, Blind and Disabled Claims:.....	11
3.8 Human Service Center: .....	11
3.9 State Hospital Claims:.....	12
3.10 Medicare premium payment claims (Clawback): .....	12
<b>Section 4: Small Estate Recovery .....</b>	<b>13</b>
4.1 Affidavits for collection of personal property: .....	13
4.2 Joint / Multi Party Financial Accounts: .....	13
4.3 Motor Vehicles and Mobile Homes: .....	13
4.4 Personal Property Without Title: .....	13
4.5 Named Beneficiary: .....	14
4.6 Special Accounts:.....	14
4.7 Life Estates: .....	14
4.8 Cooperative Credits: .....	14
<b>Section 5: Probates .....</b>	<b>15</b>
5.1 Claims: .....	15
5.2 Debts: .....	15
5.3 Judgments:.....	15
5.4 Property:.....	15

5.5	Interest Rate:.....	15
<b>Section 6: Legal Authority.....</b>		<b>17</b>
6.1	Federal Law .....	17
6.2	State Law .....	17

## Section 1. General Information

The Estate Recovery Policy Manual is for applicants and recipients of services provided by the North Dakota Department of Health and Human Services (HHS), including the Human Service Centers, local Human Service Zone offices, the State Hospital, and the Life Skills & Transition Center.

### 1.1 Purpose Statement:

Estate recovery is the process used to seek repayment of benefits received from the estate of a deceased recipient or the estate of the deceased recipient's spouse.

### 1.2 Definitions:

- a) Beneficiary: A person designated to receive property after the death of the owner of the property.
- b) Child: The offspring and adopted offspring of a parent, under the age of twenty-one (21), but does not include an individual who is a stepchild, a foster child, a grandchild, or a more remote descendant.
- c) Disabled: An individual who is blind, or permanently and totally disabled.
- d) Estate: All property and other assets that were owned by the deceased at the time of death.
- e) HHS: The North Dakota Department of Health and Human Services.
- f) Human Service Zone: Local county office within a designated area.
- g) Irrevocable Itemized Burial Agreement: An itemized irrevocable burial contract arranged with a funeral home for burial expenses.

- h) Permanently institutionalized: Any individual who is in a long-term care living arrangement, who was under the age of fifty-five (55) years at the time of permanent institutionalization, has resided in a facility for six (6) consecutive months, and has received written notice that they are considered permanently institutionalized.
- i) Probate: A court process concerning the estate of a decedent.
- j) Small Estates: The collection of estate assets by affidavit.
- k) Successors: Persons, other than creditors, who are entitled to property of a decedent (an exception: HHS may act as successors for purposes of collecting amounts owed to HHS).

### **1.3 Claims Subject to Estate Recovery:**

- a) Any payment of Medicaid assistance to a resident under the age of fifty-five (55) of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and after HHS provided notice that the resident was not expected to be discharged to return home is a debt due to HHS.
- b) Any payment of Medicaid assistance to an individual who was fifty-five (55) years of age or older when the recipient received the assistance is a debt due to HHS.
- c) Any payment of prescription drug assistance to an individual who was fifty-five (55) years of age or older when the recipient received the assistance is a debt due to HHS.
- d) Any general assistance provided to a resident of North Dakota is a debt due to HHS.

- e) Any services provided through the Human Service Centers, State Hospital, and Life Skills & Transition Center is a debt due to HHS.

**NOTE:** Claims may be made at any time, including against the estate of the recipient or any responsible relative of the recipient, for benefits incorrectly provided.

## Section 2. Limitations on Claims

Benefits correctly paid are subject to some limitations.

### 2.1 Medicaid Assistance and Prescription Drug Assistance:

- a) Age of Recipients: A claim may not be made for Medicaid assistance or prescription drug assistance except from the estate of the deceased or the estate of the deceased spouse for benefits correctly provided:
  - i. On and after October 1, 1993, to individuals aged fifty-five (55) or older;
  - ii. Before October 1, 1993, to individuals aged sixty-five (65) and older; or
  - iii. Effective November 1, 2010, to permanently institutionalized individuals under age fifty-five (55).
- b) Surviving Spouse: A claim may not be enforced against a decedent's estate while a spouse survives the decedent.
  - i. An informational claim will be provided to inform the surviving spouse of the existence of a claim.
  - ii. The surviving spouse may voluntarily pay the claim.
- c) Surviving Child Under Age Twenty-One: A claim is not actively pursued against the share of the decedent's estate that passes to a child under age twenty-one (21), who survives the decedent, until the child turns twenty-one (21).
  - i. A claim will be filed against the estate.
  - ii. The claim may be voluntarily paid.

- d) **Surviving Adult Child with Disabilities:** A claim is not actively pursued against the share of a decedent's estate that passes to an adult child with disabilities, who survives the decedent, until the child with disabilities passes away.
- i. A claim will be filed against the estate.
  - ii. The claim may be voluntarily paid.
  - iii. This provision is intended to assure that the adult child who is disabled receives property from the decedent's estate and is not intended to benefit siblings or other relatives of the adult child who is disabled.
  - iv. Estate distributions that pass to other children of the deceased are subject to the estate recovery process.
- e) **Deceased Spouse:** A claim for recovery against the estate of an initially surviving spouse of a deceased Medicaid recipient may be enforced to the extent the estate of the initially surviving spouse is comprised of assets that may be traced to the Medicaid recipient.
- NOTE:** In accordance with North Dakota Century Code (N.D.C.C.) § 50-24.1-07(5), "[a]ll assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death."
- f) **Certain Native American income, resources, and property** are exempt from Medicaid estate recovery.



- g) If a decedent's estate has insufficient property to pay all claims and debts (is insolvent), claims are paid in order of priorities as established under N.D.C.C. § 50-24.1-07.

## **2.2 Waiver of Claim:**

Federal Medicaid estate recovery law (42 U.S.C. § 1396p(b)(3)) requires states to have available a process under which a state will waive recovery in cases of undue hardship. North Dakota limits claims for undue hardship to surviving spouses, children under age twenty-one (21), and adult children with disabilities.

## **Section 3: Priority Claims Eligible for Payment before Medicaid**

### **3.1 U.S. Government Claims:**

All debts owed by the decedent to the U.S. government have a greater priority, by law, than claims by other creditors, including those of HHS.

### **3.2 Recipient Liability:**

Amount of funds owed to a nursing home or basic care facility applicable to the month of death.

### **3.3 Funeral Expenses:**

#### **a) Irrevocable Itemized Funeral Contract:**

- i. There is no limit to the amount designated as long as the funds are in an irrevocable itemized funeral contract prior to the death of the Medicaid recipient.
- ii. If the amount of funds set aside for funeral expenses, are less than \$3,000.00, a claim [by a relative or funeral home] may be made for additional funds, up to a combined total amount of \$3,000.00.
- iii. Burial costs such as flowers, grave markers, headstones, gifts to clergy, pianist, and any other similar funeral expenses may be paid from the irrevocable itemized funeral contract. Funeral lunch is not considered a part of the funeral expenses.
- iv. Any amount in an irrevocable itemized funeral contract which is not used for funeral or burial expenses must be returned to the estate of the medical assistance recipient and is subject to recovery by HHS.

- b) If no funds have not been set aside in an Irrevocable Itemized Funeral Contract, up to \$3,000.00 may be used for burial expenses from estate assets.
- c) Memorial Funds may be used for burial expenses. Memorial Funds are not subject to estate recovery.

### **3.4 Expenses of Last Illness:**

An expense of last illness must be directly related to the cause of death. HHS determines what is a valid claim for expenses of last illness.

### **3.5 Expenses of Administering the Estate:**

Costs incurred by a personal representative in managing the probate, including the expense of employing assistants and lawyers who represent them. The expenses must be reasonable. The expenses must be related to activities required to preserve and manage the estate. Reimbursement for the costs of hiring a lawyer is authorized only when the lawyer's work is necessary for the benefit of the entire estate. Reimbursement is disallowed if the legal services are performed primarily for the personal interest of the personal representative, or another individual, and not for the sole benefit of the estate.

### **3.6 General Assistance Claims:**

Funds received by the deceased through a local Human Service Zone office for subsistence, medical, hospital, or burial expenses.

### **3.7 Vulnerable Aged, Blind and Disabled Claims:**

Amount of funds owed for services received to the extent those services are not covered under the medical assistance program, including Basic Care services.

### **3.8 Human Service Center:**

Amount of funds owed for fees and expenses for services provided through a regional human service center.

**3.9 State Hospital Claims:**

Amount of funds owed for care and treatment services provided by the State Hospital.

**3.10 Medicare premium payment claims (Clawback):**

Amounts of funds owed for payments made to Medicare for monthly Medicare Part D prescription drug benefits.

## **Section 4: Small Estate Recovery**

### **4.1 Affidavits for collection of personal property:**

Affidavits may be used by HHS when the value of the estate does not exceed \$50,000.00.

HHS can collect the assets of the deceased if:

- a) The value of the entire estate does not exceed fifty thousand dollars;
- b) Twenty days have elapsed since the death of the decedent;
- c) An application or petition for probate has not been filed with the court;
- and
- d) HHS is entitled to payment or delivery of the property.

### **4.2 Joint / Multi Party Financial Accounts:**

Ownership of property as joint tenants with right of survivorship is common.

Ownership of accounts that are payable on death ("P.O.D.") is also common.

These arrangements are not effective to transfer ownership of an account when the decedent's estate is insufficient to pay debts and claims against the estate.

When an account in a financial institution is owned in joint tenancy or is a P.O.D. account, the notice and affidavit for collection may properly be used.

### **4.3 Motor Vehicles and Mobile Homes:**

Affidavits for collection should be used to obtain valid titles to motor vehicles and mobile homes.

### **4.4 Personal Property Without Title:**

Affidavits for collection may be used to obtain ownership of personal property that has no “paper” title. Examples of such personal property include livestock and farm and commercial equipment and machinery.

#### **4.5 Named Beneficiary:**

Insurance policies, annuities, stocks, bonds, 401k, and other financial policies that have a named beneficiary, other than HHS, are not subject to estate recovery. The benefit will go to the named beneficiary.

#### **4.6 Special Accounts:**

Trusts, Self-funded Special Needs Trusts and ABLE accounts may be subject to estate recovery.

#### **4.7 Life Estates:**

Life Estates are not generally subject to estate recovery.

#### **4.8 Cooperative Credits:**

Cooperative Credits are subject to estate recovery.

## **Section 5: Probates**

Probate is the legal (court) process of distributing a deceased person's assets and settling their debts. State law requires copies of probate paperwork be furnished to HHS. Unless claims against the estate are paid in full, property in the estate must be sold to pay the claims. The personal representative must furnish a statement of assets and disbursements if HHS's claim is not paid in full.

### **5.1 Claims:**

HHS will file its claim with the clerk of district court after Letters have been signed by the Court and HHS receives the probate paperwork from the estate.

### **5.2 Debts:**

The debts of a decedent's estate are paid according to the provisions of the Medicaid estate recovery statute (N.D.C.C. § 50-24.1-07). Distributions to heirs cannot be made until the debts are paid in full.

### **5.3 Judgments:**

Judgments filed against the homestead now held by the estate are not automatically entitled to priority payment. Such a judgment must be presented as any other claim against the estate.

### **5.4 Property:**

Family members can purchase property of a decedent's estate at fair market value, at the time of sale. The family can pay the preferred claim in lieu of selling the decedent's property.

### **5.5 Interest Rate:**

Unless otherwise provided, allowed claims begin to earn interest at the legal rate for the period sixty days (60) after the time period to file claims has expired. The current interest rate must be at the rate of six percent (6%) per annum.

**NOTE:** Please contact an attorney to discuss the probate process and the requirements for opening a probate in District Court.



## Section 6: Legal Authority

### 6.1 Federal Law

42 U.S. Code (U.S.C.) §§ 1396p(b): Liens, adjustments and recoveries

42 U.S. Code (U.S.C.) § 1396u-5(c)(1)(A): Medicare prescription drug benefit

### 6.2 State Law

N.D.C.C. § 50-24.1: Medical Assistance for Needy Persons

N.D.C.C. § 50-24.5: Aid to Aged, Blind and Disabled

N.D.C.C. § 50-24.7: Expanded Service Payments for Elderly and Disabled

N.D.C.C. § 50-06.3: Human Service Center and State Hospital

N.D.C.C. § 50-01: County Poor Relief: General Assistance

N.D.C.C. § 28-20: Judgments

N.D.C.C. § 47-14: Loans of Money; Interest Defined

N.D.C.C. Title 30.1 Uniform Probate Code