

# West Virginia Estate Recovery Program



***Department of Health and  
Human Resources  
Bureau for Medical Services***

The information in this brochure is intended to provide only a general description of the State of West Virginia Department of Health and Human Resources Medicaid Estate Recovery Program. No information in this brochure is intended as legal advice and is not to be construed as such. Individual circumstances may vary how the Medicaid Estate Recovery Program affects you; therefore, you should obtain legal counsel regarding the impact it may have on your specific situation. In the case of any inconsistencies between this brochure and the State law, W. Va. Code §9-5-11(c) et seq. shall prevail.

## BACKGROUND

Most people pay for their nursing home care out of their own pocket until they have exhausted their savings, and then rely on Medicaid to pay for their remaining medical expenses.

The federal government requires states to seek recovery, from estates, of the monies disbursed to Medicaid beneficiaries under certain circumstances. This brochure identifies and answers some of the most frequently asked questions about Estate Recovery Programs.

***When was the Medicaid Estate Recovery Law passed?***

The Omnibus Reconciliation Act (OBRA) of 1993 was enacted on August 10, 1993. Its effective date was October 1, 1993, which allowed the states time to adopt OBRA. As a result of OBRA, **the State of West Virginia passed legislation to implement Medicaid Estate Recovery in**

**March 1995. Under this legislation the West Virginia Department of Health and Human Resources is required to recover Medicaid payments made after June 6, 1995 from the estates of individuals aged 55 or older.**

***What is the difference between Medicaid and Medicare?***

Medicaid is funded by the federal and state government to pay for the medical care of certain individuals who are unable to finance their own medical expenses. To qualify for Medicaid, an individual must have limited income and resources. The state of West Virginia operates the Medicaid program according to federal law. Medicaid will only pay for services covered by the program.

Medicare is a federal program under the Social Security Administration designed to assist in the payment of medical bills of senior citizens and certain disabled individuals. Medicare subsidizes the cost of medical care and recipients must pay their share of medical bills not covered by this program.

## ESTATE RECOVERY

***What is estate recovery and how does it work?***

Under the West Virginia Probate Code, the State of West Virginia Department of Health and Human Resources as a state agency has priority over certain other private creditors. The personal representative or the attorney probating the estate will use the proceeds from the sale of estate property to reimburse the Medicaid Program for medical expenses paid on the recipient's behalf.

*Example: Mr. Roberts, a widower, left his only property, a house valued at \$75,000, to his son. Following his death, his estate incurred a total of \$4,000 in funeral and administrative expenses. In addition, West Virginia Medicaid had provided \$24,000 for Mr. Robert's care and other related medical services. If Mr. Roberts' son sold the home, he would receive the proceeds from the sale of the house (i.e. \$75,000), less \$4000 for funeral and administrative expenses and \$24,000 for Medicaid costs. Consequently, Mr. Roberts' son would only receive the remaining \$47,000 from the sale. Alternatively, he could retain ownership of the house by reimbursing the state for the \$24,000 provided for his father's medical services.*

### ***What is an estate?***

Under West Virginia Probate Code, an estate is comprised of any real and personal property owned by an individual at the time of his/her death, including any partial ownership interests. This includes personal property conveyed from a deceased recipient to an heir by will or by the rules of intestate succession (i.e. no will).

If the recipient jointly owns any property with others, then the state may only recover the portion of any sale proceeds equal to the recipient's ownership interest.

### ***Whose estates will be affected?***

Recipients, age 55 or older, whose nursing home and/or community based waiver services were paid by Medicaid.

### ***What costs will be recovered?***

Any payments by Medicaid for: Nursing home, ICF/IID care or home and community based waiver care (this is a special program that allows recipients to receive medical services in the home or a community – based setting instead of a nursing home); Related hospital or prescription drug services provided while the recipient was in one of the listed programs.

NOTE: Food stamps, emergency assistance and cash grants, however, are not deemed Medicaid costs, and are exempt from the Estate Recovery Program.

### ***How will the State recover the cost?***

When a recipient whose nursing home, or home and community based waiver costs were paid by Medicaid dies, the State will file a proof of claim against the recipient's estate. This claim is filed with the probate court in the county in which the recipient lived. This claim applies to all of the property subject to probate (personal, real, and intangible) owned by the recipient at the time of his/her death. In addition, this claim will prevent the transfer of any estate assets prior to satisfying creditor's claims.

### ***Are there circumstances in which estate recovery may be deferred or exempted?***

There are exemptions which delay recovery for a period of time, including situations where your home is the lawful residence of a spouse, minor child, adult blind or legally disabled child; therefore, it is important for the administrator or executor to respond to all documents received

Recovery may occur when the condition upon which the delay was based no longer exists (i.e., the surviving spouse passes away or the child becomes age 21). Consequently, the State may impose a property lien after the recipient's death, which will be executed only if the condition no longer exists that deferred recovery. As in other estate recoveries, only the portion of the proceeds which represents the recipient's interest in the property is subject to recovery.

### ***Are there any exemptions if estate recovery would cause a hardship?***

Full recovery may not be pursued if there is a finding by the State of undue hardship on the recipient's heirs. If action is taken to recover Medicaid expenses from the recipient's estate, (i.e. a creditor's claim) the heirs may ask to have the recovery waived or compromised based on hardship. All undue hardship requests will be carefully considered and decisions will be based on guidelines as set forth in Medicaid's regulations.

If the recipient's heirs fail to qualify for an undue hardship exemption, they may provide documentation of financial support given to the recipient for medical care prior to Medicaid eligibility. In such instances, Medicaid may, if appropriate, reduce its claim in an amount equal to all payments made by the recipient's heirs.

**Please note:** It is important for the administrator or executor to respond to all documents received including the request for a hardship waiver and the request for an appraisal of the property in the estate.

### ***Can a recipient's heirs keep the estate property by repaying the state of West Virginia?***

The recipient's heirs may have the state's claim withdrawn by paying the lesser of: the formal appraised value of the estate, the fair market value of the estate property, or the amount of the medical assistance claim.

### ***Are recipients required to sell his/her home?***

The program does not require a recipient to sell his/her home to be eligible to receive Medicaid while he/she is alive.

Some of the information contained within this pamphlet is based on a publication of the Public Policy Institute on behalf of the AARP entitled:

## ***“Questions and Answers on Medicaid Estate Recovery for Long-Term Care Under OBRA'93”***

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