

Special Needs Planning and Medicaid Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ APRIL, 2017 EDITION

Estate Recovery FAQ

What is Medicaid estate recovery?

According to federal and state law, the money that the Florida Medicaid program pays on behalf of a Medicaid recipient is a debt owed back to the state.

Upon the death of the Medicaid recipient, the Medicaid program files a claim against the decedent's estate in order to seek reimbursement for the amount owed.

Does this program affect a person's eligibility for Medicaid or the benefits one might receive?

No. The estate recovery program does not affect any eligibility considerations or the benefits available to a recipient.

What costs will be recovered?

The debt includes all payments made by Medicaid for services or goods when the recipient was age 55 years or over. Payment of benefits for a person under the age of 55 years does not create a debt.

How will I know how much money is owed the Agency?

Florida Statutes requires that the attorney or personal representative of any estate in which the decedent at the time of death was 55 years of age or older, promptly send a notice and a copy of the death certificate to the Agency for Health Care Administration.

This should be mailed to Florida Medicaid Estate Recovery Program, P.O. Box 12188, Tallahassee, FL 32317-2188. Once received, Xerox will determine whether Medicaid provided any medical assistance and, if so, file a claim with the probate court.

The claim states the amount owed. The Clerk of Court then forwards a copy of the claim to

the estate attorney or personal representative.

What expenses can be paid with the assets of the deceased?

Assets that are not exempt are used to pay the expenses of administration and other obligations of the decedent's estate in the following order.

First, there are the expenses of administering the estate such as filing fees and attorney fees.

Second, the estate may pay for funeral and burial expenses (not to exceed \$6,000).

After these are paid, the Medicaid claim must be satisfied before any lower-class creditors or heirs receive any non-exempt assets or money.

Will Medicaid take the house?

Under Florida probate law, some estate assets may be exempt or protected from creditors who have filed claims against the estate.

The probate judge makes the determination about what is exempt. In general, if the Medicaid recipient owned the home as the primary place of residence and it passes to the decedent's relatives, the judge would likely declare it to be "homestead protected from creditors."

If so, then Medicaid, or any other creditor, cannot force its sale. If however, any real property is not "homestead protected," it may need to be sold to pay Medicaid.

Are there circumstances for which Medicaid would not enforce its claim?

Medicaid will not seek to recover the debt if the Agency receives sufficient verification that the deceased recipient was survived by a spouse, a minor child (under age 21), or a child who has been determined by the Social Security Administration to be blind or permanently and totally disabled.

Would the Agency waive its claim so that the heirs could get some money?

The personal representative of an estate and any heir may request that the Agency considers waiving recovery if it is believed that recovery would create a hardship.

A Request for Hardship Waiver form may be obtained by contacting the Florida Medicaid Estate Recovery Program. Upon receipt of the completed form and sufficient supporting documentation, the Agency may grant a waiver of all or part of the debt.

The Agency will consider whether the heir would be deprived of food, clothing, shelter, or medical care necessary for the maintenance of life or health.

The Agency also considers whether the decedent's children or siblings provided full-time care which delayed the recipient's entry into a nursing home. A hardship does not exist solely because recovery will prevent any heirs from receiving an anticipated inheritance.

News You Can Use

2017 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,205.00
Personal Needs Allowance:	\$105.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Community Spouse Resource Allowance:	\$120,900.00
Minimum Monthly Maintenance Income Allowance:	\$2,002.50
Maximum Monthly Maintenance Income Allowance:	\$3,022.50
Home Equity Interest Maximum Limit:	\$560,000.00