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**ESTATE RECOVERY**

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**MA-3326 – ESTATE RECOVERY**

**REVISED 05/01/11 – CHANGE NO. 09-11**

**I. BACKGROUND**

- A. The Omnibus Budget reconciliation Act of 1993 mandated that states recover certain Medicaid payments from the estates of deceased Medicaid recipients. In July 1994, the North Carolina General Assembly passed G.S 108A-70.5 to implement an estate recovery program effective October 1, 1994.**
- B. The estates of Medicaid recipients may be subject to estate recovery if the recipient applied or re-applied on or after October 1, 1994, and**
1. Is under age 55 and an inpatient in a nursing facility, intermediate care facility for the mental retarded, or other medical institution, and cannot reasonably be discharged to return home, or
  2. Is 55 years of age or older and is living in medical facility and receiving medical care services, or home and community-based services, or Personal Care Services (PCS).
  3. **Effective May 1, 2007 PCS claims for SA recipients ages 55 and over are subject to Medicaid estate recovery.**

**II. POLICY PRINCIPLES**

- A. Estate Recovery means a claim is filed against the estate of a deceased recipient to recover Medicaid dollars paid on behalf of the individual.**
1. It is important to understand that estate recovery does not include placing a lien on the property.
  2. Recovery is not initiated until the recipient's death.
  3. In some situations, recovery is waived. Please see V. below for information on estate recovery waiver.
  4. DMA, Third Party Recovery Section (TPR) is responsible for collection activities after a claim is filed against the estate.
  5. TPR works directly with the representative/administrator of the estate to ensure claims against an estate are paid to the extent the assets are available and in accordance with the order of payment in state law.

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**(II. A)**

6. Medicaid is a fifth class creditor.
7. The IMC must explain Estate Recovery to the a/r or his representative at application and/or redetermination. This includes all individuals:
  - a. Age 55 and older in any aid program including Work First (WFFA) and Special Assistance (SA).
  - b. Under age 55 applying for Long Term Care (LTC).
8. A qualified Long Term Care Partnership policy provides the insured a resource disregard at application for LTC Medicaid or CAP and provides resource protection at estate recovery. The amount of the resource disregard is up to the amount paid out on behalf of the insured from the qualified Long Term Care Partnership policy as of the date of application for LTC or CAP Medicaid. The resource protection at estate recovery is equal to the amount paid out by the policy on behalf of the insured as of the date of application for LTC or CAP Medicaid. See MA-2230, Financial Resources, XII. D. for instructions on how to calculate the resource disregard.

**B. State law limits estate recovery to individuals who apply or re-apply for Medicaid on or after October 1, 1994. It applies to two specific groups of individuals:**

1. Recipients under age 55 who reside in a medical facility on a permanent or indefinite basis, and
2. Recipients age 55 or older living in a medical facility where Medicaid paid a portion of his/her cost of care or received services under the Community Alternative Program (CAP), or received Personal Care Services (PCS).
3. **Effective May 1, 2007 PCS claims for SA recipients ages 55 and over are subject to Medicaid estate recovery.**

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**C. Definition**

	<b>Group 1 Under age 55</b> <b><u>This is not applicable to SA recipients under age 55</u></b>	<b>Group 2 Age 55 or older</b>
<b>Who Falls in this Group:</b>	Recipients <b>under age 55</b> who reside in a medical facility on a permanent or indefinite basis. Permanent or indefinitely means the individual cannot reasonably be expected to be discharged to return home to live.	Recipients <b>age 55 or older</b> : 1. Living in a medical facility where Medicaid paid a portion of his/her cost of care, or  2. Received services under CAP, or received Personal Care Services (PCS).
<b>Permanent or Indefinite Basis</b> Documentary evidence is used to make the determination that an individual is residing in a medical facility on a permanent or indefinite basis.	Documentary evidence may include:  1. No plans for discharge are indicated on the FL-2/MR-2, plan of care, hospital discharge summary or physician's statement, or  2. The individual has already been in a medical facility for 6 months and there is no discharge plan for the near future.	N/A
<b>Payments Subject to Recovery:</b> DMA does not recover more than the amount paid on individual's behalf by the Medicaid program.	Recovery includes:  1. Certain Medicaid claims paid for any period of time the recipient was budgeted for LTC after October 1, 1994, and  2. Services received under CAP beginning at age 55.	Recovery includes:  1. Certain Medicaid claims paid for any period of time the recipient was budgeted for LTC after October 1, 1994, and  2. Claims paid for nursing facility cost of care, related hospital expenses while residing in a nursing facility, CAP services, PCS services and prescription drugs.

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<p><b>Explanation of Estate Recovery</b>                  The IMC is responsible for explaining estate recovery to an applicant.                   If an a/r chooses not to apply for Medicaid or withdraws his application after learning of possible estate recovery, treat this as an inquiry or withdrawal. Follow application processing rules.</p>	<p>Explain the following:</p> <ol style="list-style-type: none"> <li>1. Who is subject to estate recovery, and</li> <li>2. What Medicaid payments are subject to recovery, and</li> <li>3. Medicaid does not recover prior to the death of the recipient, and</li> <li>4. Medicaid never recovers more than what was paid by Medicaid on his behalf, and</li> <li>5. Estate Recovery Waiver rules.</li> <li>6. Appeal rights.</li> </ol> <p>If the recipient or representative has other questions regarding Estate Recovery, refer them to Third Party Recovery.</p>	<p>Same as Group 1</p>
<p><b>Assets Subject to Estate Recovery</b>                  There are certain assets that <u>may</u> be subject to Estate Recovery at the time of the recipient’s death.</p>	<p>Assets subject to recovery may include:</p> <ol style="list-style-type: none"> <li>1. <b>Real property</b>; such as the recipient’s home site, income-producing property, Tenancy-In-Common, and life estates.  <u>Please note</u>: When a life estate is measured by the life of someone other than the recipient who owns the life estate, the life estate does not end at the time of the death of the recipient, but continues until the death of the person on whose life the life estate is measured. As a result, the life estate, in this situation is an asset that is subject to claims against the estate of the recipient.</li> <li>2. <b>Personal property</b>; such as motor vehicles and home furnishings, and</li> <li>3. <b>Liquid assets</b>; such as annuities and certain life insurances policies without a living beneficiary.</li> </ol>	<p>Same as Group 1</p>

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	<p>4. For individuals with a qualified Long Term Care Partnership policy, assets subject to estate recovery include all of the above and assets owned by the a/r immediately prior to his death, including:</p> <ul style="list-style-type: none"> <li>• All real and personal property available for the discharge of debt in which the recipient had any legal interest at the time of death.</li> <li>• Assets conveyed to a survivor, heir or assignee.</li> <li>• Life estates and living trusts</li> <li>• Ownership interests in joint tenancy with rights of survivorship</li> <li>• Tenancy-In-Common</li> <li>• Any other arrangement</li> </ul>	
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**III. PROCEDURES**

**A. A Notification Procedures**

There are different notification requirements for individuals under the age of 55 and individuals age 55 or older. If notification forms regarding estate recovery are given at application and documented in the file a second notification is not necessary at redetermination, unless the individual has turned age 55. **Medicaid is automatic for all Special Assistance (SA) facility recipients. Therefore, each Special Assistance, (SA) applicant/recipient, regardless of age, or his representative must sign the [DMA-5052SA](#), State/County Special Assistance Applicant Medicaid Estate Recovery Notice. (Not applicable to SA/IH a/rs). They will have signed the DMA notice, since they must first qualify for Medicaid before being approved for SA/IH).**

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**(III A)**

<b>Notification for:</b>	<b>Group 1 Under age 55</b>	<b>Group 2 Age 55 or older</b>
PLA/SA/CAP LTC	DMA-5051, , possibly DMA-5053	DMA-5052/ <a href="#">DMA-5052SA</a>
	<p>1. A/r or representative must sign the <a href="#">DMA-5051</a>, Your Estate May Be Subject to Medicaid Recovery. This form is notice to the a/r explaining that he may be subject to estate recovery and that a determination must be made whether the a/r is considered living in a facility on a permanent or indefinite basis.</p> <p>2. If the a/r or representative refuses to sign, document this on the DMA-5051, and in the case record.</p> <p>3. Document in the case record that the notice was given or mailed to the a/r, and file a copy of the form in the case record.</p> <p>4. Do not delay approval of the application while making the determination of whether the stay is permanent or indefinite.</p> <p>5. If the placement is found to be permanent or indefinite, mail the <a href="#">DMA-5053</a>, Your Estate Is Subject to Medicaid Recovery, which explains the decision and appeal rights.</p> <p>6. File a copy of the DMA-5053 in the case record. No further action is required at this time.</p>	<p>1. A/r or his representative must sign the <a href="#">DMA-5052</a>, Your Estate Is Subject To Medicaid Recovery, or the <a href="#">DMA-5052SA</a>, State/County Special Assistance Applicant Medicaid Estate Recovery Notice, if the a/r is SA. Provide a signed copy of the DMA-5052, or the <a href="#">DMA-5052SA</a>, to the applicant and/or his representative and retain one copy for the case file. This is a general notice that explains the a/r is subject to estate recovery.</p> <p>2. If the a/r or representative refuses to sign, document this on the DMA-5052 or the <a href="#">DMA-5052SA</a> and in the case record.</p> <p>3. Document in the case record that the notice was given or mailed to the a/r, and file a copy of the form in the case record.</p> <p>4. No further action is required at this time.</p>

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**B. Determination of “Permanent or Indefinite basis” for recipients under age 55**

Living in a Medical facility on a permanent or indefinite basis means the individual under the age of 55 cannot reasonably be expected to be discharged to return home. This determination is based on documentary evidence. This does not mean an individual would never be able to return home. The county DSS is responsible for making the determination that the a/r cannot reasonably be expected to be discharged home. There are several ways to establish this.

1. Initial Determination

**Review the FL-2/MR-2 or other documentary evidence:**

Verify whether it contains a specific discharge plan/date or period of time that care in an institution is needed. Other documentary evidence includes the nursing facility's plan of care, hospital discharge summary/planner's report or a physician's statement.

For example, an FL-2 may indicate placement required for 5 months to provide care and physical therapy for an individual who is recovering from a broken hip. This indicates a plan for discharge in 5 months. Therefore, the stay is not considered permanent or indefinite.

**When the FL-2/MR-2 or other documentary evidence does not indicate a specific discharge plan/date:**

The person is considered permanent or indefinite and cannot reasonably be expected to be discharged home.

**When the FL-2/MR-2 or other documentary evidence indicates a specific discharge date to the home or reasonable plans for discharge:**

1. Take no further action at this time.
2. Flag the case for review at the projected date of discharge or at the next review, whichever comes first.

Please see III.B.2 below for instructions.

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2. Determination at next review or flagged date

**On the flagged date or next review:**

1. Verify the recipient's current living arrangement. If the individual was discharged to return home to live, his placement was not permanent and estate recovery does not apply.
2. No further action is required.

**If the individual is still residing in the facility:**

1. Consider that the individual cannot reasonably be expected to be discharged to return home unless documentation of specific plans and a date for discharge is provided from one of the sources listed in III.B.1.
2. Document the decision in the case record.

**If no medical documentation of a specific discharge plan/date is provided or the individual is still residing in a facility at the time of the review:**

1. Consider that the individual cannot reasonably be expected to be discharged to return home.
2. If the recipient in the medical facility dies before the determination has been made, assume the placement was permanent.
3. Document the decision in the case record.

**C. Reconsideration Review of "permanent or indefinite status"**

The recipient or his parent/guardian/responsible person acting on behalf of the recipient may request reconsideration of the determination that the individual cannot reasonably be expected to be discharged to return home.

1. The recipient or his parent/guardian/responsible person acting on behalf of the recipient may request the reconsideration review in writing by completing the back page of the [DMA-5053](#), Your Estate Is Subject to Estate Recovery.
2. The request is forwarded to the Department of Health and Human Services Hearings Office within 30 calendar days of the date of the notification.
3. If the request is forwarded to county DSS, the county must send the request, including evidence supporting the county's decision, to the Department of Health and Human Services Hearings Office within 30 calendar days of receipt of the request for a reconsideration review.

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4. Within 30 calendar days of receipt of reconsideration review, the Hearings Office shall establish a reconsideration date and conducts a review of:
  - a. All evidence considered by the county DSS in making a determination of permanent institutionalization, and
  - b. Information provided to the Hearings Office, in writing or by telephone conference with the recipient or an individual acting on the behalf of the recipient.
2. The estate recovery administrator notifies the recipient or the individual acting behalf of the recipient in writing within 15 calendar days of the reconsideration review. If the recipient disagrees with the decision of the reconsideration review, he or she may appeal to the Office of Administrative Hearings (OAH) within 60 calendar days from receipt of the decision. If no appeal to OAH is filed, the decision is final.

**IV. ESTATE RECOVERY PROCEDURES WHEN A RECIPIENT DIES**

**A. EIS Termination Code 52**

When the county learns the death of a recipient:

1. Promptly terminate the case with code 52.
2. Include date of death to ensure that a claim for Estate Recovery is produced.
3. See [EIS-3200](#) for instructions on entering information in EIS.

Failure to terminate the case timely or use of the incorrect code may prevent timely generation of the estate recovery invoice or filing of a claim.

**B. Invoices/claims**

1. Approximately 30 days after the date of death, MMIS will generate three invoices itemizing the amounts Medicaid paid that are subject to estate recovery. The estate recovery invoices are mailed to DSS weekly. Please refer to II.C. above for services subject to estate recovery.

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**(IV. B)**

2. An invoice may be generated for some deceased recipients who applied for Medicaid prior to October 1, 1994 and received Medicaid continuously to the date of death because certain programs appear as an application in EIS. For Example, if a SSI Medicaid recipient move to non-SSI Medicaid through an ex parte review, completing the EIS 8124 screen may be required. The current EIS system is unable to distinguish continuous eligibility; therefore, invoices will be generated.
3. If a recipient's Medicaid is terminated prior to his death, an invoice will not be generated. TPR will pursue estate recovery for those individuals upon notification by DSS.
4. If DSS learns the death of a former recipient, it's important to provide TPR with the recipient's information in order for TPR to begin the manual recovery process. Contact TPR at 919-647-8100 and provide the recipient's name, Medicaid ID, and date of death.

<b>Review the Individual Eligibility History (IE) Screen in EIS</b>	
<p><b>If the deceased individual received Medicaid (in any aid program category, including MQB) continuously beginning prior to October 1994 and there is no new application:</b></p> <ol style="list-style-type: none"> <li>1. Return the invoice within 10 days to TPR.</li> <li>2. Note on the invoice the deceased is not subject to estate recovery because he applied for Medicaid prior to October 1, 1994 and received continuously until his death.</li> </ol>	<p><b>If the deceased lost eligibility and made a new application or re-application for Medicaid on or after October 1, 1994:</b></p> <p>Proceed with estate recovery procedures.</p>

**C. Instructions when DSS receives the invoices:**

It is recommended that DSS designate one person and a back up as an estate recovery coordinator/caseworker to receive all invoices. This simplifies procedures and tracking.

1. When the invoices are received, promptly pull the case record.

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2. Review each DSS case file to determine if the deceased recipient received Medicaid continuously beginning prior to October 1, 1994 and what resources the deceased owned that may be subject to estate recovery.
3. Complete the DMA-5056, Estate Recovery Information Form for every invoice received. It should include all information in the record that may be relevant to the recovery process. Include insurance information for any Long Term Care Partnership policy the recipient owned at death. Provide the name of the insurance company, the insurance company mailing address, date of purchase, policy number, original value of the policy and the amount paid out on behalf of the recipient as of the date of application. See the note in ABD MA-2230, Financial Resources, XII.D, for instructions on how to apply the resource protection at estate recovery.
4. If the applicant died during the application process, in the field for the signer of the DMA-5051, DMA-5052, DMA-5052SA or DMA-5053 form, enter the name and address of the person to whom the DMA-5054, Medicaid Recovery Claim, was or will be sent.
5. Forward to Third Party Recovery (TPR) within 30 days of the invoice date:
  - a. The completed DMA-5056, including any additional documentation
  - b. One copy of the invoice
  - c. Do not forward any forms or invoices to the clerk of court. All documentation is sent to the TPR unit.
6. If it is discovered that the recipient was eligible for Medicaid prior to October 1, 1994, and has had no break in eligibility since September 30, 1994, write “prior to 10/1/94” on the invoice and complete the DMA-5056. The required fields are: name of recipient, Medicaid ID #, date of death, county worker, and date and telephone number of worker. Circle YES for the first question. Attach the EIS history screen and send it to the TPR unit.

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**(IV.C.)**

7. Mail the second copy of the invoice and the [DMA-5054](#), Medicaid Estate Recovery Claim, to the signer of the DMA-5051, DMA-5052, [DMA-5052SA](#) or DMA-5053 form.
8. If the applicant dies during the application process, send the DMA-5054 to the personal representative or family member of the deceased recipient. It is not necessary to send the notice and invoice via certified mail.
9. File a third copy of the invoice in the DSS case file.

**D. Instructions for SSI Recipients**

1. SSI cases are terminated by SSA. When you learn of the death of a SSI recipient who has not been terminated by Social Security, report the date of death promptly via the [DMA-5049](#), Referral to Local Social Security Office.
2. When SSA terminates SSI due to death, the Medicaid case is terminated in EIS with a code 90 and the death date from the SDX is inserted into the EIS record. An estate recovery invoice is generated when Medicaid is terminated in EIS with a code 52 or 90.
3. Follow instructions in IV.C. above.

SSI recipients who did not receive LTC or CAP services, but received PCS services prior to death, may not have a county case file available to review. If there is not a case file available, write “no file” on the invoice and forward it along with the DMA-5056 to TPR. It is the responsibility of TPR to obtain asset information that may be subject to recovery.

**V. WAIVER OF ESTATE RECOVERY**

There are some circumstances when DMA does not recover from a recipient's estate.

**A. DMA waives recovery when:**

1. The recipient is survived by a legal spouse, child under age 21, or child of any age who is blind or disabled.
2. The total assets in the estate are less than \$5000, or the total Medicaid paid is less than \$3000, or
3. Recovery will cause undue or substantial hardship to a surviving heir.

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**B. Undue hardship exists when:**

1. Real or personal property included in the estate is the sole source of income for a surviving heir, his or her spouse and related family members in his or her household and the gross income available to the surviving heir, his or her spouse and related family members in his or her household is below 200% of the federal poverty level.
2. Recovery would result in forced sale of the residence of a surviving heir who is living in and has continuously lived in the property since the decedent's death and who lived in the property for at least 12 months immediately prior to and on the date of the recipient's death and who would be unable to obtain an alternate residence because the gross income available to the surviving heir, his or her spouse and related family members in his or her household is below 200% of the federal poverty level and assets are valued below \$12,000.

**VI. CLAIM OF UNDUE HARDSHIP**

A claim of undue hardship must be made within 60 days of the date of the notice of the Medicaid claim. A claim of hardship must describe the financial circumstances of the surviving heir, and/or his or her dependents in the estate. The estate recovery administrator evaluates each claim of hardship based on documentary evidence submitted by the claimant. Inform the personal representative to submit a hardship claim to:

The Division of Medical Assistance  
Estate Recovery Administrator  
2508 Mail Service Center  
Raleigh, North Carolina 27699-2508

**A. Documentary Evidence**

Inform the personal representative to contact the Division of Medical Assistance's Estate Recovery Administrator at 919-647-8100 for a list of the documents that may be required for an undue hardship claim.

**B. Hardship Claim Decision**

Each claim of undue hardship is evaluated within 90 calendar days from the date of receipt. A written decision is made within 10 calendar days after completing the review. If the surviving heir disagrees with the decision on his claim of hardship, he or she may appeal to the Office of Administrative Hearings (OAH) within 60 calendar days from the receipt of the decision. If no appeal to OAH is filed, the decision is final.