

IOWA MEDICAID ESTATE RECOVERY
FOR THE IOWA FUNERAL DIRECTORS ASSOCIATION
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I. History of Medicaid Estate Recovery in Iowa

Congress passed the first estate recovery law for Title XIX medical assistance in 1982 that encouraged voluntary compliance by the states. The federal Budget Reconciliation Acts of 1993 and 1994 then mandated that states recoup Medicaid payments from the estates of recipients.

Iowa complied with the federal mandate effective July 1, 1994. All states now have an estate recovery program, but they vary greatly in their policies, procedures, and efforts. The Iowa Department of Health and Human Services (“HHS”) has contracted with Health Management Systems, Inc., to administer the program since 1994, which subcontracts with SUMO Group, Inc., an Iowa corporation, located in Des Moines.

II. Estate Recovery under Iowa Law

A. Establishment of the debt.

1. Provision of medical assistance

A debt is due for medical assistance upon the recipient’s death 1) when the recipient was age 55 or older; or 2) when the recipient was under 55 and a resident of a nursing facility, intermediate care facility for persons with an intellectual disability, or mental health institute, who cannot reasonably be

expected to return to the individual's home. Title XIX medical assistance is often known as Medicaid and provides funding for several programs such as Medically Needy, the Iowa Health and Wellness Plan, and Elderly Waiver.

Medicaid is generally for persons who cannot afford to pay their own medical bills and who meet certain criteria for assets and income. Eligibility for Medicaid is obtained through HHS, and medical assistance can be provided through fee-for-service or capitation fees. Any funds expended on behalf of a recipient who meets the above qualifications are treated very similarly to a loan or a line of credit that must be repaid at the time of death from any assets the recipient had at that time. However, the medical assistance debt is not based upon a contract like a loan or line of credit. The debt is created by statute and the provision of medical assistance to an individual.

2. Medicare Buy-in and other capitation fees

Title XIX medical assistance, or Medicaid, is often confused with Medicare, which is similar to an insurance program for the elderly. Unlike Medicare, Medicaid is intended for indigent individuals who qualify by having less than certain income limits. Most Medicaid programs also have limits on assets. As Medicaid members often have few assets, Medicaid may pay Medicare premiums instead of Medicare premiums being deducted from social security income. Medicare premiums are capitation fees because they are paid monthly for each person who qualifies for subsidized Medicare premiums regardless of the medical services needed by the recipient.

Since 2016, Medicaid also pays capitation fees for most Medicaid programs including the Iowa Health and Wellness Plan (HWP), which was adopted to comply with the Affordable Care Act. This program is for those persons of working age population, ages 21 to 65, who are not in long-term care. Assets are not considered for HWP eligibility, but HWP recipients are subject to estate recovery if they are over 55 years of age.

3. Medicare Improvement for Patients and Providers Act

Congress passed the Medicare Improvements for Patients and Providers Act (MIPPA) in July 2008 that was effective January 1, 2010. This Act limits the recovery of medical assistance, by excluding those who are enrolled pursuant to the Medicare Cost Sharing ("MCS") Program. The Estate Recovery Program excludes these amounts incurred after January 1, 2010 when obtaining debt information for those who receive benefits pursuant to the MCS program.

B. Waiver (or deferral) of the debt

1. *Waiver for spouse or child* -- If the deceased Medicaid member had a surviving spouse, a minor child, or a blind or disabled child at the time of the recipient's death, the collection of the debt is waived.

The waiver is only 1) to the extent that collection of the debt would result in a reduction of the amount received by the spouse or child and 2) until the death of the surviving spouse, or the blind or disabled child, or until the minor child reaches the age of 21. Upon the death of the spouse or disabled child or the minor child reaching the age of 21, the debt is then collectible to the extent that the spouse or child received assets from the deceased medical assistance recipient.

Other states allow liens to be placed on real estate, but Iowa has not adopted this approach. Heirs may consent to a lien against the property to confirm and clarify HHS's position as to the heirs in the future, but ordinarily, there is no real estate lien for a medical assistance debt. The real estate may be sold during this period when the collection of the debt is waived and is often sold to pay for the care of a spouse or disabled child. There is no collection of the medical assistance debt during the lifetime of the surviving spouse or disabled child provided all the decedent's assets went to those persons.

2. Waiver for undue hardship

To be eligible for an undue hardship waiver, the heir or beneficiary must receive assets from the estate, and 1) have income of less than 200% of the poverty level; 2) have less than \$10,000 in resources, not including a home and a vehicle; and 3) the application of estate recovery would deprive the person of food, shelter, clothing, or medical care such that life or health would be endangered. Hardship waivers are reviewed on a case-by-case basis, and most often approved when a house is passing solely to a son or daughter of a deceased medical assistance recipient and selling the house will deny that person of a place to live. Collection of the debt returns when the waiver recipient no longer meets the undue hardship criteria or at death.

C. Probate Assets

Medical assistance recipients generally must have less than a certain amount of assets to be eligible for assistance. These assets that were exempt for eligibility, then become subject to recovery at death when the exemptions expire. The most common types of assets exempt for eligibility and then subject to estate recovery are bank accounts, burial trust funds, vehicles, and real estate. If there is no real estate, there is usually no probate estate opened.

1. *Bank Accounts* – Most medical assistance recipients are allowed to have a bank account of no more than \$2,000. This is often the only remaining asset of the recipient. For example, if a burial fund is used to pay for funeral and burial expenses, and there are no other higher priority expenses, the remaining amounts in the bank account are then paid to HHS through the Estate Recovery Program by the following: a joint account holder whose name is on the account for convenience; a small estate affidavit; or through a probate of the estate along with other assets.

A bank may transfer a pay-on-death account to another person in accordance with their rules, but the funds remain subject to estate recovery because these funds were an asset of the recipient at the time of death as explained below regarding non-probate assets.

Occasionally, memorial money will be placed in a bank account. Heirs of a decedent may receive money as a memorial to pay for the funeral, luncheon expenses, or other items in memoriam of the decedent. Since these funds are not an asset of the decedent at the time of death, but rather given to the family after death, the estate does not have an interest in these funds at the time of death. The family may keep memorial money, as it is not an asset of the estate for repayment of debts and charges of the estate.

2. *Excess burial funds* -- Often a recipient will have a non-guaranteed irrevocable burial trust fund at the time of death. This includes burial trusts funded by annuities or insurance. Pursuant to Iowa Code 523A.303, the "Seller," which is generally the funeral home, must provide notice to HHS if funds remain in the trust account after payment of reasonable funeral expenses. This can be done online at the website shown on the cover sheet to this Outline. The Estate Recovery Program must confirm there is a debt due within 60 days of receiving the notice, or the seller may disburse the funds to the family. The seller is protected from liability if the funds are disbursed to the family. However, the funds are still an asset of the estate and may be recovered from those who receive the funds, unless there is a spouse or other waiver of the debt.

If a probate estate is not opened, the seller must remit excess funds to the Estate Recovery Program up to the amount of its claim. The seller may retain up to \$50.00 for administering these funds and should forward the remaining funds to the Estate Recovery Program after receiving confirmation that a debt is due.

The funeral home should always notify the Estate Recovery Program when there are excess burial funds in a non-guaranteed contract. If the seller does not provide this notice, and excess funds are disbursed, the funeral home may be liable for failing to comply with Iowa law.

For guaranteed contracts, there are no excess funds because the funeral and burial services were "bought and paid for" at prearrangement, if the guaranteed services were provided after death. If the guaranteed services were not provided, then the guarantee was not fulfilled, and the excess funds should be considered as if they were in a non-guaranteed contract.

If funds are distributed to a waiver recipient as described in Section B, above, then the funds disbursed to these persons will become a debt against their estates at the time of their deaths (or when the minor child turns 21, or a hardship waiver recipient is no longer meets the hardship waiver criteria.)

Medicaid recipients may use insurance policies, house sale proceeds, cash, or other assets to obtain a burial fund in order to obtain Medicaid eligibility. Whether the burial funds are held by a bank or an insurance company, the funds are exempt for eligibility and collectable for estate recovery. If an insurance policy has a cash value over \$1,500 and has been assigned or made payable to a funeral home, then to stay eligible, the policy must be treated as a burial fund. Paying excess burial funds to a funeral home or others after death violates Medicaid laws and state probate laws because burial funds are estate assets.

Medicaid laws require that assets that are exempt before death be used for repayment of Medicaid after death through estate recovery. Excess burial funds are part of a deceased person's estate and subject to payment of the debts and charges of the estate, including the medical assistance debt, like any other assets of a Medicaid recipient that were held exempt prior to death.

3. *Real estate* -- All assets of the estate of a medical assistance recipient are subject to probate, but the amount of remaining assets often does not justify opening a probate estate. A probate estate is generally opened to transfer real estate when the deceased medical assistance recipient has title to, or an interest in, real estate at the time of death, and most often when there are no other surviving owners.

4. *Household goods and personal effects* – All personal property is recoverable for estate recovery. However, the value of the remaining items often does not justify the costs of selling this property. The personal representative is responsible to value these items whether a probate estate is opened, or not, since the value of these items are estate assets.

5. *Litigation* –The proceeds of settlements or judgments are distributed in accordance as any other estate asset, unless there are specific provisions in the law to distribute them differently, for example, in wrongful death or other personal injury actions.

D. Expanded Probate Assets

Assets of the estate for purposes of estate recovery are defined as “any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.”

In 2005, the Iowa supreme Court confirmed that “the phrase ‘at the time of death’ means the time immediately before the Medicaid recipient's death”. So, collectable assets include bank accounts and houses held in joint tenancy, as well as similar forms of ownership, such as pay on death accounts or life estates, IPERS, annuities, and interests in trusts.

An annuity is not life insurance but is rather an investment to create income by payments over fixed intervals of time. Although there may be a “beneficiary” designation, the “beneficiary” is not entitled to the funds if there is an outstanding medical assistance debt and the deceased recipient had an interest in the funds at the moment before death. An annuity may be assigned to HHS and received by the Estate Recovery Program or a commuted value may be used for reimbursement of medical assistance. The funds in an annuity are subject to the medical assistance debt just as a bank account or other investment.

A beneficiary designation does not alter the status of annuity funds since investments are assets of the recipient at the moment before death. These same principles apply to other accounts with a beneficiary designation such as pay-on-death bank accounts, transfer on death accounts, individual retirement accounts and IPERS death benefits. To the extent that the recipient had an interest in these funds at the moment before death, they are subject to reimbursement of the medical assistance debt.

Life insurance policies payable to a named beneficiary are neither property of the estate nor recoverable in most circumstances, because they are contracts based on risk and there is little or no cash value at the moment before death. However, the funds are recoverable if the policy is assigned or made payable to a funeral home; or if the deceased recipient was the beneficiary (not the insured); or if the policy was not reported to HHS when obtaining eligibility, and would have made the person ineligible.

E. Expenses

Regardless of whether a probate estate is opened, the estate recovery law requires the use of probate law to determine the distribution of the assets. If the claim does not have a higher priority, it cannot be paid before the medical assistance debt. Iowa law prioritizes expenses after death as follows:

1. Court costs
2. Other costs of administration
- 3. Reasonable funeral and burial expenses**
4. Federal debts and taxes
5. Reasonable and necessary medical and hospital expenses of last illness
6. State taxes
- 7. Medical assistance reimbursement**
- 8-10. Labor claims, Child support, and other debts.

1-2. Court costs and costs of administration fees have top priority, which include attorney’s fees, executor’s fees, and the expenses of preparing and selling real estate or other property and property taxes.

3. Funeral and burial expenses have the next priority and typically include all services provided by the funeral home and the costs of burial as long as the costs are reasonable. The definition of reasonable funeral and burial expenses is for all cases, not just estate recovery.

Sometimes it is easier to think of these questions when there is no estate recovery debt. For example, disputes arise occasionally among family members as to reasonable funeral expenses. There may be adult children and a mother or stepmother, who are estranged. The children may get nothing, and want to spend more money on a funeral. The mother or stepmother as surviving spouse, may want to spend less on funeral expenses to leave more funds for herself.

Who should determine what is reasonable if there is an irrevocable non-guaranteed burial fund with \$30,000, no Medicaid, and all other assets go to the spouse under the will? Can the children as the court appointed executors spend \$30,000 for funeral expenses, including \$7,000 each for a higher priced casket, vault and monument, or can the spouse do a cremation for \$5,000, and keep the remaining \$25,000 from the burial fund?

If the parties agree what funeral and burial expenses are reasonable, then the Courts do not need to be involved. However, if there is a further dispute, then the matter can be brought before the courts. Similarly, funeral and burial expenses must be reasonable when the remaining funds will be used to repay the medical assistance debt.

“Funeral merchandise”, “cemetery merchandise”, and “funeral services” are defined in Iowa Code 523A.102. If funeral expenses are not within these definitions or not reasonable, they would have a priority in the 3rd position:

“Funeral merchandise” means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. “Funeral merchandise” does not include easements for burial rights in a completed space or cemetery merchandise.

“Cemetery merchandise” means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

“Funeral services” means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. “Funeral services” does not include perpetual care or maintenance.

Higher priority funeral expenses may include as part of these definitions, the services, a luncheon; postage for notification of death; honorariums for the priest or pastor, organist, or other music; and a burial marker.

Gifts and travel expenses for family members are not funeral and burial expenses, because they do not fall within the above definitions, so they are not priority funeral and burial expenses.

Memorial jewelry is not an allowable expense, because jewelry is not used for the “disposition of a dead human body.” They are gifts (like gifts to charities or anyone else), even if they contain some remnant, e.g. ash, of a dead human body. They are not reasonable funeral and burial expenses under Iowa law. However, this may not become an issue if, for example, the other funeral expenses were already more than the decedent’s assets; if there is a surviving spouse or a disabled child as the sole heir, or if these gifts are not disclosed. Consistency is important in reviewing funeral expenses. Disputes about funeral expenses can be raised in probate or another court to challenge the collection of the estate recovery debt.

Both the IFDA and the Estate Recovery Program have experience understanding what are reasonable funeral and burial expenses. The IFDA can survey members and accumulate data, and the Estate Recovery Program reviews many hundreds of funeral statements every year.

Medicaid also has rules for itemizing funeral expenses during eligibility, because if funds were not placed in a burial trust, then they could have been used to pay medical expenses to defray the costs of medical assistance. The IFDA has had input into the average funeral home cost that determines the minimum amount when a pre-paid funeral agreement must be itemized. The burial fund may increase with interest, or adjustments can be made to the funeral goods and services after death, so the funeral expenses must still be reasonable after death as required by Iowa law to have a priority in the 3rd position.

4. Federal debts and taxes have the next priority in the 4th position, and may include a loan backed by a federal agency for improvements to a property; a Medicare subrogation claim; or the federal income taxes on the proceeds of an annuity if they were inadvertently paid to a beneficiary prior to the payment of the medical assistance debt.

5. Reasonable and necessary medical and hospital expenses of the last illness are in the 5th position. Only expenses of the last illness are allowed by statute, and the personal representative has the duty to determine whether the medical expenses are of last illness. Caregiving by relatives is not a medical or hospital expense and should not be paid before the medical assistance debt.

6. State taxes are in the 6th position. The decedent may owe taxes to the Iowa Department of Revenue and there may be a lien against real estate.

The medical assistance debt is in the 7th position, ahead of labor claims, child support, and other allowed claims.

F. Other Provisions

1. *Interest* -- Interest medical assistance debts accrue and are set at six months after the date of death of the recipient by the State Court Administrator's published rates plus two percent. There is no interest on waived debts during a waiver period. Interest commences six months after the debt comes due.

2. *Reporting and referrals* – Long-term care facilities and the person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient are responsible for reporting deaths to HHS within ten days of the date of death so that Medicaid benefits will stop. This information should then be forwarded to the Estate Recovery Program.

3. *Liability* – If a distribution is made from the estate of the decedent prior to the payment of obligations in the order of priority above, whether that estate is probated or not, the person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient or executor may be held personally liable. Liability is for the amount of medical assistance paid on behalf of the recipient to the full value of any property belonging to the estate that was under the control of the personal representative or executor.

III. Estate Recovery Procedure

At the death of a Medicaid recipient, the medical assistance benefits come due from the decedent's estate, whether probated or not. Medicaid provides financial assistance to pay the costs of medical care, which includes the payment of fees for services rendered, payments to managed care organizations, payments for Medicare premiums, and any other medical assistance paid on behalf of the decedent.

Letters are sent to the family representative within about two weeks of notice of death. The reports of debt information are generally obtained weekly, and processing hundreds of letters per month takes some time. If sent too quickly, family members may be early in the grieving process. If sent too slowly, the family may get impatient when trying to wind up the decedent's affairs. So, letters are generally sent within two to three weeks of notice of the death.

To help families navigate estate recovery, it is best to send the online referral as soon as possible after death. Then after the family receives the estate recovery letter, they should complete and send in the response form that is on the back of the letter along with bank statements and a funeral statement. There

is a toll-free number to call on the letter if they have any questions regarding the assets or expenses of the estate.

In most estate recovery cases (routinely over 65%), there are no assets remaining. However, the total recoveries have steadily increased and averaged over \$40 million for the last few years. These funds are deposited into an account to pay for more Medicaid recipient's care. If there are assets to pay some or all of the debt, then the funeral expenses must be reasonable as explained above. Excess burial funds are less than 2% of the total funds recovered.

The Estate Recovery Program does not set any timelines for when burial trusts must be spent or the excess funds paid. However, as a courtesy, the funeral home and family should return estate recovery paperwork, and advise of the status of the funds and when the services will be completed, so that the file can be set forward for a final report of these estate assets and expenses.

Every Medicaid recipient is provided educational material about estate recovery, but families often get the wrong impression from friends, relatives, and others as to how estate recovery works. The Estate Recovery Program recovers what HHS has advanced to pay for those who cannot afford to pay for their own medical care.

A. Referral Process

There are consistently over 900 Iowa Medicaid recipients or former recipients who die every month and whose assets are subject to estate recovery. Many of the referrals of these deceased persons are received by letter, fax, phone, or email. Some are received through the estate recovery website at www.iowa-estates.com. A list of deceased recipients is also received monthly from HHS after deaths are reported to the Central Office from the county offices. Data is also used from state and national vital statistics records and matched against Medicaid eligibility files. Contact with the estate representative may be six to eight weeks after death under the automated processes. Direct referrals from attorneys, family members, funeral homes, and other entities are encouraged as this expedites the estate recovery process.

When writing or calling, the Estate Recovery Program should be advised of the name of the decedent, the date of death, the date of birth, and the social security number. Information regarding the spouse must be provided to verify whether there is any debt for a predeceased spouse; or if there is a surviving spouse; or if the decedent was divorced or never married at the time of death.

Often discovering the name of the person who is winding up the affairs of the recipient is more difficult than identifying a deceased recipient. Sometimes, this information can only be found in the will. The computer-generated lists from the HHS and from Vital Statistics do not always have the proper contact person. Consequently, letters are occasionally sent to nursing homes, disinterested heirs,

or payees that have no further responsibilities in the matter. Direct referrals from attorneys, funeral homes, or personal representatives can be very helpful to prevent delays in processing these cases. When inherited funds are spent and then must be repaid, the heirs often become upset that they received the funds in the first place. So, notifying the Estate Recovery Program directly of the death will move the process along more efficiently.

B. History Process and Contacts to Representatives

When a name, birth date, date of death, and social security number are referred to the estate recovery office, a history report is obtained that lists all medical assistance paid on the recipient's behalf since July 1, 1994. If the recipient turned 55 years of age after July 1, 1994, and they were not in a long-term care facility before they turned 55, the report should include all medical assistance provided on and after their 55th birthday. If the recipient was in a facility before age 55 and could not reasonably have been expected to return home, the report will show medical assistance provided from facility admission. An additional separate report, known as the buy-in report, is obtained if the medical assistance program paid Medicare premiums on behalf of the recipient.

An initial amount of debt is sent within a few weeks of the referral. After the initial letter, cases are reviewed periodically and follow-up efforts are made if the Estate Recovery office receives no response or inadequate information.

If the debt is more than the assets, the remaining assets are used to partially pay the amount owed. If the debt is less than the assets, the debt must be paid in full. A final debt amount will be provided at least four months after death to allow for any necessary adjustments.

C. Probate Notice and Probate Process

Probate notices to the Estate Recovery Program are mandated for all probate estates. If there is a medical assistance debt, claims are filed soon after a probate notice is received. If there are sufficient assets to pay the debt, attorneys and executors should only make payment after they have received a final payoff amount.

D. Deposit Process

Checks should be made payable to "Iowa HHS". Checks are deposited in an Iowa bank account for payment of future medical assistance benefits.

IV. Special Needs Trusts and Miller Trusts

Medical Assistance Income Trusts (also known as MAIT's, Qualified Income Trusts, Income Assignment trusts, or Miller Trusts) and Medical Assistance Special Needs Trusts are used to obtain Medicaid eligibility for a person who would not be eligible if the funds in the special needs trust or the

individual's income were considered in the eligibility determination. The funds remaining in these types of trusts are paid to HHS after death.

The primary difference between the assets from a MAIT or Special Needs Trust and other recoverable assets is that the funds are payable in accordance with the terms of the trust and not in accordance with the probate code or the estate recovery statute. Since HHS is the residual beneficiary of these trusts, the funds are not subject to any waivers or higher priority debts.

MAIT's do not affect pre-paid burial expenses. Both types of funds are in trusts. The burial trust pays to the funeral home first, with the excess potentially paid to HHS. MAIT's pays to HHS first, with the excess potentially paid to the funeral home.

Medicaid compliant annuities are not trusts, but are similar to the extent that they HHS named as the beneficiary, or in the second position after a spouse, pursuant to the Deficit Reduction Act of 2005. These types of annuities, like the above trusts are not subject to higher priority expenses, e.g. funeral expenses.

Conclusion

The Estate Recovery Program engages in public awareness through a web site, distributing brochures, and speaking to organizations. Questions or comments are always welcome regarding the administration of the program.