

Pennsylvania Department of Public Welfare



Medical Assistance
ESTATE RECOVERY PROGRAM
and
RELATED TOPICS
QUESTIONS and ANSWERS

Prepared in conjunction with
Pennsylvania Intra-Governmental Council
On Long Term Care

1. What is the Medical Assistance Estate Recovery Program?

Established under federal law, this program requires the Department of Public Welfare to recover the Medical Assistance costs from the estates of certain individuals who have died. If an individual 55 years of age or older received certain Medical Assistance benefits and dies, the Department will reimburse the Medical Assistance program by recovering these costs from the assets of the person's estate. An estate exists when a person dies and his or her assets are distributed by will or state law. All monies collected by the Medical Assistance Estate Recovery Program are returned to the Department of Public Welfare's long-term care programs to assist others in need of long-term care services.

2. Who is affected?

Only individuals age 55 years and older who were receiving Medical Assistance benefits for the following services:

- Nursing facility care;
- Home and Community Based Services; and
- Any related hospital care and prescription drug services provided while receiving nursing facility care or care at home or in a community setting.

3. When does Medical Assistance Estate Recovery occur?

Medical Assistance Estate Recovery happens only after the death of a person receiving nursing facility care, Home and Community Based Services, or related hospital and prescription drug services.

4. How does Medical Assistance Estate Recovery work when a recipient dies?

When a recipient dies, the personal representative of the deceased recipient's estate shall give notice to the Department requesting a statement of claim.

The notice shall be sent by certified mail return receipt or facsimile, with the deceased's name, deceased's last known address, deceased's social security number, deceased's date of birth, deceased's date of death, and written documentation of the gross value of the deceased's estate to:

**Division of Third Party Liability
Department of Public Welfare
Estate Recovery Program
P.O. Box 8486
Harrisburg, PA 17105-8486
Facsimile # (717)772-6553**

Be sure to include the personal representative's name, address, and telephone number in the letter so the Medical Assistance Estate Recovery staff can respond.

Within 45 days of receipt of the notice, the Department of Public Welfare must send to the personal representative of the estate, a statement of claim (SOC) listing the amount of Medical Assistance paid. If the personal representative of the estate has questions about the amount owed or disagrees with it, he or she should contact the Medical Assistance Estate Recovery Program by telephone or letter. The Medical Assistance Estate Recovery Program will address any issues regarding the claim with the personal representative of the estate.

5. A. What property is subject to estate recovery?

Any property or assets that are part of the deceased's estate are subject to Medical Assistance Estate Recovery.

B. What is an estate?

An estate includes property or assets owned entirely or in part by the deceased. Medical Assistance Estate Recovery only recovers estate property or assets.

FREQUENTLY ASKED QUESTIONS

6. What happens if the spouse or a dependent child is still living after the Medical Assistance recipient dies?

If the spouse is still living and the property passes to the surviving spouse outside of the estate, there is no recovery by the Department of Public Welfare (refer to #13). If there is a dependent child who is under age 21, recovery will be postponed until the child reaches age 21. For an adult child who is blind or totally and permanently disabled, recovery will be postponed until the adult child dies.

7. We never really "got married," but we lived together as husband and wife. Do the Medical Assistance Estate Recovery regulations still apply to us?

Yes. If you have any questions, talk with a lawyer.

8. Once the estate is settled, in what order are the proceeds distributed?

Proceeds are to be distributed in the following order when there is not enough money to pay all debts:

1. costs of administration
2. family exemption
3. cost of funeral and burial and the cost of any of the following furnished within six months of death:
 - medicines
 - nursing services
 - medical services
 - hospital services
 - services performed by any employees of the deceased
4. cost of a grave marker
5. rent for any residence occupied by the deceased for six months prior to his death

- 5.1. claims by the commonwealth and the political subdivisions of the commonwealth. (**This applies if the date of death is 2/21/06 or after.**)
6. all other claims, including claims of the commonwealth. (**This applies if the date of death is prior to 2/21/06.**)

Medical Assistance Estate Recovery claims fall within numbers 3, 5.1 and 6.

If you have questions concerning distribution of the estate proceeds, talk with a lawyer, the local bar association or your local legal services office.

QUESTIONS CONCERNING PROPERTY

9. What happens if someone has been paying taxes and upkeep expenses for maintaining the deceased's vacant home?

An amount equal to the necessary and reasonable expenses for maintaining the vacant home will be deducted from the Department's estate recovery amount. Necessary and reasonable expenses include, real estate taxes, utility bills, home repairs and home maintenance.

10. Is it true that I have to turn my home over to the state when I move to the nursing facility or begin receiving Home and Community Based Services?

No. You do not have to sign over the deed to your home to receive nursing facility care or Home and Community Based Services through the Medical Assistance program. If the state is going to help pay for your nursing care through the Medical Assistance program, you may have to give some or most of your income toward the cost of your nursing facility care each month.

11. Will the state try to take my home while I am in the nursing facility or receiving Home and Community Based Services?

No. You may own a home while you are living in the nursing facility or receiving Home and Community Based Services.

12. I do not own anything but my home, and I want to leave that to my children. Will the state still take it?

The state has a legal right to recover the Medical Assistance paid on your behalf from your estate, including the fair market value of your home, even if you have a will giving the home to your children. The Department's claim for Medical Assistance Estate Recovery takes priority over any bequest to a beneficiary of the estate.

13. What if both my name and my spouse's name are on the deed?

If the deed says "tenancy by the entireties" or "joint tenancy with right of survivorship," your spouse will get the home free and clear of Medical Assistance claims when you die. If the deed is in both of your names but does not have these words written on it, talk to a lawyer.

14. What if only my spouse's name is on the deed?

If the deed is only in your spouse's name, you do not legally own the home. If your spouse received nursing facility care or Home and Community Based Services, the Medical Assistance Estate Recovery Program will postpone recovery of its claim until you either go into a nursing facility, vacate or sell the property or die. If you later gain ownership of the home and then receive nursing facility care or Home and Community Based Services, the state will recover its claim from the fair market value of the home after you die.

TRANSFERRING PROPERTY

15. Can I give my home away before I enter the nursing facility or receive Home and Community Based Services?

The law limits to whom you can give your home without the transfer affecting your eligibility for payment from Medical Assistance toward the cost of nursing facility care or Home and Community Based Services. You can transfer ownership of the property to your husband or wife, your child who is under 21 years old, or your adult child who is blind or totally and permanently disabled without affecting your eligibility for Medical Assistance.

Contact your local county assistance office or the Welfare Helpline at 1-800-692-7462 if you have questions about how transferring property may affect your eligibility for Medical Assistance payment for nursing facility care or Home and Community Based Services. You may also want to talk with a lawyer.

16. How do I transfer the deed to the property?

It is very important that you talk with a lawyer before you try to transfer the deed.

17. I am not sure who owns the home because it was passed down by family members. Can I still give the home to my children who have been taking care of me?

Your children will not legally own the home unless the deed to the home has been legally transferred to them. Talk with a lawyer about how to do this. If they do not legally own the home when you die, the state will recover its claim against the fair market value of the home or any other property through the Medical Assistance Estate Recovery Program.

18. Can I give my home to anyone else so the state will not take it?

No. The law does not allow you to avoid Medical Assistance Estate Recovery by transferring the deed to a relative (except as explained in #15) or anyone else, unless they pay fair market value for it. Talk with a lawyer if you have questions about this.

MEDICAL ASSISTANCE ESTATE RECOVERY WAIVER INFORMATION

19. What are the criteria for a hardship waiver?

If the gross value of the estate is \$2,400 or less, and the estate is administered, and there is an heir to the estate, the Department of Public Welfare will permanently waive its claim for Medical Assistance Estate Recovery.

A hardship waiver, with respect to a primary residence of the deceased, will be granted if all of the following criteria are met:

- The person has continuously resided in the primary residence of the decedent for at least two years immediately preceding the decedent's receipt of nursing facility services, or, for at least two years during the period of time which Medicaid-funded Home and Community Based Services were received; and
- The person has no other alternative permanent residence; and
- The person has provided care or support to the decedent for at least two years during the period of time that Medicaid-funded Home and Community Based Services were received by the decedent, or for at least two years prior to the decedent's receipt of nursing facility services during which time the decedent needed care or support to remain at home.

A hardship waiver will be granted with respect to an income-producing asset (for example, a working farm) for a spouse, child, parent, sibling, or grandchild of the deceased if they meet both of the following criteria:

- The asset is used to generate the primary source of income for the household; and
- There would be a gross family income of less than 250% of the Federal poverty guideline* without use of the asset.

*These amounts change every year. For example, in 2008, a single person could earn up to \$2,167.50 per month, while a couple could earn up to \$2,917.50 per month.

20. How do I ask for a hardship waiver?

After the decedent dies, write a letter explaining the situation and the compelling reasons why the Department of Public Welfare should not recover against the fair market value of the home or property. Give as many details as possible about how Medical Assistance Estate Recovery would cause a hardship. Make a copy of the letter for yourself and mail the original letter certified mail return receipt, to:

**ESTATE RECOVERY PROGRAM
P. O. Box 8486
Harrisburg, PA 17105-8486**

A hardship waiver form is available to assist you in requesting a waiver. The form can be obtained by contacting the Estate Recovery Program at the above address or by calling them at 1-800-528-3708. Information is also available at the Estate Recovery Program Web site at www.dpw.state.pa.us/ServicesPrograms/Other/003670689.htm.

21. What if I want to appeal any Departmental decision?

Appeals should be mailed to:

**Division of Third Party Liability
Department of Public Welfare
Estate Recovery Program
P.O. Box 8486
Harrisburg, PA 17105-8486**



WHAT IF I HAVE MORE QUESTIONS?

Questions concerning Medical Assistance Estate Recovery should be directed to:

ESTATE RECOVERY PROGRAM

P. O. BOX 8486

Harrisburg, PA 17105-8486

Or

Estate Recovery Program Hotline

1-800-528-3708

Or

Welfare Helpline

1-800-692-7462

Or

Long Term Care Helpline

1-866-286-3636

Estate Recovery Program Web site:

www.dpw.state.pa.us/ServicesPrograms/Other/003670689.htm

If you have legal questions or need additional help, talk with a lawyer, the local bar association or your local legal services office.

If you have questions about eligibility for Medical Assistance services, contact your local county assistance office or the Welfare Helpline.

Glossary of Terms

Deed: a document that shows ownership of property

Estate: the property left by a person at death i.e. home, land, insurance policies, stocks, bonds and bank accounts

Estate Recovery Waiver: the Department's consent to abandon or relinquish its claim and recovery rights to an estate

Fair Market Value: the price which property would sell for on the open market in the geographic area in which it is located

Heir: one who inherits or is entitled to inherit property

Home: for the purposes of this brochure the word home includes the physical structure and any land described by the deed

Home and Community Based Services: services under a Medical Assistance Waiver established by the state, with the approval of the Federal government, to provide services in the home to individuals who would otherwise require nursing facility services

Medical Assistance (Medicaid): a jointly funded, Federal-State health insurance program for eligible low-income people

Personal Representative: a court-approved executor or administrator of an estate, includes executors or administrators of any type or description

Property: for the purpose of this brochure, property includes, but is not limited to, a home, land, insurance policies, stocks, bonds, bank accounts, personal care account monies, and any monies remaining in a burial account

Statement of Claim: a computation of the amount of Medical Assistance paid for all nursing facility services, Home and Community Based Services and related hospital and prescription drug services provided from the time the decedent was 55 years of age and thereafter



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DEPARTMENT OF PUBLIC WELFARE

www.dpw.state.pa.us