9. Is there a time limit for filing a Medicaid Estate Recovery claim?

Medicaid Estate Recovery claims are filed according to the states' probate code requirements, which include the time limit for filing.

10. What happens if a person enrolls in Medicaid when they are younger than 55 years old and dies when they are older than 55 years old?

The Medicaid Estate Recovery claim will only include Medicaid-paid services received after the person was 55 or older. However, if the person lived in a state that imposes TEFRA liens, and he or she was determined to be permanently institutionalized, all Medicaid-paid services may be included in the Estate Recovery claim, including those received before the person turned 55.

11. Is personal property below a certain value exempt from Medicaid Estate Recovery? Is there a Medicaid Estate Recovery threshold? Who decides the value of an old truck, for example?

Each Medicaid state plan includes a threshold for the minimum value of an estate that allows Medicaid to file an Estate Recovery claim. This means that if the value of your beneficiary's estate is below that threshold, the state cannot file a Medicaid Estate Recovery claim. In addition, some states may exempt certain property from Estate Recovery.

Check with your state Medicaid program to see what, if any, property is exempt from Estate Recovery. Deciding the value of property in the estate is the responsibility of the personal representative or executor of the estate, but he or she must follow the state probate laws when making those determinations.

More information

about Medicaid Estate Recovery is available on Medicaid.gov at:

www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD10001.pdf
www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-001.pdf

Health Insurance Marketplace

www.healthcare.gov/tribal | @CMSGov | #CMSNativeHealth

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Medicaid Estate Recovery:

Rules and Protections for American Indians and Alaska Natives

1. What is Medicaid Estate Recovery?

Medicaid is a federal-state program for low income people. Federal law requires state Medicaid programs to file claims against the estates of certain Medicaid beneficiaries who have died. Estates are the property that is left after people die. Sometimes courts are involved in making sure that the property from estates is distributed and debts are paid. This process is called "probate."

2. Who is subject to Estate Recovery?

Estate Recovery applies to Medicaid beneficiaries, age 55 and over, who have received certain services, like nursing home care or home- and community-based long-term care, and related hospital and prescription drug services. States may also choose to include any other Medicaid services in their estate claims. In certain states that impose the Tax Equity and Fiscal Responsibility Act (TEFRA) liens, Medicaid Estate Recovery applies to some people of any age who received care when they were permanently institutionalized.

Your state Medicaid agency can tell you what type of estate claim applies to you. To find your state Medicaid program, visit: **www.medicaid.gov**.

Estate Recovery for Medicaid does NOT apply to you in the following circumstances.

- Medicaid Estate Recovery does not apply to you if you only received health care that Medicaid paid for when you were age 54 or younger, unless the state you live in imposes TEFRA liens and Medicaid determined that you were permanently institutionalized.
- Medicaid Estate Recovery does not apply if you sign up for QMB or SLMB, two Medicaid programs that help low income elders pay their Medicare premiums and co-payments, and did not qualify for Medicaid payment of any other services.
- If you are married and own a home or other property, there will be no Medicaid Estate Recovery claim if your spouse survives you. Some states may make a claim against your surviving spouse's estate when he or she dies.
- If you have a child who is under 21 years old, or a child of any age who is blind or disabled, there will be no Medicaid Estate Recovery after you die.

3. How will you know if Estate Recovery applies to you?

When you sign up for Medicaid, information about Estate Recovery may be included on the Medicaid application form that you or your representative have to sign. If a state doesn't include information about Estate Recovery on the application form, the state must make this information available to applicants and beneficiaries in some other way. For example, a state could send the applicant or beneficiary a letter and/or brochure with the information.

4. Is some property belonging to American Indians and Alaska Natives (AI/ANs) exempt from Medicaid Estate Recovery?

Yes. Based on the unique trust relationship between the federal government and federally recognized tribes, Section 5006 of the American Recovery and Reinvestment Act (ARRA) exempts certain Indian income, resources, and property from being subject to Medicaid Estate Recovery for AI/ANs. State Medicaid programs are not permitted to recover any expenses from any of the following types of an AI/AN's income, resources, or property:

- Property–including real property and improvements (such as land and buildings)– that is (1) held in trust, subject to federal restrictions, or otherwise under the supervision of the Secretary of the Interior; (2) located on a reservation, including any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior; or (3) located within the most recent boundaries of a prior federal reservation for any federally recognized tribe not described above
- Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights
- Ownership interests in or usage rights to items not described above that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable Tribal law or custom

For more detailed information of the types of AI/AN property exempt from Medicaid Estate Recovery, please see **http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10001.pdf.**

5. Is a home located on tribal land exempt from Medicaid Estate Recovery?

Yes, if the property, whether held in trust or not (e.g., fee simple land), is located within the boundaries of a current or former reservation.

6. Can AI/ANs retain the types of property listed on the previous page and pass it along to others after they die without it being subject to Medicaid Estate Recovery?

State Medicaid programs may recover from the estates of AI/ANs for ownership interests in assets and property, both real and personal, which are not described previously, and any income and assets left as a remainder in an estate that do not derive from protected property as listed in the answer to Question 4.

7. If money in a bank account came from one of these protected types of property, would that money be exempt from Medicaid Estate Recovery?

Yes, but the family must be able to document that the money in the account came from one of the previously listed types of protected Indian property.

8. Do rules for Medicaid Estate Recovery vary from state to state? Do states have any flexibility when imposing Estate Recovery?

Yes, state Medicaid programs vary from state to state. Each program can decide to waive or adjust the recovery of the Medicaid claim from the estate of the deceased beneficiary. For example, if recovery would cause an undue hardship to the survivors, state Medicaid programs can choose to waive or adjust the recovery claim. Each state sets its own definition of undue hardship and may include within this definition situations in which estate recovery would present undue hardship to the AI/AN population.