

## **MEDICAL ASSISTANCE (MEDICAID) PROPERTY LIENS & ESTATE RECOVERY FACT SHEET**

**This fact sheet is designed to provide more information regarding property liens and estate recovery, which is addressed on the Medicaid application under Rights and Responsibilities.**

### **What is a lien?**

A lien is the legal right to hold an interest in the property of another until some debt is paid. A mortgage is an example of a lien. A property lien is filed in the Circuit Court for the area in which the property is located. The lien may become payable at the time of sale either during the lifetime of a person or after a person's death through his/her estate.

### **What is a Medicaid property lien?**

Federal and State law allow Medicaid to place liens on the homes of persons who have been:

1. Admitted to a nursing home, and
2. Granted eligibility for Medicaid, and
3. Determined by medical review as "not able to resume living in the home property."

Medicaid files a lien in these instances due to the large payments made to nursing homes. Having a property lien enables Medicaid to recover the money it spent on behalf of the recipient when the property is sold. Medicaid can file a property lien regardless of a person's age. Medicaid cannot file a lien if: a spouse, a child under 21 or a blind or disabled child lives in the home.

### **What is an estate?**

An estate is all real and personal property and other assets (anything owned that can produce wealth) of a deceased person. An estate can include the home and property of a deceased person.

### **What is estate recovery and how does it work?**

In 1976 the Maryland General Assembly granted Medicaid the right to file a claim against the estate of a deceased Medicaid recipient for medical services it provided to the recipient. The Medicaid recipient must have been at least 55 years old when receiving Medicaid benefits and only money that was paid by Medicaid for medical services rendered to the recipient on or after his/her 55<sup>th</sup> birthday can be recovered. However, Medicaid cannot file a claim if there is:

1. A surviving spouse, or
2. An unmarried child younger than 21, or
3. A blind or totally disabled child.

Usually Medicaid is considered a general creditor. This means that Medicaid is paid after priority claims such as court fees, fees used to administer the estate, funeral expenses, attorney's fees and taxes. In some instances there may be other assets that can satisfy Medicaid's claim that would not require the selling of the deceased person's home and property. If the assets are not enough to pay the Medicaid claim, Medicaid will withdraw the claim, accept the remaining assets as payment in full, or work with the administrator of the estate in choosing other options to repay the Medicaid debt. Medicaid is not interested in taking the title to anyone's home.

**TURN OVER**

### Example 1

John Doe, age 85, was in a nursing home in May. He died June 3. Medicaid paid \$2,000 for his care. His estate is worth \$50,000. Medicaid will recover \$2,000, once all priority claims are paid.

### Example 2

Joe Smith dies while in the Older Adults Waiver. Medicaid paid \$25,000 for his care. His estate is worth \$20,000. Medicaid will recover whatever remains once all priority claims are paid.

### Are there exceptions in estate recovery?

Estate recovery may also be waived in certain circumstances due to hardship. A hardship means Medicaid's claim will result in the removal of a dependent who:

1. Lived in the property at the time of the Medicaid recipient's death.
2. Lived there continuously for a period of two years before the Medicaid recipient's death, and
3. Cannot find another place to live.

Sometimes, when all the conditions above are not met, Medicaid will allow the dependent to continue to live in the property, but may place a non-interest bearing mortgage on the property. Medicaid, based on the dependent's ability to pay, determines monthly payments. This agreement protects the dependent who lives in the property and Medicaid's interest in the property.

### What expenses can Medicaid recover?

**All** medical services are subject to repayment. This includes, but is not limited to, nursing home care, hospital services, home and community based waivers (for example, Older Adults Waiver, Living at Home Waiver), personal care, physician and pharmacy services. **It is important to note that recovery will be made even if Medicaid paid a relative, friend or agency to provide services to the Medicaid recipient as allowed under certain Medicaid waivers (such as the Older Adults Waiver).** However, in those instances where Medicaid made **Medicare premium, co-pay and deductible payments only**, the Medicaid Program **will not seek** reimbursement.

Additional questions concerning estate and/or property lien recovery should be directed to your caseworker at the local department of social services or:

Department of Health and Mental Hygiene  
Office of Operations, Eligibility & Pharmacy  
Recoveries and Financial Services Division  
ATTN: Estates, Liens & Trust Section  
P.O. Box 13045  
Baltimore, MD 21203  
Phone (410) 767-6613

Applicable references may be found at Article 15-120 of the Annotated Code of Maryland, COMAR 10.09.24.15, and the Tax Equity and Fiscal Responsibility Act of 1982