

Medicaid Estate Recovery

State and federal law requires the North Dakota Department of Human Services (department) to make claims against the estate of a Medicaid member who: (1) was age 55 or older when the individual received Medicaid services; (2) who has been permanently institutionalized and received services, regardless of age; or (3) is a spouse of any Medicaid member who was age 55 or older or permanently institutionalized when the Medicaid benefits were provided.

State law controls the distribution of a decedent's estate. It limits the kind of claims that can be paid before any Medicaid claim. Funeral expenses are limited.

Individuals who want to dis-enroll from Medicaid coverage because of estate recovery may contact their local human service zone office (formerly called county social service office).

Effective Jan. 1, 2010, expenditures for Medicare cost sharing made on or after Jan. 1, 2010, are exempt from Medicaid estate collection.

Effective Aug. 1, 2015, except for the portion of the payment made to a private carrier for nursing facility services, home and community-based services and hospital and prescription drug services received while in a nursing home or while receiving home and community-based services, the department may not file a claim against the estate to recover payments made on behalf of members who received coverage through a private carrier. Individuals eligible under the Medicaid Expansion coverage receive their coverage through a private carrier.

Effective Jan. 1, 2020, pharmacy services for Medicaid Expansion are no longer part of the coverage through a private carrier and are subject to estate collections.

What if there is a surviving spouse or children?

No claim for Medicaid benefits must be paid during the lifetime of a Medicaid decedent's surviving spouse or while a member has a surviving child who is under age 21 or blind or disabled.

What if the decedent leaves a will?

A decedent's estate must first pay the decedent's debts. A will does not change that. Unless an estate has sufficient liquid assets to pay all claims, estate property is sold to pay the claims. Family members can purchase estate property at fair market value.

Can funeral expenses be paid from an estate?

Effective Aug. 1, 2019, individuals applying for Medicaid coverage will need to set up an irrevocable itemized funeral contract if they chose to set aside an amount for funeral expenses. If there are no funds designated for funeral expenses, the estate can spend no more than \$3,000 for funeral expenses.

Family and friends may use their own money to help pay for funeral expenses. Additional amounts may not be paid from assets in the decedent's estate before Medicaid claims are paid in full.

What other claims can be paid before the Medicaid claim is paid?

The decedent's estate can pay recipient liability applicable to the month of death, funeral expenses, expenses of the sickness or condition that caused the decedent's death, the necessary and reasonable costs of administration, certain other assistance claims, and claims on behalf of the state hospital. The Medicaid claims must be paid in full before other creditors or claims can be paid.

What if an account is payable to someone else at the decedent's death?

Unless all estate claims are paid in full, money a decedent left in a joint account, an "in trust for" (ITF) account, or any other payable on death (POD) account, must be made available to pay claims and costs of probate. If the money was properly designated for funeral expenses, the money can be used for that purpose.

How is a Medicaid claim made?

If a decedent leaves only cash and limited personal property, the department will usually collect the amount that must be paid for Medicaid claims using an Affidavit for Collection of Personal Property. Sometimes family members will be asked to help sell personal property that is worth the cost of probate, or if there is some other reason a probate is necessary, the person named in a will or some other family member can be appointed personal representative and properly distribute the decedent's estate. Attorney fees and other reasonable costs of administration can be paid from the estate. The department will usually initiate probate only if there is no family member willing or able to do so.

What should I do if I need help reviewing this information?

This fact sheet provides only general information about estates and Medicaid claims. If you have questions about probate or wills, or if you are the personal representative for an estate, ask your private attorney. If you need assistance in reviewing the information in this fact sheet, contact your human service zone.

Protections for American Indians (AI) and Alaskan Natives (AN)

Section 5006 of the American Recovery and Reinvestment Act exempts certain Indian income, resources, and property from being subject to Medicaid estate recovery for AI/AN's. The North Dakota Medicaid program is 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 under the supervision of the Secretary of the Interior; or (2) property located on a reservation. For example, a home, and oil and gas royalties from the land, are both exempt from Medicaid estate recovery
- 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 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.

Income, resources or property that is not described above is subject to Medicaid estate recovery. In order to be exempt under the protections for AI/ANs, the property must derive from protected property (i.e. can be traced back to protected property). For example, a family must be able to document that the money in decedent's bank account came from one of the previously listed types of protected property to be exempt.



For more information, contact your human service zone office (formerly called county social service office). Contact information is online at www.nd.gov/dhs/locations/countysocialserv/.