

CHAPTER 900 ESTATE RECOVERY

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BACKGROUND

This rule establishes the West Virginia Department of Health and Human Resources (DHHR) Bureau for Medical Services (Bureau) standards and procedures for recovery of medical assistance payments from the estates of certain deceased members and from property sold by permanently institutionalized members receiving such assistance.

POLICY

900.1 SCOPE

Under certain circumstances, states are mandated by both federal and state law to pursue recovery of certain Medicaid costs.

900.2 AUTHORITY AND ENFORCEMENT

The Omnibus Budget Reconciliation Act of 1993 ([OBRA '93](#)) requires all states to implement a Medicaid estate recovery program. [Section 1917 of the Social Security Act](#) and [WV Code §9-5-11c](#) allows a state to recoup payments made by the Bureau, or any successor agency responsible for administering the State's Medicaid program for nursing facility services, home and community-based services and related hospital and prescription drug services provided to individuals fifty-five years of age or older or to individuals who, after notice and an opportunity for hearing, have been deemed to be permanently institutionalized.

The Secretary of the Department of Health and Human Resources or his or her lawful designee is granted full authority to enforce this mandate.

900.3 DETERMINATION OF PERMANENT INSTITUTIONALIZATION

Upon admission of a Medicaid member to a nursing facility or other institution which provides twenty-four hour nursing and custodial care, the facility will notify the local DHHR office of the member's admission, legal guardian, and physician.

The Bureau will determine, based upon the medical information supplied, if the member meets the conditions of being permanently institutionalized. There shall be a rebuttable presumption that the member is permanently institutionalized. The presumption of permanent institutionalization after six (6) months of residence can be rebutted by documentation of the personal physician that the individual will be discharged within a reasonable period of time not to exceed three (3) months and that the individual has a place to which he/she can return. If said individual is not discharged within this three (3) month period, the nursing facility will notify the Bureau and a presumption of permanent institutionalization will be instituted. For additional information refer to [WV Code §9-5-11c](#).

If the member is permanently institutionalized, the member and his/her legal guardian will be advised in writing of this determination and the right to a hearing before the Bureau should this determination be disputed. The member and his/her legal guardian shall have thirty (30) days from the date of receipt of the Bureau determination in which to request a hearing.

No lien shall be placed upon property belonging to a member until a final determination is made regarding whether the individual is permanently institutionalized.



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Any lien imposed shall dissolve within thirty (30) days upon that individual's discharge from the medical institution and return home. The individual shall provide written documentation of the return home and request that the lien be dissolved.

900.4 IDENTIFICATION OF ESTATES FOR RECOVERY

All local Department of Health and Human Resources case managers will advise the Bureau when any member in their case load age fifty-five or older is admitted to a nursing facility, ICF/IID or becomes a recipient of home and community-based services pursuant to a 1915(c) waiver. Nursing facilities, ICF/IID facilities, and case managers will also advise the Bureau on a monthly basis of those individuals in their case load who are in nursing facilities or receiving home and community-based services and have attained the age of fifty-five.

900.5 RECOVERY FROM ESTATES

OBRA '93 requires states to recover, at a minimum, all property and assets that pass from a deceased person to his or her heirs under state probate law, for both property conveyed by will or property of a person who dies intestate. The order of payment of debt is established under state law and may actually reduce the amount if any that is recovered.

Pursuant to [42 USC §1396p \(2\)\(A\)](#), recovery will be made against an estate of a member and a lien imposed only if the home is not the lawful residence to:

- The spouse of the member
- The member's child who is under 21
- The member's child is blind or permanently and totally disabled
- A sibling of the member with an equity interest and residing in the member's home for a period of at least one year immediately before the date the member was admitted to the medical institution.

Pursuant to [42 USC §1396p \(2\)\(B\)](#), recovery will be made against an estate of a member and a lien imposed only after:

- The death of the individual's spouse
- No surviving child under age 21, or
- The individual's blind or permanently and totally disabled child no longer lawfully resides in the home
- The member's sibling with equity interest no longer lawfully resides in the home.

For members whose eligibility is determined using Modified Adjusted Gross Income (MAGI) standards, refer to [Section 1917\(a\) of the Social Security Act](#) and [42CFR 435.700](#) et seq. for additional information.

900.5.1 Delayed Recovery

Recovery from estates may occur when the condition upon which the delay was based no longer exists. The Department may impose a recovery property lien to be executed only when the condition no longer exists and the property is to be sold.



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If property subject to delayed recovery is sold, only that portion of the proceeds which represents the member's interest in the property is subject to a recovery lien.

900.6 UNDUE HARDSHIP WAIVERS

No lien will be placed nor recovery made from the estates of members when there is:

- a) An adult child who has resided continuously in the home for a two-year period of time prior to the date the parent became a member and continued to reside in the home until the parent's death, if that child can establish that he/she provided care to the member which permitted the parent to remain at home without Medicaid assistance for at least that two year period;
- b) An heir, who maintains continuous employment in the family business for a period of time beginning at least one year before the member became a Medicaid member until the time of the member's death, if the property which would otherwise be subject to an estate recovery lien is an integral part of the business and is required for the continued viability of the business.
- c) An adult child maintains continuous employment in the family business for a period of time beginning at least three (3) years before the parent became a member until the time of the parent's death if the property which would otherwise be subject to an estate recovery lien is an integral part of the business and is required for the continued viability of the business.
- d) An adult child regardless of whether he/she was living in the family home, is able to present proof of monetary support to his/her parent for medical care and other necessities including upkeep, utilities and repairs prior to the date the parent became a member and continued said upkeep in order to maintain the member's property. Such support will reduce the medical assistance lien on a dollar-for-dollar basis.
- e) An adult grandchild, who is the heir and whose parents are both deceased prior to the date the grandparent became a member is able to present proof of monetary support to his/her grandparent for medical care and other necessities prior to the date the grandparent became a member. Such support will reduce the medical assistance lien on a dollar-for-dollar basis.
- f) A sibling who is able to present proof of monetary support to his/her sibling for medical care and other necessities prior to the date the sibling became a member. Such support will reduce the medical assistance lien on a dollar-for-dollar basis.
- g) An heir may apply for a hardship waiver by presenting evidence that recovery from the estate will jeopardize the survival of the family unit or severely disrupt the family's income or business unless the circumstances which caused the disruption were created by the member's use of estate planning methods to avoid estate recovery.

An application for an undue hardship waiver shall be submitted to the Bureau within forty-five (45) days of the placement of the lien or filing of the proof of claim. The Bureau will have ninety (90) days from receipt in which to issue an approval or denial of a request for a hardship waiver or to advise the applicant that additional time is necessary to consider the request. The presence of a will, that bequests specific property to heirs, cannot be used as evidence of an undue hardship. Documentation of an inter vivos gift cannot be used as evidence of an undue hardship unless the gift would not have been considered an uncompensated transfer and resulted in the imposition of a penalty period.

900.7 RECOVERY ON ESTATES

The DHHR will impose no recovery on estates with a value of \$5,000.00 or less at the time the estate is admitted to probate.

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No undue hardship waiver will be granted if the member had a long-term care insurance policy and became Medicaid eligible by virtue of disregarding assets because of payments or entitlement to payments under such policy. [\[See 42 USC §1396p \(b\)\(C\)\(ii\) \(1\)\].](#)

900.8 MEDICAID EXEMPT TRUSTS

For any trust established under 42 USC 1396p, the trustee must assure that the DHHR is the primary beneficiary of the trust after the member's death. The DHHR is to be reimbursed up to the amount of medical assistance paid on behalf of the member after June 9, 1995, or the balance of the trust whichever is less.

The trustee shall account to the DHHR and forward payment within thirty (30) days of the member's death.

900.9 ADMINISTRATIVE DUE PROCESS

Only those persons adversely affected by the enforcement of this rule may request an administrative review or appeal the issue of permanently institutionalized or to contest the failure to grant an undue hardship waiver only shall do so in conformance with the following:

900.9.1 Administrative Review

The administrative review procedure provides an informal conference to allow the member, administrator, executor, or heir the opportunity to present his/her case, to provide additional information bearing on the adverse administrative action. Through this procedure, the Bureau is afforded an opportunity to receive additional information that could affect its decision or impending action on permanent institution or undue hardship.

900.9.2 Request for Administrative Review

A member, administrator, executor, or heir may, within thirty (30) days after receipt of a notice of an adverse administrative action taken by the Bureau, request an administrative review. The request for an administrative review must be in writing, dated, signed and must set forth in detail the items in contention, and identify the representatives who will be present for the conference. Upon receipt of the request for an administrative review conference, the Bureau will establish a mutually agreeable date and time for the review.

900.9.3 Administrative Review Notice of Decision

A written decision based on findings and setting forth the reasons for the conclusions will be issued within thirty (30) to sixty (60) days after the administrative review hearing. The decision may nullify, modify, or uphold the original administrative action and will establish an effective date for any further action to be taken. In the case where the decision is disputed, the member, or heir may/must request an evidentiary hearing within thirty (30) days after receipt of the notice of decision.

900.9.4 Evidentiary Hearing

An evidentiary hearing is a formal hearing procedure before the Commissioner of the Bureau or his/her designee. The member, or heir may present evidence and argument and cross examine adverse

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witnesses. Only those issues presented in the administrative review will be considered in the evidentiary hearing.

900.9.5 Request for Evidentiary Hearing

The request for an evidentiary hearing shall be in writing, dated, signed, and filed within thirty (30) days of the date on the notice of decision from the administrative review conference or other adverse ruling. The request for an evidentiary hearing shall contain a statement as to the specific issues or findings of fact and/or conclusions of law in the preceding determination with which the member, administrator, executor, or heir disagrees and the basis for his/her contention that the specific issues and/or findings and conclusions were incorrect. The request shall include identification of the representatives who will be present at the hearing.

Any member, administrator, executor, or heir requesting a hearing resulting from an adverse decision of the Bureau shall bear the necessary and attendant costs of such hearing, including costs of transcription, court reporting, production, and copying of documents and all similar costs.

900.9.6 Record of Hearing

A complete record of proceedings at the hearing shall be made and transcribed in all cases.

900.9.7 Evidentiary Hearing Notice of Decision

A written decision based on findings and setting forth reasons for the decision will be issued as soon as practical after the hearing. The decision by the Commissioner of the Bureau is final. The member, heir, administrator, or executor may pursue further recourse through judicial review.

GLOSSARY

Definitions in [Chapter 200, Definitions and Acronyms](#) apply to all West Virginia Medicaid services, including those covered by this chapter. Definitions in this glossary are specific to this chapter.

Adult Child: A natural child, legally adopted child or step child who is under the age of twenty-one.

Estate: The real and personal property belonging to a decedent at the time of his/her death, including any intangible interests therein. The term "estate" includes all property identified in [W.Va. Code §11-11-2\(b\)\(4\)](#).

Home and Community-based Services: Those services provided by Medicaid pursuant to Section 1915(c) Waivers (No.WV.0133 Intellectual and/or Developmental Disabilities, No.WV.0134 Aged and Disabled, and No.WV.0876 Traumatic Brain Injury, as approved by the Centers for Medicare and Medicaid Service (CMS) of the United States Department of Health and Human Services (DHHS).

Related Hospital and Prescription Drug Services: Those hospital and prescription drug services which are rendered in conjunction with nursing facility and/or home and community-based services whether or not they are billed by the nursing facility or home and community-based service provider.

Other necessities: Such as utilities, major home repairs, real estate taxes, real estate insurance and normal upkeep and maintenance.



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Permanently Institutionalized: An individual who:

- Is an inpatient in a nursing facility, ICF/IID facility or other medical institution;
- Is required, as a condition of receiving services in such institution under the State Plan, to spend for costs of medical care all but a minimal amount of his/her income required for personal needs; and,
- After notice and opportunity for a hearing, has been deemed permanently disabled to such an extent that he or she cannot reasonably be expected to be discharged from the medical institution and returned to a non-institutional home environment prior to death.

REFERENCES

The West Virginia Medicaid State Plan references estate recovery in section 4.17 [Liens and Recoveries](#).

CHANGE LOG

REPLACE	TITLE	CHANGE DATE	EFFECTIVE DATE
Entire Chapter	Estate Recovery		October 2, 2015