

**Arkansas Department of
Human Services**

**Your Guide To
Medicaid
Estate
Recovery
In Arkansas**



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What is Medicaid Estate Recovery?

Medicaid is a government program that pays for healthcare for people with limited income and assets. One type of service that Medicaid pays for is long-term care services. Long-term care services assist persons in need of help with activities of daily living. Medicaid pays for long-term care services in the person's own home or for residents living in Level II Assisted Living Facilities, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and nursing homes. The Medicaid programs that pay for long-term care services at home are called home and community-based services waivers.

To help pay for the long-term care services, every state is required by federal law to have a Medicaid Estate Recovery program. If you received Medicaid long-term care services, the Arkansas Department of Human Services (DHS) is required to file a claim against your estate upon death. In some cases, DHS may not pursue the claim, and the state will never pursue a claim for more money than it paid for your long-term care services.

Who does estate recovery affect?

Estate recovery applies only to:

- Individuals age 55 or older who received Medicaid in a nursing home or Intermediate Care Facility for the Mentally Retarded (ICF/MR) or in a home and community-based waiver program; and
- Individuals under age 55 considered permanently institutionalized in a nursing home or ICF/MR.

What is a Home and Community-Based Waiver Program?

Medicaid programs that allow individuals in need of long-term care services to receive them at home or in the community. In Arkansas, these programs currently include the DDS/ACS Waiver, ElderChoices, Alternatives for Adults with Physical Disabilities and LivingChoices (Assisted Living Facility Waiver).

What is an estate?

An estate is property, such as money, a house, a lawsuit settlement or other things of value that a person leaves to family members or others (heirs) when he or she passes away.

What will the heirs to the estate have to pay?

The amount of the estate recovery claim is the amount Medicaid paid for long-term care services for the recipient after the Medicaid recipient reached age 55, or younger if determined permanently institutionalized. If the total of the claim exceeds the value of the estate, heirs will not be liable for the balance.

Are there times when the state will not pursue a claim against the estate?

Yes, the state will not pursue a claim when:

- There is a spouse who is still alive.
- There is a child under 21 years of age.
- There is a child of any age who is blind or disabled. This child did not have to live with or be dependent on the recipient at the time of their death.

The state may also choose to waive its claim if the DHS Hardship Waiver Committee determines that:

- Recovery will create an undue hardship for other surviving family members, or
- Recovery is not cost effective

Is there property that the state will not collect on?

Yes, these may include:

- A home, when:
 - ◊ There is a son or daughter currently living in the home and was living in the home for at least two years before the recipient entered the nursing home and who provided care to the recipient which permitted the recipient to live at home longer.
 - ◊ There is a brother or sister currently living in the home and who lived in the home for at least one year before the recipient entered the nursing home.
- Assets that pass directly to a beneficiary independently of the probate process. Some examples of this may include:
 - ◊ Insurance policy proceeds
 - ◊ Retirement Accounts, such as IRAs
 - ◊ Pension plans
 - ◊ Mutual funds
 - ◊ Deferred compensation plans

How does Estate Recovery work?

When a person applies for Medicaid long-term care services, DHS provides a notice that explains estate recovery. When the person dies, DHS will determine if estate recovery is appropriate, file a claim and explain how the representative may request an undue hardship waiver.

What is Undue Hardship?

Estate recovery may be waived if recovery would result in undue hardship for the heirs of the estate. The representative of the estate will receive a notice of estate recovery at the death of the recipient which provides instructions on how to apply for an undue hardship. The DHS Hardship Waiver Committee will determine if undue hardship exists. The committee considers the following in making their determination:

- The estate asset subject to recovery is the sole income-producing asset of the beneficiaries of the estate;
- Without receipt of the proceeds of the estate, a beneficiary would become eligible for federal or state benefits;

(continued)

Undue Hardship (continued)

- Allowing a beneficiary to receive the inheritance from the estate would enable a beneficiary to discontinue eligibility for federal or state benefits;
- The estate asset subject to recovery is a home with a value of fifty percent (50%) or less of the average price of homes in the county where the homestead is located; and
- Other compelling circumstances.

If the representative doesn't agree with the committee's decision, they may file an appeal.

Is it true that Medicaid takes your house when you enroll?

No, Medicaid does not "take" nor put a lien against a recipient's home while he or she is alive. When the recipient dies and it is determined that estate recovery does apply, DHS will file a claim against the estate. The judge will then decide what will have to be paid to DHS. If it doesn't go to probate, DHS will issue a demand notice with the county clerk's office. This will require the county clerk to notify DHS if the house is sold or goes to probate, at which time DHS will file a claim.

My husband is 45 years old and has been in an accident. His doctor wants him to move to a nursing facility for about 3 months for rehab services. If we apply for Medicaid, would he be subject to estate recovery?

No, since your husband is under age 55 and his stay in a nursing home is considered temporary (not permanently institutionalized), estate recovery would not apply to him.

I'm receiving QMB Medicaid. Does that mean estate recovery will apply to me?

No, QMB or other Medicare Savings categories do not provide long-term care services, so estate recovery would not apply to you.

Is property that I own in another state exempt from recovery?

Not necessarily. Any property you own, regardless of location, can be part of your estate and subject to recovery.

If I receive long-term care services in another state as well as Arkansas, which state will file a claim?

Both states may file a claim. The probate court will determine how to divide the estate between the competing claims.

I want to will my home to my children. Can the state still take it?

A will does not protect your home from estate recovery. All claims against an estate, including Medicaid estate recovery claims, must be paid before property can be distributed as specified in a will.

What if I transfer all my assets now to avoid estate recovery?

Medicaid has very strict penalties in regards to transferring assets. Giving away, selling for less than fair market value, or restricting your access to any type of property or financial instrument may cause you to be ineligible for Medicaid long-term care coverage for months or possibly for up to five years based on the total amount of the transfer and services requested. Before making any changes to your assets, it would be best to consult an attorney.

I have assets protected through a Qualified Long-Term Care Insurance Partnership Policy. Will it be subject to Estate Recovery?

No, any disregarded assets under a Qualified Long-Term Care Partnership Policy remaining at the death of the policyholder is exempt from estate recovery. Any other assets not disregarded through a Qualified Long-Term Care Insurance Partnership Policy will be subject to estate recovery.

If you have additional questions about Medicaid Estate Recovery or need advice concerning estate planning, please contact an Elder Law attorney.

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