

## Estate Recovery Frequently Asked Questions

**Effective September 1, 2003, the following changes will be made to the Kentucky Medicaid Estate Recovery Program: the exemption of \$50,500 on homestead property will be eliminated; Estate Recovery will pursue all assets in which the Medicaid recipient had an interest; The \$5,000 minimum for Estate Recovery will be increased to \$10,000; and Appeal Rights will be provided if a claim for undue hardship exemption has been denied.**

1. After September 1, 2003, are claims paid for home and community based waiver (HCBW) services received subject to estate recovery?

*Yes. Paid claims for HCBW services have always been subject to estate recovery, along with Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR/DD), and Supports for Community Living (SCL) (formerly Alternative Intermediate Services for the Mentally Retarded). These are considered institutional services. There is no change in the services being subject to estate recovery.*

*Medicaid will seek recovery for claims paid during any period of institutionalization, even if the recipient is no longer receiving such services at the time of death. A "period of institutionalization" means any institutional services received at age 55 or older. It also means NF or ICF/MR/DD services received if permanently institutionalized at any age.*

2. After September 1, 2003, what other claims paid by Medicaid are subject to estate recovery?

*Claims related to the institutional services for prescription drugs, hospital services, physician services, and other costs such as Medicare cost sharing payments.*

3. With no homestead exemption, will Medicaid require that the homestead property be sold?

*Medicaid has never specifically required that the homestead property be sold but with the elimination of the \$50,500 exemption, the full value of the recipient's ownership/equity interest will be considered an estate asset and subject to any estate recovery claim. The heirs may choose to retain the homestead and provide funds equal to the value of the claim from their own resources, or borrow against the value of the property to provide the funds, or access any other lawful and appropriate financial means to satisfy the amount of Medicaid's claim.*

4. Will Medicaid seek estate recovery for payments made on behalf of a recipient for institutional services received prior to September 1, 2003, even if the estate is worth less than the current homestead exemption (\$50,500)?

*Yes, all dates-of-death beginning September 1, 2003 and after will be subject to the new rules.*

5. What, if any, exemptions from estate recovery will there be after September 1, 2003?

*No recovery shall be made from the estate if the estate representative can verify to the Department's satisfaction that there is a surviving spouse or a surviving minor child, or disabled child as defined in the Social Security Act. This is a current exemption that will continue after September 1, 2003*

*The Department shall also waive recovery to the extent the recovery would work an "undue hardship". Undue hardship shall exist if the total date-of-death value of the estate is \$10,000 or less. This amount is raised from \$5,000 or less under the rules prior to September 1, 2003.*

*Undue hardship shall also exist if an asset subject to recovery is the sole income-producing asset of the estate conveyed to the surviving recipient family member (spouse, child or sibling). For example, this could be a family farm or business. However, the sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.*

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*Medicaid may also waive recovery if it is not cost effective to recover from the estate. To be cost effective, the administrative cost of recovering from the estate shall be less than the total date-of-death value of the estate subject to recovery.*

*Finally, Medicaid may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir. The estate representative shall submit to the Department a written request for such an exemption and provide verification to the satisfaction of the Department.*

*The estate representative must request these exemptions in writing to Medicaid and must verify the qualification for the exemption to the Department's satisfaction. **Appeal rights are granted only for denials of undue hardship exemption requests.***

6. Will Medicaid notify institutionalized recipients about the changes in the estate recovery program and when these changes will take effect?

*Recipients will be notified of the changes by the local DCBS office at the time of initial application for services and/or at the time of recertification for Medicaid services. In addition, the Department will be separately mailing a notice to all current institutionalized recipients. Recipients or their representatives may at any time obtain estate recovery information by contacting their local DCBS office or Medicaid staff in Frankfort.*

7. Where can one get a copy of the new estate recovery regulation, 907 KAR 1:585?

*After September 1, 2003, you may obtain a copy of the regulation by accessing the Cabinet for Health Services web page or Legislative Research Commission web page.*