

Medical Assistance Estate Recovery and Liens

The Medical Assistance (MA) program is Minnesota's Medicaid program, providing assistance for basic health care services for low-income individuals. Federal and state law require the Department of Human Services (DHS) and local county or tribal agencies to recover costs that MA paid for specified health care services provided to certain enrollees, through estate recovery processes. Minnesota recently enacted changes to limit some MA estate recoveries. MA estate recovery is governed by federal law and [Minnesota Statutes, section 256B.15](#).

What costs are recovered?

For MA enrollees receiving services at age 55 or older, local agencies will now recover **only the costs of long-term services and supports** received by a deceased enrollee. Costs for these services received prior to age 55 are **not** subject to estate recovery. Long-term services and supports include:

- nursing facility services;
- home and community-based services;
- personal care assistance; and
- hospital and prescription drug services received along with nursing facility and home and community-based services.

If a person at any age received General Assistance Medical Care (GAMC) or MA services while permanently residing in a medical institution (including a nursing home), **all** MA and GAMC service costs may be recovered from their estate upon death. The GAMC program ended in 2011.

To which estate claims do the new limitations apply?

MA estate recovery for only the costs of long-term services and supports applies to estate claims pending on or after July 1, 2016, or to estates of people who die on or after July 1, 2016. Previous estate claims were subject to estate recovery for the costs of all MA services provided to enrollees at or after age 55.

How do DHS and local agencies recover the costs?

Local agencies assert an MA claim against an enrollee's estate after requesting a claims history report from DHS and determining the final claim amount. The process for filing a claim depends on how the estate's property is distributed. There is no statute of limitations for when local agencies may file MA claims.

DHS does not directly recover from estates, but asserts liens against real property to collect MA costs, if necessary. DHS only asserts liens if an enrollee permanently resides in a medical institution, or after an enrollee's death.

Are there protections for surviving spouses and children?

If a deceased enrollee is survived by a spouse or a child who is under 21 years old, blind, or permanently disabled, local agencies will delay estate recovery and the spouse or qualifying child will inherit. After the spouse dies or a child no longer qualifies, local agencies will attempt to recover costs for the deceased enrollee's care from the spouse's estate.

DHS cannot file a real property lien on a property that is the enrollee's spouse's or qualifying child's home.

Undue hardship waivers may be granted when an MA claim can only be satisfied by the sale of a particular estate asset and the following is true:

- 1) the waiver applicant (other than surviving spouse) has continuously occupied the property since at least 180 days before the MA enrollee's death, and will continue to do so;
- 2) the waiver applicant had an ownership interest in the real property and continues to have an interest; or
- 3) the waiver applicant uses the property to produce income in a trade, profession, or occupation.

How are funeral expenses affected?

Reasonable funeral expenses are paid from a deceased enrollee's estate **before** a local agency can recover MA costs. According to DHS guidelines, reasonable funeral and funeral-related costs include the following:

- Up to two death certificates
- Expenses for cremation or embalming, clothing, and the lowest-cost casket
- Ground transportation of the body
- Costs of internment in a cemetery plot or vault, including lowest-cost grave marker and engraving
- One public visitation service, funeral service, or grave site service, including fees for one officiant and one musician or vocalist
- One 24-line obituary, without a photo, for one day

Funeral expenses **not** paid before a local agency may recover MA costs include: family travel and lodging; flowers; food and beverages; clothing; police escort; stationery; and charitable donations.

How are funds in trusts treated?

Any funds in a prepaid burial trust or life insurance policy intended to pay funeral expenses will be distributed for those expenses and are not subject to MA recovery. After funeral expenses are paid, any funds remaining in the trust or policy are distributed to the estate and are then subject to MA recovery. If funeral expenses exceed the amount in the trust or policy, reasonable funeral expenses are paid from the estate before a local agency may recover MA costs.

If a deceased enrollee has a special needs trust or pooled trust, the DHS Special Recovery Unit works with the trust administrator to determine which funeral expenses will be allowed prior to MA recovery. Minnesota law does not prioritize reasonable funeral expenses before MA claims for these trusts.

For more information: Private attorneys or legal aid organizations can answer questions and provide planning assistance. For legislative issues, contact legislative analyst Sarah Sunderman at 651-296-8079. See also the House Research Department publication, *Medical Assistance*, November 2016.

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