

IC 12-15-9

Chapter 9. Death and Funeral Expenses; Claims Against an Estate

IC 12-15-9-0.5

"Estate" and "nonprobate transfer" defined

Sec. 0.5. (a) As used in this chapter, "estate" includes:

- (1) all real and personal property and other assets included within an individual's probate estate;
- (2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002;
- (3) any real or personal property conveyed through a nonprobate transfer; and
- (4) any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of:
 - (A) the Medicaid recipient; or
 - (B) the Medicaid recipient's spouse.

(b) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

- (1) whose last domicile was in Indiana; and
- (2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:
 - (A) use the property for the benefit of the transferor; or
 - (B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entirety real estate or payment of the death proceeds of a life insurance policy.

As added by P.L.152-1995, SEC.5. Amended by P.L.178-2002, SEC.82; P.L.224-2003, SEC.78; P.L.246-2005, SEC.107.

IC 12-15-9-0.6

Claim against assets not included in probate estate; time limit

Sec. 0.6. (a) The office's claim against assets that are not included in the individual's probate estate may be enforced as set out in IC 32-17-13.

(b) Enforcement of a claim against assets that are not included in an individual's probate estate must be commenced not more than nine (9) months after the decedent's death. This limit does not apply to any assets that were not reported to the county office of the division of family resources.

As added by P.L.178-2002, SEC.83. Amended by P.L.1-2003, SEC.54; P.L.145-2006, SEC.87; P.L.44-2009, SEC.12.

IC 12-15-9-0.7

Repealed

(Repealed by P.L.246-2005, SEC.230.)

IC 12-15-9-0.8

Limitation on definition of estate

Sec. 0.8. Any nonprobate assets:

- (1) that the office determined were exempt or unavailable assets; or
- (2) that were transferred out of the probate estate;

before May 1, 2002, may not be included in the definition of estate under this chapter.

As added by P.L.178-2002, SEC.85.

IC 12-15-9-1

Amount of claim; preference

Sec. 1. (a) Subject to subsection (b), upon the death of a Medicaid recipient or upon the death of a deceased Medicaid recipient's spouse, the total amount of Medicaid paid on behalf of the recipient after the recipient became fifty-five (55) years of age must be allowed as a preferred claim against the estate of the recipient or the recipient's spouse in favor of the state. The affidavit of a person designated by the secretary to administer this section is evidence of the amount of the claim and is payable after the payment of the following in accordance with IC 29-1-14-9:

- (1) Funeral expenses for the recipient and the recipient's spouse, not to exceed in each individual case three hundred fifty dollars (\$350).
- (2) The expenses of the last illness of the recipient and the recipient's spouse that are authorized or paid by the office.
- (3) The expenses of administering the estate, including the attorney's fees approved by the court.

(b) If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the recipient.

As added by P.L.2-1992, SEC.9. Amended by P.L.152-1995, SEC.6; P.L.246-2005, SEC.108.

IC 12-15-9-2

Property exempt from enforcement

Sec. 2. A claim may not be enforced against the following:

- (1) Real estate of a recipient while it is necessary for the support, maintenance, or comfort of the surviving spouse, a dependent child less than twenty-one (21) years of age, or a dependent who is nonsupporting because of blindness or other disability.
- (2) Personal property necessary for the support, maintenance, or comfort of the surviving spouse, a dependent child less than twenty-one (21) years of age, or a dependent who is nonsupporting because of blindness or other disability.
- (3) Personal effects, ornaments, or keepsakes of the deceased.

As added by P.L.2-1992, SEC.9. Amended by P.L.152-1995, SEC.7.

IC 12-15-9-5

Recoverability of claims

Sec. 5. (a) The office may not recover on a claim filed against the estate of a surviving spouse while the individual is survived by a child who is:

- (1) less than twenty-one (21) years of age; or
- (2) permanently and totally disabled under criteria established by the federal Supplemental Security Income program.

(b) The office may not recover on a claim filed against the estate of a surviving spouse from any part of the estate described in section 1(b) of this chapter.

As added by P.L.152-1995, SEC.8. Amended by P.L.246-2005, SEC.109.

IC 12-15-9-6

Waiver in cases of undue hardship; rules

Sec. 6. Notwithstanding sections 2 and 5 of this chapter, the office may waive the application of this chapter in cases of undue hardship. The office of the secretary shall adopt rules under IC 4-22-2 establishing criteria for hardship waivers that are consistent with guidelines of the Secretary of the United States Department of Health and Human Services.

As added by P.L.152-1995, SEC.9.

IC 12-15-9-7

Reimbursement; proceeds of annuity contracts

Sec. 7. A person receiving beneficiary payments from an annuity contract of a deceased Medicaid recipient is liable to the state for reimbursement of Medicaid benefits:

- (1) paid to; or
- (2) on behalf of;

the deceased Medicaid recipient to the extent of any payments that are received by the person under a annuity contract purchased after May 1, 2005.

As added by P.L.246-2005, SEC.110.