Indiana Health Coverage Program Policy Manual
Chapter 4700 ESTATE RECOVERY Sections 4700.00.00 – 4725.00.00

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4700.00.00 ESTATE OF THE DECEASED (MED 1)

The estate consists of all assets, including both real and personal property, owned by the deceased recipient. An estate need not be established by formal legal proceedings. However, the value of the estate may be established by FSSA, and a determination made of the total amount payable for burial expenses.[1]

4705.00.00 CLAIMS AGAINST THE ESTATE

Under the provisions of the Social Security Act (42 U.S. Code §1396p) the state is required to recover certain Medicaid benefits correctly paid on behalf of an individual from the individual's estate.[2]

This includes any capitation payments made on behalf of the recipient. Capitation payments are made each month on behalf of a member when they are enrolled with a Managed Care Entity (health plan) for programs such as HIP, Hoosier Care Connect, or Pathways. Capitation rates may include payments made for Medicaid services and for case management services with the health plan. Medicaid providers generally have one hundred and eighty (180) days from the date of death to file a claim for payment from Medicaid. Therefore, the amount of the claim may continue to increase after the death of a Medicaid recipient.

The circumstances under which a recovery claim must be filed are explained in this and the following sections.

Upon the death of a Medicaid recipient, the total amount paid for medical coverage, except as explained in Section 4710.00.00 and Section 4725.10.00, is allowed as a preferred claim against the estate of such person in favor of the state. All assets owned by the deceased individual at the time of death, including both real and personal property, become a part of the estate, even if no probate proceedings are initiated in court. The estate does not include property held jointly with rights of survivorship, property held in trust, or life insurance proceeds paid to the deceased's survivors or other beneficiaries.

The claim provision is applicable to all categories of MA, except for Medicare cost sharing benefits which include the Medicaid categories of QMB (MA L), SLMB (MA J) and QI (MA I).[3] Medicare premiums and Medicare cost sharing benefits paid for any member are not recoverable.

A claim against the estate can be filed for Medicaid benefits "incorrectly paid" on behalf of a recipient regardless of age.[4]

It is not required that there be a previous court judgment as to the amount of Medicaid benefits incorrectly paid. However, the existence of such a court judgment would expedite the probate proceedings when the claim against the estate is filed.

4710.00.00 NON-ENFORCEMENT OF CLAIM

If a spouse survives the recipient, recovery shall be made after the death of the surviving spouse. Only those assets that were included in the recipient's probate estate are subject to recovery after the surviving spouse's death.[5]

If the recipient (or the recipient's spouse upon his or her death) is survived by a dependent child, no recovery shall be made while the child is under age twenty-one (21) or is a dependent who is non-supporting due to blindness or disability as determined under SSI standards.[5]

In addition, a claim may not be enforced against the personal effects, ornaments, or keepsakes of the deceased.[6]

Resources that are protected under the Indiana Long Term Care Program (ILTCP) are not subject to recovery from the recipient's estate. Refer to Section 2615.25.15 concerning the ILTCP.[7] A claim may be waived if it is not cost effective to pursue the claim.

4715.00.00 FILING THE CLAIM

Estate administration may be accomplished using one of the following three procedures:

- Supervised administration (the normal procedure)
- Unsupervised administration
- No administration procedure

The process for filing claims depends on the type of estate administration procedures used.

When estates are administered under the supervised and unsupervised administration procedures, the probate court first appoints a personal representative to administer the estate. The personal representative then opens the estate. Once an estate is opened for probate, the personal representative must serve notice of an estate administration to the Medicaid Estate Recovery Unit if the decedent was at least fifty-five (55) years of age at the time of death and died on or after June 30, 2018.[8]. Beginning July 1, 2026, the Medicaid Estate Recovery Unit has nine (9) months after the date of death of the decedent to file a claim in a probated estate.[9]

A systematic and regular review of the legal notices and the probate docket of the county probate court are to be made by the Medicaid Estate Recovery Unit to ascertain whether an estate has been opened for any deceased Medicaid recipients. As soon as the Medicaid Estate Recovery Unit learns that an estate has been opened, the Medicaid Estate Recovery Unit should initiate the process for filing a claim with the probate court as applicable.

The claim against the estate should be filed with the Clerk of the Probate Court as soon as possible. However, when a small estate claim affidavit is used, it is presented to whoever is holding assets of the deceased and is not filed with the Clerk of Probate Court.

4715.05.00 RECOVERY FROM CERTAIN TRUSTS

Funds remaining in a Special Needs Trust, Pooled Trust, and/or Qualified Income Trust as defined in Section 2615.75.15, are to be recovered up to the amount of Medicaid expenditures paid on the individual's behalf after the recipient's death.

These claims will not require the preparation of an affidavit or filing with the probate court. Because the terms of the trusts and federal law require the trustee to pay any remaining funds to the state up to the amount of Medicaid expenditures, the state's claim is to be presented to the trustee for payment. This is accomplished by letter to the trustee signed by the Estate Recovery Analyst with an explanation of Medicaid expenditures. The claim includes all Medicaid expenditures paid on behalf of the deceased, regardless of age.

Pursuant to IC 12-15-2-17, funds remaining in a funeral trust that belonged to a Medicaid recipient after the delivery of all services and merchandise under the contract must be sent to a recipient's estate or the State up to the amount of Medicaid expenditures paid on the individual's behalf after the age of fifty-five (55).

4720.00.00 OPENING AN ESTATE

If an estate is not opened, any interested party (such as a creditor) may petition the court to open an estate and to request the appointment of an administrator. [10] Prior to petitioning the court, these cases should be evaluated by the Medicaid Estate Recovery Unit in conjunction with an FSSA attorney, to determine if there are sufficient assets in the estate to offset the cost of opening and administering the estate. If not, opening an estate should not be initiated.

Cases in which there are sufficient assets or cases where certain non-probate transfers have occurred should be referred to the Office of Attorney General to prepare and file with the court a petition to open an estate and appoint an administrator.

4725.00.00 PRIORITY OF THE CLAIM

Payment of debts from resources in the estate of the decedent is made in accordance with legally established priorities. Priority in the payment of claims is important whenever the estate of the deceased is insolvent (such as when the total amount of all claims against the estate exceeds the assets of the estate). If the amount of the FSSA claim is not satisfied in full after distribution of the estate assets, such debt must be considered cancelled.

The FSSA attorney should be consulted regarding the order of priority of the FSSA claim in relation to that of other claimants.

4725.05.00 COMPROMISE OF CLAIMS

IC 4-6-2-11 provides "No claim in favor of the state shall be compromised without the written approval of the governor and the attorney general, and such officers are hereby empowered to make such compromise when in their judgment, it is the interest of the state so to do."

This applies to situations where the State agrees to accept less than the amount that is available and to which it is legally entitled. If the estate is insolvent and the State will receive the entire balance of the estate after payment of claims that have higher priority, that is not a compromise and it does not require the approval of the governor and attorney general.

The settlement must be in the State's best interest and can only be approved if it is cost effective for the State. Some examples of when a compromise may be cost effective are when:

- Another claim arguably has priority such as expenses of last illness
- There is a legitimate dispute as to the amount of the claim
- The asset is a land contract or other asset that is not easily liquidated, and the State agrees to accept cash in a lesser amount.

Typically, the Estate Recovery Analyst or the FSSA attorney will be contacted by the estate of a deceased member regarding a potential settlement of the FSSA's claim. The Estate Recovery Analyst and FSSA attorney will review the proposed settlement to see if it would be cost effective for the State. If the proposed settlement is found to be cost effective, the Estate Recovery Analyst will create a referral packet for the Office of Attorney General containing all relevant information and communications, including but not limited to:

- The amount of the claim
- Available assets in the estate
- The proposed settlement
- The reason for settlement
- Why it is in the best interest of the State to accept the settlement.

4725.10.00 WAIVING ESTATE CLAIMS FOR UNDUE HARDSHIP

The Medicaid program's claim against the estate of a deceased recipient must be waived if enforcement of the claim would result in undue hardship for a beneficiary.[11] The term "undue hardship" is a term of art that is defined in 405 IAC 2-8-2.

The decision to approve or deny an application for a waiver of the estate recovery claim will be made by the Medicaid Estate Recovery Unit based on information provided by the beneficiary and the FSSA attorney in accordance with the following procedures.

At the time a claim is filed, a notice is to be included with the claim, explaining the undue hardship provisions and the process for applying for a waiver of the State's claim. An application (State Form 48259/OMPP 003) is to be provided upon request to a beneficiary who wishes to apply for a waiver.

The hardship applicant will complete the form and return it, along with supporting documentation, to the FSSA attorney or to the Medicaid Estate Recovery Unit. The applicant must indicate one of the following situations as the basis for their claim:

- Causing a beneficiary of the decedent's estate to become eligible for public assistance. As used in this section, "public assistance" means:

    - Aid to Families with Dependent Children;
    - Medicaid;
    - SNAP; or
    - Supplemental Security Income.
- Causing a beneficiary of the decedent's estate who is currently eligible for public assistance to remain dependent on that public assistance.
- The complete loss of an income-producing asset or assets when the:
    - Beneficiary of the decedent's estate has no other source of income; and
    - Beneficiary's income does not exceed one hundred percent (100%) of the poverty level as determined annually by the U.S. Department of Health and Human Services.
- Other compelling circumstances described by the applicant, as determined on a case-by-case basis by the office.

An undue hardship does not exist in circumstances where the state's recovery simply results in a loss of a preexisting standard of living or the loss of an expectation of an inheritance. [12]

If the applicant indicates that they may be eligible for an undue hardship waiver, the application must be sent to the following:

Medicaid Estate Recovery Program
Indiana Family and Social Services Administration
402 W. Washington St., W451 MS27
Indianapolis, IN 46204

If the applicant specifies hardship category under 405 IAC 2-8-2(b)(1), the applicant must provide proof to the Medicaid Estate Recovery Unit that the applicant would be eligible for TANF, Medicaid, SNAP, or SSI if they lose access to the asset(s) in the deceased recipient's estate. The Medicaid Estate Recovery Analyst's determination must show the eligibility result as if the applicant owned the asset and as if they did not own it.

Example:

A member and non-disabled son live together on a farm. The son works on the farm, and the member shares the farm income with their son. The property is in the members' name only and when the member dies, the property becomes subject to estate recovery. The son, who is beneficiary of the estate, applies for an undue hardship waiver claiming that without the income from the property, the son will become eligible for public assistance benefits. The Medicaid Estate Recovery Unit must review the documents to see if the son would be eligible for public assistance benefits. (The son does not need to file an application). The Medicaid Estate Recovery Analyst determines that if the son were to own the farm, they would not be eligible for public assistance benefits due to the income they would have from the farm. Without the farm and its income, the son would meet public assistance benefits eligibility requirements. Therefore, if the FSSA enforces its claim against the estate, the child will become eligible for public assistance benefits.

In the above example, assume that member and son do not live together. The son is employed, and the family receives public assistance benefits. When the member dies, the son files an undue hardship waiver application claiming that if they could be allowed to inherit the farm, they would no longer need public assistance benefits. The Medicaid Estate Recovery Analyst determination shows that if they owned the farm, they would lose public assistance benefits eligibility.

The undue hardship waiver applicant is responsible for providing all necessary verifications to the Medicaid Estate Recovery Unit at the address listed above. Failure to timely provide necessary information and documentation may lead to the denial of an undue hardship waiver.

Medicaid Estate Recovery Analysts should apply the usual verification requirements in an undue hardship waiver determination and inform the applicant in writing of the documentation that must be provided to substantiate the hardship claim. The Medicaid Estate Recovery Analyst will need to inform the applicant of the various types of acceptable verification; however, the responsibility for obtaining the verification rests solely with the applicant. Any undue hardships must be filed with the Estate Recovery Unit within ninety (90) calendar days of the date the executor or personal representative of the estate receives notice of the FSSA's claim. The Medicaid Estate Recovery Unit shall review and rule on the undue hardship waiver application within forty-five (45) calendar days after the receipt of a fully completed undue hardship waiver application. [13]

If an undue hardship waiver applicant claims that the only source of income comes from the income-producing asset in the estate, the Medicaid Estate Recovery Analyst must determine whether that income is less than the FPL. For the current annual FPL limits set by the Federal Government please refer to the following website: https://aspe.hhs.gov/poverty-guidelines for the current standards. For this determination, family units are defined as a group of people related by birth, marriage, or adoption who live together. In determining the amount of income to compare to the standard, the Specialist will consider:

- Gross income from employment
- All unearned income
- Net self-employment income and rental income in accordance with the methodologies used for the aged, blind, and disabled Medicaid categories. The applicant is responsible for providing the necessary verifications.

The Medicaid Estate Recovery Unit will decide to approve or deny the application and issue a Notice of Action, State Form 48260/OMPP 0004, to the applicant within forty-five (45) days of the application date. An applicant has 30 days to appeal this decision.

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1 IC 12-15-9

2 Social Security Act, Section 1917(b)(1), Indiana State Plan 4.17

3 Social Security Act, Section 1917(b)(1), Indiana State Plan 4.17

4 IC 12-15-2-19, H.R.2264 - Omnibus Budget Reconciliation Act of 1993, Subchapter B: Medicaid - Part I: Services, Part II: Eligibility

5 IC 12-15-9-2

6 IC 12-15-9-2

7 405 IAC 2-8-1(e)(2)

8 IC 29-1-7-7

9 IC 29-1-14-1

10 IC 29-1-14-1

11 405 IAC 2-8-2

12 405 IAC 2-8-2

13 405 IAC 2-8-2