

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

Contents

4700.00.00 ESTATE OF THE DECEASED (MED 1) ..... 1

4705.00.00 CLAIMS AGAINST THE ESTATE ..... 1

4710.00.00 NON-ENFORCEMENT OF CLAIM ..... 1

4715.00.00 FILING THE CLAIM ..... 2

    4715.05.00 RECOVERY FROM SPECIAL NEEDS TRUSTS ..... 2

4720.00.00 OPENING AN ESTATE ..... 3

4725.00.00 PRIORITY OF THE CLAIM ..... 3

    4725.05.00 COMPROMISE OF CLAIMS ..... 3

    4725.10.00 WAIVING ESTATE CLAIMS FOR UNDUE HARDSHIP ..... 4

#### **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.<sup>1</sup>

#### **4705.00.00 CLAIMS AGAINST THE ESTATE**

Under the provisions of the Social Security Act (42 USC 1396p) the state is required to recover certain Medicaid benefits correctly paid on behalf of an individual from the individual's estate.<sup>2</sup>

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 includes the Medicaid categories of QMB (MA L), SLMB (MA J) and QI (MA I).<sup>2</sup> 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<sup>3</sup>

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.<sup>4</sup>

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 by SSI standards.<sup>5</sup>

In addition, a claim may not be enforced against the personal effects, ornaments, or keepsakes of the deceased.<sup>6</sup>

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.<sup>7</sup> A claim may be waived if it is not cost effective to pursue the claim. If the cost of collection is equal to or exceeds the amount that can be collected, then 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, a notice to creditors is published in the legal notices of a local newspaper of general circulation. After published notification, there is a five-month period during which creditors of the deceased individual may submit claims against the estate. While the five-month time limit does not apply to governmental entities, it is important for the OMPP to submit claims as soon as possible. The OMPP should file the claim within five-months, whenever possible.

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

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 SPECIAL NEEDS TRUSTS**

Funds remaining in a "special needs trust", as defined in Section 2615.75.20.05, are to be recovered 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 trust 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 local DFR office manager with documentation of expenditures attached. The claim includes all Medicaid expenditures on behalf of the deceased, regardless of age.

#### **4720.00.00 OPENING AN ESTATE**

If an estate is not opened and the heirs have no intention of doing so, any interested party (such as a creditor) may petition the court to open an estate and to request the appointment of an administrator. Prior to petitioning the court, these cases should be evaluated by the DFR 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 should be referred to the FSSA attorney 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 DFR 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 DFR 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. In most cases for which a compromise is approved, there is some reason that the claim would be risky to pursue.

Some examples are when:

- Another claim arguably has priority such as expenses of last illness
- There is a 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.

**Procedure for approval:** The DFR or the FSSA attorney should submit to the Office of Medicaid Policy and Planning (OMPP), Attn: Estate Recovery Specialist, in writing, the following information:

- 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.

OMPP will forward the information to the collection section of the attorney general's office for final action.

#### **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 an heir.<sup>8</sup>

The decision to approve or deny an application for a waiver of the estate recovery claim will be made by the Office of Medicaid Policy and Planning based on information provided by the heir 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 an heir who wishes to apply for a waiver.

The hardship applicant will complete the form and return it, along with supporting documentation, to the attorney or to OMPP. The applicant must indicate one of four situations as the basis for their claim:

- Enforcement of the state's claim will cause the applicant to become eligible for public assistance

- Enforcement of the state's claim will cause the applicant to remain dependent on public assistance
- Enforcement of the state's claim will result in the complete loss of the applicant's sole source of income and the beneficiary's income does not exceed the Federal Poverty Level (FPL)
- Other compelling circumstance (the applicant must describe). This is reviewed on a case-by-case basis.

If the applicant indicates only the last category, other compelling circumstances, the application is to be immediately forwarded to the following:

Office of Medicaid Policy & Planning  
 Attn: Estate Recovery Specialist  
 Indiana Government Center South  
 402 West Washington St.  
 Indianapolis, IN 46204.

If any of the other three situations are checked by the applicant, the OMPP office must make the appropriate determination.

If the applicant specifies hardship category 2a or 2b, the OMPP must determine if the hardship 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 Specialist'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 father shares the farm income with his son. The property is in the member's name only and when the father dies, the property becomes subject to estate recovery. The son, who is beneficiary of the estate, applies for a hardship waiver claiming that without the income from the property, the child will become eligible for public assistance benefits. The DFR must make an eligibility determination for public assistance benefits. (The child does not need to file an application). The Specialist determines that if the applicant(s) 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, they meet public assistance benefits eligibility requirements. Therefore, if the state enforces its claim against the estate, the child will become eligible for assistance.

In the above example, assume that father and son do not live together. The son is employed, and the family receives public assistance benefits. When the father dies, the son files a hardship application claiming that if they could be allowed to inherit the farm, they would no longer need public assistance benefits. The Specialist's determination shows that if they owned the farm, they would lose public assistance benefits eligibility.

The hardship applicant is responsible for providing all necessary verifications to OMPP at the address listed above.

Specialists should apply the usual verification requirements in a hardship determination and inform the applicant in writing of the documentation that must be provided to substantiate the hardship claim. The specialist 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. The determination must be made within 30 days of receipt of the application and forwarded to OMPP. If the applicant does not provide necessary verification within 30 days, the Specialist must indicate such in a letter accompanying the application to OMPP. The letter should specify the verifications that the applicant failed to submit and a copy of the Specialist's notification to the applicant concerning the need for verifications should be included.

If a hardship applicant claims that the only source of income comes from the property in the estate, the Specialist 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 unit is defined as a group of persons 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 Office of Medicaid Policy and Planning will decide to approve or deny the application and issue a Notice of Action, State Form 48260/OMPP 0004, to the applicant within 45 days of the application date. A copy of the notice will be sent to the FSSA attorney. An applicant has the right to appeal the decision.

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<sup>1</sup> IC 12-15-9

<sup>2</sup> Social Security Act, Section 1917(b)(1), Indiana State Plan 4.17

<sup>3</sup> IC 12-15-2-19, H.R.2264 - Omnibus Budget Reconciliation Act of 1993, Subchapter B: Medicaid - Part I: Services, Part II: Eligibility

<sup>4</sup> IC 12-15-9-5

<sup>5</sup> IC 12-15-9-2

<sup>6</sup> IC 12-15-9-2

<sup>7</sup> 405 IAC 2-8-1(e)(2)

<sup>8</sup> IC 29-1-8-1