

# Ohio's Medicaid Estate Recovery Program



## What is the Medicaid Estate Recovery Program?

The Medicaid Estate Recovery Program, also referred to as MER, is a program through the Ohio Department of Medicaid which allows the Ohio Attorney General to seek recovery from the estates of deceased former Medicaid recipients for all correctly paid Medicaid benefits by placing a lien against the estate. Medicaid Estate Recovery is required by the federal government.



## Who is subject to Medicaid Estate Recovery?

A Medicaid recipient who owned real and/or personal property and other assets immediately prior to their death who:

- Was any age and permanently institutionalized --residing in a nursing home, Intermediate Care Facility/IID or a medical institution; or
- Was Age 55 or older who was NOT permanently institutionalized but received services through home and community-based Medicaid waiver services such as PASSPORT, Ohio Home Care Waivers, Assisted Living Waivers or received state Medicaid.



## What types of services are recovered through Medicaid Estate Recovery?

All medical services correctly paid on behalf of a Medicaid recipient are subject to recovery.



## What types of services are NOT subject to Medicaid Estate Recovery?

Medicaid services provided before January 1, 1995.

Medicaid benefits correctly paid after January 1, 2010, under the Medicare Premium Assistance Programs also known as Qualified Medicare Beneficiary (QMB), Specified Low-Income Beneficiary (SLMB) and Qualified Individuals-1 (QI-1).



## What is included in an estate?

All real and personal property and other assets which an individual had any legal title to or interest in at the time of death. Real property means land, including buildings or immovable objects attached permanently to the land. Personal property means any property that is not real property and includes but not limited to cash, jewelry, household goods, tools, life insurance policies, automobiles, promissory notes, etc.

After the death of a Medicaid recipient subject to Medicaid Estate Recovery, any property determined exempt or excluded when determining Medicaid eligibility for that individual is no longer exempt or excluded. It will be included.



## Will your home be subject to Medicaid Estate Recovery?

Yes, after your death, unless certain individuals live in the home. Those individuals include:

- A surviving spouse;
- Surviving child or children under age 21;

- Surviving blind or permanently and totally disabled child or children of any age; or your surviving sibling.



### **When will Medicaid Estate Recovery happen?**

Medicaid Estate Recovery may be sought only after the Medicaid recipient's death AND

- The death of the individual's surviving spouse, if any;
- There are no surviving children under age 21; and
- There are no surviving children who are considered blind or disabled (any age).



### **Is Medicaid Estate Recovery ever delayed or postponed?**

Medicaid Estate Recovery against the home may be postponed if the Medicaid nursing home resident or institutionalized person's brother or sister resided in the home and cared for them for one year prior to their admission to a nursing home AND has lived in the home on a continuous basis since then.

Recovery may be postponed if an adult caretaker child provided care that delayed institutionalization or going into a nursing home for at least two years immediately before institutionalization and has resided in the home on a continuance basis since that time. In both cases, the sibling or caretaker child will be required to provide certain documents to support their claim to delay or stop recovery.



### **Will the Ohio Department of Medicaid ever waive its right to Medicaid Estate Recovery?**

Yes. The Ohio Department of Medicaid director or designee may grant an undue hardship waiver on a case-by-case basis when recovery would cause an undue hardship on the individual's survivors. The survivor must show that the estate is the sole income-producing asset of the survivor or is the sole asset of the survivor; without the proceeds from the estate the survivor would become eligible for public assistance; or the recovery would deprive the survivor of necessary food, shelter, or clothing; or when the survivor provides clear and convincing evidence of contributions to the deceased individual, creating an equity interest in the property; the survivor is age 65 or older and financially dependent upon the receipt of the proceeds from the estate; if the estate proceeds are set aside for the benefit of a survivor who is totally and permanently disabled and is financially dependent upon the proceeds of the estate.

An undue hardship waiver may be permanent waiver, a temporary deferral or postponement of the recovery. Only an heir, potential heir, or someone with an interest in the asset can request the hardship waiver.



### **Can I transfer my interest in things I own during my lifetime?**

Yes, Medicaid allows for transfer of assets during your lifetime to a spouse, a surviving child under the age of twenty-one, or a surviving child over age twenty-one who is blind or permanently and totally disabled (as determined by Social Security), or to a sibling with an equity interest or an adult caretaker child.



**What happens if I give property or money away to family or friends before I get Medicaid?**

The State will look back five (5) years from the date of your application for Medicaid to determine if you gave away or transferred any real and/or personal property or assets. If you transferred or gifted anything during the five (5) year look back period, the value of the gift and/or transfers may be used to determine a period for which you would not be eligible for Medicaid. The State assumes any transfer is improper. The Medicaid recipient has an opportunity to explain why they transferred or gave away property. A determination of a penalty period based on the value of the improperly transferred property or assets will be determined for improper transfers. The Medicaid applicant/recipient who improperly transferred or gave away assets will NOT qualify for Medicaid during the penalty period. You will get written notice of your rights.



**What if I disagree with the penalty or determinations of the Ohio Department of Medicaid or my local Job and Family Services?**

Use the appeal section of your notice to appeal by asking for a state hearing. The notices should include their decision, the rule upon which the determination was made and appeal rights. Be sure to pay close attention to your appeal deadlines.

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*This information is provided by Southeastern Ohio Legal Services based on current Medicaid laws which are always subject to change. If you have questions about Medicaid Estate Recovery or Periods of Ineligibility and need to find your local legal aid program, call 1-800-589-5888.*

*The information on this flyer is not legal advice. If you are seeking representation or legal advice, please contact SEOLS. An attorney-client relationship does not exist between you and SEOLS.*

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**How to contact SEOLS:**

[www.seols.org](http://www.seols.org)

<b>Athens Office</b>	<b>740.594.3558</b> <b>800.686.3669</b>	<b>New Philadelphia Office</b>	<b>330.339.3998</b> <b>800.686.3670</b>
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