

Medicaid Estate Recovery

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Program information

What is the Medicaid Estate Recovery Program?

The Medicaid Estate Recovery Program (MERP) is required by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) to recover the costs paid by Medicaid for long-term care benefits received by certain Medicaid recipients. All states are federally mandated to implement the program. In Texas, the Health and Human Services Commission is the state Medicaid agency; the Department of Aging and Disability Services is the state's MERP implementation agency. The funds collected by the state will be used to pay for future Medicaid community-based and institutional long-term care services.

Who is affected?

The state may make a claim against the estate of a deceased Medicaid recipient for covered Medicaid long-term care services when the recipient:

- was age 55 years or older at the time the services were received; and
- applied for covered Medicaid long-term care services on or after March 1, 2005.

If you are a Medicaid recipient of any age who applied for any of the covered Medicaid long-term care services identified below before March 1, 2005, and were subsequently determined eligible and received services, your estate is permanently exempt from Medicaid estate recovery. If you first received these services on or after March 1, 2005, your estate may be subject to recovery, but only for the costs of any services provided after age 55.

What are covered Medicaid long-term care services?

Covered Medicaid long-term care services include the following services provided to a recipient age 55 years or older:

- nursing facility services;
- services in an intermediate care facility for persons with mental retardation (ICF/MR);
- Medicaid 1915c waiver programs:
 - Community Living Assistance and Support Services,
 - Deaf-Blind with Multiple Disabilities,
 - Home and Community-based Services,
 - Texas Home Living,
 - Consolidated Waiver Program, and
 - Community Based Alternatives (CBA), which includes Star Plus services;
- Community Attendant Services (CAS); and
- hospital and prescription drug services received while on the above programs.

Services received under the Primary Home Care (PHC) program are not subject to MERP.

I applied for QMB coverage so Medicaid would pay my Medicare premiums, deductibles, and co-pays. I received the MERP notification form. Will my estate be subject to recovery?

MERP does not apply to recipients whose only Medicaid coverage is QMB (Qualified Medicare Beneficiary). This notice is provided when you file a Medicaid application only for future reference should you choose at a later date to receive Medicaid covered long-term care services.

What happens if I refuse to sign the acknowledgement form when I apply for Medicaid covered services?

The acknowledgement (Form 8001) is an informational notice only. Your caseworker asks that you sign it as evidence that the state has met its responsibility to inform the applicant about MERP. You can still receive services if you don't sign the form. However, failure to sign the notice does not exempt your estate from recovery.

If I put my name on an interest list for services before March 1, 2005, does that exempt my estate from recovery?

No. Being placed on an interest list is not the same as applying for Medicaid covered long-term care services.

Property questions

What is considered an estate?

An estate for purposes of Medicaid estate recovery consists of the deceased Medicaid recipient's real and personal property that are subject to probate. Real property may include a home and other real estate. Personal property may include a car, cash, and other personal property. A probate estate **does not** include assets that pass directly to a beneficiary independently of the probate process. Some typical examples of assets that usually are not subject to probate include:

- insurance policy proceeds;
- retirement accounts, such as IRAs;
- pension plans;
- accounts at financial institutions, such as banks or credit unions, that are paid on death or accounts or joint accounts with right of survivorship;
- mutual funds; or
- deferred compensation plans.

Is property that I own in another state exempt from recovery?

Not necessarily. Any property you own, regardless of location, can be part of your estate and subject to recovery.

If both my husband and I enter a nursing facility, what happens to our home at the time of death?

This response assumes that the nursing facility stay for both spouses is paid for through the Medicaid program. When one spouse dies, no claim is filed against the deceased recipient's estate because estate recovery is not pursued when there is a surviving spouse. However, when the second spouse dies, unless an exemption exists at that time, a claim is filed against his or her estate to recover Medicaid payments made for the nursing facility care provided to the second spouse.

I want to will my home to my children. Can the state still take it?

Yes. All claims against an estate, including MERP claims, must be paid before property can be distributed as specified in a will. The state does not, however, require an heir to sell the deceased recipient's homestead if the claim can be paid by other funds.

Exceptions to claims filing

Are there any exceptions from recovering Medicaid costs?

A claim will not be filed under MERP if one or more of the following conditions exists:

- there is a surviving spouse;
- there is a surviving child or children under 21 years of age;
- there is a surviving child or children of any age who are blind or permanently and totally disabled under Social Security requirements;
- there is an unmarried adult child residing continuously in the Medicaid recipient's homestead for at least one year before the time of the Medicaid recipient's death.

Claims will only be filed when it is cost-effective. Claims are not considered cost-effective if:

- the value of the recoverable estate is \$10,000 or less;
- the recoverable amount of Medicaid costs is \$3,000 or less; or
- the cost of the sale of the property would be equal to or greater than the value of the property.

What are Undue Hardship Waivers?

MERP may waive the recovery of costs from an estate if recovery would result in undue hardship. The state will consider applications for an undue hardship waiver when:

- the estate property
 - has been the site of an operation of a family business, farm, or ranch for at least 12 months prior to the death of the Medicaid recipient,
 - is the primary income-producing asset of the heirs,
 - produces at least 50 percent of their livelihood, and
 - recovery by the state would affect the property and result in heirs losing their primary source of income;
- beneficiaries of the estate would be eligible for public or medical assistance if a recovery claim is collected;
- allowing one or more heirs to receive the estate enables them to discontinue eligibility for public or medical assistance;
- the Medicaid recipient received medical assistance as the result of being a crime victim; or
- other compelling reasons exist.

MERP may waive recovery of costs from a homestead under the following condition:

- Up to \$100,000 of the value of a homestead, as assessed by a tax appraisal district, may be exempt from Medicaid estate recovery for certain heirs of a deceased Medicaid recipient who have gross family incomes below 300 percent of the federal poverty level. If there are multiple heirs and not all meet this income threshold, the amount exempted from recovery will be proportionate to the qualifying heir(s)' share.

What are the actual incomes which represent 300 percent of the federal poverty level?

2011 Federal Poverty Level - 300% (Effective Date: 4/01/11)

Number of Persons in Family or Household	Monthly Income	Annual Income
1	\$2,723	\$32,670
2	\$3,678	\$44,130
3	\$4,633	\$55,590
4	\$5,588	\$67,050
5	\$6,543	\$78,510
6	\$7,498	\$88,970
7	\$8,453	\$101,430
8	\$9,408	\$112,890
For each additional person, <u>add</u>	\$955	\$11,460

How do I apply for an Undue Hardship Waiver?

MERP will include that information with the Notice of Intent to File a Claim. Waiver requests will not be considered unless written evidence of the hardship is submitted with the request.

Claims process

What will the heirs to the estate have to pay?

The amount of a MERP claim against the estate of a deceased Medicaid recipient is the amount paid for the benefit of a Medicaid recipient for covered long-term care services, including related hospital and prescription costs, received after the Medicaid recipient reached age 55. If the total of the claim exceeds the value of the estate, heirs will not be liable for the balance.

Are there any other allowable claim deductions that may reduce the amount owed?

Under MERP, certain deductions from the claim amount may be considered when sufficient supporting documentation is available. These include necessary and reasonable home maintenance expenses for vacant homes of institutionalized recipients. Costs such as real estate taxes, real estate insurance (excluding liability), utility bills, home repairs, and other maintenance expenses such as lawn care would be allowed.

In addition, deductions from the claim amount may be considered for necessary and reasonable expenses for care (including payment of personal attendant care) provided for the Medicaid recipient that enabled the recipient to remain in his or her home, thereby delaying the need for institutionalization. The documentation submitted must be paid invoices from a provider showing the allowable charges and payments made.

How will Medicaid costs be recovered?

The acceptance of Medicaid assistance provides a basis for the state to file a Class 7 probate claim. (This means there are six other classes of claims that receive priority in payment from the estate before Medicaid gets paid.) Examples of estate debts allowed prior to the MERP claim are funeral costs, estate administration costs, and secured claims such as mortgages or tax liens.

The state will make a claim in Probate Court against the estate of a deceased Medicaid recipient for the cost of covered Medicaid long-term care services received by certain Medicaid recipients on or after March 1, 2005. Medicaid cost recovery will follow claims procedures specified in the Texas Probate Code.

How will beneficiaries be notified of the state's intent to file a claim?

Within 30 days of the notification of the death of a Medicaid recipient, MERP will send a Notice of Intent to File a Claim to the decedent's estate representative, guardian, agent with durable power of attorney or medical power of attorney, or family members who have acted on behalf of the recipient, provided that their name and address are known. The notice will include a program overview, a questionnaire to be completed and returned, and an undue hardship waiver request form.

A Medicaid Estate Recovery claim will be filed within 70 days after MERP has actual notice of the death of a Medicaid recipient aged 55 years or older who received covered long-term care services. The claim will be presented to the estate personal representative (executor, administrator, or guardian) or filed by depositing it in the appropriate Probate Court and will include the amount of the claim, the date or dates of the covered Medicaid services provided, and a statement that to MERP's best knowledge the deceased Medicaid recipient had:

- no surviving spouse;
- no surviving child under age 21;
- no surviving child of any age who is blind or disabled; and

- no unmarried adult child residing continuously in the decedent's homestead for at least one year prior to the time of the Medicaid recipient's death.

The claim will also state that, to the best knowledge of MERP, no undue hardship exists and that recovery will be cost-effective.

A claim may be filed in accordance with applicable provisions of the Texas Probate Code, including §298, Claims Against Estates of Decedents, which allows unsecured claims to be presented at any time before the estate is closed or within four months of receipt of notice from the estate administrator.

If I received Medicaid covered services in another state as well as in Texas, which state will file a claim?

Both states may file a claim. The probate court will determine how to divide the estate between the competing claims.

If I applied for services after March 1, 2005 but terminated these services sometime prior to my death, will MERP still file a claim?

Yes, a Medicaid long-term care recipient does not have to be receiving services at the time of death in order for MERP to file a claim.

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