

907 KAR 1:585. Estate recovery.

RELATES TO: KRS 205.520, 205.619, 304.14-640, 42 C.F.R. 430.10, 435.236, 42 U.S.C. 1396p(b)(1)-(4)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. 42 U.S.C. 1396p(b)(1)-(4) establishes minimum requirements for state plans for estate recovery actions. This administrative regulation establishes provisions relating to estate recovery.

Section 1. Definitions.

- (1) "Aged institutionalized individual" means a recipient age fifty-five (55) or older who received nursing facility (NF) services, intermediate care facility for individuals with an intellectual disability (ICF-IID) services, home and community based (HCB) waiver services, supports for community living (SCL) services, acquired brain injury (ABI) waiver services, ABI long-term care waiver services, or Michelle P. waiver services with payment for these services made, wholly or in part, by the Medicaid Program.
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "Estate" means:
 - (a) All real and personal property or other assets owned by the deceased recipient that would be included as probate property under Kentucky law; and
 - (b) All real and personal property or other assets in which the deceased recipient had legal title or interest at the time of death, to the extent of the recipient's interest, whether the asset was conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common survivorship, life estate, living trust or other arrangement.
- (4) "Estate representative" means the court appointed fiduciary or the fiduciary's attorney, the recipient family member or other interested party who represents to the department in writing that he or she is the representative for the estate.
- (5) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).
- (6) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).
- (7) "Period of institutionalization" means the period of time an aged institutionalized or permanently institutionalized individual received Medicaid services.
- (8) "Permanently institutionalized" means residing in a nursing facility or intermediate care facility for individuals with an intellectual disability for six (6) months or more.
- (9) "Recipient family member" means the surviving spouse, child or sibling of a deceased recipient.
- (10) "State plan" is defined by 42 C.F.R. 400.203.
- (11) "Surviving child" means a living child under age twenty-one (21) or a child who is blind or disabled as defined in 42 U.S.C. 1382c.

Section 2. Recovery.

- (1) The department shall seek recovery from the estate of a deceased recipient for a period of institutionalization.
- (2) The amount recovered shall not exceed the amount paid by the Medicaid Program on behalf of the deceased recipient for services received during a period of institutionalization.
- (3) The amount subject to recovery shall include:

- (a) The expenditures for:
 - 1. NF services pursuant to 907 KAR 1:022;
 - 2. ICF-IID services pursuant to 907 KAR 1:022;
 - 3. Home and community based (HBC) waiver services pursuant to 907 KAR 1:160;
 - 4. Supports for community living (SCL) services pursuant to 907 KAR 1:145;
 - 5. Acquired brain injury (ABI) waiver services pursuant to 907 KAR 3:090;
 - 6. ABI long-term care waiver services pursuant to 907 KAR 3:210; or
 - 7. Michelle P. waiver services pursuant to 907 KAR 1:835; or
- (b) Other costs for:
 - 1. Related prescription drugs, hospital services, and related physician services; or
 - 2. Medicare cost sharing or Medicare premiums.
- (4) The amount subject to recovery shall include a capitation payment made by the Medicaid Program to a managed care organization on behalf of the deceased recipient.

Section 3. Exemptions and Limitations.

- (1) Recovery shall not be made from the estate if the estate representative can verify to the department's satisfaction that there is a:
 - (a) Surviving spouse; or
 - (b) Surviving child.
- (2) Recovery shall not be made from the estate on any resources protected from consideration during the eligibility determination process based on payment issued by a long-term care partnership insurance policy.
- (3) The department shall waive estate recovery to the extent the recovery would work an undue hardship.
 - (a) Undue hardship shall exist if an asset subject to recovery is the sole income-producing asset, for example a family farm or business, conveyed to the surviving recipient family member. A sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.
 - (b) The estate representative shall apply for an undue hardship exemption by:
 - 1. Making a written request to the department within thirty (30) days of receipt of the notice provided in accordance with Section 7(3)(a) of this administrative regulation; and
 - 2. Verifying to the department's satisfaction that the criteria specified in paragraph (a) of this subsection exists for an undue hardship.
 - (c) The department shall issue a decision on an undue hardship exemption request within thirty (30) days of receipt of the request and supporting documentation.
 - (d)
 - 1. If the department denies the estate representative's request for an undue hardship exemption, the estate representative may request an appeal.
 - 2. If an appeal is requested, an administrative hearing shall be conducted in accordance with 907 KAR 1:563, Section 4, and KRS Chapter 13B.
 - (e) The department shall not conclude that an undue hardship exists if the deceased recipient created the hardship by resorting to estate planning methods under which the recipient illegally divested assets to avoid estate recovery.
- (4)
 - (a) The department may waive recovery if it is not cost effective to recover from the estate.
 - (b) The department shall not consider it to be cost effective to recover from an estate if the total date-of-death value of the estate subject to recovery is:
 - 1. Less than the administrative cost of recovering from the estate; or
 - 2. \$10,000 or less.
- (5)

- (a) The department may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir.
- (b) The estate representative shall submit to the department a written request for an exemption and provide verification to the satisfaction of the department.
- (6)
 - (a) A deceased recipient's estate shall be subject to recovery of Medicaid Program expenditures to the extent it is adjudicated through a final administrative appeal process or court action that the recipient qualified for Medicaid fraudulently.
 - (b) If the recipient qualified for Medicaid fraudulently, the exemptions or limitations established in this section shall not apply.

Section 4. Notification.

- (1) A general written notice regarding estate recovery shall be provided by the department to an aged institutionalized or permanently institutionalized individual, or an authorized representative acting on his or her behalf, at the time the individual requests coverage of NF services, ICF-IID services, HCB waiver services, SCL services, ABI waiver services, ABI long-term care waiver services, or Michelle P. waiver services under the Medicaid Program.
 - (2) When an aged institutionalized or permanently institutionalized individual who is receiving NF services, ICF-IID services, HCB waiver services, SCL services, ABI waiver services, ABI long-term care waiver services, or Michelle P. waiver services under the Medicaid Program dies, the Medicaid provider from which the recipient was receiving institutionalized services at the time of death shall be responsible for reporting the death to the local Department for Community Based Services office within ten (10) days of the date of death.
 - (3)
 - (a) Upon receipt of the notice of death specified in subsection (2) of this section, the department shall prepare and serve written notice of its intent to recover upon the estate representative.
 - (b) The estate representative shall be responsible for notifying individuals who are affected by the proposed recovery.
 - (c) If no estate representative exists, notice shall be provided to the family members or heirs if the recipient has provided the department with this information through the eligibility application process.
 - (4) The notice of intent to recover shall include:
 - (a) The action the department intends to initiate;
 - (b) The reason for the action;
 - (c) Exemptions and limitations to estate recovery as specified in Section 3 of this administrative regulation;
 - (d) Conditions that are considered an undue hardship exemption as specified in Section 3(3) of this administrative regulation;
 - (e) Procedures for applying for an undue hardship exemption as specified in Section 3(3) of this administrative regulation;
 - (f) The total amount subject to recovery; and
 - (g) The procedure for appealing a denial of an undue hardship exemption request.
- (20 Ky.R. 1741; 2348; eff. 2-2-1994; 22 Ky.R. 632; eff. 10-19-1995; 1114; 1531; eff. 1-5-2004; 35 Ky.R. 1637; 1802; 2747; eff. 7-6-2009; TAm 7-16-2013; TAm 9-26-14; Crt eff. 12-6-2019.)