

## **Kansas Medical Assistance**

### **Estate Recovery**

#### **What is Estate Recovery?**

Estate Recovery is a program mandated by federal law for the recovery of medical assistance payments from the assets and estates of recipients of medical assistance. Medical assistance is commonly known as Medicaid.

#### **Who is affected by Estate Recovery?**

This will depend on the nature of the care and the age of the recipient. If the recipient is 55 year of age or older, they would be subject to estate recovery. If the recipient is under 55 years of age, they would only be subject to estate recovery is they have been in long-term care at a nursing facility.

#### **What types of services are included in the medical assistance claim?**

The majority of the claims are for the following services:

- Nursing facility care;
- Home and Community based services; and
- Any related hospital care and prescription drug services provided while receiving nursing facility care or care at home or in a community setting.

#### **Are QMB services exempt?**

Beginning January 1, 2003, the agency will not establish a claim for persons who only received coverage under the Medicare Savings Program (QMB and LMB programs). If other programs are used, though, the agency would collect for all programs.

#### **How does Estate Recovery work?**

The Estate Recovery Unit uses agreements with heirs, claims against financial accounts, and the filing of claims in a court action. In certain situations after July 1, 2004, Estate Recovery could use a lien on the recipient's real property to preserve the medical assistance claim.

#### **How does a recovery through a probate action work?**

If the recipient owned an asset, the Estate Recovery Unit would review the case and determine whether the family has started a probate action. If there is a case filed, the Unit will file a claim in the probate case.

## **What happens if the family does not want to start a probate action?**

If the heirs of the deceased recipient choose to not initiate probate proceedings, ERU may start the probate action. In these instances, ERU determines whether to proceed with probate based on the amount of the agency's claim, value of estate assets, and the cost-effectiveness of the action.

## **I have left my property to my children in my Will. Can the state still take my property?**

Any creditor, including the State, has a legal right to recover its claim from the property in your estate. Creditors' claims usually take priority over any bequest to heirs or beneficiaries.

## **Can a probate action deal with property that the recipient owned with another person?**

Possibly. If the recipient received benefits on or after July 1, 2004, the agency could file a claim for those benefits against all property that the recipient had any legal title or interest immediately before or at the time of death to the extent of that interest. The main example of this type of property is joint tenancy property or property transferred by a pay-on-death provision. If the recipient only received benefits before July 1, 2004, then the agency's claim would only apply to property solely owned by the recipient.

## **Does anyone else do estate recovery in Kansas?**

Yes. Health Management Systems has a contract with the State to do part of the estate recovery program.

## **Can you file a lien against my real property?**

Yes. As of July 1, 2004, if the recipient is presently receiving inpatient care at a nursing home or other medical facility that is partially or totally paid by Medicaid, the agency could impose a lien on the recipient's home or real property.

## **When will you consider using a lien?**

If the recipient has received 6 months or more of inpatient care at a nursing home or other medical facility, the agency may determine that the recipient is not returning home. If the agency makes that decision, then the agency must notify the recipient of that conclusion and the agency's intent to impose a lien on the recipient's real property.

## **Can the recipient challenge the agency's decision about the lien?**

Yes. The recipient has 30 days from the date they received the agency's notice to request a fair hearing. At the fair hearing, the issue would be whether the recipient could reasonably be expected to return to their home.

**When would the lien be filed?**

If there is no challenge by the recipient, the lien would be filed after 30 days from the notice date. If there is a challenge, the agency would only file the lien if the fair hearing and any subsequent legal action ruled in their favor.

**Will the agency proceed with a lien or probate action when there is a spouse or a dependent child living in the home?**

No. If there is a surviving spouse, surviving child under the age of 21 years, blind or permanently disabled child according to Social Security criteria, the agency does not pursue a probate claim nor a lien at that time. You should check with the Estate Recovery Unit for specific rules.

**Can I request a waiver of the estate recovery action?**

Yes. The family may request a waiver of the estate recovery action under certain financial or hardship situations.

**How do I contact Estate Recovery?**

To contact Estate Recovery:  
Call 785-296-6707  
E-mail to [eeseru@khpas.gov](mailto:eeseru@khpas.gov)  
Mail to Estate Recovery Unit  
P.O. Box 2428  
Topeka, KS. 66601

To contact the contractor, Health Management Systems:  
Call 800-817-8617  
E-mail to: [KSestaterecovery@hms.com](mailto:KSestaterecovery@hms.com)  
Fax to 646-465-6530