

## **Title 23: Division of Medicaid**

### **Part 306: Third Party Recovery**

#### **Chapter 1: Third Party Recovery**

##### *Rule 1.8: Estate Recovery Requirements*

- A. The Division of Medicaid is required to seek recovery of payments for nursing facility services and Home and Community-Based Services (HCBS) as well as related hospital and prescription drug services from the estates of deceased Medicaid recipients who were fifty-five (55) or older when Medicaid benefits were received.
- B. The estate recovery provision applies to all Medicaid recipients in a nursing facility as of July 1, 1994, and all Medicaid recipients who entered the Home and Community-Based Waiver (HCBS) Program on or after July 1, 2001, who:
  - 1. Are age fifty-five (55) or older at time of death;
  - 2. Own real or personal property at time of death that can be considered an estate.
- C. Individuals who entered the HCBS Waiver Program prior to July 1, 2001, are “grandfathered in” and will not have their case referred to estate recovery unless the individual is discharged from the program and readmitted after July 1, 2001. In which case, “grandfathered” status is lost and the individual will be referred to estate recovery as a new HCBS client subject to the provision.
- D. Estate property includes any real or personal property owned by the recipient in its entirety or by shared ownership. Ownership of life estate interests or ownership of property that has been transferred into a trust is not subject to estate recovery.
- E. Real property includes the home and any other real property, including ownership of mineral rights and/or timber rights.
- F. Personal property includes ownership of any cash reserves, stocks, bonds, automobiles, RVs, mobile homes or any other type of property with value known to be owned by the recipient in full or in part.
- G. Estate recovery rules do not apply to a deceased recipient if at the time of death the recipient has:
  - 1. A legal surviving spouse living in the home, or
  - 2. A surviving dependent child under the age of twenty-one (21) living in the home, or
  - 3. A dependent blind or disabled child of any age living in the home, or

4. An undue hardship condition exists that causes estate recovery not to apply.

H. An undue hardship that would exempt estate recovery includes:

1. A blood relative living in the home who meets all of the following requirements:

- a) The relative resided in the home at least one continuous year immediately prior to the date of the Medicaid recipient's admission to a nursing facility or HCBS waiver program.
- b) The relative provided care to the Medicaid recipient which delayed entrance into a nursing facility or allowed the recipient to avoid entering a nursing facility.
- c) The relative has no other residence.

2. The property is a source of income for the family, such as a family farm.

I. The following assets and resources of American Indians and Alaska Natives are exempt from estate recovery:

- 1. Interest in and income derived from Tribal land and other resources currently held in trust Status and Judgment funds from the Indian Claims commission and the U.S. claims court.
- 2. Ownership interest in trust or non-trust property, including real property and improvements located on a reservation.
  - a) Reservation payments to special populations.

Source: P.L. 111-5 American Recovery and Reinvestment Act of 2009 § 5006, Miss. Code Ann. § 43-13-317.

History: New Rule moved from Miss. Admin. Code Part 306, Rule 1.8 eff. 08/01/2020.