

IMPORTANT INFORMATION REGARDING MEDICAID ESTATE RECOVERY

Pursuant to Section 369 of the Social Services Law, Medicaid provided on or after age 55, or when permanently residing in a medical institution, may be recovered from the assets in your estate upon your death.

For purposes of Medicaid estate recovery, regulations at 18 NYCRR Section 360-7.11 define estate as all of a decedent's real and personal property and other assets passing under the terms of a valid will or by intestacy, and any other real and personal property and other assets in which the decedent had any legal title or interest at the time of death, including such assets conveyed to a survivor, heir or assign of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement, to the extent of the decedent's interest in the property immediately prior to death.

Deferral of Estate Recovery

Estate recovery will be deferred during the lifetime of your surviving spouse, child who is certified blind or disabled or while there is a minor child under age 21.

Recovery against the home of a deceased Medicaid recipient will be deferred when one of the following relatives is residing in the home:

- A sibling with equity interest in the home who lived in the home for at least one year immediately before the recipient was institutionalized and who has lawfully resided in the home continuously since that time; and
- An adult child who lived in the home for at least two years immediately before the recipient was institutionalized, who provided care that may have delayed the recipient's institutionalization, and who has lawfully resided in the home continuously since that time.

Upon death of a surviving spouse or blind or disabled child, or upon a minor child reaching 21 years of age, or when the sibling or adult child no longer resides in the home or the property is to be sold, recovery will be pursued to the extent the person received assets from your estate.

Waiver of Estate Recovery

Recovery may be waived, in whole or in part, if it will result in undue hardship to the heir, survivor or beneficiary of your estate. For example, undue hardship may exist when the asset subject to recovery is the sole income-producing asset of the beneficiary, such as a family farm or family business and income produced by the asset is limited or when the asset is real property of modest value (i.e. having a value no higher than 50 percent of the average selling price in the county where the home is located, as of the date of your death) and the home is the primary residence of the

beneficiary. The beneficiary or representative of your estate must request a consideration of undue hardship within 30 days of the notification of the Medicaid estate claim.

Lien on Real Property

A post death lien will be placed on real property to the extent of your interest in the property at the time of death, unless recovery is deferred or waived under the conditions described above. Although a lien is placed on the real property, recovery against the property may also be deferred if:

- An heir or survivor has lawfully and continuously resided in the home, beginning prior to your death, and is unwilling to sell the property;
- The Medicaid claim cannot be paid in full unless the property is sold;
- The heir or survivor demonstrates the inability to obtain financing to pay the estate claim; and
- The heir or survivor enters into a written agreement with the Medicaid program to pay the amount of the claim in accordance with a reasonable payment schedule, subject to reasonable interest.

If you have any questions regarding estate recovery, contact the local department of social services office in the county where you reside.