

OTHER ELIGIBILITY REQUIREMENTS

RECOVERIES

liability. In any event recovery cannot exceed the amount that Medicaid paid.

The overpayment for federally non-participating (FNP) individuals is the total amount of Medicaid payments (fee for service or Managed care premiums) expended. The overpayment for Family Health Plus recipients is the total amount of premiums paid during the period of ineligibility.

When Medicaid is provided to a person with a legally responsible relative (LRR) who refuses or fails to make his/her income available to the A/R, an implied contract is created with the non-contributing LRR. The LRR may be responsible for Medicaid paid. Recovery for Medicaid paid may be pursued through court action. The LRR can be offered the opportunity to voluntarily reimburse the district before a court action is initiated. By clearly explaining the district's procedures, a court action may be avoided.

The cost effectiveness of pursuing recoveries for Medicaid paid must be determined. Cost effectiveness is based on a variety of factors, including but not limited to: the administrative cost of a court action; the amount of overpayment; the availability of income or assets from which to recover; and previous experience with the court.

Error! Bookmark not defined.If a non-custodial parent is meeting his/her medical support obligations under FCA § **Error! Bookmark not defined.** 413 and 416 such parent does not have an obligation to repay the cost of Medicaid provided to the child, assuming such Medicaid is otherwise correctly paid. A referral should not be made to Child Support to pursue such a recovery.

NOTE: This applies only to the parent's general obligation to provide medical support to a child; separate rules govern when Medicaid pursues a third-party recovery from a father for the mother and child's confinement and pregnancy-related expenses. (See **OTHER ELIGIBILITY REQUIREMENTS RECOVERIES CONFINEMENT AND PREGNANCY RELATED EXPENSES**).

See **OTHER ELIGIBILITY REQUIREMENTS RECOVERIES LIENS** for a discussion of recovery from the real property of an institutionalized individual. An institutionalized individual is an inpatient in a nursing facility, intermediate care facility for the

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mentally retarded, or other medical institution, who is not reasonably expected to be discharged from the medical institution to return home.

Limitations on recoveries from Personal Injury Settlements/Awards (effective for recoveries made on or after May 1, 2006):

- Only the portion of the personal injury settlement or award specifically allocated to compensate the Medicaid recipient for past medical expenses arising out of the personal injury is available to satisfy a 104-b lien. Any portion allocated to compensate the Medicaid recipient for pain and suffering, lost wages, and other non-medical damages is not available to satisfy a 104-b lien. A minor's personal injury settlement or award is also subject to this policy.
- To the extent that the lien amount exceeds the portion of the personal injury award or settlement specifically allocated to repayment of past medical expenses, the district's recovery of the lien will be reduced.
- 104-b liens are paid prior to funds being transferred to a supplemental needs trust for the benefit of the Medicaid recipient, insofar as the lien is partially or fully satisfied out of the portion of the personal injury settlement or award specifically allocated to compensate the Medicaid recipient for past medical expenses. Any other amounts of the settlement or
- awards are the Medicaid recipient's personal property and should be evaluated in accordance with resource and supplemental needs trust policies.

Medicaid Managed Care and Family Health Plus capitation payments made during a time after a recipient has either reported a change that makes him/her ineligible or requests his/her case closed may be recovered ONLY if the recipient accessed services from the managed care plan during that time.

NOTE: A recovery cannot be made for Medicaid correctly paid on behalf of a Medicaid recipient with a total asset long term care insurance policy certified under the New York State Partnership for Long Term Care in accordance with SSL 367-f.

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- The sections that follow discuss these forms of recoveries:
Liens; and
- Voluntary repayments.