

OTHER ELIGIBILITY REQUIREMENTS**RECOVERIES**

Description: Recovery is the repayment or taking back of funds expended for Medicaid.

Policy: A recovery may be made:

- from the estate (including non-probate assets) of a permanently institutionalized individual of any age;
- from the estate (including non-probate assets) of an individual who was 55 years of age or older when s/he received Medicaid;
- from a personal injury award or settlement;
- based upon a court judgment, for Medicaid incorrectly paid (including Family Health Plus);
- from a legally responsible relative who fails or refuses to make his/her income and resources, as appropriate, available to the Medicaid recipient (See **OTHER ELIGIBILITY REQUIREMENTS OWNERSHIP AND AVAILABILITY**);
- from the sale of real property of a permanently institutionalized individual (See **RESOURCES PERSONS IN MEDICAL FACILITIES TREATMENT OF REAL PROPERTY**) when a lien had been placed against the real property of such person pursuant to SSL 369(2)(a)(ii); or
- from a non-custodial parent who has a court order to pay cash medical support to the LDSS.

A recipient may elect to voluntarily reimburse a district for Medicaid correctly or incorrectly paid.

References: SSL Sect. 366(3)(a)
369

NYS Finance Law 18 (4&5)

General Business Law 453

Social Security Act 1917(b)

OTHER ELIGIBILITY REQUIREMENTS

RECOVERIES

Dept. Reg.	360-1.4 360-4.4 360-4.7 360-7.2 360-7.4 360-7.11
ADMs	09 OHIP/ADM-3 02 ADM-03 96 ADM-08 94 ADM-17 92 ADM-53 92 ADM-45 89 ADM-47 89 ADM-45
LCMs	94 LCM-89
GISs	10 MA/008 08 MA/031 06 MA/018 06 MA/022

Interpretation: Medicaid paid on behalf of a recipient age 55 or older or a permanently institutionalized individual of any age is recoverable from the recipient's estate (including non-probate assets) with certain exceptions (See **OTHER ELIGIBILITY REQUIREMENTS RECOVERIES** ESTATE RECOVERIES).

Medicaid/Family Health Plus which has been paid for an ineligible recipient is incorrectly paid and may be recovered. This may be done by:

- requesting voluntary repayment from the recipient for any incorrect payment; or.
- going to court to obtain a judgment that the payment was incorrectly made.

The amount of Medicaid/Family Health Plus incorrectly paid is calculated from the first day the recipient became ineligible for Medicaid, (including any Medicaid paid during the notice period, and pending a fair hearing decision). Medicaid paid prior to the day the

OTHER ELIGIBILITY REQUIREMENTS

RECOVERIES

recipient became ineligible is Medicaid correctly paid.

For federally-participating (FP) individuals, when Medicaid has been incorrectly paid because the recipient had excess income and, in the case of SSI-related individuals excess resources, that were not considered in the eligibility determination, the amount of Medicaid incorrectly paid is limited to the amount of the recipient's excess income/resources liability. The overpayment is restricted to the amount of the spenddown 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.

NOTE: Recoveries are not pursued from the parents of: children participating in one of the home and community-based waiver programs; pregnant minors; certified blind or certified disabled children who are 18 years of age or older; children under age 18 who are expected to be living separately from their parents' household for at least 30 days; and from the parents of a disabled child for Medicaid furnished for school-based medical care and services provided to such child under the IDEA as part of a free and appropriate education.

If a district has a legal basis for making a Medicaid recovery from a recipient of his or her estate, it may commence a court action pursuant to the Debtor and Creditor Law to undo transfers of assets by the recipient and have those assets returned to the recipient or his/her estate so that sufficient assets will be available to satisfy the district's claim. The Debtor and Creditor Law cannot be used to attempt to have assets returned to a Medicaid recipient for the purpose of making the recipient ineligible for Medicaid prospectively.

OTHER ELIGIBILITY REQUIREMENTS**RECOVERIES**

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.

Cash medical support court ordered to be paid by the non-custodial parent to the LDSS can be recovered from the non-custodial parent by using the Non-custodial Parent Billing Notice, OHIP-0029. Such recovery can be made administratively through the accounting or Medicaid unit. The Medicaid Medical Support Transmittal, OHIP-0030 must be sent to the CSEU for further action. Additional court appearances to recover money may be indicated if cost-effective.

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