

**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 of a permanently institutionalized individual of any age;
- from the estate 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**); or
- 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).
- from a non-custodial parent who has a court order to pay cash medical support to the LDSS.

**NOTE:** Effective January 1, 2010 Medicaid payments for Medicare cost sharing expenses made on behalf of any individual receiving benefits through the Medicare Savings Program, including: Medicare Part A and Part B premiums; Medicare deductibles, coinsurance and co-payments are exempt from estate recovery. Medicaid payment for all other services not related to Medicare cost sharing, continue to be subject to estate recovery. In addition, Medicare cost sharing payments made on behalf of individuals who are not enrolled in the Medicare Savings Program, continue to be subject to estate recovery.

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

**References:** SSL Sect. 366(3)(a)  
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Dept. Reg. 360-7.11

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ADMs	09 OHIP/ADM-3 02 ADM-03 92 ADM-53
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. Medicaid can only be recovered if there is no surviving spouse, and/or child of any age who is certified blind or certified disabled, and/or any surviving child under age 21.

If a recipient who is not permanently institutionalized (non PI) was 65 years of age prior to October 1, 1993, a claim may be made against the estate for the amount of Medicaid paid from the date the recipient became 65 until his/her death. If such recipient was less than 65, but more than 55 years of age as of October 1, 1993 then a claim may be made against the estate for the amount of Medicaid paid from the date the recipient became 55 years old or October 1, 1993, whichever is later.

The local social services district is a preferred creditor of the estate. After all debts (including Medicaid) of the estate are satisfied, the remainder goes to the beneficiary or beneficiaries designated by will or by law, if no will exists. The estate includes excess revocable burial funds or payments for burial space items that are not used.

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.
- 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 recipient became ineligible is Medicaid correctly paid.

For federally-participating (FP) individuals, when Medicaid has been

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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.

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