State of New Mexico
Human Services Department
Human Services Register

I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT
ESTATE RECOVERY

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED REGULATIONS

V. BACKGROUND SUMMARY
The Human Services Department is proposing to update Estate Recovery policy to implement provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the American Recovery and Reinvestment Act of 2009 (ARRA). Section 115 of MIPPA requires States to exempt Medicare cost sharing benefits (Part A and Part B premiums, deductibles, coinsurance, and co-payments) paid under the Medicare Savings Programs from estate recovery. Section 5006(c) of ARRA requires States to exempt specific income, resources, and property for American Indians and Alaska Natives. Additional changes were made to remove outdated language and define a homestead of modest value.

VI. REGULATIONS
These proposed regulation changes will be contained in 8.200.420 NMAC of the Medical Assistance Eligibility Manual. This register and the proposed changes are available on the Medical Assistance Division web site at http://www/hsd/state/nm/us/mad/registers/2010. If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 827-3156.

VII. EFFECTIVE DATE
The Department proposes to implement these regulations effective October 15, 2010.

VIII. PUBLIC HEARING
A public hearing to receive testimony on these proposed regulations will be held at 10:00 a.m. on Tuesday, August 31, 2010, in the South Park conference room, 2055 S. Pacheco St., Ste.500-590, Santa Fe, NM.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Kathryn Falls, Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m. on August 31, 2010. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: Magdalena.Romero@state.nm.us.

X. PUBLICATIONS

Publication of these regulations approved by:

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KATHRYN FALLS, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT POLICIES
PART 420 SPECIAL RECIPIENT REQUIREMENTS

8.200.420.12 THIRD PARTY LIABILITY: The New Mexico medicaid program (medicaid) is the payor of last resort. If resources are available from a third party, these health care resources must be used first. To ensure that these resource alternatives are used, an applicant/recipient assigns his/her right to medical support and payments to the human services department (HSD) and cooperates with the medical assistance division (MAD) in identifying, obtaining, and collecting medical support and medical care payments as a condition of eligibility. This section describes third party liability, HSD's responsibilities in identifying and collecting medical support and payments, and a recipient's responsibility to cooperate with HSD in obtaining medical support and medical payments.

A. **Required third party liability information:** During the initial determination or [~~redetermination~~] recertification of eligibility for medical assistance, the caseworker must obtain the necessary information from applicants/recipients to complete the third party liability (TPL) inquiry form.

(1) HSD is required to take all reasonable measures to ascertain the legal liability of third parties, including health insurers in paying for the medical services furnished to medicaid recipients [42 CFR 433.138(a)].

(2) HSD uses the information collected at the time of any [~~determination/redetermination~~] certification/recertification of eligibility for medical assistance to pursue claims against third parties.

B. **Availability of health insurance:** If an applicant/recipient has health insurance, the caseworker must collect all relevant information, including name and address of the insurance company; individuals covered by the policy; effective dates; covered services; and appropriate policy numbers.

(1) Applicants/recipients with health insurance coverage or coverage by a health maintenance organization (HMO) or other managed care plan (plan) must be given a copy of the TPL recipient information letter.

(2) If there is an absent parent, the [~~ISS~~] ISD caseworker may request the absent parent's social security number.

(3) The [~~ISS~~] ISD caseworker must determine if absent parents, relatives, applicants or any members of the household are employed and have health insurance coverage.

C. **Recipients with health insurance coverage:** An applicant/recipient is expected to be aware of his/her available health insurance coverage. An applicant/recipient must inform health care providers of this coverage and provide special billing forms for providers, if required. An applicant/recipient must also report change to or termination of insurance coverage to the local county income support division (ISD) office. If an applicant/recipient has health coverage through an HMO or plan, payment from medicaid is limited to applicable copayments required under the HMO or plan and to medicaid-covered services documented in writing as exclusions by the HMO or plan.

(1) If the HMO or plan uses a drug formulary, the medical director of the HMO or plan must sign and attach a written certification for each drug claim to document that a pharmaceutical product is not covered by the HMO or plan. The signature is a certification that the HMO or plan drug formulary does not contain a therapeutic equivalent that adequately treats the medical condition of the HMO or plan subscriber.

(2) Medical services not included in the HMO or plan are covered by medicaid only after review of the documentation and on approval by MAD-TPLU.

(3) An applicant/recipient covered by an HMO or plan is responsible for payment for medical services obtained outside the HMO or plan and for medical services obtained without complying with the rules or policies of the HMO or plan.

(4) An applicant/recipient living outside an HMO or plan coverage area may request a waiver of the requirement to use HMO or plan providers and services. An applicant/recipient for whom a coverage waiver is approved by the MAD-TPLU may receive reimbursement for expenses which allow him/her to travel to an HMO or plan participating provider, even if the provider is not located near the applicant/recipient's residence.

D. **Potential health care resources:** The [~~ISS~~] ISD caseworker must determine the presence of a source of health care if certain factors are identified during the application/reapplication interview.

(1) **Age of applicant/recipient:** Medicare must be explored if an applicant is over sixty-five (65) years old. Students, especially college students, may have health or accident insurance through the school.

(2) **Death of applicant:** Applications on behalf of deceased individuals must be examined for "last illness" coverage through a life insurance policy.

(3) **Presence of income sources:** Certain specific income sources are indicators of possible third party health coverage, which include:

(a) Railroad retirement benefits and social security retirement/disability benefits indicating eligibility for Title XVIII (medicare) benefits;

(b) Workers' compensation (WC) benefits paid to employees who suffer an injury or accident caused by conditions arising from employment. These benefits may compensate employees for medical expenses and lost income. Payments for medical expenses may be made as medical bills are incurred or as a lump sum award;

(c) Black lung benefits payable under the coal mine workers' compensation program, administered by the department of labor (DOL), can produce benefits similar to railroad retirement benefits if the treatment for illness is related to the diagnosis of pneumoconiosis. Beneficiaries are reimbursed only if services are rendered by specific providers, authorized by the DOL. Black lung payments are made monthly and medical expenses are paid as they are incurred; and

(d) Title IV-D payments or financial support payments from absent parents may indicate the potential for medical support. If a custodial parent does not have health insurance that meets a minimum standard, the court, in a divorce, separation or custody and support proceeding, may order the parent with the obligation of support, to purchase insurance for a child [45 CFR 303.31(b)(1); NMSA 40-4C-4(A)(1)(Cum. Supp. 1992)]. Insurance can be obtained through the parent's employer or union [NMSA 40-4C-4(A)(2)(Cum. Supp. 1992)]. A parent who is unemployed may be ordered to pay all or a portion of the medical or dental expenses. For purposes of medical support, the minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out-of-pocket expenses, co-payments, and plan requirements are the minimum standards of health insurance policies and managed care plans established for small businesses in New Mexico. See New Mexico Insurance Code.

(4) **Applicant/recipient has earned income:** Earned income usually indicates medical and health insurance made available by an employer.

(5) **Work history or military services:** Work history may indicate eligibility for other cash and medical benefits. Previous military service suggests the potential for veterans administration (VA) or department of defense (DOD) provided health care, including the civilian health and medical program of the United States (CHAMPUS). Within a forty (40) mile radius of a military health care facility, DOD eligibles must obtain certification of non-availability of medical services from the base health benefits advisor in order to be eligible for CHAMPUS.

(6) **Applicant/recipient's expenses show insurance premium payments:** Monthly expense information may show that recipients pay private insurance premiums or are enrolled in an HMO or plan.

(7) **Applicant/recipient has a disability:** Disability information contained in applications or brought up during interviews may indicate casualties or accidents involving legally responsible third parties.

(8) **Applicant/recipient has a chronic disease:** Individuals with chronic renal disease are probably entitled to medicare. Applications for social security disability may be indicative of medicare coverage.

E. **Communicating third party liability information:** Information concerning health insurance or health plans is collected, entered into the computerized eligibility system and transmitted to the medical assistance division third party liability unit (MAD-TPLU) by the [~~ISS~~] ISD caseworker. Information about policy terminations are forwarded to MAD-TPLU via memorandum. In all cases where TPL is verified to exist, a case file is created by the MAD-TPLU. TPL information, including names and addresses of insurance companies, is stated when possible at the time the provider verifies the client's eligibility for the date the services are provided.

(1) **Information exchange with county offices:** Information relating to accidents or incomplete information is transmitted to the MAD-TPLU directly.

(a) Information relating to potential or on-going malpractice suits is forwarded to MAD-TPLU via memorandum.

(b) If recipients receive a cash settlement, MAD-TPLU advises the appropriate county office or supplemental security income (SSI) office of the amount of cash received and the approximate date of receipt.

(2) **Information exchange with social security administration:** The MAD-TPLU receives TPL information from the social security office. This information is obtained on SSI applicants during initial eligibility application or eligibility redetermination. The social security office finds out if applicants have medical coverage through a third party and informs applicants of their obligation to cooperate with HSD in the pursuit of third party resources, and of their statutory assignment of medical support rights and payments for medical care to HSD.

(3) **Information exchange with the child support enforcement division:** The child support enforcement division (CSED) provides information to MAD-TPLU on cases identified by CSED as having health insurance [45 CFR 303.30(C)].

(a) MAD-TPLU refers cases to CSED when it learns that absent parents are not providing health coverage as required by court order or have health insurance available through employers but have not obtained it for their dependents as specified in the Child Support Enforcement Act of 1984, as amended.

(b) The New Mexico IV-D agency establishes paternity and obtains orders of support for medical payments. MAD-TPLU gives this agency information about lapses and changes of coverage as received by the MAD-TPLU. Notification takes place when the MAD-TPLU learns that claims for dependent children are rejected by absent parents' health insurance companies because the policies have been terminated, revised or no longer cover the children receiving IV-D agency services.

(4) **Information exchange with other departments or agencies:**

(a) The children, youth and families department (CYFD) provides information to MAD-TPLU to ensure the assignment of rights to medical support and payment is obtained on CYFD cases, such as subsidized adoptions and foster children cases.

(i) CYFD determines whether these individuals are covered by a health insurance policy or health plan and transmits this information to MAD-TPLU.

(ii) CYFD obtains the social security number of absent and custodial parents of medicaid eligible children or adolescents.

(b) MAD-TPLU performs data matches with CHAMPUS, worker's compensation, the highway department, wage data exchange (WPX) and private insurance companies to identify individuals who are covered by private health insurance or other liable third parties.

F. **Assignment of medical support:** As a condition of eligibility, HSD must require legally able applicants/recipients of benefits [42 CFR 433.146; NMSA 1978 27-2-28 (G)(Repl. Pamp. 1991):

(1) to assign his/her individual rights to medical support and payments. The assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf; and

(2) to assign the rights to medical support and payments of other individuals eligible for medicaid, for whom the applicant/recipient can legally make an assignment.

(3) The assignment of an individual's rights to medical support and payments to HSD occurs automatically under state law with the receipt of benefits. The actual signing of the application in and of itself does not constitute an assignment of the individual's rights to HSD.

G. **Refusal to assign medical support:** If a parent or legal guardian does not agree to assign his/her rights to receive third party medical support or payments, or refuses to cooperate with HSD in establishing paternity or providing information about responsible third parties, the child for whom that application is being made is still entitled to receive medicaid benefits, provided all other eligibility criteria are met.

H. **Cooperation with HSD:**

(1) As a condition of eligibility, recipient/applicant must cooperate with HSD in obtaining medical support and payments and in identifying and providing information about any health care coverage that he/she may have available to them [42 CFR 433.147; 45 CFR 232.42, 232.43; NMSA 1978 27-2-28(G)(3)(Repl. Pamp. 1991)]. Cooperation requirements include the following:

(a) help establish paternity for children born out of wedlock for whom individuals can legally assign rights;

(b) help obtain medical support and medical payments for themselves and other individuals for whom they can legally assign rights;

(c) help pursue liable third parties by identifying individuals and providing information to HSD;

(d) appear at a state or local office designated by HSD to give information or evidence relevant to the case, appear as a witness at a court or other proceeding or give information or attest to lack of information, under penalty of perjury; and

(e) refund HSD any money received for medical care that has already been paid. This includes payments received from insurance companies, personal injury settlements, and any other liable third party.

(2) **Waiver of cooperation:** The requirements for cooperation may be waived by HSD if it decides that applicants/recipients have good cause for refusing to cooperate. Waivers can be obtained for the following:

(a) establishing paternity for children born out of wedlock; or

(b) obtaining medical support and payments for an applicant/recipient or other individual for whom he/she can legally assign rights.

(c) to waive the requirement and make a finding of "good cause", HSD must be presented with corroborating evidence that cooperation is against the best interest of the individual, child(ren), or others.

(d) specific factors considered in making this determination include physical or emotional harm to child(ren), parent or caregiver relative, adoption proceedings, and potential for emotional impairment.

(3) **Penalties for failure to assign or cooperate:** An applicant/recipient who refuses to assign his/her individual right to benefits or to assign the rights of any other individual for whom he/she can legally make assignment, or who refuses to cooperate with HSD, is not eligible for medicaid or may have his/her eligibility terminated. In denying or terminating eligibility, HSD complies with federal notice and hearing requirements. See 42 CFR 431.200.

(4) **Sanctions for failure to refund payments:** An applicant/recipient will be immediately ineligible for benefits if HSD determines that he/she received funds in the form of insurance payments or settlement amounts from personal injury case awards and failed to refund the amounts paid for those services to HSD. Recipients whose eligibility has been revoked due to failure to refund a medicaid payment for medical care are deemed ineligible for future services for a period of not less than one [~~(1)~~] year and until full restitution has been made to HSD.

I. **Trauma diagnosis claims processing:** To help identify liable third parties who may have caused a injury to a medicaid recipient, MAD-TPLU has implemented an editing process in its claims processing system which permits the recognition of all claims with a trauma diagnosis [42 CFR 433.138(4)]. Trauma inquiry letters are mailed to recipients identified in the edit. The letters ask recipients to provide more information about possible accidents, causes of accidents, and whether legal counsel has been obtained. Failure to respond to these inquiries is considered a failure to cooperate and results in termination of medicaid benefits.

[~~J. **Medicaid estate recovery:** The New Mexico human services department (department) is mandated to seek recovery from the estates of certain individuals up to the amount of medical assistance payment made by the department on behalf of the individual. See Social Security Act Section 1917, as amended by the Omnibus Budget Reconciliation Act of 1993, Section 13612; NMSA 1978 Section 27-2A-1 et. seq. (Cum. Supp. 1994) the "Estate Recovery Act". This section provides a definition of estate and medical assistance, estates subject to recovery under this provision, recovery process, and waiver provisions.~~

~~(1) **Definitions used in medicaid estate recovery:** The following terms are used throughout this Section:~~

~~(a) "estate" means real and personal property and other assets of an individual subject to probate or administration pursuant the uniform probate code; and~~

~~(b) "medical assistance" means amounts paid by the department as medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act, or any successor act.~~

~~(2) **Estates subject to recovery:** The estates of medicaid recipients who meet the following criteria are subject to the provisions of the Medicaid Estate Recovery Act.~~

~~(a) Recipients who were fifty-five (55) years of age or older when medical assistance payments were made on their behalf for nursing facilities services, home and community based services, and/or related hospital and prescription drug services.~~

~~(i) For purposes of this section, "related hospital and prescription drug services" are defined as such hospital and prescription drug services received by the medicaid recipient fifty-five (55) years of age or older while he/she was receiving nursing facility or home and community-based services.~~

~~(ii) "Related hospital and prescription drug services" for qualified medicare beneficiaries include the medicare cost sharing amount paid to the extent that such amounts are for nursing facility services, home and community-based services, and related hospital and prescription drug services described above.~~

~~(b) Recovery from a recipient's estate will be made only after the death of the recipient's surviving spouse, if any, and only at a time that the recipient does not have surviving child(ren) who are less than twenty-one years of age or blind or disabled, as defined at 42 U.S.C. 1383c.~~

~~(c) Recovery under the provisions of the estate recovery regulations is limited to payments for applicable services received on or after October 1, 1993 except that recovery also is permitted for pre-October 1993 payments for nursing facility services received by medicaid recipients who were sixty-five (65) years of age or older when such nursing facility services were received.~~

~~(3) **Administrative process:**~~

~~(a) During the application or redetermination process for medicaid eligibility, the local county income support division (ISD) office will identify the assets of an applicant/recipient which may be considered as part of the applicant/recipient's estate. Information explaining estate recovery will be furnished to the applicant/recipient during the application or redetermination process.~~

~~(b) At the death of the medicaid recipient, the medical assistance division (MAD) or its designee will determine if recoverable assets exist and file a claim against the estate in the manner prescribed for creditors by the New Mexico probate code.~~

~~(c) MAD or its designee will send notice to the applicable probate court with jurisdiction over the matter and to the recipient's personal representative or successor in interest if it chooses to seek recovery. Such notice will contain the following information:~~

~~(i) statement describing the action MAD or its designee intends to take;~~

~~(ii) reasons for the intended action;~~

~~(iii) statutory authority for the action;~~

~~(iv) amount to be recovered;~~

~~(v) opportunity to apply for the undue hardship waiver, procedures for applying for a hardship waiver and the relevant timeframes involved;~~

~~(vi) explanation of the representative's right to request an administrative hearing and his/her right to be represented at the hearing by legal counsel, family member, friend, or other spokesperson; and~~

~~(vii) the method by which an affected person may obtain a hearing and the applicable timeframes involved.~~

~~(d) Once notified by MAD or its designee of the decision to seek recovery, it will be the responsibility of the recipient's personal representative or successor in interest to notify other individuals who would be affected by the proposed recovery.~~

~~(e) In situations where there is no personal representative or successor in interest, MAD or its designee will notify known family members or heir(s) of the proposed recovery.~~

~~(f) **Date of death reporting:** Income support specialists are required to enter appropriate termination codes in the event of the death of an eligible recipient. These codes are identified as follows:~~

~~(i) 244 - the member(s) listed below have died (system generated when date of death field is completed).~~

~~(ii) 544 - the member(s) listed below have died (worker generated when date of death is not known).~~

~~(iii) 557 - the head of the assistance group has died.~~

~~(iv) 572 - death of all members~~

~~(v) 50 (198 C system)~~

~~(vi) social security administration will report death information for individuals under the supplemental security income program via the SDX system (Code T01).~~

~~(4) **Waiver of recovery by the department:** The department may compromise, settle, or waive recovery pursuant to the Medicaid Estate Recovery Act if it deems that such action is in the best interest of the state and/or federal government.~~

~~(a) The department may waive recovery because recovery would work an undue hardship if the:~~

~~(i) deceased recipient's heir(s) would become eligible for assistance programs (such as AFDC or general assistance) and/or medical assistance programs (such as medicaid) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;~~

~~(ii) deceased recipient's heir(s) would be able to discontinue reliance on cash assistance programs and/or medical assistance programs if he/she received the inheritance from the estate;~~

~~(iii) assets subject to recovery are the sole income source for the heir(s) or are homesteads of modest value as defined herein; or~~

~~(iv) other compelling circumstances.~~

~~(b) Within ninety (90) days of the receipt of notice of the action MAD or its designee intends to take, the recipient's representative or successor in interest must apply for an undue hardship waiver of recovery.~~

~~(c) For purposes of this provision, "deprivation" is defined as the inability to pay for the basic provision of food, clothing, or shelter. Deprivation does not exist simply because the application of the Medicaid Estate Recovery Act may cause an inconvenience or restriction to the heir(s) current lifestyle.~~

~~(d) For purposes of this provision, a homestead of "modest value" is defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the recipient's death.~~

~~(e) For purposes of this provision, undue hardship does not exist if the individual created the hardship by resorting to estate planning methods by which the individual divested assets to avoid estate recovery. If the deceased recipient undertook estate planning within one year of the date of death, such as changing the form of title or encumbering the property, the department presumes that the resulting financial condition does not qualify for an undue hardship waiver. The provisions included in this paragraph may be waived if the recipient's representative~~

~~or heir(s) can prove to the department's satisfaction that estate planning was undertaken for a purpose other than to avoid estate recovery.~~]

[2-1-95, 11-15-95; 8.200.420.12 NMAC - Rn, 8 NMAC 4.MAD.425 & A, 7-1-01; A, 7-1-03; A, 10-15-10]

8.200.420.13 MEDICAID ESTATE RECOVERY: HSD is mandated to seek recovery from the estates of certain individuals up to the amount of medical assistance payments made by the HSD on behalf of the individual. See Social Security Act Section 1917 [42 USC 1396p(b): NMSA 1978, Section 27-2A-1 et seq. "Medicaid Estate Recovery Act".

A. **Definitions used in medicaid estate recovery:**

(1) **Estate:** Real and personal property and other assets of an individual subject to probate or administration pursuant to the New Mexico uniform probate code.

(2) **Medical assistance:** Amounts paid by the department for long term care services including related hospital and prescription drug services.

(3) **Personal representative:** An adult designated in writing who is authorized to represent the estate of the medicaid recipient.

B. **Basis for defining the group:** Medicaid recipients who were 55 years of age or older when medical assistance payments were made on their behalf for nursing facilities services, home and community based services, and related hospital and prescription drug services are subject to estate recovery.

C. **The following exemptions apply to estate recovery:**

(1) qualified medicare beneficiaries, specified low-income beneficiaries, qualifying individuals, and qualified disabled and working individuals are exempt from estate recovery for the receipt of hospital and prescription drug services unless they are concurrently on a nursing facility category of eligibility or on a home and community based services waiver; this provision applies to medicare cost-sharing benefits (i.e., part A and part B premiums, deductibles, coinsurance, and co-payments) paid under the medicare savings programs;

(2) certain income, resources, and property are exempted from medicaid estate recovery for American Indians and Alaska Natives;

(a) interest in and income derived from tribal land and other resources held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court;

(b) ownership interest in trust or non-trust property, including real property and improvements;

(i) located on a reservation or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S, Department of Interior; or

(ii) for any federally-recognized tribe located within the most recent boundaries of a prior federal reservation;

(iii) protection of non-trust property described in (a) and (b) is limited to circumstances when it passes from an Indian to one or more relatives, including Indians not enrolled as members of a tribe and non-Indians such as a spouse and step-children, that their culture would nevertheless protect as family members; to a tribe or tribal organization; or to one or more Indians;

(c) income left as a remainder in an estate derived from property protected in (2) above , that was either collected by an Indian, or by a tribe or tribal organization and distributed to Indians that the individual can clearly trace it as coming from the protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally-protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; and

(e) ownership interest in or usage of rights to items not covered by (a) through (d) above that have unique religious, spiritual, traditional, and or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

D. **Recovery process:** Recovery from a recipient's estate will be made only after the death of the recipient's surviving spouse, if any, and only at a time that the recipient does not have surviving child(ren) who are less than 21 years of age or blind or who meet the Social Security Administration’s definition of disability.

(1) Estate recovery is limited to payments for applicable services received on or after October 1, 1993 except that recovery also is permitted for pre-October 1993 payments for nursing facility services received by medicaid recipients who were 65 years of age or older when such nursing facility services were received.

(2) A recovery notice will be mailed to the personal representative or next of kin upon the recipient’s death with the amount of claim against the estate, information on hardship waivers and hearing rights.

(3) Responsibility to report date of death: It is the family or personal representative's responsibility to report the recipient's date of death to the ISD office within 10 days from the date of death.

E. **Recipient rights and responsibilities:**

(1) At the time of application or re-certification, a personal representative must be identified or confirmed by the applicant/recipient or their designee;

(2) Information explaining estate recovery will be furnished to the applicant/recipient, personal representative, or designee during the application or recertification process. Upon the death of the medicaid recipient, a notice of intent to collect (recovery) letter will be mailed to the recipient's personal representative with the total amount of claims paid by medicaid on behalf of the recipient. The personal representative must acknowledge receipt of this letter in the manner prescribed in the letter within 30 days of receipt.

(3) During the application or recertification process for medicaid eligibility, the local county ISD office will identify the assets of an applicant/recipient. This includes all real and personal property which belongs to in whole or in part to the applicant/recipient and the current fair market value of each asset. Any known encumbrances on the asset(s) should be identified at this time by the applicant/recipient or personal representative.

(4) MAD or its designee will send notice of recovery to the probate court, when applicable, and to the recipient's personal representative or successor in interest. The notice will contain the following information:

(a) statement describing the action MAD or its designee intends to take;

(b) reasons for the intended action;

(c) statutory authority for the action;

(d) amount to be recovered;

(e) opportunity to apply for the undue hardship waiver, procedures for applying for a hardship waiver and the relevant timeframes involved;

(f) explanation of the representative's right to request an administrative hearing; and

(g) the method by which an affected person may obtain a hearing and the applicable timeframes involved.

(5) Once notified by MAD or its designee of the decision to seek recovery, it is the responsibility of the recipient's personal representative or successor in interest to notify other individuals who would be affected by the proposed recovery.

(6) The personal representative will:

(a) remit the amount of medical assistance payments to HSD or designee;

(b) apply for an undue hardship waiver; see Subsection E below; and

(c) request an administrative hearing.

F. **Waivers:**

(1) **General:** HSD may compromise, settle, or waive recovery pursuant to the Medicaid Estate Recovery Act if it deems that such action is in the best interest of the state or federal government.

(2) **Hardship provision:** HSD or its designee may waive recovery because recovery would work an undue hardship on the heirs. The following are deemed to be causes for hardship.

(a) deceased recipient's heir(s) would become eligible for a needs-based assistance program (such as medicaid or temporary assistance to needy families (tanf) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(b) deceased recipient's heir(s) would be able to discontinue reliance on a needs-based program (such as medicaid or tanf) if he/she received the inheritance from the estate;

(c) assets subject to recovery are the sole income source for the heir(s);

(d) the homestead is worth 50 percent or less than the average price of a home in the county where the home is located based on census data compared to the property tax value of the home; and

(e) other compelling circumstances as determined by HSD or its designee.

[8.200.420.13 NMAC - N, 10-15-10]