

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Overview of Medicaid Estate Recovery

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals, and people with limited English proficiency.

Our Commitment to Justice

- We believe that to advance justice in aging, we must ensure that everyone has access to what they need as they age, without discrimination and regardless of race, gender, gender identity, sexual orientation, ability, language or country of origin.
- We push for policies that will ensure that those experiencing the greatest barriers to economic security, health care, and housing can exercise their rights and fully access the services and programs they need.

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Overview of Medicaid Estate Recovery

Federal Law

- Since 1993, federal law requires states to pursue certain Medicaid costs after an enrollee dies
- 42 U.S.C. § 1396p(b)(1)(B):
 - “In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual’s estate, but only for medical assistance consisting of—
 - (i)nursing facility services, home and community-based services, and related hospital and prescription drug services, or
 - (ii)at the option of the State, any items or services under the State plan (but not including medical assistance for [M]edicare cost-sharing or for benefits described in section 1396a(a)(10)(E) of this title).”

Scope of Recovery

- Who: Medicaid enrollee is at least 55 years old or is permanently institutionalized
 - States have the option to recover from younger individuals, but Florida does not
- Which services: Long-Term Services and Supports (LTSS)
 - Nursing facility services
 - Home and community-based services (HCBS); and
 - Related hospital and prescription drug services
- States have the option to include non-LTSS Medicaid services
 - Florida recovers for all Medicaid services to people age 55+
 - States may not collect payments for premiums or cost-sharing under Medicare Savings Programs (QMB, SLMB, QI)

Federal Limits

- Federal law prohibits recovery during lifetime of
 - Surviving spouse
 - Minor child (under age 21); or
 - Disabled child of any age (based on Social Security Administration standards)
- Defers claims against all heirs, even if only one heir is minor or disabled child.
- 42 U.S.C. § 1396p(b)(2)

State Discretion

- Florida's Medicaid Estate Recovery Act: Fla. Stat. 409.9101
- States must recover from probate estate but can choose to expand
 - Florida limits to the probate estate and the homestead law protects many homes
- State does not have to pursue collection if recovery would not be cost effective.
 - Florida's thresholds: Liquid assets \$100; Non-liquid assets \$1,000; Non-homestead real estate: \$50,000 (Medicaid State Plan 4.17-A [Liens and Adjustments or Recoveries](#))

Hardship Waivers

- States must establish procedures to waive recovery in case of hardship.
 - 42 U.S.C. § 1396p(b)(3)(A)
- Florida hardship waivers (Fla. Stat. 409.9101(8))
 - Heir resides at the Medicaid enrollee's home for 1 year before the enrollee's death & owns no other residence
 - Recovery would deprive the heir of shelter, clothing, food or medical care
 - The heir is the Medicaid-enrollee's sibling or child, resided with the enrollee for 1 year, and can document they provided full-time care which delayed entry into a nursing home
 - The cost involved in the sale of nonexempt property would be equal to or greater than the value of the property

Examples of Hardship Waivers

- Public Benefit Utilization (19 states)
- Deprivation of Necessities of Life (10 states incl. FL)
- Income Producing Asset, e.g., farm (36 states)
- Home of Modest Value (8 states)
- Caregiver Waiver (34 states incl. FL)
- Income-Based Waiver (8 states)
- Residing in deceased's home (17 states incl. FL)



Impact of Medicaid Estate Recovery

Medicaid Enrollees have Limited Resources

- Net Wealth Average: \$44,393
 - By quartile:
 - Minus \$14,236
 - + \$304
 - \$17,709
 - \$173,436
- Home Equity Average: \$27,364
 - By quartile:
 - Minus \$6,954
 - +\$8
 - \$12,880
 - \$98,694
- Source: Medicaid and CHIP Payment and Access Commission (MACPAC), [Chapter 3 of March 2021 Report to Congress](#)

Minimal Financial Benefit to States

- 2015-2019: states recovered less than 1% of national Medicaid fee-for-service LTSS expenditures (MACPAC, 2021)
- Florida recovered only 0.8% of LTSS spending in 2019
- [When States Recoup Medicaid Costs by Seizing Family Homes, Poor Families Suffer While State Budgets are Barely Affected](#), Justice in Aging

The Impact on Individuals and Families

- Discourages individuals from applying for critical benefits and getting the care they need
- Some are unaware of the policy and find out after it is too late to take action to protect property
 - Hardship waivers are rarely granted
- Harms the surviving family members
 - Hampers building intergenerational wealth & exacerbates racial wealth gaps
 - Disproportionately harms economically oppressed older adults and families & older adults who experience unpredictable medical crises



Questions?

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