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**ESTATE RECOVERY**

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**I. BACKGROUND**

**A. The Omnibus Budget Reconciliation Act of 1993 mandated that states recover certain Medicaid payments from the estates of deceased Medicaid beneficiaries. In July 1994, the North Carolina General Assembly passed G.S 108A-70.5 to implement an estate recovery program effective October 1, 1994.**

**B. The estates of Medicaid beneficiaries may be subject to estate recovery if the beneficiary applied or re-applied on or after October 1, 1994, and**

1. Is under age 55 and an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be discharged to return home, or
2. Is 55 years of age or older and is living in a medical facility and receiving medical care services, or home and community-based services (HCBS) to include Community Alternative Program (CAP), Innovations and Traumatic Brain Injury (TBI), or Personal Care Services (PCS).
3. Effective May 1, 2007 PCS claims for SA beneficiaries ages 55 and over are subject to Medicaid estate recovery.

**II. POLICY PRINCIPLES**

**A. Estate Recovery means a claim is filed against the estate of a deceased beneficiary to recover Medicaid dollars paid on behalf of the individual.**

1. It is important to understand that estate recovery does not include placing a lien on the property.
2. Recovery is not initiated until the beneficiary's death.
3. In some situations, recovery is waived. Please see V. below for information on estate recovery waiver.
4. Division of Health Benefits (DHB), Third Party Recovery Section (TPR) is responsible for collection activities after a claim is filed against the estate.
5. TPR works directly with the representative/administrator of the estate to ensure claims against an estate are paid to the extent the assets are available and in accordance with the order of payment in state law.

6. Medicaid is a **sixth**-class creditor.
7. The Income Maintenance Caseworker (IMC) must explain estate recovery to the applicant/beneficiary (a/b) or their representative at application and/or redetermination. This includes all individuals:
  - a. Age 55 and older in any aid program including Special Assistance (SA).
  - b. Under age 55 applying for Long - Term Care (LTC).
8. A qualified Long - Term Care Partnership policy provides the insured a resource disregard at application for LTC Medicaid or CAP and provides resource protection at estate recovery. The amount of the resource disregard is up to the amount paid out on behalf of the insured from the qualified Long - Term Care Partnership policy as of the date of application for LTC or CAP Medicaid. The resource protection at estate recovery is equal to the amount paid out by the policy on behalf of the insured as of the date of application for LTC or CAP Medicaid. See [MA-2230, Financial Resources](#), for instructions on how to calculate the resource disregard.

**B. Definition**

	<b>Group 1 Under age 55 <u>This is not applicable to SA recipients under age 55</u></b>	<b>Group 2 Age 55 or older</b>
<b>Who Falls in this Group:</b>	Beneficiaries <b>under age 55</b> who reside in a medical facility on a permanent or indefinite basis. Permanent or indefinitely means the individual cannot reasonably be expected to be discharged to return home to live.	Beneficiaries <b>age 55 or older:</b>  1. Living in a medical facility where Medicaid paid a portion of their cost of care, or  2. Received services under CAP or received Personal Care Services (PCS).
<b>Permanent or Indefinite Basis</b> Documentary evidence is used to make the determination that an individual is residing in a	Documentary evidence may include:  1. No plans for discharge are indicated on the FL-2, plan of care, hospital	N/A

<p>medical facility on a permanent or indefinite basis.</p>	<p>discharge summary or physician's statement, or</p> <p>2. The individual has already been in a medical facility for 6 months and there is no discharge plan for the near future.</p>	
<p><b>Payments Subject to Recovery:</b> DHB does not recover more than the amount paid on individual's behalf by the Medicaid program.</p>	<p>Recovery includes:</p> <p>1. Certain Medicaid claims paid for any period of time the beneficiary was budgeted for LTC after October 1, 1994, and</p> <p>2. Services received under CAP beginning at age 55.</p>	<p>Recovery includes:</p> <p>1. Certain Medicaid claims paid for any period of time the beneficiary was budgeted for LTC after October 1, 1994, and</p> <p>2. Claims paid for nursing facility cost of care, related hospital expenses while residing in a nursing facility, CAP services, PCS services and prescription drugs.</p>
<p><b>Explanation of Estate Recovery</b> The IMC is responsible for explaining estate recovery to an applicant.</p> <p>If an a/b chooses not to apply for Medicaid or withdraws their application after learning of possible estate recovery, treat as an inquiry or withdrawal. Follow application processing rules.</p>	<p>Explain the following:</p> <p>1. Who is subject to estate recovery, and</p> <p>2. What Medicaid payments are subject to recovery, and</p> <p>3. Medicaid does not recover prior to the death of the beneficiary, and</p> <p>4. Medicaid never recovers more than what was paid by Medicaid on an individual's behalf, and</p> <p>5. Estate Recovery Waiver rules.</p> <p>6. Appeal rights.</p>	<p>Same as Group 1.</p>

	<p>If the beneficiary or representative has other questions regarding Estate Recovery, refer them to Third Party Recovery.</p>	
<p><b>Assets Subject to Estate Recovery</b>  There are certain assets that <u>may</u> be subject to Estate Recovery at the time of the beneficiary's death.</p>	<p>Assets subject to recovery may include:</p> <ol style="list-style-type: none"> <li>1. <b>Real property</b>; such as the beneficiary's home site, income-producing property, Tenancy-In-Common, and life estates. <u>Please note</u>: When a life estate is measured by the life of someone other than the beneficiary who owns the life estate, the life estate does not end at the time of the death of the beneficiary but continues until the death of the person on whose life the life estate is measured. As a result, the life estate, in this situation is an asset that is subject to claims against the estate of the beneficiary.</li> <li>2. <b>Personal property</b>; such as motor vehicles and home furnishings, and</li> <li>3. <b>Liquid assets</b>; such as annuities and certain life insurance policies without a living beneficiary.</li> <li>4. For individuals with a qualified Long - Term Care Partnership policy, assets subject to estate recovery include all of the above and assets owned by the</li> </ol>	<p>Same as Group 1</p>

	<p>a/b immediately prior to death, including:</p> <ul style="list-style-type: none"> <li>• All real and personal property available for the discharge of debt in which the beneficiary had any legal interest at the time of death.</li> <li>• Assets conveyed to a survivor, heir or assignee.</li> <li>• Life estates and living trusts</li> <li>• Ownership interests in joint tenancy with rights of survivorship</li> <li>• Tenancy-In-Common</li> <li>• Any other arrangement</li> </ul>	
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### III. PROCEDURES

#### A. Notification Procedures

There are different notification requirements for individuals under the age of 55 and individuals age 55 or older. If notification forms regarding estate recovery are given at application and documented in the file a second notification is not necessary at redetermination, unless the individual has turned age 55. Medicaid is automatic for all Special Assistance (SA) facility beneficiaries. Therefore, each Special Assistance, (SA) applicant/beneficiary, regardless of age, or their representative must sign the [DMA-5052SA](#), State/County Special Assistance Applicant Medicaid Estate Recovery Notice. (Not applicable to SA/IH a/b). They will have signed DMA-5052, Your Estate is Subject to Estate Recovery, since they must first qualify for Medicaid before being approved for SA/IH).

Notification for:	Group 1 Under age 55	Group 2 Age 55 or older
PLA/SA/CAP LTC	<a href="#">DMA-5051</a> , possibly <a href="#">DMA-5053</a>	<a href="#">DMA-5052/DMA-5052SA</a>

	<p>1. A/B or their representative must sign the <a href="#">DMA-5051</a>, Your Estate May Be Subject to Medicaid Recovery. This form is notice to the a/b explaining that they may be subject to estate recovery and that a determination must be made whether the a/b is considered living in a facility on a permanent or indefinite basis.</p> <p>2. If the a/b or their representative refuses to sign, document this on the <a href="#">DMA-5051</a>, and in the case.</p> <p>3. Document in the case that the notice was given or mailed to the a/b and file a copy of the form in the case.</p> <p>4. Do not delay approval of the application while making the determination of whether the stay is permanent or indefinite.</p> <p>5. If the placement is found to be permanent or indefinite, mail the <a href="#">DMA-5053</a>, Your Estate Is Subject to Medicaid Recovery, which explains the decision and appeal rights.</p> <p>6. File a copy of the <a href="#">DMA-5053</a> in the case. No further action is required at this time.</p>	<p>1. A/B or their representative must sign the <a href="#">DMA-5052</a>, Your Estate Is Subject To Medicaid Recovery, or the <a href="#">DMA-5052SA</a>, State/County Special Assistance Applicant Medicaid Estate Recovery Notice, if the a/b is SA. Provide a signed copy of the <a href="#">DMA-5052</a>, or the <a href="#">DMA-5052SA</a>, to the applicant and/or their representative and retain one copy for the case. This is a general notice that explains the a/b is subject to estate recovery.</p> <p>2. If the a/b or their representative refuses to sign, document this on the <a href="#">DMA-5052</a> or the <a href="#">DMA-5052SA</a> and in the case.</p> <p>3. Document in the case that the notice was given or mailed to the a/b and file a copy of the form in the case.</p> <p>4. No further action is required at this time.</p>
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**B. Determination of “Permanent or Indefinite Basis” for Beneficiaries Under age 55 (Group 1 Above)**

Living in a medical facility on a permanent or indefinite basis means the individual under the age of 55 cannot reasonably be expected to be discharged to return home. This determination is based on documentary evidence. This does not mean an

individual would never be able to return home. The local agency is responsible for making the determination that the a/b cannot reasonably be expected to be discharged home. There are several ways to establish this.

1. Initial Determination

<p><b>Review the FL-2 or other documentary evidence:</b>          Verify whether it contains a specific discharge plan/date or period of time that care in an institution is needed. Other documentary evidence includes the nursing facility's plan of care, <b>level of care documentation</b>, hospital discharge summary/planner's report or a physician's statement.</p> <p>For example, an FL-2 may indicate placement required for 5 months to provide care and physical therapy for an individual who is recovering from a broken hip. This indicates a plan for discharge in 5 months. Therefore, the stay is not considered permanent or indefinite.</p>	
<p><b>When the FL-2 or other documentary evidence does not indicate a specific discharge plan/date:</b></p> <p>The person is considered permanent or indefinite and cannot be reasonably expected to be discharged home.</p>	<p><b>When the FL-2 or other documentary evidence indicates a specific discharge date to the home or reasonable plans for discharge:</b></p> <ol style="list-style-type: none"> <li>1. Take no further action at this time.</li> <li>2. Create a task for review at the projected date of discharge or at the next review, whichever comes first. For keying instructions, refer to job aid, "Creating Tasks".</li> </ol>

2. Determination at next review or task review date

<p><b>On the flagged date or next review:</b></p> <ol style="list-style-type: none"> <li>1. Verify the beneficiary's current living arrangement. If the individual was discharged to return home to live, placement was not permanent and estate recovery does not apply.</li> <li>2. No further action is required.</li> </ol>	
<p><b>If the individual is still residing in the facility:</b></p> <ol style="list-style-type: none"> <li>1. Consider that the individual cannot reasonably be expected to be discharged to return home</li> </ol>	<p><b>If no medical documentation of a specific discharge plan/date is provided or the individual is still residing in a facility at the time of the review:</b></p>

<p>unless documentation of specific plans and a date for discharge is provided from one of the sources listed in III.B.1.</p> <p>2. Document the decision in the case.</p>	<p>1. Consider that the individual cannot reasonably be expected to be discharged to return home.</p> <p>2. If the beneficiary in the medical facility dies before the determination has been made, assume the placement was permanent.</p> <p>3. Document the decision in the case.</p>
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**C. Reconsideration Review of “permanent or indefinite status”**

The beneficiary or their parent/guardian/responsible person acting on behalf of the beneficiary may request reconsideration of the determination that the individual cannot reasonably be expected to be discharged to return home.

1. The beneficiary or their parent/guardian/responsible person acting on behalf of the beneficiary may request the reconsideration review in writing by completing the back page of the DMA-5052, Your Estate Is Subject to Estate Recovery.
2. The request is forwarded to the Department of Health and Human Services Hearings Office within 30 calendar days of the date of the notification.
3. If the request is forwarded to the Local Agency, the Local Agency must send the request, including evidence supporting the county’s decision, to the Department of Health and Human Services Hearings Office within 30 calendar days of receipt of the request for a reconsideration review.
4. Within 30 calendar days of receipt of reconsideration review, the Hearings Office shall establish a reconsideration date and conduct a review of:
  - a. All evidence considered by the Local Agency in making a determination of permanent institutionalization, and
  - b. Information provided to the Hearings Office, in writing or by telephone conference with the beneficiary or an individual acting on the behalf of the beneficiary.
5. The estate recovery administrator notifies the beneficiary or parent/guardian/responsible person acting on behalf of the beneficiary in writing within 15 calendar days of the date of the reconsideration review. If the beneficiary disagrees with the decision of the reconsideration review, they may appeal to the Office of Administrative Hearings (OAH) within 60



calendar days from receipt of the reconsideration review decision. If no appeal to OAH is filed, the decision is final.

**IV. ESTATE RECOVERY PROCEDURES WHEN A BENEFICIARY DIES**

**A. When a County Learns of the Death of a Beneficiary**

1. Update the “Birth and Death Details” evidence in NC FAST. For keying instructions, refer to job aid, “Process Estate Recovery”.
2. Close the Product Delivery Case (PDC) of the deceased beneficiary.
3. Send the DSS-8110, “Your Benefits are Changing.”

Failure to close the case timely may prevent timely generation of the estate recovery invoice or filing of a claim.

**B. Invoices/claims**

1. Approximately 30 days after the date of death, NC Tracks will generate three invoices itemizing the amounts Medicaid paid that are subject to estate recovery. The estate recovery invoices are mailed to DSS weekly.
2. An invoice may be generated for some deceased beneficiaries who applied for Medicaid prior to October 1, 1994 and received Medicaid continuously to the date of death.
3. If a beneficiary’s Medicaid is terminated prior to their death, an invoice will not be generated. TPR will pursue estate recovery for those individuals upon notification by the Local Agency.
4. If the Local Agency learns of the death of a former beneficiary, it’s important to provide TPR with the beneficiary’s information in order for TPR to begin the manual recovery process. Contact TPR at 866-455-0109 and provide the beneficiary’s name, Medicaid ID, and date of death.

<b>Review the Benefit History Screen in NC FAST</b>	
<p><b>If the deceased individual received Medicaid (in any aid program category, including MQB) continuously beginning prior to October 1994 and there is no new application:</b></p> <p>1. Return the invoice within 10 days to TPR.</p>	<p><b>If the deceased lost eligibility and made a new application or re-application for Medicaid on or after October 1, 1994:</b></p> <p>Proceed with estate recovery procedures.</p>

<p>2. Note on the invoice the deceased is not subject to estate recovery because he applied for Medicaid prior to October 1, 1994 and received continuously until their death.</p>	
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**C. Instructions when the Local Agency receives the invoice:**

It is recommended that the Local Agency designate one person and a backup as an estate recovery coordinator/caseworker to receive all invoices. This simplifies procedures and tracking.

1. When the invoices are received, promptly review the case.
2. Review each case to determine if the deceased beneficiary received Medicaid continuously beginning prior to October 1, 1994, and what resources the deceased owned that may be subject to estate recovery.
3. Complete the [DMA-5056](#), Estate Recovery Information Form for every invoice received. It should include all information in the case that may be relevant to the recovery process. Include insurance information regarding any Long - Term Care Partnership policy the beneficiary owned at death. Provide the name of the insurance company, the insurance company mailing address, date of purchase, policy number, original value of the policy and the amount paid out on behalf of the beneficiary as of the date of application. See MA 2230, [Financial Resources](#), for instructions on how to apply the resource protection at estate recovery.
4. If the applicant died during the application process, in the field for the signer of the [DMA-5051](#), [DMA-5052](#), [DMA-5052SA](#) or [DMA-5053](#) form, enter the name and address of the person to whom the [DMA-5054](#), Medicaid Estate Recovery Claim, was or will be sent.
5. Forward to Third Party Recovery (TPR) within 30 days of the invoice date:
  - a. The completed [DMA-5056](#),
  - b. One copy of the invoice, and
  - c. Any requested documentation on the [DMA-5056](#). Include the following information regarding the qualified Long- Term Care Partnership policy: The name of the insurance company, company mailing address, issue date, policy number, original value and amount paid out on behalf of the

beneficiary as of the date of application. Attach a copy of the qualified Long - Term Care Partnership policy, if available.

Do not forward any forms or invoices to the clerk of court. All documentation is forwarded to the TPR unit.

6. If it is discovered that the beneficiary was eligible for Medicaid prior to October 1, 1994, and has had no break in eligibility since September 30, 1994, write "prior to 10/1/94" on the invoice and complete the [DMA-5056](#). The required fields are: name of beneficiary, Medicaid ID #, date of death, county worker, and date and telephone number of worker. Circle YES for the first question. Attach the Benefit History screen and send it to the TPR unit.
7. Mail the second copy of the invoice and the [DMA-5054](#), Medicaid Estate Recovery Claim, to the signer of the [DMA-5051](#), [DMA-5052](#), [DMA-5052SA](#) or [DMA-5053](#) form.
8. If the applicant dies during the application process, send the [DMA-5054](#) to the personal representative or family member of the deceased beneficiary. It is not necessary to send the notice and invoice via certified mail.
9. File a third copy of the invoice in the Local Agency case.

#### **D. Instructions for Supplemental Security Income (SSI) Beneficiaries**

1. SSI cases are terminated by the Social Security Administration (SSA). When you learn of the death of a SSI beneficiary who has not been terminated by Social Security, report the date of death promptly via the [DMA-5049](#), Referral to Local SSA Office.
2. When the SSA terminates SSI due to death, the date of death evidence is automatically updated. The deceased individual's case is also terminated. If the individual is dually eligible, this case will be listed on the Death Match Report for the IMC to reassess for Medicaid eligibility. An estate recovery invoice will be generated automatically.
3. Follow instructions for IV.C. above.

SSI beneficiaries who did not receive LTC or CAP services, but received PCS prior to death, may not have a local agency case available to review. If there is not a case available, write "no file" on the invoice and forward it along with the [DMA-5056](#) to TPR. It is the responsibility of TPR to obtain asset information that may be subject to recovery.

## V. WAIVER OF ESTATE RECOVERY

There are some circumstances when DHB does not recover from a beneficiary's estate.

### A. DHB waives recovery when:

1. The total assets in the estate are less than \$5000, or
2. The total Medicaid benefits paid is less than \$3000

### B. Undue Hardship Waiver

For Medicaid estate recovery purposes, an "undue hardship waiver" can be either full or partial. A partial waiver may be a waiver that applies to only some of the assets in the beneficiary's estate, or may be limited in duration, or both. A time-limited undue hardship waiver is also known as a "deferral."

### C. DHB defers estate recovery when:

1. the spouse of the Medicaid beneficiary is still living; or
2. the beneficiary has a surviving child, who is under age 21; or
3. the beneficiary has a surviving child of any age who is blind or disabled according to the Social Security Administration definition.
4. a qualified undue hardship applicant continues to meet the undue hardship criteria.

Estate Recovery will be deferred as long as one of the above conditions exists. When none of the four circumstances are present, the State Medicaid Agency will resume estate recovery. If recovery is deferred due to one of these conditions, the State Medicaid Agency may take legal measures to secure its claim against property of the Medicaid beneficiary's estate.

### D. Physician Disability Certification

A disabled surviving adult child who has reached full Social Security retirement age and for whom Social Security cannot make a disability determination because of their age, may have their disability certified by a physician.

1. Complete the "Physician Disability Certification for North Carolina Medicaid Estate Recovery Exemption for Surviving Disabled."
2. Mail to the Third - Party Recovery vendor for review at:

Division of Health Benefits  
HMS Estate Recovery Unit  
PO Box 18869  
Raleigh, North Carolina 27619-8869

3. Once approved, the surviving adult child will receive notification from the Third - Party Recovery vendor that the claim has been deferred until the criteria is no longer met by the surviving adult child.

**E. A qualified undue hardship applicant** includes only lineal descendants of the decedent, brothers and sisters of the decedent, lineal descendants of brothers and sisters and heirs of the decedent.

**F. Undue hardship exists when:**

1. Real or personal property included in the estate:
  - a. Is the sole source of income for a surviving heir, their spouse and related family members in their household and
  - b. The gross income available to the surviving heir, their spouse and related family members in their household is below 200% of the federal poverty level.

OR

2. Recovery would result in forced sale of the residence of a surviving heir who:
  - a. Is living in and has continuously lived in the property since the decedent's death and
  - b. Who lived in the property for at least 12 months immediately prior to and on the date of the beneficiary's death and
  - c. Who would be unable to obtain an alternate residence because the gross income available to the surviving heir, their spouse and related family members in their household is below 200% of the federal poverty level and assets are valued below \$12,000.

OR

3. Recovery would result in the sale of the residence of the qualified undue hardship applicant who:
  - a. Is living in and has continuously lived in the property since the decedent's death and

- b. Lived in the property for at least 12 months immediately prior to and continuously until the date of the decedent's death and
- c. Owns as a tenancy in common interest of at least 25% in the real property which is valued at less than \$100,000
- d. Acquired the interest at least 24 months prior to the Medicaid beneficiary's death, and
- e. Has gross income available to him and his or her spouse and related family members in his or her household which is below 200% of the federal poverty level and
- f. Has assets and his or her spouse and related family members in his or her household have assets, excluding the qualified undue hardship applicant's tenancy in common interest in the residence, valued below twelve thousand dollars (\$12,000)

**G.** An undue hardship waiver or deferral applies only during the lifetime of the qualified undue hardship applicant and only as long as the qualified undue hardship applicant continues to meet the criteria of one of the undue hardship definitions.

## **VI. CLAIM OF UNDUE HARDSHIP**

A claim of undue hardship must be made within 60 days of the date of the notice of the Medicaid claim. A claim of hardship must describe the financial circumstances of the surviving heir, and/or their dependents in the estate. The estate recovery administrator evaluates each claim of hardship based on documentary evidence submitted by the claimant. Inform the personal representative to submit a hardship claim to:

Division of Health Benefits  
HMS Estate Recovery Unit  
PO Box 18869  
Raleigh, North Carolina 27619-8869

### **A. Documentary Evidence**

Inform the personal representative to contact the Division of Health Benefit's Estate Recovery Administrator at (866) 455 – 0109 for a list of the documents that may be required for an undue hardship claim.

### **B. Hardship Claim Decision**

Each claim of undue hardship is evaluated within 90 calendar days from the date of receipt of a complete application and all necessary documentation. A written

decision is made within 10 calendar days after completing the review. If the surviving heir disagrees with the decision on a claim of hardship, they may appeal to the Office of Administrative Hearings (OAH) within 60 calendar days from the receipt of the decision. If no appeal to OAH is filed, the decision is final.