
ESTATE RECOVERY

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I. INTRODUCTION

A. Background

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. Beneficiaries Subject to Estate Recovery

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 **intellectual disabilities (ICF-IID)**, 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 **Special Assistance (SA)** beneficiaries ages 55 and over are subject to Medicaid estate recovery.

II. POLICY PRINCIPLES

A. Estate Recovery Explanation

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 refer to 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 **caseworker** must explain estate recovery to the applicant/beneficiary (a/b) or their representative at application and/or **recertification when applicable (in-person or telephone contact)**. This includes all individuals who are:
 - a. Age 55 and older in any aid program including 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.
 - a. 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.
 - b. 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.
 - c. **Refer to [MA-2230, Financial Resources](#)**, for instructions on how to calculate the resource disregard.

B. Definitions:

	Group 1 Under age 55 <u>This is not applicable to SA recipients under age 55</u>	Group 2 Age 55 or older
Who Falls in this Group:	Beneficiaries under age 55 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 aged 55 or older: 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).
Permanent or Indefinite Basis Documentary evidence is used to make the determination that an individual is residing in a medical facility on a permanent or indefinite basis.	Documentary evidence may include: 1. No plans for discharge are indicated on the FL-2, plan of care, hospital discharge summary or physician's statement, or 2. The individual has already been in a medical facility for 6 months and there is no discharge plan for the near future.	N/A
Payments Subject to Recovery: DHB does not recover more than the amount paid on individual's behalf by the Medicaid program.	Recovery includes: 1. Certain Medicaid claims paid for any period of time the beneficiary was budgeted for LTC after October 1, 1994, and 2. Services received under CAP beginning at age 55.	Recovery includes: 1. Certain Medicaid claims paid for any period of time the beneficiary was budgeted for LTC after October 1, 1994, and 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.
Explanation of Estate Recovery	Explain the following:	Same as Group 1.

<p>The caseworker is responsible for explaining estate recovery to the applicant when the application is completed in person or by telephone.</p> <p>NC FAST systematically generates and mails the DHB-5051/DHB-5051sp when the application is authorized, however, the caseworker may generate the form in NC FAST proforma if needed.</p> <p>If the individual chooses not to apply for Medicaid or withdraws their application after learning of possible estate recovery, treat it as an inquiry or withdrawal. Follow application processing rules.</p>	<ol style="list-style-type: none"> 1. Who is subject to estate recovery, and 2. What Medicaid payments are subject to recovery, and 3. Medicaid does not recover prior to the death of the beneficiary, and 4. Medicaid never recovers more than what was paid by Medicaid on an individual's behalf, and 5. Estate Recovery Waiver rules. 6. Appeal rights. If the beneficiary or representative has other questions regarding Estate Recovery, refer them to Third Party Recovery. 	
<p>Assets Subject to Estate Recovery 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"> 1. Real property: 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. 2. Personal property: such as motor vehicles and home furnishings, and 	<p>Same as Group 1</p>

	<p>3. Liquid assets: such as annuities and certain life insurance policies without a living beneficiary.</p> <p>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 a/b immediately prior to death, including:</p> <ul style="list-style-type: none"> • All real and personal property available for the discharge of debt in which the beneficiary had any legal interest at the time of death. • Assets conveyed to a survivor, heir, or assignee. • Life estates and living trusts. • Ownership interests in joint tenancy with rights of survivorship • Tenancy-In-Common • Any other arrangement 	
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III. ESTATE RECOVERY PROCEDURES AT APPLICATION AND RECERTIFICATION

A. Notification Procedures – at Application:

1. Caseworkers must explain Estate Recovery to applicants during telephone or in-person interviews.
2. The forms [DHB-5051/DHB-5051sp](#), [DHB-5052/DHB-5052sp](#), and [DHB-5052SA/DHB-5052SA-sp](#) can be generated manually if requested by the applicant,
 - Via NC FAST pro-forma,
 - or via the NC DHHS Forms Library link for each form.
3. Caseworkers are not required to generate these forms at application. When an application for Medicaid (PLA, LTC, SA, CAP, or PACE) is approved,

NC FAST automatically generates and mails the appropriate form based on the age of the applicant and the Medicaid program approved.

4. No signature is required for Estate Recovery forms.
5. The appropriate Estate Recovery form is determined by the age of the applicant and the Medicaid program approved.
 - a. Group 1 includes individuals under the age of 55 who must receive [DHB-5051/DHB-5051sp](#), Your Estate May be Subject to Medicaid Recovery.
 - b. Group 2 includes individuals aged 55 or older, who must receive [DHB-5052/DHB-5052sp](#), Your Estate is Subject to Medicaid Recovery.
 - c. Individuals who are eligible for SA automatically meet the eligibility requirements for Medicaid, regardless of age or living arrangement (adult care home or in home). Each SA a/b must receive [DHB-5052SA/DHB-5052SA-sp](#), State/County Special Assistance Applicant Medicaid Estate Recovery Notice.

B. Notification Procedures – at Recertification:

If notification forms regarding estate recovery are provided at application and documented on the case a second notification is not necessary at recertification unless the individual has turned age 55 since the last recertification or application.

C. Under age 55 – Facility Stay:

1. When an individual under the age of 55 enters a medical facility, it must be determined if the stay will be temporary or permanent/indefinite.
2. [DHB-5051/DHB-5051sp](#), Your Estate May be Subject to Medicaid Recovery provides 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.
3. Do not delay approval of the application while making the determination of whether the stay is permanent or indefinite (refer to III.D., below).
4. If the placement is found to be permanent or indefinite, mail the [DHB-5053](#), Your Estate Is Subject to Medicaid Recovery, which explains the decision and appeal rights.

5. **Maintain** a copy of the [DHB-5053](#) **with** the case. No further action is required at this time.

D. 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

- a. Review the FL-2, [DHB-2039, PHP Notification of Nursing Facility Level of Care Form](#), or other documentary evidence.

- (1) Other documentary evidence may include the nursing facility’s plan of care, level of care documentation, hospital discharge summary/planner’s report, or a physician’s statement.

- (2) Verify whether it contains a specific discharge plan/date or period of time that care in an institution is needed.

Example: The FL2 may indicate placement required for five months to provide care and physical therapy for an individual who is recovering from a broken hip. This indicates a plan for discharge in five months and is therefore not considered permanent or indefinite.

- b. When the documents do not indicate a specific discharge plan/date, the placement is considered permanent or indefinite and cannot be reasonably expected to be discharged home.

- c. When the documents do indicate a specific discharge date or reasonable plans for discharge:

- (1) Take no further action at this time.

- (2) Create a task **in NC FAST** for review at the projected date of discharge or at the next recertification, whichever is first.

For instructions to create a task, refer to NC FAST Job Aid: Creating Tasks.

2. Determination at next **recertification** or task review date:

Verify the beneficiary's current living arrangement.

- a. If the beneficiary was discharged to return home to live, placement was not permanent and estate recovery does not apply. No further action is required.
- b. If the beneficiary is still residing in the facility on the task review date:
 - (1) Consider that the individual cannot reasonably be expected to be discharged to return home unless documentation of specific plans and a date for discharge is provided from one of the sources listed in **III.D.1.** above.
 - (2) Document the decision in NC FAST.
- c. If no medical documentation of a specific discharge plan/date is provided or the beneficiary is still residing in a facility at the time of the next recertification:
 - (1) Consider that the beneficiary cannot reasonably be expected to be discharged to return home.
 - (2) Mail the [DHB-5053](#), Your Estate is Subject to Medicaid Recovery, to the beneficiary. Maintain a copy of the [DHB-5053](#) with the case record.
 - (3) If the beneficiary in the medical facility dies before a determination can be made, assume the placement was permanent.
 - (4) Document the decision in NC FAST.

E. 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 [DHB-5053](#), *Your Estate Is Subject to Estate Recovery*.
2. The request is forwarded to the Department of Health and Human Services (DHHS) Office of Administrative Hearings (OAH) within 30 calendar days of the date of the [DHB-5053](#), *Your Estate Is Subject to Estate Recovery*.
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 DHHS OAH within 30 calendar days of receipt of the request for a reconsideration review.
4. Within 30 calendar days of receipt of reconsideration review, the OAH 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 OAH, 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.
 - a. 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.
 - b. 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 instructions, refer to NC FAST Job Aid, "Process Estate Recovery".
2. Close the Product Delivery Case (PDC) of the deceased beneficiary.

3. Send the [DSS-8110](#), Notice of Modification, Termination, or Continuation of Public Assistance.

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 **the local agency** weekly.
2. An invoice may be generated for some deceased beneficiaries who applied for Medicaid prior to October 1, 1994 and received Medicaid continuously **until** the date of death. **When the local agency receives the Estate Recovery invoice for a deceased beneficiary, the caseworker must take the following steps:**
 - a. Review the beneficiary's Benefit History screen in NC FAST.
 - b. If the deceased beneficiary received Medicaid in **any** program, including MQB continuously and their coverage began prior to October 1994 with no new application dated October 1, 1994 or later:
 - (1) Return the invoice to TPR within ten calendar days.
 - (2) Note on the invoice that the beneficiary is not subject to estate recovery because they applied for Medicaid prior to October 1, 1994 and received Medicaid continuously until their death.
 - c. If the deceased beneficiary lost eligibility at any point and submitted a new application or re-application dated October 1, 1994 or later, continue with estate recovery procedures.
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 is 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 or by email at NCEstates@gainwelltechnologies.com and provide the beneficiary's name, Medicaid ID, and date of death.

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 [DHB-5056](#), Estate Recovery Information Form for every invoice received.
 - a. Include all information in the case that may be relevant to the recovery process.
 - b. 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.
 - c. 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, ensure that the [DHB-5051/DHB-5051sp](#), [DHB-5052/DHB-5052sp](#), [DHB-5052SA/DHB-5052SA-sp](#) or [DHB-5053](#) form, is provided to the person to whom the [DHB-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 [DHB-5056](#),
 - b. One copy of the invoice, and

- c. Any requested documentation on the [DHB-5056](#). Include the information regarding the qualified Long-Term Care Partnership policy. **Refer to IV.C.3. above.**
 - d. Attach a copy of the qualified Long-Term Care Partnership policy, if available.
 6. Do not forward any forms or invoices to the clerk of court. All documentation is forwarded to the TPR unit.
 7. 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 [DHB-5056](#).
 - a. The required fields are:
 - name of beneficiary,
 - Medicaid ID #,
 - date of death,
 - county worker, and
 - date and telephone number of worker.
 - b. Circle **YES** for the first question.
 - c. Attach the Benefit History print out and send it to the TPR unit.
 8. Mail the second copy of the invoice and the [DHB-5054](#), Medicaid Estate Recovery Claim, to the **individual who received** the [DHB-5051/DHB-5051sp](#), [DHB-5052/DHB-5052sp](#), [DHB-5052SA/DHB-5052SA-sp](#) or [DHB-5053](#) form.
 9. If the applicant dies during the application process, send the [DHB-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.
 10. **Maintain the** third copy of the invoice **with** 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.
 - a. The deceased individual's case is also terminated.
 - b. If the individual is dually eligible, this case will be listed on the Death Match Report for the caseworker to reassess for Medicaid eligibility.
 - c. An estate recovery invoice will be generated automatically.
3. Follow instructions in IV.C. above.
4. 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.
 - a. If there is not a case available, write "no file" on the invoice and forward it along with the [DHB-5056](#) to TPR.
 - b. 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 **\$50,000**, or
2. The total Medicaid benefits paid is less than **\$10,000**.

B. **Undue Hardship Waiver**

For Medicaid estate recovery purposes, an "undue hardship waiver" can be either full or partial.

1. 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.
2. A time-limited undue hardship waiver is also known as a "deferral."

C. **Deferrals**

1. DHB will defer estate recovery as long as at least one of the following conditions exist:

- a. the spouse of the Medicaid beneficiary is still living; or
 - b. the beneficiary has a surviving child, who is under age 21; or
 - c. the beneficiary has a surviving child of any age who is blind or disabled according to the Social Security Administration definition.
 - d. a qualified undue hardship applicant continues to meet the undue hardship criteria.
2. When none of the four circumstances are present, DHB will resume estate recovery.
 3. If recovery is deferred due to one of the conditions **listed above**, DHB 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."
 - a. **This form is provided to the beneficiary by the HMS Estate Recovery Unit.**
 - b. **If the individual contacts the local agency, refer them to HMS Estate Recovery Unit, 1-866-455-0109.**
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 (HMS) that the claim has been deferred until the criteria is no longer met by the surviving adult child.

E. 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 **\$25,000**.

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 them and their spouse and related family members in his or her household which is below 200% of the federal poverty level and
- f. Has assets and their spouse and related family members in their household have assets, excluding the qualified undue hardship applicant's tenancy in common interest in the residence, valued below twenty-five thousand dollars (\$25,000)

G. Duration of Undue Hardship Waiver or Deferral

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 (888) 245-0179 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.