Subject 111-3-8. ESTATE RECOVERY.

Rule 111-3-8-.01. Legal Authority.

In accordance with Title XIX of the Social Security Act, 42 U.S.C. § 1396p, the State of Georgia has defined a process to recover the cost of medical assistance payments from the estates of deceased Members. The Official Code of Georgia gives the state the authority to recover these monies. O.C.G.A. § 49-4-147.1. In addition, the recovery methodology must adhere to statutory provisions of the Georgia Revised Probate Code of 1998, O.C.G.A. Title 53.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.01
Authority: O.C.G.A. § 49-4-147.1.
History. Original Rule entitled "Legal Authority" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Aug. 17, 2004; eff. Sept. 6, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.02. Definitions.

(1) "Authorized representative" means a guardian or a person designated by the Member to act on his or her behalf during the Member's life.

(2) "Creditor" means an entity (person or institution) to whom an obligation is owed because a Member received something of value in exchange.

(3) "Debt" means a sum of money owed from one person to another, including the right of the creditor to receive and enforce payment.

(4) "Department" means the Georgia Department of Community Health, Division of Medical Assistance.

(5) "Discharge from the medical institution and return home" means a qualifying discharge, which involves the Member's dismissal from the nursing institution and/or facility for at least thirty (30) days wherein the Member's personal effects and bed are released at the same time of his or her discharge.

(6) "Equity interest in the home" means value of the property in which the Member holds legal interest beyond the amount owed on it in mortgages and liens.

(7) "Estate" means all real and personal property under the probate code, including real and personal property passing by reason of joint tenancy, right of survivorship, life estate, survivorship, trust, annuity, Individual Retirement Accounts, homestead or any other arrangement. Estate also includes excess funds from a burial trust or contract, promissory notes, cash, and personal property. Estates with a gross value of $25,000 or less are exempt from estate recovery.

(8) "Hearing" means a formal proceeding before an Administrative Law Judge or Probate Judge in which an aggrieved party affected by an action or an intended action of the Department shall be allowed to present testimony, documentary evidence, and argument as to why such action should or should not be taken.

(9) "Heirs" means heirs-at-law who are entitled under the statutes of intestate succession to property of a decedent and beneficiaries who are entitled to inherit the estate if there is a lawful will.

(10) "Lawfully residing" means permissive use by the owner/power of attorney at the law.

(11) "Lien" means a claim, encumbrance or charge against the Medicaid Member's real or personal property on account of medical assistance paid to the Member correctly under the State Plan. A Lien may be placed on the real property of a Member who is an inpatient of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other institution or a Lien may be placed on both real and personal property of a Member after the Member's death.

(12) "Long-term care" means a service provided in a long-term care facility or in the home, pursuant to federally approved home and community based services, as an alternative to institutionalization.

(13) "Medical assistance" means payment by the State's program under Title XIX of the Social Security Act or Medicaid program administered by the Department.

(14) "Member" means a person who has been certified as Medicaid eligible, pursuant to the terms of the State Plan, to have medical assistance paid on his or her behalf.

(15) "Member's home" means a true, fixed and permanent domicile and principal establishment to which the Member has the intention of returning to whenever absent.

(16) "Permanently institutionalized" means residing in a nursing facility or intermediate care facility for individuals with intellectual disabilities and developmentally disabled for six (6) consecutive months or more.

(17) "Personal representative" means an executor, administrator, guardian, conservator, committee, trustee, fiduciary, or other person having a status which by operation of law or written instrument confers upon such person a duty of distributing property to Heirs.

(18) "On a continuous basis" means that the qualifying relative lived with the Member in the Member's home at his or her principal place of residence during an uninterrupted timeframe. An absence of residence greater than six months is presumed to disrupt the continuity of residence.

(19) "Residing in the home for at least one or two years" means one is domiciled in the principal place of residence.

(20) "State Plan" means all documentation submitted by the Commissioner, on behalf of the Department, to and for approval by the Secretary of Health and Human Services pursuant to Title XIX of the federal Social Security Act of 1935, as amended.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.02
Authority: O.C.G.A. § 49-4-147.1.
History. Original Rule entitled "Definitions" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Aug. 17, 2004; eff. Sept. 6, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.03. Notification to Member or Their Heirs.

(1) If a debt is due pursuant to this section from the estate of a Member, the administrator of the nursing facility, intermediate care facility for individuals with intellectual disabilities, or medical institution in which the Member resided at the time of their death, the Medicaid case manager for community based services and/or the personal representative, if applicable, shall report the death to the Department within thirty (30) days of the death of the Member.

(2) If the personal representative of an estate makes a distribution either in whole or in part of the property of an estate to the Heirs, next of kin, distributes, legatees, or devisees without having executed the obligations pursuant to this section, the personal representative may be held personally liable for the amount of medical assistance paid on behalf of the Member, for the full value of the property belonging to the estate which may have been in the custody or control of the personal representative.

(3) When the Department receives notification of an affected Medicaid Member's death, a written notice will be provided to any known personal representative and any known Heirs which:

(a) Explains the terms and conditions of estate recovery and refers to the applicable statute and regulations;

(b) Advises of the Department's intent to recover the value of Medicaid benefits correctly paid on the Member's behalf from the Member's estate and states the amount;

(c) Explains that the Department's recovery action may include filing a lien on real property when recovery is delayed;

(d) Explains that the Heirs may file an undue hardship waiver and the procedures and time frames for filing the waiver;

(e) Advises the Heirs of their right to a hearing and the method by which they may obtain a hearing; and

(f) Includes a statement advising the amount of the claim may increase if there are additional Medicaid claims that have not yet been processed.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.03
Authority: O.C.G.A § 49-4-147.1.
History. Original Rule entitled "Notification to Member or Their Heirs" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Aug. 17, 2004; eff. Sept. 6, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.04. Recovery for Payments Made on Behalf of Medicaid-Eligible Persons.

(1) These regulations shall be construed and applied to further the intent of the Legislature to supplement Medicaid funds that are used to provide medical services to eligible persons. Estate recovery shall be accomplished by the Department or its agent filing a statement of claim against the estate or with the closest identifiable surviving family members of a deceased Medicaid Member or any person who has an interest in property of the deceased member. Recovery shall be made pursuant to federal authority in § 13612 of the Omnibus Budget Reconciliation Act of 1993 which amends § 1917(b)(1) of the Social Security Act, 42 U.S.C. 1396p(b)(1).

(2) Adjustment or recovery for all medical assistance and/or services pursuant to the State Plan will be from Medicaid Members:

(a) Who, at the time of death, were any age and an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disability, or other medical institution if the Member is required, as a condition of receiving services in the facility under the State Plan, to spend for costs of medical care all but a minimal amount of the person's income required for personal needs; or

(b) Who, at the time of death, were fifty-five (55) years of age or older when the Member received medical assistance, but only for medical services consisting of nursing facility services, personal care services, home and community based

services, and hospital and prescription drug services provided to Members in nursing facilities or receiving home and community based services.

(3) The Department shall provide written notice of the Estate Recovery program to Members at the time of application for medical assistance and the Members must sign a written acknowledgement of receipt of such notice. Notice will be given to Members thereafter at the annual redetermination. Members currently receiving medical assistance prior to the Estate Recovery program's effective date set forth in Paragraph (17) of this Rule will be notified at his or her annual redetermination. A notification by the Medicaid Eligibility Systems that the notice was sent and acknowledged by the Member and the Member's personal representative by U.S. mail or electronic means of communication for those who have elected to receive electronic communications to the last known address of the Member or the Member's personal representative shall be deemed to satisfy this notice requirement.

(4) The acceptance of public medical assistance, as defined by Title XIX of the Social Security Act, including mandatory and optional supplemental payments under the Social Security Act, shall create a debt to the agency in the amount recoverable under the State Plan. The Department shall be given priority status, upon filing a statement of claim in the estate proceeding if an estate proceeding has been filed. In addition, priority status attaches to the Department's interest regardless whether an estate proceeding has been initiated.

(5) The Department may amend the claim as a matter of right until the Member's estate has been closed.

(6) The Department's provider processing reports shall be admissible as prima facie evidence in substantiating the agency's claim.

(7) Any trust provision that denies recovery for medical assistance is void on and after the time of its making.

(8) Adjustment or recovery of debt will be made only after the death of the Member's surviving spouse, if any, and only at a time when the Member has no surviving child who is under the age of twenty-one (21), or a child who is blind or permanently and totally disabled pursuant to the eligibility requirements of Title XIX of the Social Security Act.

(9) With respect to a lien placed on the home of a permanently institutionalized Member, the Department will not seek adjustment or recovery of Medical assistance correctly paid on behalf of the Member until the following persons are not residing in the Member's home:

(a) A sibling of the Member with an equity interest in the home who was residing in the Member's home for at least one (1) year on a continuous basis immediately before the date that the Member was institutionalized; and

(b) A child of the Member who was residing in the Member's home for at least two (2) years on a continuous basis before the date that the Member was institutionalized and who has established to the satisfaction of the Department that he or she provided care that permitted the Member to reside at home rather than to become institutionalized.

(10) The sibling or child of the Member must demonstrate that he or she has been lawfully residing in the Member's home on a continuous basis for the periods described in Paragraphs (9)(a) and (b) respectively, since the date of the Member's admission to the medical institution, and must provide the Department with clear and convincing evidence to prove residency which may include, but not be limited to, receipts, mortgage statements, bills, mail forwarded to Member's address, or voter's registration. The sibling or child of the Member must demonstrate that he or she did not reside in any other residence except the Member's home during the periods of time set forth in Paragraphs (9)(a) and (b) respectively. The sibling or child shall maintain the burden of proof in all proceedings.

(11) No debt under this section shall be enforced against any property that is determined to be exempt from the claims of creditors under the constitution or laws of this state.

(12) The Department may delay or waive recovery from an estate if doing so would cause undue hardship for the qualified Heirs, as defined in Rule 111-3-8-.08. The personal representative of an estate and any Heir may request that the agency waive recovery.

(13) The state's right to full reimbursement of the costs of medical assistance shall not be diminished by the recovery of any judgment, settlement, or award of an amount less than the value of the original or settled claim. To enforce its rights, the state may intervene or join in any action or proceeding brought by a claimant against a third party. To aid in the recovery of the cost of medical assistance, the state shall have a first lien in the full amount of the costs of medical assistance against the proceeds from all damages awarded in a suit or settlement.

(14) Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. § 1396p, by a Member of such aid, or by their spouse, without adequate consideration are voidable and may be set aside by an action in court.

(15) Counsel fees, costs, or other expenses shall not reduce any third party recovery obtained by the state incurred by the Member or the Member's attorney.

(16) If, after the reported death of the Member, the Department is prohibited from Estate Recovery because of exemption conditions, the Department may postpone recovery until all exemption conditions are no longer present. An estate does not have to be open in order for the Department to execute its claim after all exemption conditions are no longer present. Termination of recovery will occur when all real and personal property included as part of the Member's estate is no longer accessible due to all estate property

having been depleted through payment of costs of medical care for the Member and the Member's spouse.

(17) The effective date of the Medicaid Estate Recovery Program is May 3, 2006. Adjustment or recovery shall apply to those costs associated with medical assistance and/or services a Member received on or after the effective date.

(18) To prevent substantial and unreasonable hardship, the Commissioner shall waive any claim against the first $25,000.00 of any estate subject to an Estate Recovery claim for the deceased Medicaid Member with a date of death on or after July 1, 2018.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.04
Authority: O.C.G.A. § 49-4-147.1, 42 U.S.C. 1396p.
History. Original Rule entitled "Recovery for Payments Made on Behalf of Medicaid-Eligible Persons" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Aug. 17, 2004; eff. Sept. 6, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.05. Recovery of Assistance; Probate.

(1) After receipt of notice of the death of an affected Member, the Department will file a claim against the estate for the full value of the Medicaid benefits paid on behalf of the Member.

(2) No action to recover a debt due by the deceased Member shall be commenced against the personal representative until the expiration of six (6) months from the date of qualification of the first personal representative to serve.

(3) Notwithstanding any other law, a claim filed for recovery of Medicaid assistance has priority in order of payment from the estate over all other claims, except the following:

(a) Years support for the family;

(b) Funeral expenses in an amount not to exceed ten thousand dollars ($10,000). However, this amount is zero (0) if the deceased Member has prepaid funeral expenses that were excluded as a resource for Medicaid eligibility;

(c) Necessary expenses of administration;

(d) Reasonable expensed of the deceased Member's last illness; and

(e) Unpaid taxes or other debts due the state or the United States. The category of Medicaid Estate Recovery is a debt due the state.

(4) The affidavit of a person designated by the Commissioner to administer this action is prima facie evidence of the amount of the claim.

(5) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a state claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(6) The personal representative must notify the Department in writing of the Member's death at least thirty (30) days before disbursing assets of the Member and shall not disburse assets prior to obtaining a release from the Department. Such notice must be sent to the Department via email at gaestaterecovery@dch.ga.gov or via mail at Georgia Department of Community Health, Office of Inspector General, Medicaid Estate Recovery Program, 19th Floor, 2 M.L.K. Jr. Drive, SW, Atlanta, GA 30334, or such other mailing address listed for the Department's headquarters as set forth on its website located at www.dch.ga.gov. The personal representative is personally liable for any incorrectly paid assets if the Department is not informed of the Member's death and assets are distributed to Heirs and/or creditors without having first obtained a release from the Department. The Department shall issue a release within ten (10) business days from the satisfaction of the claim with the Department.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.05
Authority: O.C.G.A. §§ 49-4-147.1, 53-7-42.
History. Original Rule entitled "Recovery of Assistance; Probate" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.
Amended: F. June 9, 2023; eff. June 29, 2023.

Rule 111-3-8-.06. Recovery of Assistance; No Estate.

(1) The administrator of the program may present an affidavit to a financial institution requesting that the financial institution release account proceeds to recover the cost of services correctly provided to a Member. The affidavit shall include the following information:

(a) The name of the deceased Member;

(b) The name of any person who gave notice that the Member was a Medicaid Member and that person's relationship to the deceased Member;

(c) The name of the financial institution;

(d) The account number;

(e) A description of the claim for estate recovery; and

(f) The amount of funds to be recovered.

(2) A financial institution shall release account proceeds to the administrator of the program if all of the following conditions apply;

(a) The deceased Member held an account at the financial institution that was in his or her name only;

(b) No estate has been, and it is reasonable to assume that no estate will be, opened for the deceased Member;

(c) The deceased Member has no outstanding debts known to the administrator of the program; and

(d) The financial institution has received no objections or has determined that no valid objections to release proceeds have been received.

(3) If proceeds have been released pursuant to this section and the Department receives notice of a valid claim to the proceeds that has a higher priority under O.C.G.A. 53-7-40 than the claim of this section, the Department may refund the proceeds to the financial institution or pay them to the person or government entity with the claim.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.06
Authority: O.C.G.A. §§ 49-4-147.1, 53-7-40.
History. Original Rule entitled "Recovery of Assistance; No Estate" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.07. Imposition of Liens.

(1) The basis for authority to impose liens is based on the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The TEFRA lien law provides that the agency can place a Lien on the available real estate of a Member who enters a nursing home and is "permanently institutionalized."

(2) The state may place a Lien on the Member's home when there is not a reasonable expectation that the Member will return home and when none of the following persons are living in the home:

(a) The Member's spouse;

(b) A child under twenty-one (21) years of age;

(c) A disabled child of any age; or

(d) A sibling with an equity interest in the home who has lived in the home for at least one (1) year before the Member entered the nursing home, and is lawfully residing in such home. The sibling must provide the State with clear and convincing evidence which demonstrates residency on a continuous basis and the sibling's equity interest. Additionally, the sibling must demonstrate that he or she did not reside in any other residence except the Member's home during the period of time specified in this subparagraph (2)(d). The sibling has the burden of proof in all proceedings.

(3) Liens may be imposed to protect recovery of benefits correctly paid to Medicaid Members when permitted by federal and state law. However, the use of lien authority requires prior notification to the Member or any known Heirs.

(4) The Department shall notify the Member and the authorized representative, if applicable, of its determination that the Member is permanently institutionalized and not reasonably expected to return home and its intent to file a Lien on Member's real property. Notice must include an explanation of liens and their effect on a Member's ownership of real property. A Lien may not be filed less than thirty-one (31) days from the date of the notice to the Member and after any hearing process has been completed, if a hearing is requested.

(5) A Member or his or her authorized representative may, within thirty (30) days after receipt of notice request an administrative hearing under this Rule 111-3-8-.07. A Member is deemed to have received notice within five (5) days from the date of the notice. Administrative hearings and appeals for Medicaid Members are governed by the procedures and time limits set forth in 42 C.F.R. § 431.200*et seq*. Only one (1) appeal shall be afforded on behalf of a Member, for each notice received. The administrative law judge shall make the determination if a Member can or cannot reasonably be expected to be discharged from the medical institution and returned home or if a specific exception set forth in 111-3-8-.07(2) applies.

(6) The Department or its agent shall file a notice of Lien with the recorder of the county in which the real property subject to the Lien is located. The notice shall be filed prior to the Member's death and shall include the following:

(a) Name and place of residence, including the street and county in which the property is located, of the real property subject to the Lien; or

(b) Legal description of the real property subject to the Lien.

(7) The Department shall file one (1) copy of the notice of Lien with the local DFCS office in the county in which the real property is located. The county in which the real property is located shall retain a copy of the notice with the county office's records. The Department or its agent shall provide one (1) copy of the notice of Lien to the Member and the Member's authorized representative, if applicable, whose real property is affected.

(8) The Lien continues from the date of filing until the Lien is satisfied, released or expires. From the date on which the notice of Lien is recorded in the office of the county recorder, the notice of lien:

(a) Constitutes due notice against the Member or Member's estate for any amount then recoverable under this article; and

(b) Gives a specific Lien in favor of the Department on the Medicaid Member's interest in the real property.

(9) The Department has the authority to release any lien placed upon the property of a Member deemed permanently institutionalized should that Member be subject to a discharge from a medical institution and return home. The Department shall release a lien obtained under this rule within thirty (30) days after the Department receives notice that the Member is no longer institutionalized and is living in his or her home. If the real property subject to the lien is sold, the office shall release its lien at the closing and the lien shall attach to the net proceeds of the sale.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.07
Authority: O.C.G.A. § 49-4-147.1, Ga. Comp. Rules & Regs., R. 290-1-1-.01.
History. Original Rule entitled "Imposition of Liens" adopted. F. July 16, 2004; eff. August 5, 2004.
Amended: F. Sept. 15, 2005; eff. Oct. 5, 2005.
Amended: F. Oct. 19, 2006; eff. Nov. 8, 2006.
Amended: F. Mar. 27, 2020; eff. Apr. 16, 2020.

Rule 111-3-8-.08. Hardship Waiver.

(1) Hardship waivers will be submitted to the program administrator for review. The denial of a hardship waiver may be appealed as provided under the Administrative Procedures Act, O.C.G.A. § 50-13-1 et. seq. The waiver is limited to the period in which the undue hardship exists.

(2) There is no hardship waiver provided at the time of lien placement against the real property of a deceased Medicaid Member. The equity interest of the heir will be considered to determine the percentage of the deceased member's interest in the property.

(3) Lien placement is utilized to delay recovery until such time as an exemption to recovery does not exist, or in the case of an undue hardship, until such time as the undue hardship no longer exists. The state's lien would be for the Medicaid benefits paid on behalf of the Member or the percentage of interest of the deceased Member at the time of sale, whichever is less.

(4) Recovery will be waived in whole or in part pursuant to Rule 111-3-8-.08(1) of any estate or lien recovery when the requesting party is able to show, through clear and convincing

evidence, that the state's pursuit of recovery subjects them to undue hardship. In determining whether an undue hardship exists, the following criteria will be used:

(a) The asset to be recovered is an income producing farm and sole income source of one or more of the Heirs and the annual gross income is limited to $25,000 or less and is not merely rental income; or

(b) The recovery of assets would cause the applicant to become eligible for needs based governmental public assistance based on need and/or medical assistance programs.

(5) Notwithstanding the provisions of Paragraph (4) of this Rule, an undue hardship exists when an estate has a gross value of $25,000 or less. Therefore, estates with a gross value of $25,000 or less are exempt from estate recovery. In this instance, undue hardship does not need to be asserted.

(6) Undue hardship does not exist when:

(a) The adjustment or recovery of the Member's cost of assistance would merely cause the Member's family members inconvenience or restrict the family's lifestyle; or

(b) The Member and/or the Heirs divest assets to qualify under the undue hardship provision.

(7) To the extent that there is any conflict between the preceding criteria and the standards that may be specified by the secretary of the U.S. Department of Health and Human Services, the federal standards shall prevail.

(8) The personal representative and/or Heirs shall apply for an undue hardship exemption by:

(a) Making a written request to the Department within thirty (30) days of receipt of the notice; and

(b) Verifying to the Department's satisfaction the criteria specified in this section for an undue hardship waiver.

(9) The Department shall issue a decision on an undue hardship exemption request within thirty (30) days of receipt of the request and supporting documentation.

(10) If the state denies the personal representative's request for an undue hardship waiver, the personal representative may request an appeal. The denial of a waiver must state the requirements of an application for an adjudicative proceeding to contest the Department's decision to deny the waiver and where assistance may be obtained to make such application.

(11) If an appeal is requested, a hearing shall be conducted by the probate judge if the estate is in probate court. An administrative law judge shall conduct the administrative hearing if the case is not in probate court.

(12) If the Department deems an undue hardship does exist, the state may waive recovery or defer recovery until the death of eligible exempt dependents, on the sole discretion of the Department.

(13) The provisions of this section are severable. If any provision of this section is held invalid, the remaining provisions remain in effect.

Cite as Ga. Comp. R. & Regs. R. 111-3-8-.08
Authority: O.C.G.A. § 49-4-147.1.
History. Original Rule entitled "Hardship Waiver" adopted. F. July 16, 2004; eff. August 5, 2004.
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