INFORMATION FOR FAMILY MEMBERS

If my loved one is receiving Medicaid benefits when they die, will I be contacted regarding Estate Recovery?
The Office of Recoveries and Fraud Investigations is required to wait at least 30 days after the death of a Medicaid recipient before making contact with the family or estate.

Information is sent to the contact person on record or to the estate unless we have received prior notice that an attorney is handling the estate. The contact person will need to respond to the state regarding the identification of all assets.

Am I allowed to use any of the assets of the estate?
The only expenses paid from the estate before reimbursing the state are for reasonable funeral expenses. Documentation regarding funeral costs, such as bills from the funeral home or grave marker company should be retained.

There are some assets, such as some trusts that cannot be used by the estate at all as direct reimbursement to the state is required. The state has the right to recover from any assets before any other entity, including health care facilities or utility companies.

For additional information regarding liens on homes and property, please see the brochure entitled What You Should Know About Medicaid Liens.

South Dakota Department of Social Services

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South Dakota's Estate Recovery Program

A guide to understanding the Estate Recovery process

South Dakota Department of Social Services

What is Estate Recovery?
The Department of Social Services (DSS) administers the Estate Recovery program which is required of all states by the federal government.

The Estate Recovery program files claims against the estates of deceased Medicaid recipients to help the Department recover the cost of Medicaid benefits it has provided to those recipients.

The reimbursement helps to ensure that medical assistance continues to be available to those who need it most.

What is Medicaid?
Medicaid provides health care for low income individuals, families and children. Individuals must meet certain eligibility and income criteria before they receive benefits from Medicaid.

Are all services subject to estate recovery?
Any payment of medical assistance by or through DSS to an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with developmental disabilities, or other medical institution, is a debt due to the department. Also, any payment on behalf of a person who is fifty-five years of age or older for nursing facility services, home and community-based services, intermediate care facility services for individuals with intellectual disabilities, hospital and prescription drug services is a debt due the department.

DSS may file a claim against the estate of the surviving spouse of a medical assistance recipient to satisfy the debt.

These services include:
- Nursing facility services
- Home and community-based services
- Prescription drug services
- Hospital services

What kind of resources are subject to recovery?
Reimbursement for medical expenditures can be sought from a wide variety of resources.

These include, but are not limited to:
- Residential trust accounts at a long-term care facility
- Individual and joint bank accounts
- Cash allowed to be retained and still qualify for Medicaid
- Certificates of Deposit (CD)
- Savings Bonds
- Proceeds of personal belongings such as vehicles, homes, etc.
- Rebates or monies from cooperatives or health insurance policies
- Irrevocable Income Trust, DU65 trusts, etc.
- Life Estates

Can my family be held responsible for paying Medicaid back?
Reimbursement for medical assistance is sought from the estate of the individual who received those services. If at the time of death, the individual who received services has a living spouse, recovery may be delayed until the spouse's death, depending on the specific assets available. Recovery is from the estate and not individual family members.

What if a person did not disclose all assets or other information at the time they applied for Medicaid?
If a Medicaid recipient or their spouse transferred or owned property or other assets which would have made the individual ineligible for Medicaid, reimbursement for all benefits provided by the state will be sought, regardless of any other limitations.

Are there any situations in which the recovery process is limited or delayed?
Yes. There are specific circumstances in which recovery from some resources may be limited. Individuals who have purchased a long-term care insurance policy that qualifies for the Long-Term Care Partnership Program may be eligible to have a certain dollar amount of assets disregarded when an eligibility determination is made. This asset amount may not be subject to estate recovery.

Additional situations where recovery may be limited or delayed includes situations such as when:
- There is a surviving spouse
- The recipient has a child under 21 at the time of recovery
- The recipient has a child meeting the Supplemental Security Income (SSI) definition of blind or disabled

If my spouse survives me can they limit the amount available for recovery?
The surviving spouse can file a Petition to Limit the Financial Responsibility of the Surviving Spouse with the Office of Recoveries and Fraud Investigations within six months of the Medicaid recipient's death. The value of the surviving spouse's estate at the time of the Medicaid recipient's death will be determined. If the petition is granted, this value is the maximum amount recoverable for the deceased spouse.