Minnesota Department of Human Services

Medical Assistance Estate Recovery and Lien Programs

Special Recovery Unit (SRU)

Dale Klitzke

SRU Manager

Download PowerPoint at:

www.mnsure.org/images/MA-estate-recovery-powerpoint-v2.pdf

Overview

- **Why learn about Medical Assistance estate recovery and lien programs?**
  - Estate recovery and lien programs can affect the assets of Minnesotans eligible for Medical Assistance who apply through MNsure.
  - Because of this impact, MNsure Navigators and Assistors should inform consumers about these programs when they are applying.

Overview

- **Why learn about Medical Assistance estate recovery and lien programs?**
  - Estate recovery and lien programs provide a cost-effective way to offset state and federal costs.
  - Minnesota has always had a strong Medicaid (Medical Assistance) program and was one of the pioneer states to create effective and efficient Medicaid estate recovery and lien programs.

Overview

- **This presentation focuses on three topics:**

1. Minnesota’s Medical Assistance (MA) estate recovery program
2. Minnesota’s real property lien program
3. How MA estate recovery and liens are disclosed in the MNsure application and DHS communications

Definitions

Estate

- Although each state defines estate differently, the definition usually includes:
  - all real estate and personal property that passes title or ownership from a deceased person to an heir through an administration (probate) or pre-death designation/directive.
    - joint tenancy, life estates, pay on death accounts, trusts are usually not part of a probated estate

Probate

- Probate is a legal process of settling a person's estate in court after they die.
  - The need for a probate depends on what property a person who died owned and whether they owned it alone or with others.
  - Having a will does not avoid probate

Estate Recovery

- Estate recovery is the process initiated by the state or local government for recovering payments made under the Medicaid program on behalf of recipients.
  - The state or local government will seek to recover the sum of payments from the estate of the recipient (or the estate of their surviving spouse) after the recipient passes away.

Part One

Minnesota's Medical Assistance (MA) Estate Recovery Program

Legislative History

- The federal Medicaid program
  - 1965: Congress creates Medicaid by passing the Social Security Amendments of 1965
    - States allowed to establish estate recovery programs
  - 1982: The Tax Equity and Fiscal Responsibility Act (TEFRA)
    - States allowed to file liens on property before a Medicaid recipient dies

Legislative History

- The federal Medicaid program
  - 1993: Omnibus Budget Reduction Act (OBRA)
    - States required to carry out a Medicaid recovery program
  - 2010: Affordable Care Act
    - Expanded Medicaid Coverage

MA Estate Recovery

- **What is Minnesota's estate recovery program?**
  - The Medical Assistance (MA) estate recovery is a program that the federal government requires Minnesota to administer to receive Medicaid funds.
  - In certain circumstances, the program requires Minnesota to recover against assets a person owns at death to repay the amount that MA paid for that person or the person's spouse.
  - County collection workers, on behalf of the state, file claims against the estates of MA enrollees after they die.

MA Estate Recovery

- **Who is affected by estate recovery?**
  - **Two populations of MA enrollees**
    1. **People who received MA services when they were 55 years old or older**
       - This includes people ages 55-64 determined eligible for MA under the modified adjusted gross income (MAGI) methodology.
    2. **People who resided in a "medical institution" for six months or longer and received MA services during that time**
       - Recovery can be made for the amount MA paid for these medical institution services regardless of the person's age when they received the services.
       - The enrollee's treating physician must have certified in writing that he or she expected the MA enrollee to stay in the medical institution permanently.
       - A "medical institution" means skilled nursing facility, intermediate care facility (ICF), ICF for persons with developmental disabilities, nursing facility, or inpatient hospital

MA Estate Recovery

- **Who is affected by estate recovery?**
  - **Alternative Care (AC) enrollees**
    - **AC is a long-term care program for people 65 years old or older.**
    - **Recovery is limited to the amount AC paid for an enrollee's health care on or after July 1, 2003.**
  - **People who were enrolled in General Assistance Medical Care (GAMC)**
    - **GAMC was a public health care program in Minnesota.**
    - **GAMC no longer exists.**

MA Estate Recovery

- **What happens after someone affected by estate recovery dies?**
  - A county collection worker will file a claim against the estate of the deceased MA, AC, or GAMC enrollee if the law allows it at the time of the enrollee's death.
  - Sometimes the law does not allow county workers to file a claim against the enrollee's estate when the enrollee dies. There are some <u>exceptions</u> that delay recovery.

MA Estate Recovery

- **What are some exceptions to estate recovery?**
  - **Recovery is delayed if the enrollee is survived by:**
    - **A surviving spouse**
    - **A child under 21 years old**
    - **A child of any age who is blind**
    - **A child of any age who is permanently disabled**

MA Estate Recovery

- **What are some exceptions to estate recovery?**
  - If an enrollee resided in a medical institution, recovery against the enrollee's former homestead is delayed if:
    - **the enrollee's child or grandchild**
      - lived in the home for the two years immediately before the enrollee became institutionalized,
      - provided care to the enrollee in the home that allowed the enrollee to continue living at home rather than live in an institution, and
      - has continued to live there since the enrollee's institutionalization.
    - **the enrollee's sibling**
      - lived in the home for one year immediately before the enrollee became institutionalized and
      - has continued to live there since.

MA Estate Recovery

- **What kinds of estate assets can a county claim against after an enrollee dies?**
  - All property included in the enrollee's probate estate
    - Probate is the legal process of settling a person's estate under court supervision after he or she dies.
  - Any interests the enrollee had in real property at death
    - Joint tenancy interests
    - Life estate interests

MA Estate Recovery

- **What kinds of estate assets can a county claim against after an enrollee dies?**
  - Securities, joint accounts, multiple-party accounts, pay-on-death accounts, brokerage accounts, or proceeds of those accounts
  - Assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, or other arrangements
- **<u>Important</u>: If an enrollee affected by estate recovery is survived by a spouse, the county delays recovery until the spouse dies. The county will then file a claim against the spouse's estate assets to recover the MA costs.**

MA Estate Recovery

- **Why do counties perform estate recovery?**
  - DHS has delegated the responsibility for filing and collecting MA claims to the counties.
  - Counties receive 50% of the non-federal share of all MA recoveries made by the county (25% of the total amount recovered).

MA Estate Recovery

- **What is DHS' role in estate recovery?**
  - DHS oversees the estate recovery program by:
    - providing policy and ensuring conformity with federal law,
    - assisting counties when a matter is litigated that will have a statewide impact, and
    - collecting on liens, annuities, and trusts.

MA Estate Recovery

- **How much money is recovered through this program?**

MA Estate Recovery	2012	2013	2014	2015
County Estate Recovery	$20,964,901	$24,517,001	$27,523,005	$26,451,423
Lien/Trust/ Annuities	$6,821,072	$9,056,641	$7,361,542	$6,689,253
Total	**$27,785,973**	**$33,573,642**	**$34,884,547**	**$33,150,676**

Part Two

Minnesota's Real Property Lien Program

Real Property Lien Program

- **What is a lien?**
  - A legal right or interest that a creditor has in another person's property that lasts until the creditor's claim has been repaid
- **What is real property?**
  - Land and buildings on that land
- **What is the real property lien program?**
  - A program that DHS administers to secure repayment of MA
  - DHS files liens against the real property of people affected by MA estate recovery.

Real Property Lien Program

- **What kinds of interest in real property can DHS file a lien against?**
  - Sole ownership
  - Tenants in common
  - Life estates
  - Jointly-held interests

Real Property Lien Program

- **DHS files two kinds of liens:**
  - **MA liens**
    - These liens are filed before an MA enrollee dies.
    - MA liens are only filed against real property when the enrollee is alive and living in a “medical institution.”
    - MA liens can be collected on before an enrollee dies, but only if the real property is sold.
  - **Notices of potential claim (NPCs)**
    - These liens can be filed before or after an enrollee dies but are not effective until the enrollee dies.
    - NPCs are only for post-death recovery.

Real Property Lien Program

- **How do MA liens work?**
  - The DHS Special Recovery Unit (SRU) files MA liens when counties request it.
  - An MA lien is valid if the MA recipient owns property in Minnesota on or after the date when the recipient was medically institutionalized in:
    - a long-term care facility,
    - an inpatient at a hospital, **or**
    - an intermediate care facility for persons with developmental disabilities (ICF/DD).

Real Property Lien Program

- **When is DHS prevented from filing an MA lien?**
  - When the property is a homestead of the enrollee's **spouse**
  - When property was the homestead of the enrollee, a **child** of the enrollee resides on the property, and the child is:
    - under 21 years old,
    - permanently disabled (regardless of age), **or**
    - blind regardless of age (regardless of age)
  - When the **enrollee** was determined eligible for MA using the modified adjusted gross income (MAGI) methodology

- **How long do MA liens last?**
  - An MA lien is enforceable for 10 years.
  - DHS may renew the lien for an additional ten years after the expiration date.

Real Property Lien Program

- **How do NPCs work?**
  - DHS files notices of potential claim (NPCs) on enrollees' interests in real property when an MA claim arises under Minn. Stat. § 256B.15.
  - NPCs may be filed before an enrollee dies or within one year after the enrollee dies
  - NPCs are only effective as a lien after the enrollee's death.
  - Until the enrollee dies, NPCs only serve as notice that a claim can be made against a specific piece of real property after death.

- **How long do NPCs last?**
  - NPCs are enforceable for 20 years from the date of filing, or from the date of the enrollee's death, whichever is later.

Real Property Lien Program

- **How much money is recovered through this program?**

MA Estate Recovery	2012	2013	2014	2015
County Estate Recovery	$20,964,901	$24,517,001	$27,523,005	$26,451,423
Lien/Trust/ Annuities	$6,821,072	$9,056,641	$7,361,542	$6,689,253
Total	**$27,785,973**	**$33,573,642**	**$34,884,547**	**$33,150,676**

Part Three

How MA estate recovery and liens are disclosed in the MNsure application and DHS communications

Signature Page for Online MNsure Application

☐ I received, reviewed and agree with the **Notice of Rights and Responsibilities**.

☐ I agree to report changes to the information listed on this application.

☐ I declare under the penalties of perjury that this application has been examined by me and to the best of my knowledge is a true and correct statement of every material point. I understand that a person convicted of perjury may be sentenced to imprisonment of not more than five years or to payment of a fine of not more than $10,000, or both. I understand that there may be other penalties for not telling the truth.

Additional Agreements for Medical Assistance and MinnesotaCare:

☐ **Check this box if you agree with all of the statements below.**

If anyone on this application is eligible for Medical Assistance or MinnesotaCare, I agree (consent) to the sharing of information as stated in the Consent for Sharing of My Information.

If anyone on this application is eligible for Medical Assistance, I agree to give the Medical Assistance agency our rights to pursue and get any money from other health insurance, legal settlements, or other third parties.

For parents who qualify for Medical Assistance, I know I will be asked to cooperate with the agency that collects medical support from an absent parent. If I think that cooperating to collect medical support will harm me or my children, I can tell the agency, and I may not have to cooperate. For parents who qualify for Medical Assistance, I agree to give to the Medical Assistance agency the rights to medical support paid for my children.

If anyone on this application is eligible for Medical Assistance, I have read and understand that the state may claim repayment for the cost of medical care, or the cost of the premiums paid for care, from my estate or my surviving spouse’s estate. I agree I have the right to speak with an attorney at my own expense if I have specific questions about how estate recovery for medical costs may affect my circumstance and estate planning. The Minnesota Department of Human Services cannot provide me legal advice.

First Name*___________ ___________ Middle Name ___________ Last Name*________________________

MA Recovery Notice in MNsure Application

MA Liens and Estate Claims

For people age 55 or older, Minnesota must recover health care costs paid for clients from the client's estate. Minnesota recovers payments for all MA services provided to people age 55 or older.

Minnesota will seek recovery against individuals of any age if the person was:

- Permanently living in an institution
- Receiving MA payments for long-term care services

Minnesota will also seek recovery against individuals as State and Federal law allows.

Individuals receiving MA under the modified adjusted gross income eligibility criteria are not subject to recovery before age 55.

Most of the time MA services do not have to be paid back until after the client dies and only when there is not a surviving spouse, a child under 21 or a child who is permanently disabled. A claim may be made in the estate of the surviving spouse of the MA client.

The State may file an MA lien against real property to recover MA costs before death, but only for people who are permanently living in an institution. The State may also file a Notice of Potential Claim, a form of lien, against real property to recover MA costs after death. Liens used to recover MA costs can be filed against:

- Your life estate or joint tenancy interest in real property.
- Real property you own by yourself.
- Real property you own with someone else.

If you own property with another person, the lien is only against your share.

DHS Notice to Managed Care Recipients

- Managed Care: Guide to Health Plan Enrollment
  - After you die, the state or county may try to recover what MA paid for your medical care. This includes capitation payments to your health plan. To recover those costs, the county may file a claim against your estate or your spouse's estate, or the state may file a lien against your interest or your spouse's interest in property. To learn more about this, contact your county worker.

Contact Information

DHS MHCP Member and Provider Helpdesk:

651-431-2670 or

800-657-3739

DHS Special Recovery Unit (SRU):

651-431-3204

800-657-3963, prompt (3), prompt (2)

Webinar Q & A Responses

- During the live webinar, participants were invited to submit questions via chat. The following slides include answers to the submitted questions. In some cases, questions have been reworded or similar questions combined.
- Unless otherwise specified, all answers in this Q&A section assume the question is being asked on behalf of a person enrolled in MA using the modified adjusted gross income (MAGI) methodology.

Webinar Q & A

Q: Does the estate recovery program also apply to individuals who are enrolled in MinnesotaCare or a qualified health plan (with or without advanced premium tax credits)?

A: No.

Q: Why does the MA estate recovery program only apply to individuals who are age 55 and older?

A: Federal law requires MA recovery for that population. See 42 U.S.C. § 1396p.

Q: Is there a difference in the way that estate recovery is conducted in regards to a member of a Federally Recognized Tribe?

A: Yes.

Webinar Q & A

Q: Where in statute does it state that "when the enrollee was determined eligible for MA using the MAGI methodology, DHS is prevented from filing a lien"?

A: It does not say this in Minnesota's estate recovery statute, but the Centers for Medicare & Medicaid Services (CMS), the federal Medicaid agency, provided this guidance to all states in a State Medicaid Director Letter dated February 21, 2014. DHS informed Minnesota counties of this guidance in DHS Bulletin 14-21-03.

Webinar Q & A

Q: Does the Notice of Potential Claim (NPC) have less teeth than a TEFRA (pre-death) lien?

A: A TEFRA lien (known as an "MA lien" in Minnesota) is filed against real property only when an enrollee is alive, receiving MA long-term-care services and living in a medical institution. An NPC serves as a claim against a specific piece of real property and is an effective lien only after the death of the MA enrollee. Both are tools used to secure assets for Minnesota's estate recovery program.

Webinar Q & A

Q: How is the amount of estate recovery determined? Does it include only actual claims and/or subsidized premiums?

A: If the MA enrollee's coverage requires fee-for-service billing, then the claim amount is the total of those billings for the applicable recovery period. If an MA enrollee is enrolled in managed care, then the claim amount is the total of all capitations paid during the applicable recovery period. Capitation payments are monthly payments to an insurer for an enrollee's health care coverage.

Webinar Q & A

Q: How can an individual find out if there is potentially an obligation or lien? Is this public record?

A: If the person does not fall under one of the estate recovery categories listed in the presentation, there is no potential obligation or lien. An MA lien is filed in a county recorder's office before death only for a person who is receiving MA and is permanently residing in a long-term-care facility. Any other obligations are present only at death and are obligations against only the person's estate or the estate of the person's spouse.

Q: If an individual is over the age of 55, was enrolled in MA, but never had any claims paid out for them, will there still be a lien?

A: The Minnesota estate recovery program recovers only MA benefits correctly paid for identified MA enrollees. These benefits can include monthly capitation payments or fee-for-service amounts.

Webinar Q & A

Q: If an individual has MA for three months of a calendar year, and then enrolls in MinnesotaCare because of an increase of income, would the person be potentially liable for a recovery? If yes, would it only be for those three months they were enrolled in MA?

A: If the person was over 55 years old when he or she received MA coverage, then yes, recovery would be for the three months enrolled in MA, so long as he or she doesn't reenroll in the MA program later in life.

Q: Are parents who are age 55 or older who are *not* enrolled in MA subject to estate recovery if their children are enrolled in MA?

A: No. And their children are not subject to estate recovery until age 55 or until they become permanent residents of a medical institution.

Webinar Q & A

Q: If an individual is enrolled in MA in error, but no claims were put in, are they still potentially subject to estate recovery? What if that individual enrolled in a QHP for that period of time, can their estate recovery obligation be cleared if they have proof of other coverage?

A: DHS is reviewing these errors and correcting them on a case-by-case basis in the system.

Q: If an individual is on MA from the age of 55 to 65, then goes on Medicare at 70 before entering a long-term care facility, are they still subject to estate recovery?

A: Yes.

Webinar Q & A

Q: If someone is approved for Hospital Presumptive Eligibility (HPE) and receives services, but never completes the full Medicaid application, is that individual subject to estate recovery?

A: Yes. The person must sign the HPE Application (DHS-3881) to become eligible for MA through the HPE process. By signing the application, the applicant agrees that he or she has read the list of responsibilities in the attached Notice of Privacy Practices, which includes a two-paragraph notice on "Liens and Estate Claims." An HPE applicant receives proper notice of MA estate recovery and liens even if he or she doesn't complete the "full" MA application later on.

Webinar Q & A

Q: Can an individual opt to enroll in MinnesotaCare or use advanced premium tax credits instead of enrolling in Medical Assistance?

A: Income determines whether someone is eligible for MA, MinnesotaCare or advanced premium tax credits (APTCs). Which benefit a person is eligible for is not the person's choice. Eligibility is a result of income.

Q: If an individual is already enrolled in MinnesotaCare or a QHP with APTCs, and their income drops, do they have a choice to stay on the original program in order to protect their assets?

A: If the person's income drops to a point where he or she qualifies for MA instead of MinnesotaCare or a qualified health plan (QHP) with APTCs, then the person cannot choose to stay on MinnesotaCare or the QHP with APTCs.

Webinar Q & A

Q: If a person puts their assets in the name of a family member before they die, is the county still able to collect on these assets after the consumer dies?

A: Recovery is allowed only against assets owned by an MA recipient or his or her spouse at the time of death.

Q: If a consumer reports an increase in their income so that they are no longer Medical Assistance eligible, but now qualify for APTCs, is there a check on the backend to verify their income status?

A: A person must report income truthfully, and the income must be verified. If the person receives APTCs that he or she was not eligible for, then fraud provisions may require the person to pay back the benefits he or she received.

Webinar Q & A

Q: Can a person pay back the recovery amount before death?

A: The only time properly paid MA costs can be paid back before an MA enrollee dies is when the enrollee has a special needs or pooled trust that terminates or when (1) an enrollee is permanently living in a medical institution, (2) an MA lien has been filed against the enrollee's interest in real property, (3) the property has been sold, and (4) the lien amount was collected on that sale. Otherwise, federal guidance prohibits DHS from accepting MA repayment during life.

Webinar Q & A

Q: If someone received MA at 55 or later, but then stopped, if they purchased a home after their MA eligibility ended, would their estate be subject to a lien?

A: No. It is very important to understand that liens for the reimbursement of MA benefits received are not filed against someone's estate. An estate includes a variety of property interests that a person owns at death. Liens for MA repayment can be filed against only a specific type of property—real property—which includes land and buildings on land located in Minnesota. In this situation, DHS may file a postdeath lien (NPC) against the former MA enrollee's interest in the home.

Q: How would estate recovery affect someone wanting to obtain a reverse mortgage?

A: The possibility of an MA estate claim after death does not prohibit someone from obtaining a reverse mortgage.

Webinar Q & A

Q: If an individual is enrolled in MA with no real estate, but has a Roth IRA, would there be a lien against that Roth IRA? Or that estate?

A: No. A lien can be filed only against real property (land and buildings on land). The Roth IRA would be considered part of the person's estate, however, and a county could claim against that asset for MA repayment after the person dies and recovery exceptions no longer apply.

Q: If an individual receives MA for long term care, can the surviving spouse sell their house and move into a townhouse without the lien applying prior to the surviving spouse passing away?

A: If the MA enrollee is now permanently residing in a medical institution, DHS cannot file an MA lien against the house if it is the homestead of the enrollee's spouse. The spouse can sell the homestead without an MA lien attached and move into a townhouse. The sale could affect the enrollee's MA eligibility.