



Minnesota Department of Human Services

## Medical Assistance Estate Recovery and Lien Programs

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### Overview

**This presentation focuses on four topics:**

1. Basics about Minnesota's Medical Assistance (MA) estate recovery program
2. The 2016 legislative change to MA estate recovery
3. The DHS MA lien program

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PART ONE

## Minnesota's Medical Assistance (MA) Estate Recovery Program




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## 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.

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## MA Estate Recovery

### Who is affected by estate recovery?

#### Two populations of MA enrollees

- 1. People who received certain 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

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## 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.
- GAMC that was received at any age is recoverable.

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## 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 collect on a claim against the enrollee's estate after the enrollee dies. There are some exceptions that delay recovery.

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## 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

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## 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.

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## 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

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## 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
- **Important:** 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.

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PART TWO  
The 2016 legislative change to MA  
estate recovery




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## The 2016 Legislative Change

### What happened?

- Since Minnesota’s MA estate recovery program began in 1967, estate claims have attempted to recover the costs paid for all MA services an enrollee received during the applicable recovery period.
- In May 2016, the Minnesota Legislature amended Minnesota Statutes, section 256B.15, to change the law about MA estate recovery. On June 1, 2016, Governor Dayton signed this legislation, which limits the number of MA services received at 55 years old or older for which county agencies can recover costs when asserting an MA estate claim.

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## The 2016 Legislative Change

### What did the law say before the change?

- Before the change, counties recover the costs of all MA services an enrollee received at 55 years old or older:
  - (e) A claim shall be filed if medical assistance was rendered for either or both persons under one of the following circumstances:
    - (1) the person was over 55 years of age, and received services under this chapter;
    - .....
    - Subd. 2. **Limitations on claims.** The claim shall include only the total amount of medical assistance rendered after age 55 or during a period of institutionalization described in subdivision 1a, paragraph (e), and the total amount of general assistance medical care rendered, and shall not include interest.

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## The 2016 Legislative Change

### What does the law say after the change?

- Starting with services received on and after January 1, 2014, county agencies can only recover the amount MA paid for long-term services and supports (LTSS) that an MA member received at 55 years old or older.
  - (e) A claim shall be filed if medical assistance was rendered for either or both persons under one of the following circumstances:
    - (1) the person was over 55 years of age, and received services under this chapter **prior to January 1, 2014;**
    - .....
    - (4) the person was 55 years of age or older and received medical assistance services on or after **January 1, 2014, that consisted of nursing facility services, home and community-based services, or related hospital and prescription drug benefits.**

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## The 2016 Legislative Change

### What does the law say after the change?

Subd. 2. **Limitations on claims.** (a) For services rendered prior to January 1, 2014, the claim shall include only the total amount of medical assistance rendered after age 55 or during a period of institutionalization described in subdivision 1a, paragraph (e), and the total amount of general assistance medical care rendered, and shall not include interest.

(b) For services rendered on or after January 1, 2014, the claim shall include only:

(1) the amount of medical assistance rendered to recipients 55 years of age or older and that consisted of nursing facility services, home and community-based services, and related hospital and prescription drug services; and

(2) the total amount of medical assistance rendered during a period of institutionalization described in subdivision 1a, paragraph (e), clause (2).

The claim shall not include interest. For the purposes of this section, "home and community-based services" has the same meaning it has when used in United States Code, title 42, section 1396p(b)(1)(B)(i), and includes the alternative care program under section 256B.0913.

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## The 2016 Legislative Change

### What are long-term services and supports (LTSS) for purposes of MA estate recovery?

- Nursing facility services (NFS)
- Home and community-based services (HCBS)
  - Waiver HCBS
    - [Alternative care \(AC\)](#)
    - [Brain injury \(BI\)](#)
    - [Community alternative care \(CAC\)](#)
    - [Community access for disability inclusion \(CADI\)](#)
    - [Developmental disabilities \(DD\)](#)
    - [Elderly waiver \(EW\)](#)
  - Nonwaiver HCBS
    - [Home care services](#)
    - [Personal care assistance \(PCA\)](#)
- Hospital and prescription drug services received during the time enrollee receives NFS or HCBS

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## The 2016 Legislative Change

### Is the law change effective yet?

- No, the law change is not effective until it receives federal approval.
- **EFFECTIVE DATE.** This section is effective upon federal approval and applies retroactively to services rendered on or after January 1, 2014, and to claims not paid prior to July 1, 2016. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
- DHS has not received federal approval as of the date of this presentation.
- However, if DHS receives federal approval, the law change will apply retroactively to MA estate claims that were not paid by July 1, 2016.
- Therefore, DHS issued a [bulletin](#) instructing counties to review all MA claims that were not paid by July 1, 2016, and to refrain from collecting on these claims if the deceased MA enrollee received services at 55 years old or older on or after January 1, 2014.
- DHS then created a new claims history for LTSS services for January 1, 2014, and issued the new histories to counties with instructions to proceed with estate recovery using the new claim total.

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**PART THREE**  
**Minnesota's Real Property Lien Program**




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**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.

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**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

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## 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.

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## 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).

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## 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

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### Real Property Lien Program

#### 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.

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### 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.

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### Real Property Lien Program

#### 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.

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