

## Title: Estate Recovery

**Issuance Date: September 21, 2023**

(Must be reviewed annually)

### **Applicable Regulations, Guidelines, and AHS Policy:**

#### **Federal statute or rule:**

- Omnibus Budget Reconciliation Act of 1993 (OBRA 93)
- Social Security Act: 1917(b)(1)(B)

#### **Purpose:**

This SOP outlines the Estate Recovery process steps, as Federal and State law mandates an attempt be made to recover Long Term Care claims paid by Medicaid. The recovery process starts with a notification that an estate has been opened in Probate Court. The Estate Recovery Program Consultant must determine if a deceased individual on the list from Probate had previously received long term care Medicaid. Medicaid Covered Services Rule 7108 enforces DVHA's right to seek recovery.

#### **Procedure:**

##### **Medicaid Covered Services Rules:**

##### **Check Medicaid Covered Services Rule: 7108.3 (page 2)**

- Decedent's age: 55 Years of Age or older and received LTC Services,
- Surviving Spouse,
- Blind or Permanently Disabled Child,
- Rehab vs. Long Term Care services.

##### **Check for Rehab vs. Long Term Care services:**

- If a decedent has spent less than (30) days receiving long-term care, the claim may be waived, as the decedent may have received rehabilitation services only.
- If the decedent received rehab services and long-term care services, exclude the rehab time and bill only the long-term care services.

### Other process notes:

- DVHA has four months after the 1<sup>st</sup> publication (notice to creditors) to establish their claim.
- If no published notice, DVHA has up to one year after the decedent's death to file a claim.
- A decedent's will does not precede a Medicaid LTC Claim.
  - Priority claims will be paid first. Any remaining assets/funds can be distributed as requested in the decedent's will.
- The "Look-Back" Period in Long Term Care Eligibility:
  - After 02/08/2006 - five years
  - Prior to 02/07/2006 - three years
- Funeral Expenses:
  - Probate Court allows up to \$3,800.
  - Medicaid allows up to \$10,000.
- Life Insurance Policy listed as an asset on the estate inventory -
  - If there is no beneficiary, then it is considered an asset of the estate & these cases generally take a bit longer to decide if the family and/or creditor(s) get the money.
- Small Estates - Assets of no more than \$30,000. Probate court does not require a final summary of accounts.
- A Mobile Home (on wheels) is considered a personal item/property.
- A House is considered property/real estate.

### Open Case File/System Process

The estate recovery program consultant receives Tax Notice of Estate Forms and reviews the names of deceased individuals on each form received to check for long term care Medicaid Coverage. The program consultant must check each name within the Access Eligibility System to verify eligibility and Long Term Care status. A query is run in the Business Objects System to capture Long Term Care claims paid, and a letter is created by the AAG's office noting the amount paid out for the deceased member's long term care services and is submitted to the Probate Court via the Odyssey Online Court System to establish DVHA's right to recovery. A copy of that letter is also be mailed by the AAG's office to the executor/executrix or attorney. The Medicaid claim amount for the deceased LTC individual is logged into the TPL system, recorded in a monthly "billed" spreadsheet, and a spreadsheet of all open and closed estate cases for tracking purposes.

### Close Estate -Withdraw/\$0 Collected.

When DVHA withdraws its claim and no dollars are collected, as in a hardship case or in which there is no money left in the estate, after all expenses have been paid, the program consultant notes a \$0 amount in the TPL system and closes the case. The

## **Standard Operating Procedure**

closure and \$0 amount are recorded in the TPL system, and the estate is closed. The withdrawal is recorded in the monthly “closed no \$ collected” spreadsheet and on the estate spreadsheet for tracking purposes with the AAG’s office. The AAG’s office closes the file with probate court through the Odyssey Court System.

### **Close Estate - Recovery/Discharge**

When an estate check copy is received by DVHA, the program consultant fills out a recoveries receipt with a copy of the check attached to the paper, and all check details, for example, Date received, Name and SSN of deceased Medicaid Member, check date, check amount, and which probate court check was received from. Billed claims are matched in the MMIS System to the check amount and the MMIS TPAS Screen is attached with the recoveries receipt. One copy goes in the paper file, and one copy goes in the end of month folder. The program consultant sends a copy of the recoveries receipt to the fiscal agent for them to dispose of the funds. The check information is recorded in the TPL system, and the case is closed. The amount received is recorded in the monthly “collected” spreadsheet. The Program Consultant emails the AAG’s office when a check is received and the AAG closes the file with probate court through the Odyssey Court System.

### **Hardship Exemption**

The rules allow for an executor or family member to submit a request for a hardship exemption if he or she believes to be eligible. The completed forms must meet criteria established in the Medicaid Covered Services Rules 7108.31-7108.32. If the submitted information meets the requirements, then the request is approved and DVHA redraws it’s claim on homestead but not on other assets. If the requirements are not met, then the request for hardship exemption is denied and the AAG’s office sends a denial letter with rights to appeal. The appeals are assigned to an Assistant Attorney General.

## Revision History:

Date	Summary of Revisions
5/14/18	Draft submitted
5/24/18	Final draft
11/13/18	Accepted by OMU
2/5/19	COO approval
01/29/2020	Updates to Business Objects section as BO is now web-based and the instructions have changed, new author and SME.
2/10/2021	Updated unit director.
9/21/2023	OMU review. Moved to ADA template. Revised Roles & Responsibilities table. Streamlined and bulleted lists. Minor punctuation corrections.

Table 1 Revision History