

Estate Recovery



What is Estate Recovery?

Estate recovery is the process the State uses to seek reimbursement for MaineCare benefits from the estate of a deceased individual who received MaineCare benefits at the age of 55 or older.

This program exists because under federal law, the State must implement an estate recovery program to receive federal money for the MaineCare program. In Maine, the Department of Health and Human Services (DHHS) administers the estate recovery program through the Estate Recovery Unit.

How Much of the Estate Can Be Recovered?

DHHS recovery is limited to the actual amount paid by MaineCare on behalf of the deceased individual.

What Assets Are Included in the Estate?

Recoverable assets include the interests held by the deceased MaineCare recipient at the time of death. The recoverable assets include real, personal, probate, and non-probate property.

The estate may also include certain assets held by the decedent that have passed upon his or her death to a survivor, heir, or assigns.

Any assets transferred by the decedent before receiving MaineCare are not included in the estate for estate recovery purposes. However, great caution should be exercised when making transfers. Transfers that occur before the decedent receives MaineCare are subject to laws and regulations that may make an individual ineligible for MaineCare benefits. We strongly recommend seeking legal advice before making transfers of your property.

When Will the State Seek Reimbursement?

In general, the estate recovery process occurs when the MaineCare recipient dies. However, the recovery process will be delayed until the recipient no longer has a spouse or no longer has a child who is either under the age of 21, blind, or totally disabled.

Are There Any Circumstances in Which the State Will Waive or Reduce Its Claim?

There are three exceptions to the general rule. First, if a claim for hardship can be proven, the State may waive a part or the whole of its claim. To request a hardship waiver, the person requesting waiver must be at least 18 years of age, hold a beneficial interest in the decedent's estate, and file an application within six months from the decedent's death (or within 30 days from the notice of DHHS's claim, whichever is later).

To make a claim for hardship, the requesting person must prove:

- Collection of the claim would place their income and assets below 180% of the federal poverty level (adjusted for household size); **OR**
- The estate's real property is their primary income-producing resource and collection of the claim would place their income and assets below 180% of the federal poverty level (adjusted for household size). Waivers are not granted if DHHS determines that assets were dissipated, lost, or otherwise transferred in an effort to prevent recovery.

Second, if the State's claim would otherwise deplete the estate and an heir used his or her personal funds to protect against damage or loss of value to real property during the decedent's life, the State (at its discretion) may reduce its claim in whole or in part.

The heir must request a claim reduction in writing, supported by documentation and proof that payments were made (such as receipts), and that they were reasonable. The deadlines to file are the same as hardship waivers.

Third, if a caregiver provided health maintenance services to the decedent during part or all of the two years just prior to the decedent's death (or institutionalization) and such care enabled the decedent to remain at home for an equivalent period of time, the State will exempt part of the estate from recovery. The caregiver requesting a Care Given Exemption must provide corroborating statements from the decedent's medical care providers and supporting documentation. The deadlines for filing are the same as hardship waivers.

What if I am Not Satisfied with DHHS's Decision?

After DHHS makes a final decision, you have the right to request a hearing with the Office of Administrative Hearings.

If the Office of Administrative Hearings agrees with DHHS's decision, you have the right to appeal this final agency decision to Superior Court.

Seek legal advice if you need help with the hearing or appeal process.

For more information, call the Legal Services for the Elderly Helpline for free legal advice.

LSE Helpline
1-800-750-5353



Legal Services for the Elderly
Free legal help for Maine's seniors

