Ohio’s Medicaid Estate Recovery Program

The Medicaid Estate Recovery Program, also referred to as MER, is a program that allows the state to seek reimbursement for money it spent on a person’s Medicaid care after that person dies. The Ohio Attorney General, acting on behalf of the Ohio Department of Medicaid, can place a lien against the estate of someone who benefited from Medicaid before their death, and in certain circumstances, can put a lien on a person’s property even before they die. The federal government requires states to participate in Medicaid Estate Recovery.

Who is subject to Medicaid Estate Recovery?

A Medicaid recipient who owned any significant property (real estate, personal, or other assets) immediately prior to their death who:

- Was any age and permanently institutionalized—residing in a nursing home, Intermediate Care Facility/IID, or a medical institution; or
- Was age 55 or older and was enrolled in Medicaid.

What does Medicaid Estate Recovery “recover”?

MER recovers some or all of what the Ohio Department of Medicaid paid for a deceased person’s care. MER can draw from a deceased person’s “estate,” (what the person owned when they died). MER can also draw from assets other creditors can’t touch, like property the deceased person tried to convey to their survivors via “transfer-on-death,” survivorship deeds, and living trusts.

What types of services are NOT subject to Medicaid Estate Recovery?

Medicaid care for anyone still alive is not subject to MER—at least not yet! Medicaid care for individuals under age 55 who are not permanently institutionalized is not subject to MER. MER also does not apply to Medicaid payment of Medicare premiums through the Qualified Medicare Beneficiary (QMB), Specified Low-Income Beneficiary (SLMB) and Qualified Individuals-1 (QI-1) programs on behalf of anyone not permanently institutionalized.
What is included in an estate?
All real and personal property and other assets which an individual had any legal title to or interest in at the time of death. Real property means land, including buildings or immovable objects attached permanently to the land. Personal property means any property that is not real property and includes but not limited to cash, jewelry, household goods, tools, life insurance policies, automobiles, promissory notes, etc.

After the death of a Medicaid recipient subject to Medicaid Estate Recovery, any property determined exempt or excluded when determining Medicaid eligibility for that individual is no longer exempt or excluded. It will be included.

Could my home be subject to Medicaid Estate Recovery?
Yes, after your death, unless certain individuals live in the home. Those individuals include:

- A surviving spouse;
- Surviving child or children under age 21 or a surviving child older than 21 if they took care of you;
- Surviving blind or permanently and totally disabled child or children of any age; or your surviving sibling

When does Medicaid Estate Recovery happen?
Medicaid Estate Recovery may be sought only after the Medicaid recipient’s death, and

- The death of the individual’s surviving spouse, if any;
- There are no surviving children under age 21; and
- There are no surviving children who are considered blind or disabled (any age).

Is Medicaid Estate Recovery ever delayed or postponed?
Medicaid Estate Recovery against a deceased person’s home may be postponed if the person’s brother or sister resided in the home and cared for the person for one year prior to their admission to institutional care AND the sibling has lived in the home on a continuous basis since then.

Recovery may be postponed if a deceased person’s adult child provided care that delayed institutionalization for at least two years immediately before institutionalization and the adult child has resided in the home on a continuous basis since that time. In both cases, the sibling or caretaker child will be required to provide certain documents to support their claim to delay or stop recovery.
**Will the Ohio Department of Medicaid ever waive its right to Medicaid Estate Recovery?**

Yes. The Ohio Department of Medicaid may grant an undue hardship waiver on a case-by-case basis when recovery would cause an undue hardship on the individual’s survivor(s).

Things that can establish undue hardship:

- The estate is the sole asset of the survivor.
- Without the estate, the survivor would be eligible for public assistance.
- Losing the estate would leave the survivor without food, clothing, or shelter.
- The survivor contributed so much to the dead person that the survivor has an equity interest in the estate.
- The survivor is dependent on the proceeds of the estate, particularly if the survivor is over 65 or disabled.

An undue hardship waiver may be permanent waiver, a temporary deferral or postponement of the recovery. Only an heir, potential heir, or someone with an interest in the asset can request the hardship waiver.

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**Can I transfer my interest in things I own during my lifetime?**

Yes, Medicaid allows for transfer of assets during your lifetime to a spouse, a surviving child under the age of 21, or a surviving child over age 21 who is blind or permanently and totally disabled (as determined by Social Security), or to a sibling with an equity interest or an adult caretaker child.
What happens if I give property or money away to family or friends before I get Medicaid?

The State will look back five years from the date of your application for Medicaid to determine if you gave away or transferred any property or assets. If you transferred or gifted anything during the five-year look back period, the value of the gift and/or transfers may be used to determine a period for which you would not be eligible for Medicaid. The State assumes any transfer is improper. The Medicaid recipient has an opportunity to explain why they transferred or gave away property. A determination of a penalty period based on the value of the improperly transferred property or assets will be determined for improper transfers. A Medicaid applicant/recipient who improperly transferred or gave away assets will NOT qualify for Medicaid during the penalty period. You will get written notice of your rights, including your right to challenge the default assumption that a transfer is improper.

What if I disagree with the penalty or determinations of the Ohio Department of Medicaid or my local Job and Family Services?

Use the appeal section of your notice to appeal by asking for a state hearing. The notices should include the Ohio Department of Medicaid’s initial decision, the rule upon which the determination was made and appeal rights. Be sure to pay close attention to your appeal deadlines.

Have Questions? We Can Help.
LASCO can provide free legal help with noncriminal issues.

Call 1-888-246-4420  
Online lasco.org

Legal Aid of Southeast and Central Ohio (LASCO) provides free noncriminal legal help to people experiencing poverty, seniors, and veterans in 36 Ohio counties.

This information is based on current law, which is subject to change. If you have questions, contact LASCO. LASCO is an equal opportunity organization and will not allow discrimination of any kind.