

# COLORADO ESTATE RECOVERY

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**COLORADO**  
Department of Health Care  
Policy & Financing



# THE DEPARTMENT'S PURPOSE AND MISSION:

We oversee and operate Health First Colorado (Colorado's Medicaid Program), Child Health Plan *Plus* (CHP+), and other public health care programs for Coloradans who qualify.

Our mission is to improve health care equity, access and outcomes for the people we serve while saving Coloradans money on health care and driving value for Colorado.



# THE MISSION OF THIRD PARTY LIABILITY AND RECOVERIES



To ensure that all other available resources are used for the cost of recipients' care prior to Medicaid paying for services.



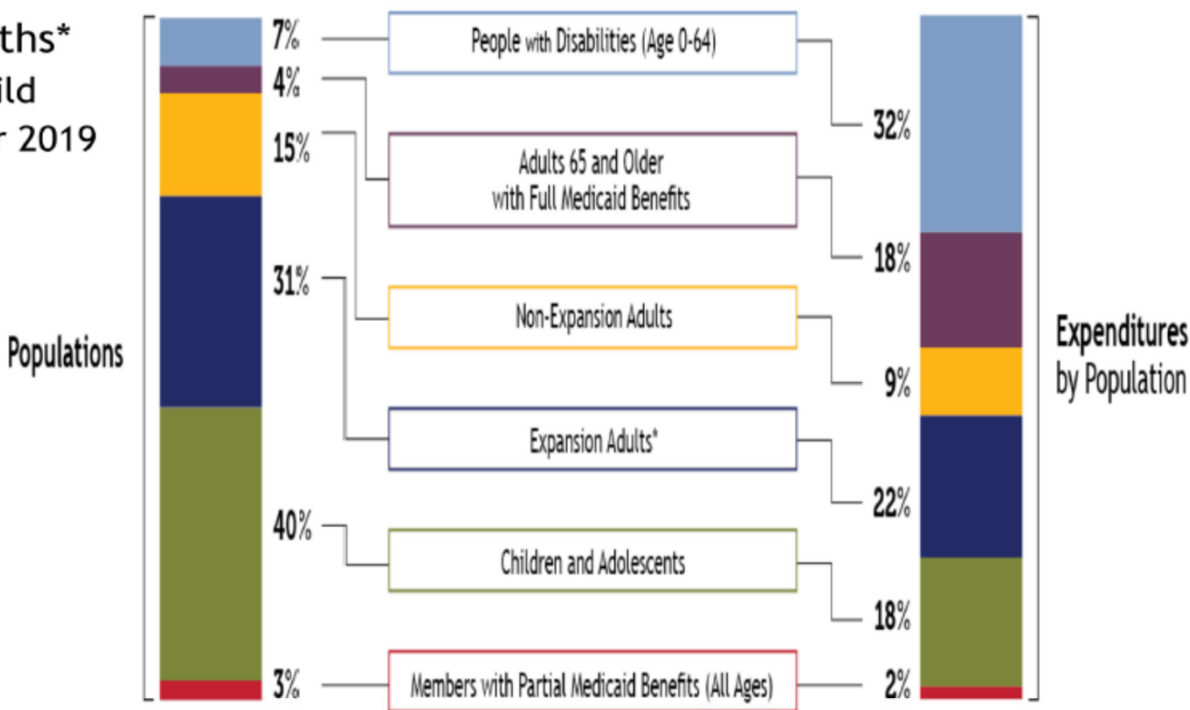
## Health First Colorado: Who is Covered and What Does it Cost?

**1 in 4** Coloradans & **44%** of all births\*  
 \*Includes Health First Colorado and Child Health Plan *Plus* (CHP+), Calendar year 2019

### 2020 FEDERAL POVERTY LEVELS by Family Size\*



\*Some earning more may still qualify



\*The majority of funding for Expansion Adults is federal dollars, with the state fund source funded by the Hospital Affordability and Sustainability Fee.



# Who Receives Long-Term Services and Supports?

13%



## Children & Adolescents

ages 21 & younger  
& qualifying former  
foster care youth

45%



## Adults

ages 22-64

42%



## Older Adults

ages 65 or older

## Cross Disability

- **Physical Disabilities** - i.e., Spinal Cord Injury, Parkinson's disease
- **Cognitive Disabilities** - Intellectual & Developmental Disabilities (I/DD), Brain Injury, Dementia
- **Mental Health**
- 84% have a **chronic condition** (compared to the 41% of the rest of the Medicaid); 31% have five or more of them

# History

## Social Security Act

Since the beginning of the Medicaid program in 1965, state agencies have been permitted to recover from the estates of recipients. The original law applied to recipients over the age of 65 and gave states permission to impose liens on property of deceased recipients. 42 U.S.C. § 1396p(b).

## C.R.S. § 26-4-403.3

The Colorado General Assembly directed the Department to establish an estate recovery program in 1991 with the passage of H.B. 91S2-1030. The General Assembly noted that increasing costs had created an increased burden on state revenues and an estate recovery program would be a cost-efficient method of offsetting medical assistance costs in an equitable manner.



## Omnibus Budget Reconciliation Act of 1993 (OBRA '93)

Congress required states to recover the cost of Medicaid benefits from the estates of certain nursing home residents and older persons receiving home and community-based services.

The Colorado General Assembly passed conforming amendments in state statute in S.B. 94-164. Amendments lowered the estate recovery threshold to recipients 55 years of age or older at the time they received medical assistance.

## C.R.S. § 25.5-4-302

Estate recovery provisions (and medical assistance act) relocated to title 25.5 in 2006.



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## The Affordable Care Act, Pub. Law No. 111-148, 124 Stat. 119 (2010)

The Affordable Care Act expanded Medicaid coverage to millions of previously uninsured Americans - and potentially expanding the reach of Medicaid estate recovery.

## CMS State Medicaid Director Letter, SMDL #14-001 (Feb. 21, 2014)

CMS clarified that MAGI individuals who were 55 years or older when they received medical assistance are not exempt from the estate recovery provisions in the law.

## 10 CCR 2505-10, Section 8.063

The Department updated its estate recovery rule in 2014 in response to ACA and the issues raised in SMDL #14-001. The services subject to estate recovery for the 55 and over population are now those required under federal law: nursing facility services, home and community-based services, and related hospital and prescription drug services.





# WHO IS IMPACTED?

- 1) Members who were institutionalized at the time he/she received medical assistance; or,
- 2) Members who received nursing facility services, home and community-based services, and related hospital and prescription drug services when they were age 55 and older.

10 CCR 2505-10, Section 8.063.11



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# Modified Adjusted Gross Income (MAGI)

- The Affordable Care Act simplified the method for calculating income eligibility utilizing “MAGI.”
- Those that qualify for Medicaid benefits under MAGI are not subject to an asset test and are only subject to income restrictions.
- Per CMS, estate recovery is not limited to only recipients in which post-eligibility income rules apply. SMDL #14-001 (Feb. 21, 2014).
- Estate recovery may apply to MAGI individuals that receive long-term care or home and community-based services.



# Working Adults with Disabilities (WAwD)

- The Buy-In Program for Working Adults with Disabilities (WAwD) allows qualified adults with disabilities to "buy-into" Medicaid.
- Those that qualify pay a monthly premium based on their gross monthly earned and unearned income.
- Those that qualify for benefits under WAwD are not subject to an asset test.
- Those that qualify receive standard state plan Medicaid benefits and may also qualify for additional long-term services and supports.
- Estate Recovery may apply to WAwD that receive long-term services and supports such as home and community-based services.





Health Management Systems (HMS) is the Department's vendor for estate recovery cases.

- Open probate
- File estate claims
- Process exclusions, waivers & compromises
- Open probate & sell properties to pay the Estate Recovery Claim



# Basic Estate Recovery Process

- 1) A Medicaid member passes away.
- 2) HMS receives notification of the death from one of many sources.
- 3) HMS conducts asset research to determine real property and other assets subject to probate that were owned by the deceased member.
- 4) HMS monitors the case for probate to be opened.
- 5) If no probate is opened, a letter is sent to the address of the real property advising of the Department's claim and that probate must be opened.
- 6) Once probate is opened, either by the family or by HMS, a creditor claim is filed against the estate for the recovery amount the Department is seeking.
- 7) If a family requests a hardship or exclusion, HMS will review the request and work directly with the family regarding its approval or denial. When necessary, the Department renders the final decision whether a hardship is warranted.
- 8) If there are assets in excess of what is owed on the Department's claim, such excess assets will pass to heirs by will or other creditors according to the creditor hierarchy found in the Colorado Probate Code.



# ASSETS SUBJECT TO ESTATE RECOVERY

- The Department will collect any assets that are included in the estate inventory.
- The inventory typically includes homes, parcels of land, mineral and water rights, various insurance policies, bank accounts, valuable artwork and jewelry, retirement and investment accounts, vehicles, boats, ATVs, etc.



# ARE THERE INSTANCES WHERE THE RECOVERY FROM A MEMBER'S ESTATE CAN BE BYPASSED?

There are very specific instances when the Department's claim can be reduced or waived entirely:

- Federally allowed exclusions
- Hardship waivers or compromises
- A claim may be reduced if the estate assets are less than the full amount the Department is seeking to recover.

Claims are NOT negotiated outside of the provisions of the Colorado medical assistance estate recovery regulations. There are NO standard discounts offered on estate cases to reduce the overall claim being made by the Department.



# EXCLUSIONS

## THE DEPARTMENT WILL NOT RECOVER FROM A DECEASED MEMBER'S ESTATE IF:

- 1) The deceased Medicaid recipient is survived by a spouse, a child under age 21, or survived by a blind or disabled dependent residing in the home.
- 2) There is a brother or sister of the decedent who lived in the home for at least one year prior to the member entering a nursing facility, and who has lived in the home continuously since the date of entry into the nursing facility.
- 3) There is a son or daughter who lived in the home for at least two years prior to the recipient entering a nursing facility, whose care allowed the recipient to delay nursing facility placement, and who has lived in the home continuously since the date of entry into the nursing facility.

10 CCR 2505-10, Section 8.063.15 and 16.





# HARDSHIP WAIVERS/COMPROMISES

The Department may chose not recover from an estate if doing so would cause a hardship for the heirs.

- Heir is defined under Colorado Probate Code. Determination of hardship is at the discretion of the Department. The recovery may be compromised or waived if the Department determines that good cause exists to do so. HCPF may determine good cause exists if:
  - The Department concludes that the heirs would become eligible for assistance payments and/or medical assistance programs without receipt of the proceeds of the estate.
  - The Department concludes that allowing the heirs to receive the inheritance from the estate will enable them to discontinue eligibility for assistance payments and/or medical assistance programs.
  - HCPF concludes that the home is part of a business, including a working farm or ranch, and recovery will result in the heirs to the estate losing their means of livelihood.

Approval of a hardship may result in either maintenance of the Department's claim over time, reduction of the Department's claim, allowance of time for heirs to make payments, or entire waiver of the claim.

10 CCR 2505-10, Section 8.063.18.



# The Department and HMS do not pre-grant exclusions or hardship requests

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- Exclusions and hardships for estate recovery are considered at the time when estate recovery applies, which is at the time when the Medicaid recipient passes away.
- Families should collect and obtain documentation that can later be presented in a request for an exclusion or hardship.
- Documentation may include, but is not limited to:
  - A letter from SSA or ARG showing the disability of a dependent.
  - Physician statements outlining care provided to a recipient by family members prior to entering a nursing facility.
  - Birth Certificate or a copy of the will of the deceased proving a child's relationship to the deceased member. \*Adoptions are acceptable.
  - Any address related documentation that demonstrates residency for two-years prior to the member entering a nursing facility.
  - Any address related documentation that demonstrates current/continuous residency.



# Medical Assistance Estate Recovery Program

Learn how estate recovery works, who is affected by it, and other facts about this federally-required program.

## What is estate recovery?

Estate recovery is a program to help pay costs of providing services to people on Medicaid.

**Estate recovery is required by federal law.**

The Colorado Department of Health Care Policy and Financing (the Department) is responsible for administering estate recovery.

## Who will be affected by this program?

**Any Medicaid recipient with the circumstances below may be affected.** Estate recovery applies to all Medicaid recipients, regardless of their program type or category of eligibility (for instance, MAGI clients may be affected).

**The Department may:**

- Recover payments made for all medical assistance paid on behalf of an individual who was institutionalized at the time he/she received medical assistance
- Recover the costs of medical assistance provided for nursing facility care, home and community-based services, and related hospital and prescription drug services (for persons age 55 and older at the time they received medical assistance)

## What costs will be recovered by this program?

For institutionalized recipients, all payments made by Medicaid will be recovered. Payments include, but are not limited to, payments made to providers and capitation fees paid on behalf of the client.

For recipients age 55 and older at the time they received medical assistance, recovered costs are limited to nursing facility services, home and community-based services, and related hospital and prescription drug services.


## How does estate recovery work?

The Department will file a claim against the estate of the deceased Medicaid recipient. The estate of the recipient will include all of the property (personal and real) that is left when the recipient passes away. Proceeds from the sale of the property in the estate will be used to reimburse the Department for medical assistance provided on behalf of the recipient.




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Address: 1570 Grant St, Denver, CO, 80203-1818  
Phone: 303-866-2993  
Web: [www.colorado.gov/hcpf](http://www.colorado.gov/hcpf)



## Can the recipient's heirs keep the property in the estate and pay the Department the amount owed instead?

If the heirs wish to retain the property that is in the estate, they may do so as long as they agree to pay the amount that the Department would have otherwise recovered.

## Is the Medicaid recipient required to sell a home while they are still alive?

The program does not require a recipient to sell a home. However, the Department may place a lien on the property while the recipient is alive. A lien represents a debt that must be satisfied when the property is sold. A lien secures the Department's interest by ensuring the Department can recover medical costs when the property is sold. A lien does not change ownership of the property. Liens will be used when ALL FIVE of the following conditions are met:

1. The recipient resides in a nursing facility or other medical institution;
2. The recipient owns a home or other real property;
3. The Department determines that the recipient is not likely to return home to the property;
4. The recipient does not have a spouse, child under age 21, or a blind or disabled dependent living in the home; AND
5. The recipient does not have a brother or sister who is part owner of the home and who has lived in the home continuously since at least one year prior to the recipient entering the nursing facility.

## Will any estates be exempt from recovery?

The Department will not recover from a deceased recipient's estate if:

- The deceased Medicaid recipient is survived by a spouse, child under age 21, or a blind or disabled dependent residing in the home; OR
- There is a brother or sister who lived in the home for at least one year before the recipient went into a nursing facility, and who lived in the home continuously since the date of entry into the nursing facility; OR
- There is a son or daughter who lived in the home for at least two years before the recipient entered a nursing facility, whose care allowed the recipient to delay nursing facility placement, and who has lived in the home continuously since the date of entry into the nursing facility.

## What if estate recovery would cause a hardship?

The heirs of a Medicaid recipient may submit a request to waive or compromise recovery from the estate on the basis of hardship. Determination of hardship is at the discretion of the Department.







**NOTIFICATION OF COLORADO ESTATE RECOVERY PROGRAM  
AND REAL ESTATE OWNERSHIP**

Property owned by an applicant for Medicaid benefits is to be identified at the time of Medicaid application. If the applicant is applying for or receiving benefits from the Medicaid Program, this document must be completed. Property to be reported on this notification should include:

- The principal residence owned solely or jointly by the Medicaid applicant.
- Any subsequent properties in the State of Colorado owned solely or jointly by the Medicaid applicant.
- Any out-of-state property owned solely or jointly by the Medicaid applicant.
- Property previously owned solely or jointly where an applicant's interest has been transferred in any way (including the addition of any names to the title) within the last five (5) years.

The \_\_\_\_\_ County Department of Human Services needs to obtain information from \_\_\_\_\_ regarding property owned solely, jointly, or transferred, and his/her ownership interest in any properties. Properties may be subject to the TEFRA lien and estate recovery provisions defined in the Colorado Revised Statute 25.5-4-302.

Members Name                      Members State ID#

Primary Address: \_\_\_\_\_

Primary Property Owner(s): \_\_\_\_\_, \_\_\_\_\_  
(as defined on Title)

Joint Ownership: Yes  or No  Date of Transfer or change in Title \_\_\_\_\_

Secondary Address: \_\_\_\_\_

Secondary Property Owner(s): \_\_\_\_\_, \_\_\_\_\_  
(as defined on Title)

Joint Ownership: Yes  or No  Date of Transfer or change in Title \_\_\_\_\_

Please use additional forms to indicate additional properties owned by the applicant/client.

\_\_\_\_\_  
Signature or mark of Applicant/Member or their Representative                      Date

This information will be reported to the Colorado Estate Recovery Program that is managed on behalf of the Department by Health Management Systems (HMS). Please reach out to HMS with questions and/or concerns.

Our mission is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.  
[www.colorado.gov/hcpf](http://www.colorado.gov/hcpf)



# RECENT MEMBER OUTREACH by



- The Department endeavors to provide notice of the Colorado Estate Recovery Program and its applicability to members and applicants. See, State Medicaid Manual § 3810.G.1
- Counties have historically been responsible for providing notice of estate recovery to members. 10 CCR 2505-10, Section 8.100.5.d.
- HMS took over sending estate recovery materials to members.
- The initial mass mailing appears to have been too broad and caused some hysteria.
- Future notices will include members age 50 and older that are currently receiving long-term care, waiver services, SSI, and individuals enrolled in Medicare Savings Programs.



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# FREQUENTLY ASKED QUESTIONS

- 1) What is Estate Recovery and how do we get out of it?
- 2) My mom/dad/myself were approved for Medicaid and knew the home was owned. Why isn't the home exempt?
- 3) If there is a Will and the home is to be left for me or someone else, does that exempt us from the estate claim?
- 4) What if someone else's name is on the title to the home in addition to mine?
- 5) We meet one of the exclusions or hardships outlined in the brochure. How do we apply for it now (before the client is deceased)?
- 6) How can we retain the home for sentimental value?
- 7) Can we set-up a payment plan, rather than paying the claim all at once?
- 8) What happens if we already sold the home and spent or disbursed the funds?
- 9) Why weren't we advised of this program sooner?
- 10) How do we know the claims paid by Medicaid are accurate?
- 11) We had commercial health coverage and/or Medicare. Why did Medicaid pay these claims and not the carrier or Medicare?



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Who do I contact about  
Estate Recovery?

**General Medicaid Recovery Inbox**  
[medicaid.recovery@state.co.us](mailto:medicaid.recovery@state.co.us)

**Estate Recovery Vendor**  
**Health Management Systems (HMS)**  
[coestatererecovery@hms.com](mailto:coestatererecovery@hms.com)  
**303-837-8293**



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# QUESTIONS?

