

Department of Public Health
and Human Services

Section:

RESIDENTIAL MEDICAL
INSTITUTIONS

MEDICAL ASSISTANCE

Subject:

► Pursuing Claims on Property and
Estates

Supersedes: MA 906-1 (07/01/02)

References: 72-2-221, MCA; ARM 37.82.101

► GENERAL RULE—Medicaid applicants and recipients who are receiving or requesting nursing home/institutional or waiver coverage are required to assert all necessary legal claims to obtain assets or income to which they may be entitled. Failure or refusal to assert such legal claims will result in the failure or refusal to be evaluated as uncompensated asset transfers.

**► RESOURCES
CONSIDERED
AVAILABLE
IMMEDIATELY**

Any resources owned jointly between the deceased individual and the Medicaid applicant or recipient as "joint tenants with right of survivorship" or other types of joint tenancy are considered available to the Medicaid applicant or recipient immediately.

Resources owned exclusively by a community spouse at the time of the community spouse's death are not immediately or automatically considered to be available for the use of the institutionalized spouse.

**► RESOURCES
WILLED TO A
PERSON**

If it is known that a deceased individual willed all or parts of his or her estate to a Medicaid applicant or recipient, those resources are not considered to be countable resources of the Medicaid applicant or recipient until the estate has been probated or otherwise settled. However, it is incumbent on the Medicaid applicant or recipient and/or his authorized representatives to begin the process of settling the estate within a reasonable amount of time. A reasonable amount of time may vary from case to case, but a period of 60 days is normally considered to be reasonable.

**RESOURCES
WILLED TO
PERSONS OTHER
THAN AN
INSTITUTIONALIZED
SPOUSE**

If a community spouse has willed all or parts of his or her estate to individuals other than his or her institutionalized spouse, several issues must be evaluated. According to Montana law, the survivor is entitled to an "elective share of a surviving spouse". This will vary depending on how long the spouses were married to one another, but if they were married for 15 years or more, the elective share is 50 percent. It must then be determined whether pursuit of this elective share will result in a hardship to the institutionalized spouse. A hardship could be established if pursuit of the elective share would result in a cost greater than the value of the elective share. If no hardship exists, it is incumbent on the surviving spouse to pursue his or her elective share of the deceased spouse's estate.

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Assets transferred by a community spouse after Medicaid eligibility is established for the institutionalized spouse do not result in a transfer penalty for the institutionalized spouse. Therefore, if the community spouse wills 50 percent or less of his or her personal assets to an entity other than the surviving spouse, no transfer penalty is imposed on the institutionalized spouse, and there is no requirement to pursue the elective share, because the surviving spouse has received at least 50 percent of the estate.

**COMMUNITY
SPOUSE DIES
WITH NO WILL**

If a community spouse dies and leaves no will, the institutionalized spouse would be entitled to all or a large part of the estate under Montana statutes.

**► FAMILY
ALLOWANCES**

If a Medicaid applicant or recipient may be entitled to a “family allowance” from the estate of a deceased family member, or to any other type of inheritance or allowance, the Medicaid applicant or recipient must pursue the claim.

**► OTHER
ENTITLEMENTS**

If other regulations or laws entitle an individual to other assets over and above or separate from family allowances or elective shares, these additional claims must also be asserted, according to the General Rule in this section.

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