

Legal Citations and websites:

Statutes and Regulations

42 CFR § 433.36

Social Security Act section 1917

Montana Code Annotated: <https://leg.mt.gov/bills/mca>

Lien Recovery

MCA 53-6-143 through MCA 53-6-144

MCA 53-6-171 through 53-6-189

Estate Recovery

MCA 53-6-165 through MCA 53-6-169

MCA 53-6-189

Administrative Rules of Montana: <http://www.mtrules.org/>

FOR MORE INFORMATION, PLEASE CONTACT:

Third Party Liability Unit

Lien Recovery & Estate Recovery

P.O. Box 202953

Helena MT 59620-2953

In Helena: 406-444-9440, Option 2

Telephone (toll free): 1-800-694-3084, Option 2

For more information on Montana Medicaid's Senior and Long-Term Care services please visit our website at <http://www.dphhs.mt.gov/sltc>.

Information on Medicaid Lien Recovery and Estate Recovery can also be found at <https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html>.

DPHHS complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-406-444-1386 (TTY: 1-800-833-8503).

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-406-444-1386 (TTY: 1-800-833-8503).

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Montana Medicaid Lien Recovery & Estate Recovery Program



This pamphlet is meant to provide basic information only and does not constitute legal advice. To receive legal advice please consult an attorney.

**LIEN RECOVERY: MCA 53-6-171
THROUGH 53-6-189**

To secure recovery of Medicaid payments made, the Montana Department of Public Health and Human Services (DPHHS) State Medicaid Agency, may place a lien on real property (real estate; land with or without improvements) owned by a Medicaid recipient living in a nursing home or institution such as Montana State Hospital and Intensive Behavior Center. A lien may be imposed only if the recipient is permanently institutionalized. For purposes of imposing a lien, a recipient is considered to be permanently institutionalized when the recipient cannot be expected to return home. The amount of the lien cannot exceed the amount Medicaid paid on behalf of the recipient.

If a lien is imposed and the recipient is discharged from the facility or institution and returns home, DPHHS may release the lien based on a written request from the recipient. Additionally, heirs may retain the property by paying the lesser of the amount the State Medicaid Agency is entitled to recover; or the fair market value of the property.

DPHHS may enforce the lien after the Medicaid recipient's death, or upon the sale, transfer or exchange of the right, title and interest in the real property.

In accordance with Social Security Act 1917 § (b)(1)(3)(B), no lien will be imposed on Tribal trust property and improvements to tribal trust property (buildings or other attachments).

MCA 53-6-171- A lien may not be imposed if the State Medicaid Agency is notified that any of the following relatives of the recipient is living in the home:

- The surviving spouse;
- A child under 21;
- A child of any age who is blind or determined permanently and totally disabled by Social Security;

MCA 53-6-180- Hardship Waivers: The State Medicaid Agency may waive its recovery, wholly or in part, for any other interested individuals, if it determines that recovery would result in undue hardship as defined by department rule, ARM 37.82.436.

**ESTATE RECOVERY AFTER A
MEDICAID RECIPIENT'S DEATH: MCA
53-6-165 THROUGH 53-6-169 AND MCA
53-6-189**

Federal law requires Montana DPHHS to recover Medicaid payments made on behalf of the following recipients after their death.

- Residents of nursing homes;
- Residents of institutions such as Montana State Hospital and Intensive Behavior Center; and
- Individuals age 55 and older at the time they receive Medicaid-paid services

The State Medicaid Agency may recover by filing a claim against the deceased recipient's estate for the amount Medicaid paid on the recipient's behalf. Recovery may be made from any property the Medicaid recipient had an interest in prior to the recipient's death, including both real property (real estate; land with or without improvements) and personal property including but not limited to:

- Property that is part of the recipient's probate estate;
- Property that is not part of the recipient's probate estate;
- Property that was solely owned by the recipient; and
- Property that the recipient owned jointly with another or others as a joint tenant or tenant-in-common.
- Property transferred by Beneficiary Deed or Quit Claim Deed.

Recipients eligible under Medicaid Expansion are not subject to recovery except for Medicaid-paid long-term care such as nursing home and home and community-based services, as required by federal law.

DPHHS will not recover from Tribal Trust property, including real property and improvements, or from income derived from trust resources or Tribal trust property.

MCA 53-6-167- The State Medicaid Agency may not recover while there is:

- A surviving spouse; except the State can recover from the estate of the surviving spouse if the spouse dies within three years of the recipient;
- A child under 21;
- A child of any age who is blind or determined permanently and totally disabled by Social Security.

MCA 53-6-167- The State Medicaid Agency may also recover from:

- The recipient's estate after the death of the surviving spouse or child.
- The estate of the recipient's spouse, limited to the value of any property the spouse received from the recipient by distribution or right of survivorship, if the spouse survives the recipient.
- The State Medicaid Agency may recover from any person who received property from a deceased recipient by distribution or right of survivorship.

All recoveries are limited to the value of the property received from the recipient and will not exceed the amount Medicaid paid on behalf of the deceased recipient.

MCA 53-6-168- The State Medicaid Agency is entitled to receive from nursing home recipients:

- Any funds of a recipient held by a financial institution at the time of the recipient's death, such as funds in a checking or savings account;
- Any funds of a recipient held by a nursing facility at the time of the recipient's death, such as funds in a patient/resident account;
- Personal funds of a recipient held by any person at the time of the recipient's death, if the recipient resided in a nursing facility.

Note: There is no undue hardship waiver for recoveries from funds of the recipient held by a financial institution, nursing facility or other person or from unused funds in a burial/funeral contract or fund.

MCA 53-6-169- The State Medicaid Agency is entitled to receive from all recipients:

- Unused funds from burial/funeral contract(s), fund(s) or other property that was specifically designated and set aside for paying for the disposition of the decedent's remains with a cumulative value greater than \$5,000.

Example: Ms. Jones has a burial account with a value of \$5,100. Cremation was \$2,300. The remaining \$2,800 must be sent to State Medicaid Agency.

Ms. Jones has a burial account with a value of \$4,900. Cremation was \$2,300. The State Medicaid Agency has no interest in the remaining \$2,600.

The State Medicaid Agency may recover for the total amount of recoverable medical expenses paid to or on behalf of the recipient except:

- Effective June 30, 2009, Medicare premiums paid for through a Medicare Savings Program (MSP) benefit are not subject to estate recovery.
- Effective January 1, 2010, Medicare copayments, coinsurance and deductible amounts paid for through an MSP benefit are not subject to estate recovery.

Circumstances may arise when the recipient's estate may not be subject to recovery if the recipient was cared for by a sibling or child living with them.

MCA 53-6-167- Hardship Waivers:

The State Medicaid Agency may waive its recovery, wholly or in part, for any other interested individuals, if it determines that recovery would result in undue hardship as defined by department rule, ARM 37.82.431.