

ARKANSAS REGISTER

Transmittal Sheet



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SECRETARY OF STATE
STATE OF ARKANSAS

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Secretary of State
State Capitol Room 017
Little Rock, AR 72201-1094

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Name of Agency Department of Human Services

Department Division of County Operations

Contact Person Carol McKnight

Statutory Authority for Promulgating Rules AR Code Ann. 25-15-201 et Seq. and AR Code Ann. 20-76-201 et Seq.

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

[Signature]
Signature

Director, Division of County Operations
Title

12/29/95
Date

1340

Disposition of Medicaid Case Records

AABD category Medicaid case records may be destroyed when the case has been closed continuously for a period of three years.

AFDC and U-18 category Medicaid case records may be destroyed when

1. The case has been closed continuously for five (5) years or,
2. The case has been closed continuously for three years and the youngest child is over 18 years old.

Exception: If an audit by or on behalf of the Federal Government has begun but is not completed at the end of the three or five year period, or if audit findings have not been resolved at the end of the three or five year period, the records will be retained until resolution of the audit findings. (Central Office will notify the County Office when an audit by the Federal Government is to be conducted, of the cases to be audited, and when the audit has been completed.)

When records or contents of case records (refer to retention schedule, EMS-PUB-014) are to be discarded, they will be destroyed by burning or shredding. These methods will maintain the confidentiality of records by ensuring that unauthorized persons do not gain access to the records.

1345

Estate Recovery

The Omnibus Budget Reconciliation Act of 1993 and Arkansas Act 415 of 1993 mandate recovery of medical payments correctly made from 8/13/93 and later from the estates of:

- . Individuals of any age who were considered to be permanently institutionalized, who received medical services in a nursing or ICF/MR facility, and who were required to pay all but a minimal amount of income for their care, and for
- . Individuals age 55 and older who received medical services in a nursing or ICF/MR facility or in a home and community based waiver program, whether or not they were considered to be permanently institutionalized.

Estate recovery will not be made from the estate of deceased individuals when:

- . there is a surviving spouse, dependent children under age 21, or blind or disabled children (as determined by SSA disability guidelines),
- . recovery will create an undue hardship for other surviving family members, or
- . recovery is not cost effective.

1345.1

Definitions

Estate - The term "estate" under Arkansas law, with respect to a deceased individual, means all real and personal property owned by the individual at his death.

Permanently Institutionalized - An individual is considered to be "permanently institutionalized" if a medical determination is made which indicates there is no reasonable expectation that the individual is likely to return home.

The date on which an individual was determined to be permanently institutionalized is irrelevant. If services were provided prior to the time a decision was made regarding permanent institutionalization, recovery will include assistance provided prior to the decision.

Intent to Return Home - When an individual who enters an institution states his intent to return home, the home may be excluded from countable resources in determining eligibility, even when a medical decision has been made that the individual is "permanently institutionalized".

Undue Hardship - Undue hardship may exist when the estate's asset is the sole asset of the survivors, the asset is their sole source of income, the income is not sufficient to meet their living expenses and also repay the debt to DHS, or there are other compelling circumstances (e.g., the estate assets cannot be readily converted to cash).

Cost Effective - Recovery is cost effective if the amount which can be recovered from an estate is greater than the cost of recovery to DHS.

Personal Representative - The executor of a will or administrator of an estate who has been appointed to the position by a probate court.

Distributee - A person entitled to real or personal property of a decedent, either by will, as an heir, or as a surviving spouse.

Affidavit for Collection of Small Estates - The affidavit permitted by Ark. Code Ann. § 28-41-101 to allow the distributees of an estate that does not exceed \$50,000 to receive the estate without the appointment of a personal representative or administration of the estate.

Notices - An initial notice of intent to recover from the estate of individuals who received Medicaid services in an institution or a waiver program will be given at the time of application for services. The notice is printed on the application, Form DCO-777.

A second notice, DHS-20 - Notice of Estate Recovery, will be sent to the personal representative of the deceased's estate or to a distributee of the estate who has signed an "Affidavit for Collection of Small Estates". The notice will inform the individual of the intent to recover, of the hardship and cost effectiveness provisions, and of appeal rights. The notice will be mailed by the Office of Chief Counsel (OCC).

1345.2 County Office Responsibilities

At the application interview for nursing facility, ICF/MR, or waiver services, the county worker will review the initial estate recovery notice on the back of the DCO-777 with the applicant or representative. The MSP 1345 section can be used as the basis to provide additional information if needed. If the applicant or representative has questions which the county office worker cannot answer, a suggestion may be made to make further inquiries of an attorney.

The determination that an individual is permanently institutionalized will be made based on the medical information submitted on the "Evaluation of Need for

Nursing Home Care" (Form DCO-703) for individuals under age 55 who apply for services in an ICF/MR or nursing facility.

Administrators of nursing and ICF/MR facilities have been requested to submit copies of the completed DCO-703s to county offices for new applicants who are under the age of 55. If the estimated duration of need for nursing home care is checked "permanent" on page 2 of the DCO-703, the individual will be considered permanently institutionalized. If the form has not been received prior to certification of an individual for services, a copy will be requested of the facility. Certification of the case will not be delayed pending receipt of the DCO-703.

The determination need not be made again as long as the individual resides in an ICF/MR or nursing facility. The DCO-703 will be filed in the recipient's case record to show that a determination of permanent institutionalization was made.

When closing a Medicaid case due to the death of a NF, ICF/MR or waiver recipient, the county worker will complete the "Report of Case Closure Due to Death (Form DCO-734) and mail it to the Office of Chief Counsel, Decedents' Estates, P. O. Box 1437, Slot 1033, Little Rock, AR 72203-1437.

1345.3 Recovery Procedures

State law requires in most cases that the appointed personal representative of the estate of a deceased person shall promptly mail to the creditors of an estate, including the Department of Human Services (DHS), a copy of the notice of their appointment which has been published in the newspaper. The published notice is to include the requirement that all claims against the estate be submitted within three months of the date of publication of the first notice. A copy of the petition for probate of a will or administration of an estate and the decedent's Social Security number shall be attached to the notice forwarded to DHS.

After receiving notice of the opening of an estate or filing of an "Affidavit for the Collection of a Small Estate", OCC will check the EDS System to determine if any Medicaid benefits were paid for the decedent.

If benefits were paid, OCC will mail to the personal representative or the distributee of a small estate a Notice of Estate Recovery (DHS-20), advising of the intent to recover Medicaid payments and of the procedures for requesting a hardship waiver.

A payment profile for the decedent will be ordered from EDS. When the payment profile is received, a claim against the estate will be prepared for the signature of the Director of the Division of Medical Services. The claim will be filed with the appropriate Probate Clerk and a copy mailed to the personal representative, attorney for the estate, or distributee of the estate.

If no benefits were paid, no further action will be taken.

1345.4 Application for a Hardship Waiver

The personal representative or distributee of an estate may apply for a hardship waiver at the time notice of the estate is given to DHS, or within 30 days after receiving notice from DHS of intent to recover Medicaid payments and the procedures for requesting a hardship waiver (DHS-20).

To apply for a waiver, the representative or distributee must mail a statement to the Office of Chief Counsel, Attention: Decedents' Estates, P. O. Box 1437, Slot 1033, Little Rock, AR 72203-1437, setting forth the facts which constitute the undue hardship. Tax returns, income statements or other documents which support the position that estate recovery would work an undue hardship on the survivors may be submitted.

A determination that hardship does not exist will be made if the individual created the hardship through estate planning in which assets were divested in order to avoid estate recovery.

A decision on the hardship waiver will be made by a DHS Central Office Committee within 30 days of receipt of the waiver request.

The DHS decision will be sent by certified mail, return receipt requested, to the person who applied for the waiver.

If recovery is not made due to a determination of hardship, DHS may decide to recover at a later time if the conditions which caused the original hardship cease to exist.

1345.5 Appeal Rights

The waiver applicant may appeal the DHS decision regarding the hardship waiver by writing to the Office of Appeals and Hearings and requesting an administrative review of the decision. The request must be received no later than 30 days from the date of the notice of negative action.

1350 Mandatory Assignment of Rights to Medical Support/Third Party Liabilities

As a condition of eligibility for Medicaid, recipients are required to assign their rights to Medical Support/Third Party Liability payments to the Division of Economic and Medical Services. This means that any funds settlements, or other payments made by or on behalf of third parties should be paid directly to the Arkansas Medicaid Program. In Arkansas, Third Party Liability payments are automatically assigned by state law.

The Medical Assistance Program is required by Federal and State Regulations to utilize all Third Party sources and to seek reimbursement for services which have been paid by both a Third Party and Medicaid.

Private insurance and Medicaid are complementary. A recipient's Medicaid eligibility is not affected by having Third Party coverage.

When a recipient has Third Party coverage in addition to Medicaid which can be used for medical expenses, Third Party coverage must be utilized first. Medicaid will pay up to the Medicaid allowable charge. For example: A Medicaid recipient has insurance which paid 80%, or \$80 of a \$100 medical bill. The Medicaid allowable charge for the bill was only \$60.00. A Medicaid payment was not due since the Medicaid allowable charge was less than the insurance payment. Third Party sources whose payment Medicaid will retrieve include private health insurance, automobile liability insurance where applicable, workmen's compensation, settlements for injuries, etc.

The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) is considered to be a Third Party source. Whenever a CHAMPUS beneficiary is also eligible for Medicaid, CHAMPUS is in every instance the primary payor. This

ARKANSAS DEPARTMENT OF HUMAN SERVICES

OFFICE OF CHIEF COUNSEL

NOTICE OF ESTATE RECOVERY

The Arkansas Department of Human Services (DHS) made medical assistance payments on behalf of the decedent. These payments are a debt to be repaid. DHS will recover the payments by filing a claim in the decedent's estate. DHS may waive recovery if it determines recovery is not cost effective.

DHS will waive or postpone recovery of the medical assistance payments if recovery works an undue hardship on the heirs or devisees of the decedent's estate. Undue hardship means:

1. The estate's asset is the sole asset of the survivors,
2. The asset is the survivors' sole source of income,
3. The survivors' income is not sufficient to meet their living expenses and to repay the debt to DHS, or
4. Other compelling circumstances exist (e.g., the estate assets cannot be readily converted to cash).

You may ask DHS to determine if recovery will work an undue hardship.

To request a hardship waiver, you must mail your written request within thirty (30) days of your receipt of this notice to:

Office of Chief Counsel
Decedents' Estates
P. O. Box 1437 - Slot 1033
Little Rock, AR 72203-1437

The request must set out the facts establishing the undue hardship. You should attach supporting documents, such as tax returns and income statements.

DHS will decide if an undue hardship exists within thirty (30) days of receiving the request. If the decision is adverse to you, you have the right to appeal it.

If you need this material in a different format, such as large print, contact your DHS county office.

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NOTICE OF RULE MAKING

Pursuant to AR Code Ann. 25-15-201, et seq. and AR Code Ann. 20-76-201, et seq., the Director, Division of County Operations, issues policy and procedures regarding the recovery of medical payments from the estates of deceased individuals.

Copies of the proposed policy and procedures may be obtained by writing the Division of County Operations, P.O. Box 1437 - Slot 1223, Little Rock, Arkansas 72203-1437. All comments must be submitted in writing to the address above no later than thirty days from the date of this publication.

If you need this material in a different format, such as large print, contact our Americans with Disabilities Act Coordinator at 682-8920 (voice) or 682-8933 (TDD).

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and operates, manages, and delivers services without regard to age, religion, disability, political affiliation, veteran status, sex, race, color or national origin.

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