
CATEGORY

U-100 Fraud

U-200 Recovery

U-300 Estate Recovery

FRAUD AND RECOVERY**U****U-100 FRAUD**

Fraud is willful misrepresentation of fact or concealment of information relevant to a recipient's eligibility.

U-110 Suspected Recipient Fraud

Cases of suspected recipient fraud shall be referred to the **BHSF** Fraud and Recovery Section.

Refer all cases involving one or more of the following situations for suspected recipient fraud:

- an individual representing facts in order to become or remain eligible to receive ****Medicaid of Louisiana** benefits or obtain greater benefits.
- an individual transferring his medical eligibility card to another person.
- the use of a medical eligibility card by a person not listed on the card, and
- an individual presenting (or causing to be presented) false or fraudulent documents or records to obtain medical benefits under Medicaid of Louisiana.

U-120 Suspected Provider Fraud

Refer any reports of provider fraud and/or abuse by memorandum to the Medical Program Specialist.

U-200 RECOVERY

An ineligible medical vendor payment or LTC vendor payment overpayment is a payment made on behalf of a recipient for which he was not eligible. All ineligible payments are subject to recovery.

Ineligible payments or overpayments result from one or more of the following:

- administrative error
- incorrect policy application
- misunderstanding or policy by the applicant/recipient or responsible person
- withholding information or providing false information by the applicant/recipient or responsible person, and/or
- ineligible recipient of **TANF** cash when the recipient is not eligible for Medicaid benefits under another program.

An ineligible medical vendor payment or overpayment can result in:

- recovery or recoupments
- collection through civil court action
- criminal prosecution, or
- a decision by the Fraud and Recovery Section not to proceed with recovery of the overpayment.

U-210 Agency Responsibility

When an ineligible payment is discovered, determine eligibility under other Medicaid programs. If the *enrollee* is eligible in another program, do not report the ineligible payment.

If the *enrollee* is not eligible in any program, report the ineligible payment to the *Medicaid Recovery Unit using BHSF Form TPL/MR*.

U-210.1 LTC Only

Use Form 148-PLI to correct overpayments *totaling \$50 or less* to a LTC facility that are the result of:

- administrative errors by nursing facility staff and/or BHSF staff;
- errors that result from MEDS limitations (e.g., changes reported timely but after cutoff and changes in income between the date of application and the date of certification);
- mass changes regarding Personal Care Needs, SSA COLA and VA income changes; *and*
- *any other error* ** regardless of the cause.

Report all other overpayments and ineligible payments *totaling more than \$50 using BHSF Form TPL/MR* to BHSF/TPL/Medicaid Recovery Unit.

Use Form 148-PLI to correct all under payments.

U-220 Recovery Report

Include in the written report to BHSF/TPL/Medicaid Recovery Unit:

- the Social Security Number, name and ID *number* of the recipient
- a summary of the circumstances of the ineligible payment or overpayment, specifying the type of medical benefit (e.g., CHAMP, LTC, MNP)
- the name and address of the:
 - responsible party for LTC cases, and
 - payee, third party payee or responsible party
- pertinent information and recommendations which will contribute to an understanding of the total situation,
- factual information and evidence concerning the willful concealment or misstatement of information on income, resources or other eligibility factors,
- information of the recipient's ability to repay,
- information on the recipient's third party liability, and
- a statement regarding the possibility of successful recovery.

U-230 Amount of Ineligible Payment and Amount of Recovery

The BHSF/TPL/Medicaid Recovery Unit:

- will determine the amount of the ineligible payment using records of the fiscal intermediary,
- will determine the amount to be collected,
- can compromise the amount of the debt owed if the recipient has the ability to repay part of the debt but not all, and
- will make the decision on whether or not to seek recovery on changes that were reported timely but because of system limitations could not be effected in time to prevent an ineligible payment.

U-300 **ESTATE RECOVERY**

As required by federal regulations, the State must seek recovery of Medicaid payments for long term care facility services, home and community-based services, and related hospital and prescription drug services from the estate of an individual who was age 55 or older when such services were received.

Medicaid Estate Recovery is not a condition of eligibility. LTC and HCBS applicants/recipients shall be informed at the time of application and renewal that claims for Medicaid assistance received may be subject to recovery from their estate.

U-310 **Recovery Limitations**

Recovery for services received prior to the date the recipient/responsible party was initially informed of Estate Recovery provisions will not be pursued.

- ***Beginning January 1, 2002, Estate Recovery provisions were incorporated into the application coversheet and the rights and responsibilities section of the application for LTC and HCBS. The date the application is signed will establish the initial date of notification of Estate Recovery.***
- ***For applications taken prior to January 1, 2002, the signature date on the BHSF Form ER (obsolete effective January 1, 2002) established the initial date of notification of Estate Recovery.***
- ***If the applicant/recipient refused to sign the BHSF Form ER, the refusal should have been documented on BHSF Form CD-1 and would serve as the date of initial Estate Recovery notification.***

Recovery can only be made after the death of the recipient's surviving spouse, if any, and only at the time when the recipient has no surviving child under age 21, or a child who is blind or disabled as defined by SSA.

U-310 **Continued**

Recovery may be reduced in consideration of reasonable and necessary documented expenses incurred by the decedent's heirs to maintain the homestead during the period in which the recipient was in a long term care facility or received home and community-based services, if the homestead is part of the estate.

U-320 **Cost Effectiveness**

Recovery may be waived in cases in which it is not cost effective for the state to recover from the recipient's estate. Recovery will be considered cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery and is greater than \$1,000.

U-330 Undue Hardship

If recovery would place an unreasonable burden on an heir; and if an heir's family income is equal to or less than 300 percent of the FPIG, adjustment or recovery may be waived. An undue hardship waiver is limited to the period during which the undue hardship circumstances continue to exist.

An undue hardship may exist when:

- ***the estate is the sole income-producing asset of an heir and income from the estate is limited (e.g., a family farm or other family business which produces a limited amount of income when the farm or business is the sole asset of the heir.***
- ***recovery would result in the heir's necessity to apply for and become eligible for public assistance, including but not limited to Medicaid.***
- ***other compelling circumstances would result in placing an unreasonable burden on the heir.***

Undue hardship does not exist if the circumstances of the hardship were created by or as the result of estate planning methods under which assets were sheltered or divested in order to avoid Estate Recovery. It is the obligation of the heirs to prove undue hardship by a preponderance of the evidence. If the individual obtained estate planning advice from legal counsel and followed this advice, the resulting financial situation does not qualify for an undue hardship waiver.

Determinations of undue hardship will be made by the BHSF Recovery Section.

U-330.1 *Hardship Notice*

Family or heirs affected by recovery of amounts of medical assistance will be given advance written notice of the proposed action and the opportunity to apply for an undue hardship waiver. The notice is issued by BHSF Recovery Section.

The notice shall be served on the executor, legally authorized representative or succession attorney of the decedent's estate. If there is no executor, legally authorized representative or succession attorney, the notice shall be sent to the family or heirs.

This notice shall include:

- ***the deceased recipient's name, Social Security number and Medicaid identification number***
- ***the action the State intends to take,***
- ***the reason for the action,***
- ***the dates of services associated with the recovery action and the amount of the department's claim, i.e., amount to be recovered against the recipient's estate.***
- ***the right to and procedure for applying for a hardship waiver,***
- ***the heir's right to a hearing,***
- ***the method by which the heirs may obtain a hearing, and***
- ***the time periods involved in requesting a hearing or in exercising any procedural requirements under the Medicaid Estate Recovery Program.***

U-330.1 **Continued**

The notice will request that copies of all pleadings filed in connection with the succession of the decedent, including any judgment(s) of possession, be provided to BHSF. In the event no succession has been judicially opened, BHSF is to be advised as to when such documents will be available and/or when the succession is expected to be opened.

Appeal requests will be processed by the DHH Appeals Bureau.

U-340 Method of Payment

Checks, money order, cashier checks, and treasurer's checks will be accepted for payment in full.

Transfer of property will not be accepted.

U-350 Local Agency Responsibility

The local agency must notify individuals of the Estate Recovery program at the time of application and renewal for Medicaid.

The local office shall carefully explore and document resources in the case record of an individual who is receiving nursing facility or home and community based services. The case record should be "flagged" as Estate Recovery appropriate at the point the individual reaches age 55.

Immediately upon notification of the death of a recipient identified as subject to estate recovery provisions, the local office shall advise BHSF Recovery Section by submitting to

***BHSF MMIS
Third Party/Medicaid Recovery Unit
P.O. Box 91030
Baton Rouge, LA 70821-9030***

- Form BHSF ER-1 along with Form CD-4 and Form 1L for applications taken after January 1, 2002, or***
- Form BSHF ER-1 along with Form CD-4 and BHSF Form ER for applications before December 31, 2001.***

After submittal of the above referenced forms, the case record may be purged in accordance with normal agency policy.

U-360 Estate Recovery Definitions

Cost Effectiveness – the process whereby the Medicaid agency balances and weighs that which it may reasonably expect to recover, against the time and expense of recovery. Application of the provision will be deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery and is greater than \$1,000.

Estate – the gross estate of the deceased as determined by Louisiana succession law and any interest in any property, whether moveable or immovable, corporeal or incorporeal that the recipient had 36 months prior to his death.

Heir – a descendant in the first degree.

Homestead – a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding 160 acres; rural or urban buildings and appurtenances owned and occupied by the decedent; or a residence, including a mobile home, owned and occupied by the decedent; or a residence regardless of whether the homeowner owns the land upon which the home or mobile home is sited. This same homestead shall be the primary residence which served as a bona fide home and which was occupied by the recipient immediately prior to the recipient's admission to a long term care facility or when the recipient began receiving home and community-based services.

Undue Hardship – compelling circumstances that would result in placing an unreasonable burden on an heir.