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DATE

January 25, 2017

OF INTEREST TO

County Directors

Social Services Supervisors and
StaffFinancial Assistance Supervisors
and Workers

Tribal Governments

Health Care Eligibility
Operations Managers,
Supervisors, and Staff**ACTION/DUE DATE**Please read information and
prepare for implementation**EXPIRATION DATE**

January 25, 2019

DHS Explains: Changes to MA Estate Recovery Resulting from CMS Approval of a Revised State Plan Amendment; and a New Statewide Funeral Expenses Policy

TOPIC

Changes to Medical Assistance (MA) estate recovery resulting from the Centers for Medicare & Medicaid Services (CMS) approval of a revised state plan amendment; and a new policy on funeral expenses.

PURPOSE

Inform collection workers for local agencies about changes to MA estate recovery and how to recover MA payments in compliance with these changes.

CONTACT

For MA estate recovery questions, contact:

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SIGNED

NATHAN MORACCO
Assistant Commissioner
Health Care Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Notes about This Bulletin

This bulletin uses the following abbreviations:

- “DHS” for Minnesota Department of Human Services
- “SRU” for DHS Special Recovery Unit
- “CMS” for Centers for Medicare & Medicaid Services
- “LTSS” for Long Term Services and Supports

“We” refers to SRU.

II. Background

Federal and state law require DHS and local agencies to recover costs that the Medical Assistance (MA) program paid for its enrollees in some situations. One of the required recovery processes is called MA estate recovery.

When performing estate recovery, local agencies assert MA claims against the estate of a deceased MA enrollee, or the estate of a deceased enrollee’s surviving spouse, to recover the costs MA paid for the health care the enrollee received at 55 years old or older. Since Minnesota’s MA estate recovery program began in 1967, estate claims have attempted to recover the costs paid for all MA services an enrollee received during the applicable recovery period.

In May 2016, the Minnesota Legislature amended Minnesota Statutes, [section 256B.15](#), to change the law about MA estate recovery. On June 1, 2016, Governor Dayton signed this legislation that limits the number of MA services for which local agencies can recover costs when asserting an MA estate claim.

The law change limited the type of MA services that local agencies could recover in an estate claim if the deceased enrollee received MA services on or after January 1, 2014. Specifically, the law change stated that local agencies could only collect the costs of long term services and supports (LTSS) that an MA enrollee received from January 1, 2014, and thereafter.

The law change was to become effective upon federal approval and, upon federal approval, would apply to all MA estate claims that had not been paid by July 1, 2016. DHS submitted this change in state law to the Centers for Medicare & Medicaid Services (CMS) for federal approval by proposing an amendment to its Medicaid state plan.

CMS did not approve the state plan amendment as submitted.

To receive federal approval, DHS submitted a revised state plan amendment that removed the January 1, 2014, date. Instead, the revised state plan amendment limits MA estate recovery to only the costs of LTSS “for estate claims pending on or after July 1, 2016, and estates for people who die on or after July 1, 2016.”

CMS approved the revised state plan amendment on December 20, 2016.

Due to CMS' approval and the resulting change to MA estate recovery, the DHS Special Recovery Unit (SRU) is postponing publication of a policy and procedures manual for MA estate recovery. However, because of stakeholder need for a policy regarding funeral expenses that take priority over the MA estate recovery, which was planned to be published in the manual, we are publishing the funeral expenses policy in this bulletin, in advance of the manual's postponed publication. CMS approval of the revised state plan amendment does not alter the funeral expenses policy.

III. CMS Approval of the Revised State Plan Amendment

A. Effect of CMS approval

CMS' approval of the revised state plan amendment means that an estate claim for the costs of MA services that was asserted but still pending on or after July 1, 2016, and all such estate claims that are asserted on or after July 1, 2016, must recover only the costs of MA LTSS. This restriction on recovery is not limited to the services an MA enrollee received on or after January 1, 2014. Instead, the restriction on recovery applies to all MA services an MA enrollee received at 55 years old or older. Going forward from the date of this bulletin, local agencies may recover only the costs of LTSS for MA estate claims that were asserted but still pending on or after July 1, 2016, and all estate claims that are asserted on or after July 1, 2016.

LTSS are the following:

- nursing facility services (NFS)
- home and community-based services (HCBS)
- hospital and pharmacy services received during the period the enrollee was provided NFS or HCBS

Local agencies may still recover the full amount of costs for recoverable services that were solely funded by the State of Minnesota. This includes the following:

- General Assistance Medical Care (GAMC) services received at any age
- Alternative Care (AC) services received from July 1, 2003, through October 31, 2013

IV. Funeral Expenses Policy

If a deceased person's (decedent's) estate does not have enough assets to pay all the claims made against it, [Minnesota law](#) prioritizes payment of the decedent's "reasonable funeral expenses" before MA claims. Reasonable funeral expenses are paid from the estate before you or the state can recover MA payments from the estate.

You must adopt either the following funeral expenses policy or your own policy that is in accordance with the following policy.

A. Reasonable funeral expenses

Reasonable funeral expenses include the following:

- Expenses directly related to goods sold or offered for sale or rental in connection with the final disposition of the human body
- Services sold in connection with the final disposition of the human body
- Goods that may be used for a funeral service
- Services that may be used to prepare a human body for burial or a funeral service

Reasonable costs for the following items are paid before MA claims:

- Certificates of death (up to two)
- Mortuary expenses:
 - Cremation
 - Embalming
 - Casket (get a quote for the least expensive casket from two funeral homes within the county and set the expense guideline at the less expensive of the two quotes)
 - Clothing for the body, only if clothing is unavailable
- Ground transportation of the body
- Interment:
 - Cemetery plot (get quote from two cemeteries to determine reasonable cost of plot)
 - Vault
 - Burial of cremated remains
 - Grave marker
 - Lowest-cost stone marker
 - Engraving
 - Winter burial
- Memorial service, viewing, and visitation:
 - **One** of the following:
 - Public visitation service
 - Funeral service
 - Grave site service
 - Fee **or** required donation for one officiant
 - Music (one instrument or vocalist)
 - One 24-line obituary without picture for a one-day run

B. Unreasonable funeral expenses

Expenses for these items are **not** paid before MA claims:

- Family travel and lodging
- Flowers (no matter the purpose or sender)
- Food and beverage
- Entertainment not listed above as a reasonable expense

- Clothing, unless clothing for the deceased is unavailable
- Police escort
- Memorial cards and thank you cards
- Memorial donations
- Planning costs

C. Prepaid burial trusts

If a decedent has a prepaid burial trust, the funds must “be distributed for the payment of the at-need funeral goods, funeral services, burial site goods, or burial site services selected, with any excess funds distributed to the beneficiary’s estate.” Minnesota Statutes, [section 149A.97](#), subdivision 3a, clauses (9) and (10).

Funeral costs in excess of prepaid funds must be in accordance with this funeral expense policy or the local agency’s adopted funeral expense policy. Prepaid funds that are not expended for the burial or cremation are subject to recovery.

D. Special needs trusts (SNTs) and pooled trusts

Minnesota law does not prioritize reasonable funeral expenses before MA claims in a decedent’s special needs trust or pooled trust. Upon an MA enrollee’s death, the Special Recovery Unit (SRU) at DHS works directly with any SNT or pooled trust to determine what, if any, types of funeral expenses may be allowed before payment to SRU for MA benefits. SRU requires that funeral expenses be submitted to SRU before any payments from an SNT or pooled trust are made. See Minnesota Statutes, [section 501C.1205](#), subdivision 3, for special needs trusts and Minnesota Statutes, [section 256B.056](#), subdivision 3b, for pooled trusts.

V. Action Required

A. Continue asserting and recovering on estate claims, but for now, only for the costs of MA LTSS received on or after January 1, 2014; GAMC services; and AC services received from July 1, 2003, through October 31, 2013

As of the date of this bulletin, DHS cannot yet produce a claims-payment history that reports the costs of LTSS that an MA enrollee received before January 1, 2014. DHS staff is working to create this report as soon as possible.

In the meantime, based on the requirements under the CMS-approved state plan amendment and state law, the costs for the following services can still be recovered in an estate claim:

- MA LTSS received at 55 years old or older, on or after January 1, 2014
- GAMC services
- AC services received from July 1, 2003, through October 31, 2013

Effective immediately, local agencies may use claims-payment histories that have already been issued to local agencies for estate claims that had not been paid by July 1, 2016. However, you must isolate the costs of the above services by reviewing the claims-payment histories you already have. Once you isolate these costs, you may recover on the total claim amount for the above services. The following steps in this section provide guidance on how to do this.

1. For any estate claim that you asserted but have not received payment for, evaluate the claims-payment history you received for the claim, so long as DHS sent the history on or after July 1, 2016

Review the claims-payment histories you received on or after July 1, 2016, and separate the following reports from what we have already sent you: the LTSS report for January 1, 2014, onward, the GAMC report, and the AC report.

We have provided examples and explanations for these reports below.

a. MA LTSS report for services on or after January 1, 2014

In response to the 2016 Minnesota Legislature's change to MA estate recovery, DHS asked local agencies to review all MA estate claims that had not been paid by July 1, 2016, and to request a new claims-payment history from DHS if the deceased MA enrollee had received services on or after January 1, 2014. See [Bulletin #16-21-05](#). DHS then began sending local agencies a new report that only included the costs of MA LTSS from January 1, 2014, onward.

If you have received this "LTSS report" for an MA estate claim that you have not yet received payment for, you can still assert the amounts in the LTSS report for recovery.

See the following redacted copy of an LTSS report for your reference.

Recipient ID: [REDACTED] Name: [REDACTED] Sex: [REDACTED] DOB: [REDACTED]							
payersystem	CT_Ind	MajorProgram	ProviderNumber	ProviderName	ServiceDatesBegin_End	PaidDate	ReimbursementAmount
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	MA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

b. GAMC report

In addition, if the deceased enrollee received GAMC services, then you likely received a separate report only for GAMC costs. You can still assert the amounts in the GAMC report for recovery. A GAMC report looks like this:

JOB/LOC: PROC: REPORT: PROGRAM:	MINNESOTA DEPARTMENT OF HUMAN SERVICES MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)	PROCESSING DATE: PROCESSING TIME:
C L A I M S H I S T O R Y P R O F I L E		PAGE: 1
REQUESTED DATES - THRU		
REQUESTOR ID NBR:	REQUEST NUMBER:	SORT SEQUENCE: RECIPIENT/PROVIDER/DATE
REQUESTED RECIPIENT ID:	NAME:	DOB: SEX:
REQUESTED PROVIDER NUMBER:	NAME:	
REQUESTED CASE NUMBER:	REQUEST TYPE: E ESTATE CONDENSED CLAIM INFO	
ADDITIONAL CRITERIA:	RECIPIENT ID:	PROVIDER NUMBER:
	REQUESTED DATES:	THRU S - SERVICE
	PROVIDER TYPE:	CLAIM TYPE: DIAG CODE:
	MAJOR PROG: GM	ELIGIBILITY TYPE: STATUS: P - PAID

JOB/LOC: PROC: REPORT: PROGRAM:	MINNESOTA DEPARTMENT OF HUMAN SERVICES MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)	PROCESSING DATE: PROCESSING TIME:
C L A I M S H I S T O R Y P R O F I L E		PAGE: 2
REQUESTED DATES - THRU		
REQUESTED RECIPIENT ID:	NAME:	DOB: SEX:
REQUESTED PROVIDER NUMBER:	NAME:	

CLAIM TYPE	MAJOR PGM	PROVIDER NUMBER	PROVIDER NAME	SERVICE DATES BEGIN - END	PAID DATE	REIMBURSEMENT AMOUNT
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$
	GM					\$

c. AC report

Finally, if the deceased enrollee received AC services, then you likely received a separate report only for AC costs. All costs for AC services from July 1, 2003, through October 31, 2013, are recoverable. Review the report and disregard any AC amounts paid in November or December 2013. Otherwise, all other AC amounts in the report should be asserted for recovery. An AC report looks like this:

JOB/LOC: PROC: REPORT: PROGRAM:	MINNESOTA DEPARTMENT OF HUMAN SERVICES MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)	PROCESSING DATE: PROCESSING TIME:
C L A I M S H I S T O R Y P R O F I L E		PAGE: 1
REQUESTED DATES - THRU		
REQUESTOR ID NBR:	REQUEST NUMBER:	SORT SEQUENCE: RECIPIENT/PROVIDER/DATE
REQUESTED RECIPIENT ID:	NAME:	DOB: SEX:
REQUESTED PROVIDER NUMBER:	NAME:	
REQUESTED CASE NUMBER:	REQUEST TYPE:	
ADDITIONAL CRITERIA:	RECIPIENT ID:	PROVIDER NUMBER:
	REQUESTED DATES:	THRU S - SERVICE
	PROVIDER TYPE:	CLAIM TYPE: DIAG CODE:
	MAJOR PROG: AC	ELIGIBILITY TYPE: STATUS: P - PAID

JOB/LOC:		MINNESOTA DEPARTMENT OF HUMAN SERVICES		PROCESSING DATE:	
PROC:		MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)		PROCESSING TIME:	
REPORT:					
PROGRAM:					

C L A I M S H I S T O R Y P R O F I L E		PAGE:	2
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REQUESTED DATES -		THRU	
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REQUESTED RECIPIENT ID:		NAME:		DOB:		SEX:	
REQUESTED PROVIDER NUMBER:		NAME:					

CLAIM TYPE	MAJOR PGM	PROVIDER NUMBER	PROVIDER NAME	SERVICE DATES BEGIN - END	PAID DATE	REIMBURSEMENT AMOUNT
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$
	AC					\$

2. Revise the estate claim amount to only include amounts currently recoverable

Revise claim amounts for unpaid estate claims, and monitor liens delivered to your local agency as a result of probate.

a. Revise your estate claim amounts to only include the costs of MA LTSS received on or after January 1, 2014, GAMC services, and AC services received from July 1, 2003, through October 31, 2013

Amend all written statements of a claim filed in probate to only include the total amount that is currently recoverable.

Evaluate any outstanding clearance certificates you have sent to requesting parties. If you asserted an MA claim amount on the clearance certificate, revise the claim amount to the total currently recoverable using claims-payment histories you have received since July 1, 2016. Then send a new clearance certificate with the revised amount to the party who applied for the certificate.

If the amount asserted on the clearance certificate came from a claims-payment history sent to you before July 1, 2016, submit a [Request for an MHCP Member's Claims Payment History \(DHS-2133\)](#) and we will provide you with a claims-payment history that will only include amounts that are currently recoverable. Then send a new clearance certificate with the revised amount to the party who applied for the certificate.

b. Monitor liens delivered to your local agency as a result of probate

Be aware that any outstanding liens for unpaid estate recovery amounts that were delivered to your local agency as a result of probate are affected by the CMS-approved state plan amendment.

i. When a party does not seek to pay

If a lien has been delivered to your local agency and a party does not approach you to make payment, do not revise your claim amount. DHS is developing a new report for MA claims-payment histories that will provide the costs of LTSS from before January 1, 2014. When that report [becomes available](#), you should revise your claim amount to only include MA LTSS and GAMC.

ii. When a party seeks to pay

However, if a party seeks to pay the lien amount before the LTSS report for services received before January 1, 2014, is available, communicate that your claim amount has been revised to only include the total amount that is currently recoverable. Then revise your claim total to only include the costs of MA LTSS received on or after January 1, 2014, GAMC services, and AC services received from July 1, 2003, through October 31, 2013.

Next, evaluate the balance of the lien. If an unpaid amount remains after revising your claim total, recover on that amount. But if your claim has been reduced to zero, release the lien. Moreover, if you recovered an amount before being delivered a lien, and the amount you recovered on was greater than your revised claim amount, prepare to [process a refund](#) for the excess amount.

Note: Liens delivered to local agencies as a result of probate are different than liens filed by DHS for MA repayment. MA liens and notices of potential claims (NPCs) are *not* liens delivered to local agencies. Continue sending DHS a [Referral for an MA Lien or Notice of Potential Claim \(DHS-3203\)](#) when an MA enrollee is approved for long-term care services or when an MA enrollee who received services at 55 years old or older has died.

3. For all MA claims for which you are awaiting a claims-payment history from DHS, prepare to receive a claims-payment history that does not report MA services received before January 1, 2014

We have been tracking all requests for claims-payment histories you have already sent in and, beginning on the date of publication of this bulletin, we will begin sending reports that only show the costs for:

- MA LTSS received on or after January 1, 2014
- GAMC services
- AC services received from July 1, 2003, through October 31, 2013

As already noted in this bulletin, our process has been to include separate reports for MA LTSS, GAMC, and AC when responding to claims-payment-history requests. We will continue this process. If you receive more than one report, add the claim amounts from each report to reach the claim total for services that are currently recoverable.

4. Continue to submit a [Request for an MHCP Member's Claims Payment History \(DHS-2133\)](#) if you learn the deceased (or the deceased's spouse) received MA at 55 years old or older, GAMC, or AC

Continue to submit a request for a claims-payment history when a deceased person, or the deceased person's spouse, received the following:

- Any MA services at 55 years old or older
- GAMC services
- AC services

Our claims analyst will process your request and send a secure email to you that either (1) includes a claims-payment history with recoverable amounts or (2) states that there are no claim amounts that are currently recoverable.

B. Be prepared to potentially process a refund of an estate claim that you recovered on or after July 1, 2016

Since July 1, 2016, local agencies have been recovering on estate claims that include the costs of LTSS from January 1, 2014, onward, but these claims have also included the costs of *all* MA services an enrollee received at 55 years old or older through December 31, 2013. As a result, depending on the amount of assets that were in a deceased's estate, some local agencies may have collected more than is allowable under the federal authority.

We are reviewing recovery data at DHS to identify cases that may require a refund. We will contact your local agency if we identify a potential refund.

If you identify a potential refund because a [lien was delivered to your local agency](#) as a result of probate, and a party is seeking to pay the unpaid balance, contact us by sending an email to DHS.SRUfax@state.mn.us.

We will provide further guidance on potential refunds when cases have been identified.

C. Once DHS provides a new MA claims-payment history that can report costs of LTSS from before January 1, 2014, assert and recover on estate claims for any LTSS received when MA enrollees were 55 years old or older

DHS is developing a new report for MA claims-payment histories that will report the costs of all LTSS services that an MA enrollee received at 55 years old or older, including expenditures that occurred prior to January 1, 2014. When this report becomes available, you may assert the claim amounts in the report in an MA estate claim. We will inform you when the report becomes available and provide further instructions.

D. Adopt a funeral expenses policy that incorporates this bulletin

Adopt the funeral expenses policy in this bulletin or adopt a policy for your local agency that is in accordance with the funeral expenses policy in this bulletin.

VI. Legal Authority

Laws of Minnesota 2016, chapter 189, article 19, sections 14–16

United States Code, title 42, section 1396a

United States code, title 42, section 1396p

Code of Federal Regulations, title 42, sections 430.10–430.25

Minnesota Statutes, section 149A.97

Minnesota Statutes, section 256B.056

Minnesota Statutes, section 256B.15

Minnesota Statutes, section 501C.1205

Minnesota Statutes, section 524.3-805

Americans with Disabilities Act (ADA) Advisory



For accessible formats of this publication or assistance with additional equal access to human services, write to DHS.info@state.mn.us, call 800-657-3739, or use your preferred relay service. (ADA1 [9-15])