

## 2398 – ESTATE RECOVERY FOR ABD MEDICAID

<b>POLICY STATEMENT</b>	Estate Recovery is part of a federal program that was established with the Omnibus Budget Reconciliation Act of 1993, OBRA '93. Beginning May 1, 2006, Georgia is implementing Estate Recovery (ER) to be in compliance with this mandate.
<b>BASIC CONSIDERATIONS</b>	<p>Georgia will limit its ER to Medicaid monies that paid for an A/R's medical care beginning August 1, 2001, or the first month of Medicaid eligibility, whichever is later.</p> <p>ER will be pursued under the following conditions:</p> <ul style="list-style-type: none"> <li>• A/R's total estate is valued at \$25,000 or more.</li> <li>• Medicaid has paid for a minimum of six consecutive months of nursing home or institutional care for the mentally retarded on an A/R of any age <b>and</b> the stay is anticipated to be permanent. If the A/R or responsible party (RP) contests that the stay is not permanent, then s/he will need to supply DCH or their agent with a discharge plan from a physician.</li> <li>• Medicaid has paid, for any length of time, for receipt of home and community based services, nursing home or institutional care for the mentally retarded on an A/R age 55 or older.</li> <li>• Currently active A/Rs (including SSI recipients) who are not disenrolled from institutionalized Medicaid for NH, CCSP/Source, MRWP/CHSS, ICWP, Hospice, Institutionalized Hospice by May 1, 2006.</li> <li>• An A/R who disenrolls to avoid ER and subsequently reapplies for Medicaid under one of the above COAs, will have ER pursued back to date of first Medicaid eligibility or August 1, 2001, whichever is later.</li> </ul> <p>The A/R's assets that may be subject to ER are:</p> <ul style="list-style-type: none"> <li>• All real estate property, including homeplace property <b>NOTE:</b> A Life Estate does not exempt the estate or home from ER.</li> <li>• All personal property, whether held individually or jointly</li> <li>• If a transfer penalty period was not completed due to the A/R's death, the value of the remaining penalty period may be recovered.</li> </ul> <p>If the A/R or spouse transfers assets to avoid ER, a transfer penalty may be applied. Refer to <a href="#">Section 2342</a>.</p>

**BASIC  
CONSIDERATIONS  
(cont.)**

When the Medicaid A/R dies, the authorized representative, executor or heirs will be notified by DCH or their agent before any recovery is attempted on the A/R's estate. Upon notification, the heirs of the estate will be given an opportunity to show that if they meet one of the exceptions in the law that will delay ER, then they will be told by DCH how to request an undue hardship waiver.

Recovery may be delayed if the deceased A/R has:

- a surviving spouse,
- child(ren) under 21 years of age (for the delay to continue past age 21, the child must have become disabled prior to reaching age 21),
- child(ren) who are blind or permanently and totally disabled according to Social Security guidelines,
- a sibling of the A/R who was residing in the A/R's home for a least one year immediately prior to the A/R's date of institutionalization, and who was providing such care to the A/R that institutionalization was delayed or
- a child of the A/R who was residing in the A/R's home at least two years immediately prior to the A/R's date of institutionalization, and who was providing such care to the A/R that institutionalization was delayed

If ER is delayed under one of the above deferments, that delay is valid until one of three things occur:

- the surviving spouse is deceased or divorced
- the child(ren) turn 21 years of age or decease, whichever occurs first
- the blind or totally disabled child(ren) decease
- the sibling/child deceases or no longer resides in the home

**Chart 2398.1 ABD Medicaid Estate Recovery**

Who is Affected:		Delay of Recovery Criteria:	What Will Be Recovered:
Age	COAs		
Any age & institutional facility	<ul style="list-style-type: none"> <li>• L01</li> <li>• L01 with IC-MR LOC</li> </ul>	<ul style="list-style-type: none"> <li>• Surviving spouse</li> <li>• Child(ren) under 21 yrs.</li> <li>• Child(ren): blind/disabled</li> </ul>	<ul style="list-style-type: none"> <li>• Homeplace</li> <li>• Any other assets including joint tenancy &amp; life estate</li> </ul>
Age 55 or older	<ul style="list-style-type: none"> <li>• W01</li> <li>• L01</li> </ul>		

**PROCEDURES**

Follow the steps below for Estate Recovery:

**Step 1**

Be prepared to answer questions regarding Medicaid eligibility/transfer penalty and make proper referrals, especially lien related questions, to Estate Recovery Office at 770-916-0328.

## PROCEDURES (cont.)

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| <b>Step 2</b> | Provide new applicants of L01/W01 Medicaid (including Swing Bed) with Form <a href="#">DMA 315</a> , Official Notice of the Georgia Medicaid Estate Recovery Program and if requested, the DCH Estate Recovery informational brochure, which can be ordered by calling Health Management Systems (HMS), previously PCG, at 770-916-0328. Refer to Appendix F, Forms for a copy of DMA 315. It is preferable to get the form returned and filed in the case record. However, if the A/R or representative doesn't return the document, document on NARR that the 315 was sent and the date.   |
| <b>Step 3</b> | A/Rs or AREPS who receive the DMA 315 and notify the MES of A/R's death should be closed due to death. However, fax/mail Form <a href="#">DMA 327</a> , Estate Recovery Notification Form, to Estate Recovery at the address/fax on the form. Refer to Appendix F, Forms for a copy of DMA 327. Check that the closure is due to death.  |
| <b>Step 4</b> | <p>Applicants who notify DCFS of their desire to withdraw from L01/W01 Medicaid, based on their intent to avoid Estate Recovery:</p> <ul style="list-style-type: none"> <li>• Should have their case denied, but not earlier than 5/1/06.</li> <li>• <b>WAIVE Timely Notice Period.</b></li> <li>• Close on STAT using closure reason <b>553- AU Requested Closure One Program or 557 – AU Requested Closure All Programs.</b></li> <li>• On INST, enter a termination date of the effective date of closure, but not earlier than 5/1/06. Enter a discharge date if A/R physically leaves the facility or home and community based waiver programs.</li> <li>• Enter additional text from MISC (PF13) stating <b>“AU closed at your request to avoid estate recovery.”</b> Add this text to each case denied.</li> <li>• Mail/fax Form DMA 327, Estate Recovery Notification Form, only if the AU was approved for any months, within <b>5 days of receipt/notification</b>, to Estate Recovery at the address/fax on the form. Document on NARR date sent and why and on INST reason for termination of vendor payment.</li> <li>• Maintain a copy of the DMA 327 in the case record.</li> </ul> |
| <b>Step 5</b> | When any recipient who meets or at one time did meet (on/after 5/1/06) the criteria for estate recovery dies or his/her Medicaid terminates, send in a Form DMA 327 to the address/fax on the form. Maintain a copy of the 327 in the case record. Retain the case record in closed files for three years.   |