

**409.9101 Recovery for payments made on behalf of Medicaid-eligible persons.--**

(1) This section may be cited as the "Medicaid Estate Recovery Act."

(2) It is the intent of the Legislature by this section to supplement Medicaid funds that are used to provide medical services to eligible persons. Medicaid estate recovery shall be accomplished by the agency filing a statement of claim against the estate of a deceased Medicaid recipient as provided in part VII of chapter 733. Recovery shall be made pursuant to federal authority in s. 13612 of the Omnibus Budget Reconciliation Act of 1993, which amends s. 1917(b)(1) of the Social Security Act, 42 U.S.C. s. 1396p(b)(1).

(3) The acceptance of public medical assistance, as defined by Title XIX (Medicaid) of the Social Security Act, including mandatory and optional supplemental payments under the Social Security Act, shall create a debt to the agency in the total amount paid to or for the benefit of the recipient for medical assistance after the recipient reached 55 years of age. Payment of benefits to a person under the age of 55 years does not create a debt. Upon filing of a statement of claim in the probate proceeding, the agency shall be an interested person as defined in s. [731.201](#) to the same extent as other estate claimants.

(4) The agency may amend the claim as a matter of right up to 1 year after the last date medical services were rendered to the decedent.

(5) The agency's provider processing system reports shall be admissible as prima facie evidence in substantiating the agency's claim.

(6) The debt created under this section shall not be enforced if the recipient is survived by:

(a) A spouse;

(b) A child or children under 21 years of age; or

(c) A child or children who are blind or permanently and totally disabled pursuant to the eligibility requirements of Title XIX of the Social Security Act.

(7) No debt under this section shall be enforced against any property that is determined to be exempt from the claims of creditors under the constitution or laws of this state.

(8) The agency shall not recover from an estate if doing so would cause undue hardship for the qualified heirs, as defined in s. [731.201](#). The personal representative of an estate and any heir may request that the agency waive recovery of any or all of the debt when recovery would create a hardship. A hardship does not exist solely because recovery will prevent any heirs from receiving an anticipated inheritance. The following criteria shall be considered by the agency in reviewing a hardship request:

(a) The heir:

1. Currently resides in the residence of the decedent;
2. Resided there at the time of the death of the decedent;
3. Has made the residence his or her primary residence for the 12 months immediately preceding the death of the decedent; and
4. Owns no other residence;

(b) The heir would be deprived of food, clothing, shelter, or medical care necessary for the maintenance of life or health;

(c) The heir can document that he or she provided full-time care to the recipient which delayed the recipient's entry into a nursing home. The heir must be either the decedent's sibling or the son or daughter of the decedent and must have resided with the recipient for at least 1 year prior to the recipient's death; or

(d) The cost involved in the sale of the property would be equal to or greater than the value of the property.

(9) Instances arise in Medicaid estate-recovery cases where the assets include a settlement of a claim against a liable third party. The agency's claim under s. [409.910](#) must be satisfied prior to including the settlement proceeds as estate assets. The remaining settlement proceeds shall be included in the estate and be available to satisfy the Medicaid estate-recovery claim. The Medicaid estate-recovery share shall be one-half of the settlement proceeds included in the estate. Nothing in this subsection is intended to limit the agency's rights against other assets in the estate not related to the settlement. However, in no circumstances shall the agency's recovery exceed the total amount of Medicaid medical assistance provided to the recipient.

(10) In instances where there are no liquid assets to satisfy the Medicaid estate-recovery claim, if there is nonexempt personal property or real property which is not protected homestead and the costs of sale will not exceed the proceeds, the property shall be sold to satisfy the Medicaid estate-recovery claim. Real property shall not be transferred to the agency in any instance.

(11) The agency is authorized to adopt rules to implement the provisions of this section.