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# MEDICAID LIENS

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A lien is a claim or a charge that the Department of Social Services (DSS) puts on your property for payment of Medicaid assistance that they pay on your behalf.

## **WHEN CAN DSS PUT A LIEN ON MY PROPERTY?**

DSS can place a lien against your property for Medicaid paid on your behalf under the following circumstances:

1. DSS can place a lien on your property when DSS gets a court judgment for Medicaid assistance that was incorrectly paid on your behalf; or
2. DSS can place a lien against a personal injury settlement or award you receive; or
3. 1. a lien can be placed upon your property (including your home) if you become permanently institutionalized.

## **WHAT IS MEDICAID "INCORRECTLY PAID?"**

Medicaid "incorrectly paid" is any Medicaid you received that you were not eligible to receive (i.e., overpayment). If the overpayment happened because of something you did (such as intentionally not telling DSS that you were working), DSS can recover this Medicaid overpayment through a lien. However, if the Medicaid overpayment happened because of a mistake DSS made, then DSS may not be able to recover the overpayment through a lien. If this happens, call our office. Remember, also that DSS needs a judgment from a court to recover. If DSS has a judgment, DSS can recover the amount of the Medicaid overpayment through a lien on your property if you are living or from your estate if you are deceased.

## **WHEN CAN DSS PLACE A LIEN ON MY PERSONAL INJURY SETTLEMENT?**

DSS can place a lien on any personal injury award you receive if you are an adult. DSS cannot recover from your personal injury award if you are under 21 years old, except under certain circumstances. If this happens, call our office.

## **HOW MUCH CAN DSS RECOVER FROM MY PERSONAL INJURY AWARD?**

DSS can recover for all Medicaid assistance you received from the time the injury occurred. But DSS can only recover this past assistance from the part of your personal injury award that is identified as reimbursement to you for past medical expenses.

## **CAN DSS PLACE A LIEN ON MY HOME IF I GO INTO A NURSING HOME?**

DSS can place a lien on your home if you are in a long-term medical care facility and it is unlikely that you will return home.

## **WHAT IS A "LONG-TERM MEDICAL CARE FACILITY?"**

A long-term medical care facility includes a nursing home, an intermediate care facility for the mentally retarded, or other medical institution.

## **WHAT IS CONSIDERED MY "HOME" FOR PURPOSES OF A MEDICAID LIEN?**

Your "home" means your former house, the land it is on, and any attached property that you own.

## **WHAT IF I AM IN AN INSTITUTION, BUT I PLAN TO RETURN HOME?**

You must present medical evidence to DSS to show that you are reasonably expected to be sent home at some point in the future.

### **WHAT HAPPENS IF DSS PUTS A LIEN ON MY PROPERTY, BUT THEN I RETURN HOME?**

The lien will dissolve if you return home.

### **CAN DSS ALWAYS PLACE A LIEN ON MY HOME IF I BECOME INSTITUTIONALIZED?**

No. DSS cannot place a lien if any of the following people live in your home:

1. your spouse; or
2. your child who is under age 21, blind, or disabled; or
3. your sibling, who has an equity interest in the home and who has lived in the home for at least one year prior to the date that you went into the institution.

### **WHAT IF MY HOME IS JOINTLY OWNED?**

DSS can place a lien on a jointly-owned property, but only up to the interest that you (the Medicaid recipient) have in the property.

### **WHAT IF I WILL SUFFER AN UNDUE HARDSHIP IF DSS RECOVERS ON THE LIEN PLACED ON MY HOME?**

DSS cannot recover on its lien if you can show that to do so would cause you "undue hardship." Let DSS know if you think this might be the case.

### **CAN I TRANSFER MY HOME AFTER I AM INSTITUTIONALIZED?**

Only to certain relatives. In fact, DSS must give you an opportunity to make a transfer to one of these relatives before it puts a lien on your property. DSS must allow you a reasonable time to make the transfer (usually 90 days, more if necessary).

### **WILL I BE FORCED TO SELL MY PROPERTY IF DSS PUTS A LIEN ON IT AFTER I GO INTO AN INSTITUTION?**

DSS cannot force you to sell your property if:

1. your spouse lives there; or
2. your child lives there and the child is under 21, blind or disabled; or
3. your brother or sister lives there and has been living there for more than one year before you were institutionalized; or
4. your adult, non-disabled child lives there and has lived there for at least two years before you entered a medical facility and this child provided care for you which allowed you to live at home rather than enter an institution; or
5. your relative, for whom you provided at least 50% of support lives there.

Even if none of the people listed here lives on the property, DSS cannot force you to sell your property unless ordered by a court. This is a lot of work for DSS, and they usually will not do it.

However, once you decide to sell your home, DSS can foreclose on the Medicaid lien. If there is any money left after DSS recovers its share, it will be given to you and counted as a "resource" for purposes of deciding whether you are eligible for Medicaid in the future.

### **WILL DSS RECOVER ON THEIR LIEN FROM MY ESTATE?**

Generally, yes. However, even after your death, DSS cannot recover on a lien placed on your home as long as:

1. your spouse or your child who is under age 21, blind, or disabled lives there; or
2. your sibling lives there and has been living there for more than one year before you entered a medical institution; or
3. your adult, a non-disabled child lives there and this child lived in the home for two years before you entered a medical facility and provided care for you which allowed you to live at home rather than in an institution.

Note: Jointly-owned property is not subject to estate recovery. If there is a surviving spouse or surviving child who is under 21, blind, or disabled, then there can be no estate recovery.

### **HOW FAR BACK CAN DSS GO IN RECOVERING MEDICAID PAID ON MY BEHALF?**

DSS can recover medical assistance paid on your behalf during the ten years prior to the date when they "discovered" you had the property upon which the lien was placed.

### **IS THERE A LIEN FOR COMMUNITY MEDICAID PAID ON BEHALF OF AN ELDERLY PERSON?**

Though not a lien, DSS has a "right of recovery" against the decedent's estate for Medicaid paid for on behalf of a person 55 or older. DSS must seek recovery within six years of the Medicaid recipient's death.

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