



Minnesota Department of **Human Services**

Talking Points for the 2016 Legislative Change to MA Estate Recovery and Liens

The 2016 Minnesota Legislature amended Minnesota Statutes, [section 256B.15](#), to change the law about Medical Assistance (MA) estate recovery and liens. MA is Minnesota’s Medicaid program.

Talking Points for the 2016 Legislative Change to MA Estate Recovery and Liens 1

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What changed?

- DHS and county agencies used to collect from MA members’ estates (or their spouses’ estates) the amount of MA paid out for any MA services received at 55 years old or older.
- Going forward, DHS and county agencies will collect only the amount MA paid for long-term-care (LTC) services when the member (or the member’s spouse) was 55 years or older. LTC services are:
 - nursing facility services (NFS),
 - home and community-based services (HCBS), and
 - hospital and pharmacy services received during the time the person was provided NFS or HCBS.

What did not change?

- DHS and county agencies will still collect the amount MA paid for all MA services provided before January 1, 2014, to people who were over age 55 at the time they received MA services.
- The old law still applies to MA estate claims that have been paid by July 1, 2016. Old cases will not be reopened.

- DHS and county agencies can still recover the cost of all MA services a member received at any age while permanently residing in a medical institution if DHS has filed a lien against the member's real property.

When is the change effective?

- The legislative change is effective upon federal approval.
- Once federal approval is given, the new law will apply retroactively for any services provided on or after January 1, 2014.
- Once federal approval is given, the law will apply only to MA estate claims that have not been paid by July 1, 2016.
 - This means that an estate claim or lien that has not been settled or filed by July 1, 2016, will recover only the costs of MA LTC services for the timespan of January 1, 2014, to the present.
 - If the MA member (1) first became eligible for MA services on or after January 1, 2014; (2) was 55 years old or older when receiving services; and (3) did not receive LTC services, then estate recovery and liens will no longer apply to that MA member.
 - However, an estate claim or lien that has not been settled or filed by July 1, 2016, will still recover costs for all MA services provided to a member at 55 years old or older before January 1, 2014.
- DHS and county agencies will not reopen any estate for which estate claims have already been paid to MA before July 1, 2016.

What kind of notice will people get?

- DHS will be sending out a notice within 90 days after June 1, 2016, to anyone whose situation has changed because of the law: MA members who did not receive LTC services on or after January 1, 2014.
- The notice will be a general notice explaining the new law and how estate recovery and MA may no longer apply to some MA members.
- The notice will not have an accounting of how much MA has paid out in services during the period the person was on MA.

Why won't the notice provide an accounting of how much MA has paid out?

- Generally, no debt is owed to MA until a person dies or permanently resides in a medical institution. Accordingly, DHS does not keep accountings of recoverable services for MA members who only potentially owe a debt to MA. DHS creates these accountings when counties actually file an MA claim after a person dies or when DHS can collect on a lien because the real property the lien is filed against is being sold.
 - There is only one situation in which a lien may be collected on before an MA member dies. When 1) an MA member is permanently residing in a medical institution, 2) DHS has a valid lien against that member's real property, and 3) the real property is sold, then MA is repaid for the lien amount. DHS does not compel such property sales but will collect if such sales occur.

- Also, in almost all cases, liens will not need to be removed as a result of this legislation. The idea of a “lien” being placed against someone’s “estate” is a misunderstanding as explained under “[Who administers MA estate recovery and liens?](#)”

Whom do MA estate recovery and liens apply to?

- MA estate recovery applies to a person if either of these is true:
 - The person (or the person’s spouse) received any MA services at 55 years old or older before January 1, 2014.
 - The person (or the person’s spouse) received LTC services at 55 years old or older on or after January 1, 2014.
- MA liens apply to a person if the person (or the person’s spouse) permanently resides in a medical institution (such as a nursing home) at any age.
- MA estate recovery and liens do not apply to a person if the person (and the person’s spouse) are under 55 years old and do not permanently reside in a medical institution.

Who administers MA estate recovery and liens?

- County agencies administer estate recovery, and DHS administers liens.
 - Estate recovery
 - County agencies, on behalf of the state, must assert MA claims against the estate of a deceased MA member, or the estate of a deceased member’s surviving spouse, to recover the amount MA paid for the services listed [above](#).
 - Liens
 - DHS files liens against real property interests of an MA member to recover the amount MA paid for certain services listed in federal and state law.
 - Real property includes land and buildings on land.
 - Because a deceased person’s estate can include many assets that are not real property, DHS does not file liens against a person’s “estate.”
 - DHS files liens against real property that may be included in a person’s estate.
 - The DHS lien process is separate from county-administered estate recovery, though liens can help secure county claims against estate assets.

What if an MA member is permanently residing in a medical institution?

- The legislative change does not affect these MA members. DHS and county agencies can still recover the cost of all MA services a member received at any age while permanently residing in a medical institution if DHS has filed a lien against the member’s real property.

- A “medical institution” means the following:
 - nursing home
 - intermediate care facility (ICF)
 - ICF for people with developmental disabilities (ICFDD)
 - inpatient hospital
- If 1) the MA member dies, 2) DHS has not collected on the lien because the real property hasn’t been sold, and 3) the MA member is survived by a spouse, then the amount secured by the lien may be collected from the surviving spouse’s estate if the lien has not expired by the time the surviving spouse dies. This chain of events rarely happens.

Will lien amounts change because of this legislation?

- Yes. But whether a lien amount will change depends on the type of lien.
- DHS files two types of liens: MA liens and notices of potential claim (NPCs).
 - MA liens (liens before death)
 - MA lien amounts will not change because of the legislation.
 - DHS files MA liens against real property when an MA member of any age is [permanently residing in a medical institution](#).
 - MA liens are filed only before an MA member dies.
 - NPCs (liens after death)
 - NPC amounts will change because of the legislation.
 - DHS files NPCs against the real property of a deceased MA member to secure repayment of the cost of MA services received at 55 years old or older.
 - NPCs collected on after July 1, 2016, will take the new law into account and will be used to collect only LTC costs for the timespan of January 1, 2014, to the present (in addition to all costs for MA services received at 55 years old or older before January 1, 2014).
- Lien amounts are not determined until they are collected on. Thus, there are no outstanding lien amounts that need to be revised because of the legislation.

What are the next steps?

- For MA estate claims that have not been paid before July 1, 2016, counties will need to request a new claims history from DHS to adjust the claim amount to meet the new legislative requirements.
- DHS will provide new claims histories as requested.
- DHS will also ensure the lien amounts of NPCs collected on or after July 1, 2016, meet the new legislative requirements.