

ESTATE RECOVERY PANEL TAKEAWAYS

Notes from the *Best Practices for Working with Medicaid Estate Recovery* session during the 2023 Legal Issues of the Aging seminar

Panelists: Anthony Davenport & Michelle Kocovsky,
Estate Recovery

Moderators: Reg Wydeven and Kate Schilling

COMMUNICATING WITH ESTATE RECOVERY

How big is the Estate Recovery staff?

Estate Recovery has 14 regular staff (10 for affidavit claims, 4 for estates and liens) and 3 administrative staff. It is a small office handling a high volume of cases. Each staff member has about 200-300 cases to manage.

Communication best practices

For all cases, if you have questions: call! Don't ask questions by email or letter. Anthony: "Just call me. We're a lot more reasonable than we seem."

When you do send paper, please don't use staples. They scan all mail into their system and must remove them.

Note: It takes at least a day or two to get *anything* into their system after receipt, whether it was sent by mail or fax.

Estate Recovery generally processes everything in date-received order, except for priority items like real estate closings, court dates, objections, etc. It takes them a long time to respond to simple correspondence (they can be months behind). Don't send a letter asking for a status update, it'll just go into the queue; call instead.

They try not to do business through email. You can email them, but they will probably not respond by email. That's a security decision from higher up. (Note: Not all emails make it through their security filters.) They much prefer to get mail or faxes due to HIPAA regulations they have to comply with.

They operate as a call center now—no individual, direct phone numbers. They can transfer calls to specific people, as needed.

Is there a dedicated staff person for Native Americans on Medicaid?

Yes—just call the usual number and you will be directed to that person.

ESTATE RECOVERY CLAIMS

How to ask Estate Recovery if they have a claim

Don't send a letter asking "Did John Smith receive services?" without a DOB, SSN, date of death, or other identifying information. Also, it is not helpful to send a bare letter asking if Estate Recovery has a claim and noting that probate won't be opened. They don't know what assets there are or how to respond.

Always use one of the three forms to disclose the important information:

1. Nonprobate Asset / Property Disclosure ([Form F-01729](#))
2. Probate Claims Notice ([Form F-13033](#))
3. Transfer by Affidavit

Estate Recovery can provide information on whether someone received services, but they need authorization. For example, they can check CCAP to see if you are representing the estate, or they can take a letter of retainer plus a copy of the will or POA showing your client has a right to the information (even though the POA ends at death, "we have been authorized to use that document to provide that information").

Note: If Estate Recovery does not have a claim, they do *not* send a response unless one is specifically requested. That is due to volume. If you need documentation back or a response, put that in your cover letter.

When Estate Recovery thinks there is a surviving spouse, disabled child, or other person in a protected class, they do send specific instructions on what they need. Please read their claim and instructions thoroughly before contacting Estate Recovery.

If you have an objection to Estate Recovery's claim

In a probated estate, file the objection with the court and then give Anthony Davenport a call to let him know what you're objecting to (he's usually the one involved with disputed probate claims). Nine times out of ten, he can explain his reasons; it usually has to do with the documentation and paperwork they send.

If you have any dispute over the services actually provided and billed, you have to get that information from the provider. Estate Recovery can itemize their claim, but they can only show you what providers billed and were paid. They don't have access to providers' information.

They are happy to work with you and give you the time needed to get the information from providers.

If you are going to request an itemization of the Estate Recovery claim, you might want to request those records from the provider at the same time so you can compare and identify any discrepancies.

Is there a way to confirm with Estate Recovery that a claim has been closed?

For example, if an attorney sends them information and evidence that there's nothing to recover from.

If Estate Recovery sent a claim in the mail, they will send a letter when they close their file. If you sent them notice and they haven't made a claim, Estate Recovery does not send a letter saying they don't have a claim unless it is specifically requested.

Does Estate Recovery ever negotiate their claim?

No, they don't negotiate—absent exceptional circumstances. (If the circumstances are exceptional, they may negotiate. Atty. Peter Grosskopf has, for example, settled a claim of \$60k for \$10k.)

Can Estate Recovery recover out-of-state assets?

They are limited. They can recover accounts. They can submit claims if there is a court proceeding, but in most cases the court does not recognize their claim.

Does Estate Recovery recover from ABLE accounts?

Yes. In the past, they did not recover because they are out-of-state accounts. This was simply their policy, but it was inconsistent with other policies and outdated. They have since updated their policies and they are recovering from ABLE accounts now.

What if there is a caretaker child still living in the decedent's home?

Estate Recovery will delay recovery as long as the child lives there. They do require some documentation: physician's statement, verification of residency at that address, proof of relationship.

Does Estate Recovery have any preference re how payments are sent in?

E.g. some attorneys send in the asset/expenses form for approval first, then send payment; others send in the payment with the assets/expenses form, all at once.

No, they don't care how or when payments are sent.

Can Estate Recovery provide information re potential claims while a member is still alive?

Yes, but they prefer you call Member Services. Note that changes in the law might affect expected future claims.

PROBATE ESTATES

For estates with a deadline for creditors, do you try to process things within that deadline?

Yes, they do. They do their best to file claims by the deadline set by the probate court.

Also, the statutes do require you to send notice when probate is opened, even if you check the "I don't know" box re Medicaid benefits received. Notice could be the Probate Claims Notice, a copy of the Application, or a copy of the Notice to Creditors.

Does Estate Recovery ever initiate a probate or foreclose on liens to recover assets?

No—they do not have staff for that.

What is most helpful to Estate Recovery?

Provide Estate Recovery with copies of the filed court documents, such as the Inventory, Estate Account, a signed closing statement for real estate, etc.

If the probate is dragging on for other reasons, keep Estate Recovery posted every 2-3 months.

NON-PROBATE ESTATES

Is there a time limit for Estate Recovery to make a claim?

No, there is no time limit for the claim. Once they have notice, they look and then make a claim—even if the person died 30 years ago.

When they receive a Transfer by Affidavit, they try to respond with a claim within 3-4 weeks. They almost always then need verification for: bank balance on date of death, itemized funeral bill, and life insurance documentation.

What is most helpful to Estate Recovery?

Complete the Assets and Expenses form and return it. Otherwise, they will have to fill it out themselves. This consumes a lot of their time.

If there is no probate and no notice given to Estate Recovery, how do they investigate and discover non-probate transfers?

They get notified of deaths from various places: financial institutions, nursing homes, funeral homes occasionally, county consortia sometimes, MCOs, life insurance companies, annuity companies (particularly for Medicaid-compliant annuities), phone calls from guardians, representative payees, trustees.

When they get those notifications, they have access to the county records and go off that information. So if the

county records of assets for Medicaid are not up to date, they won't have that information.

What do you do to recover vehicles, especially ones subject to a lien?

Estate Recovery never repossesses vehicles or other personal property. They do not have the resources.

Even if they have a claim, **if the vehicle is more than 5 years old they won't pursue recovery on it** (unless antique or collectible).

Does Estate Recovery ever collect personal property or household belongings?

If the property is sold and those proceeds come into the estate, that money is recoverable. Also, if personal property is valued at over \$3,000, the amount over would be part of the claim.

If it's considered an asset on the Medicaid application, they will potentially try to recover it in their claim. But Estate Recovery does not have staff to liquidate assets, so if the family says they aren't going to sell/liquidate something they take their word for it and don't recover.

Regarding the valuation of personal property: Estate Recovery will only hold people responsible for what they can actually get, but they do need documentation of the value (appraisal, etc.).

What does Estate Recovery do when the member owned a life estate?

Typically, Estate Recovery just files a lien and lets it sit there. Some families pay off the lien, some don't.

Will Estate Recovery recover from a life insurance policy where the member was the insured, but not the owner?

No. They will only recover life insurance benefits if the decedent was the *owner* of the policy. If the decedent was the insured and someone else is the owner, that is not recoverable.

What if there's an asset discovered in the estate that will take a lot of work to claim, and the family doesn't want to bother?

Estate Recovery will take a letter or other evidence of the asset. But they will most likely respond saying they won't pursue recovery of it. They do not have the resources to do that legwork.

What if a pension payment was made incorrectly?

If incorrect, the money goes back to the pension company, not Estate Recovery.

ALLOWED EXPENSES, PRIORITY OF CLAIMS

What does Estate Recovery allow for reasonable attorney fees, payable before their claim?

Estate Recovery does follow Wis. Stat. § 859.25 for priority of claims.

For attorney bills, don't worry about it as long as you are administering the estate. But note: hardship waivers are for the benefit of an heir, so expenses of obtaining one would not be allowed as an estate expense.

What does Estate Recovery allow for reasonable funeral expenses, payable before their claim?

For funeral expenses, they look at reasonable as: What are you doing for the *member*? Not benefits for the family, flying in on the member's dime for the funeral, etc.

There is a Transfer by Affidavit brochure on the DHS website ([Form P-13009](#)) that lists allowable and disallowed expenses. (Note: Alcohol is an allowable expense as long as it is part of the one allowed funeral meal.)

Sometimes they see people having two funerals, or a service plus a celebration of life later on. If that happens, give them a call. They often see mementos/gifts to the family, but those are not allowed. Sometimes they can make allowances for special circumstances; give them a call.

Estate Recovery does make exceptions for cultural differences—e.g. a Hmong funeral that occurs over several days and includes many meals. They just need to know and have that explained.

If a member wants to be buried out of state, they do allow the flight expense for a person transporting cremated remains. They have not had a case where a body needed to be transported. If that happens, call them.

Family members can be reimbursed if they paid for the funeral (as long as they fronted the money *after* death). Estate Recovery will need verification that the family member paid for the funeral expenses.

For small estates where the funeral will wipe out the assets, Estate Recovery will need:

- Documentation of assets on the date of death
- Itemized funeral bill that shows payments made and the source of those payments. If the source isn't shown, provide a copy of the receipt. (This is not the Funeral Statement of Goods & Services. It is the *final* bill. Not all funeral homes itemize their bills.)
- They will also need to see who paid what portion of the bill.
- The paper trail is very important.

What does Estate Recovery allow for reasonable Personal Representative fees?

The family can be paid the statutory 2% fee for administering the estate, even if there's no formal administration. Estate Recovery will allow that as a reasonable payment in all cases, even non-probate.

“Expenses of last illness” has priority before ERP claim.

What is included?

Cost share, patient liability, copays, ambulance rides; most medical bills in the last month of life. (Sometimes providers send a bill *before* they've billed Medicaid, insurance—Estate Recovery will sometimes tell people to hold off for a while on those.)

They also allow last-month incidentals, such as cable, phone, and rent. This is limited to essentials (things that go into the home or are essential for life; but not things like credit card bills). It does vary based on the circumstances; give them a call.

OTHER QUESTIONS

How much is recovered each year? How did the pandemic affect recovery?

In [fiscal year] 2019 it was \$31 million, in 2020 \$31.7 million, in 2021 \$42 million, in 2022 \$40.5 million, and in 2023 \$42.8 million.

Pandemic policies were probably part of the increased recovery in recent years. They've also had several unusually large SNT recoveries in the past year (one was over \$1 million on its own). And now with the public health emergency unwinding, they are seeing *a lot* of voluntary payments, 70-100 per week. Some are very large. Also, a lot depends on the real estate market and if people are selling houses they have liens on.

A few times they've seen people who tried to cancel services during COVID, but legally weren't allowed to. They still have to recover for those services, capitation fees.

They saw a big uptick in hardship waiver requests during COVID. That continues.

Note: 100% of the money recovered goes back into Medicaid programs. From working in other states with Medicaid programs, Anthony can tell that Wisconsin has a robust Medicaid system that helps a lot of people, and this is part of the way that gets done.

Is there estate recovery for card-only services?

Generally, no. But if they are on card services and receive in-patient hospital or home health and personal care services, those are recoverable (if over age 55).

Is there anything like the *Medicaid Eligibility Handbook* for estate recovery?

No, they just go by the statutes and regulations.

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