

When will ERU consider using a lien ?

If the recipient has received 6 months or more of inpatient care at a nursing home or other medical facility, the division can conclude that the recipient is not returning home. If the division makes that decision, then the division must notify the recipient of that conclusion and the division’s intent to impose a lien on the recipient’s real property.

Can the recipient challenge the agency’s decision about the lien ?

Yes. The recipient has 30 days from the date they received the division’s notice to request a “fair hearing”. At the “fair hearing”, the issue would be whether the recipient could reasonably be expected to return to their home.

When would the lien be filed ?

If there is no challenge by the recipient, the lien would be filed after the 30 days from the notice date. If there is a challenge, the division would only file the lien if the “fair hearing” and any subsequent legal action ruled in their favor.

Will the division proceed with a lien or probate action when there is a spouse or a dependent child ?

Generally, if there is a surviving spouse, surviving child under the age of 21 years, blind or permanently disabled child according to Social Security criteria, the division does not pursue a probate claim nor a lien at that time. You should check with the Estate Recovery Unit for specific rules.

Can I request a waiver of the estate recovery action ?

Yes. The family may request a waiver if the estate recovery action would cause an undue financial hardship.

How can I request a waiver of estate recovery action ?

You may call Estate Recovery at (785) 296-6707 or write Estate Recovery Unit at P.O.Box 2428, Topeka, KS. 66601 e-mail to Estate Recovery at: EESERU@khp.ks.gov



Kansas Estate Recovery



**DIVISION OF HEALTH
POLICY AND FINANCE**

What is Estate Recovery ?

Estate Recovery is a program mandated by federal law for the recovery of medical assistance payments from the assets and estates of recipients of medical assistance.

Who is affected by Estate Recovery ?

This will depend on the nature of the care and the age of the recipient. If the recipients 55 years of age or older, are subject to estate recovery. Recipients, regardless of age, who receive or have received long-term or institutional care, are subject to estate recovery. Recipients under the age of 55 years who have not received long-term or institutional care, are not subject to estate recovery.

What type of services are included in the medical assistance claim ?

The majority of the claims are for the following services:

- Nursing facility care;
- Home and Community based services; and
- Any related hospital care and prescription drug services provided while receiving nursing facility care or care at home or in a community setting.

Are QMB services exempt ?

Beginning 01-01-03, the division will not establish a claim for persons who only received coverage under the Medicare Savings Program (QMB and LMB programs). If other programs are used, though, the agency would collect for all programs.

How does Estate Recovery work ?

The Estate Recovery Unit (ERU) uses agreements with heirs, claims against financial accounts, and the filing of claims in a court actions. In certain situations after July 1, 2004, Estate Recovery could use a lien on the recipient's real property to preserve the medical assistance claim.

How does a recovery through a probate action work ?

If the recipient owned an asset, the Estate Recovery Unit would review the case and determine whether the family has started a probate action. If there is a case filed, the Unit will file a claim in the probate case.

What happens if the family does not want to start a probate action ?

If the heirs of the deceased recipient choose to not initiate probate proceedings, ERU may start the probate action. In these instances, ERU determines whether to proceed with probate based on the amount of the division's claim, value of estate assets, and the cost-effectiveness of the action.

I have left my property to my children in my Will. Can the state still take my property ?

Any creditor, including the State, has a legal right to recover its claim from the property in your estate. Creditors' claims usually take priority over any bequest to heirs or beneficiaries.

Can a probate action deal with property that the recipient owned with another person ?

Maybe. If the recipient received benefits on or after July 1, 2004, the division could file a claim for those benefits against all property that the recipient had any legal title or interest immediately before or at the time of death to the extent of that interest. The main examples of this type of property is joint tenancy property or property transferred by a pay-on-death provision. If the recipient only received benefits before July 1, 2004, then the division's claim would only apply to property solely owned by the recipient

Can ERU file a lien against my real property ?

Yes. As of July 1, 2004, if the recipient is presently receiving inpatient care at a nursing home or other medical facility that is partially or totally paid by Medicaid, the division could impose a lien on the recipient's home.