

10-144 Chapter 101
MAINECARE BENEFITS MANUAL
CHAPTER VII

SECTION 5

ESTATE RECOVERY

Established: 9/18/95
Last Updated: 11/30/20

5.04 RECOVERY PROCEDURE (cont.)

- D. If asserted against the estate, a claim may not be enforced until:
1. The Member has no surviving spouse; and
 2. The Member has no surviving child who is under age twenty-one (21);
or
 3. The Member has no surviving child who is blind or permanently and totally disabled. For the purposes of this section, a surviving child must be blind or determined to be disabled at the time the Department seeks recovery.

The time the Department seeks recovery means the earlier of (1) the date of the Department's notice of claim to the legally authorized representative of the estate or known family members or heirs; or (2) the date on which the Department files a claim in Probate Court.*

**The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions.*

- E. The Department shall provide heirs, assignees or transferees of a deceased Member an opportunity to pay a claim under this subsection through a voluntary payment arrangement that is acceptable to the Department. The payment arrangement may consist of a payment plan, promissory note, or other payment mechanism.

5.04-2 A claim made under this section must be waived if enforcement of the claim would create an undue hardship under criteria described herein or if the costs of collection are likely to exceed the amount recovered. A waiver may be granted in full or in part. A waiver may not be granted if the Member or waiver applicant acted to lose, diminish, divest, encumber or otherwise transfer any value of or title to an asset for the purpose of preventing recovery under this subsection.

5.04-3 The Department may accept, hold, transfer title to and sell real property to collect a claim under this subsection. The Department may receive title to real property from a personal representative, special or public administrator, creditor, heir, devisee, assignee or transferee in full or partial satisfaction of a claim under this subsection.

Claims in subparagraphs above will be pursued against the person who holds the property or asset in which the Member had a legal interest at death, other than a bona fide purchaser for value. If the asset or property is transferred or dissipated with intent to avoid the Department's claim, such action will be considered fraudulent and the person responsible will be held liable.