

SECTION 43-7-460. Recovery of medical assistance paid from estates of certain individuals.

(A) The department shall seek recovery of medical assistance paid under the Title XIX State Plan for Medical Assistance from the estate of an individual who:

(1) at the time of death was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if the individual is required, as a condition of receiving a service in the facility under the state plan, to spend for the cost of medical care all but a minimal amount of the person's income required for personal needs; or

(2) was fifty-five years of age or older when the individual received medical assistance, but only for medical assistance consisting of a nursing facility service, home and community-based service, hospital or prescription drug service provided to an individual or a nursing facility, or receiving a home and community-based service.

(B) Recovery under this section may be made only after the death of the decedent's surviving spouse, if one exists, and only at a time when the decedent has no surviving child under age twenty-one or no child who is blind or permanently and totally disabled as defined in Title XVI of the Social Security Act.

(C) Recovery under this section must be waived by the department upon proof of undue hardship, asserted by an heir or devisee of the property claimed pursuant to 42 U.S.C. 1396p(b)(3) and in accordance with the guidance issued by the Secretary of the United States Department of Health and Human Services in the State Medicaid Manual as incorporated into the state plan. The department shall publish and maintain such guidance on the department's web site.

(D) Recovery of a medical assistance payment under this section applies to medical assistance paid after June 30, 1994.

(E) A claim against an estate under this section has priority as established in Section 62-3-805(a)(2)(ii).

(F) For purposes of this section:

(1) "Estate" means real property, personal property, and other assets included within the individual's estate as defined in Section 62-1-201(11).

(2) "State plan" means Title XIX State Plan for Medical Assistance in effect at the decedent's death.

(3) "Immediate family member" means a child, grandchild, parent, brother, or sister of the deceased.

(G) Notwithstanding subsection (A)(2) upon the enactment of an amendment to federal law which grants states the option to exempt home and community-based services or other noninstitutional Medicaid services from the estate recovery provisions mandated by Section 13612 of the federal Omnibus Budget Reconciliation Act of 1993, the department shall seek recovery of medical assistance paid under the Title XIX State Plan for Medical Assistance from the estate of an individual who:

(1) at the time of death was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution if the individual is required, as a

condition of receiving services in the facility under the state plan, to spend for costs of medical care all but a minimal amount of the person's income required for personal needs; or

(2) was fifty-five years of age or older when the individual received medical assistance but only for medical assistance consisting of nursing facility services.