# 4.108 Estate Recovery

## 4.108.1 Definitions

For the purposes of this rule, the following definitions apply:

(a) "**Estate**" means any assets or property that are owned by a decedent at the time of death under Vermont state probate law, including any amounts in personal needs accounts held by the decedent, but does not include amounts in a prepaid burial account that are in fact used for burial costs.

(b) "**Family income**" means the income of the heir, their spouse or civil union partner, and their children, including children by marriage, if any of those family members reside in the heir's household. If the heir is under 18 and not emancipated, "family income" means the income of the heir, their parents, including parents by marriage, and their siblings, including siblings by a parent's marriage, if any of those family members reside in the heir's household.

(c) An "**income-producing asset**" is any asset or property that generates revenue or cash flow, even if the asset or property generates negative net cash flow, such as a financial instrument that generates interest or returns, a business that generates revenue, or real property that generates rental income.

(d) A "**lineal heir**" is a direct descendant of a decedent, such as a child or grandchild.

(e) "**Related hospital and prescription drug services"** includes any hospital services or prescription drug services that are paid for by Long-Term Care Medicaid.

(f) A "**sibling**" is a direct descendant of a decedent's parents, such as a brother or sister.

## 4.108.2 Estate Recovery

(a) Federal law (42 U.S. Code § 1396p) requires Vermont Medicaid to attempt to recover from estates of individuals who:

(1) Died on or after January 1, 1994,
(2) Received long-term care services, including nursing facility services, home-and-community-based services, or related hospital and prescription drug services, paid for by Long-Term Care Medicaid, and
(3) Were 55 years old or older when they received those services.

### 4.108.2.1 Estate Recovery Procedure

(a) Vermont Medicaid shall attempt to recover from estates by filing a claim as a creditor of the estate with the probate court.

(b) If the decedent was married, or has surviving children who are blind or disabled as defined by the Social Security Administration, or has surviving children under the age of 21, Vermont Medicaid shall only pursue recovery after:
(1) The decedent's spouse is deceased,

(2) The decedent's blind or disabled children, if any, are deceased or the Social Security Administration deems the child(ren) are no longer disabled after a continuing disability review, including all relevant appeals, and

(3) The decedent's children under the age of 21, if any, have attained the age of 21.

4.108.2.2 Exemptions from Estate Recovery

(a) A decedent's estate may be exempt from estate recovery if recovering from the estate would create an undue hardship for the decedent's survivors or if the estate qualifies for the cost effectiveness exception.

(b) The cost effectiveness exception exists only under the following circumstances:

(1) Estate value under $7,500. When an estate with assets is valued under $7,500, Vermont Medicaid has determined that it is not cost effective to pursue recovery. In such estates, Vermont Medicaid will not file a claim or otherwise pursue recovery.

(c) An undue hardship exists only under the following circumstances:

(1) Income-producing assets. It is an undue hardship to recover an income-producing asset from an estate if the only way to recover from the asset is for the asset to be sold and either:

(A) The income producing asset is the sole source of income for the decedent's spouse, parent(s), child(ren), or sibling(s), or

(B) As a result of the sale, it is likely the decedent's spouse, parent(s), child(ren), or sibling(s) would qualify for public assistance (including, but not limited to, Reach Up benefits, SSI/AABD, general or emergency assistance, or TANF or TANF/MOE benefits from another state).

(2) Homestead. It is an undue hardship to recover a homestead under the following conditions.

(A) Sibling occupancy. If the decedent's sibling has been living in a home continuously for at least one year immediately before the date the decedent began receiving long-term care services, it is an undue hardship to recover the home.

(B) Child occupancy. If the decedent's child has been living in a home continuously for at least two years immediately before the date the decedent began receiving long-term care services, and the decedent's child provided care that allowed the decedent to remain at home, it is an undue hardship to recover the home.

(C) Lineal heir retention. If subsection (i), and one or both of subsections (ii) and (iii), are met, it is an undue hardship to recover the first $250,000 in fair market value of a home. Vermont Medicaid shall apply this exemption by reducing the amount of its claim by the fair market value of the home or $250,000, whichever is lesser. If the decedent willed a home to multiple heirs, each heir must meet the requirements of this subsection (C). If one or more heirs do not meet the requirements of this subsection (C), their share of the homestead is subject to Medicaid estate recovery.

(i) Only the decedent's siblings or lineal heirs may inherit the home.

(ii) The heir's gross family income is below 300 percent of the federal poverty level.

(iii) The heir or their spouse provided significant services or financial support to the decedent that enabled the decedent to delay receiving long-term care services for at least six months. The decedent need not have been a Medicaid beneficiary at the time the heir or their spouse provided the services or support. The heir need not have been the sole provider of services or support.

4.108.2.3 Procedure for Applying for Exemptions from Estate Recovery

(a) An individual who has a legal claim to a homestead under 4.108.3.2 may apply for an exemption from estate recovery. The exemption must be requested in writing before the estate formally closes. The application must clearly state the grounds for requesting an exemption from estate recovery and must provide supporting documentation to demonstrate that the exemption applies. Vermont Medicaid shall respond to the application in writing within 28 days of receipt.

(b) If Vermont Medicaid determines that an exemption from estate recovery applies, Vermont Medicaid shall reduce the amount of its claim accordingly:
   (1) If an estate is valued under $7,500 within the meaning of section 4.108.3.2(b)(1), Vermont Medicaid shall withdraw its claim.
   (2) If the estate includes an income-producing asset within the meaning of section 4.108.3.2(b)(2), Vermont Medicaid shall reduce its claim by an amount sufficient to ensure that the asset need not be sold.
   (3) If the estate includes a homestead within the meaning of section 4.108.3.2(b)(3), Vermont Medicaid shall either reduce its claim by an amount sufficient to ensure that the home need not be sold or, in the case of subsection 4.108.3.2(b)(3)(C), shall reduce its claim as calculated by that section.

(c) If Vermont Medicaid determines that an exemption from estate recovery does not apply, Vermont Medicaid shall not reduce its claim.

Estate Recovery
(Annotated from
Third Party
Liability 7108)

## 4.108 Estate Recovery

### 4.108.1 Definitions

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(b) "**Family income**" means the income of the heir, their spouse or civil union partner, and their children, including children by marriage, if any of those family members reside in the heir's household. If the heir is under 18 and not emancipated, "family income" means the income of the heir, their parents, including parents by marriage, and their siblings, including siblings by a parent's marriage, if any of those family members reside in the heir's household.

(c) An "**income-producing asset**" is any asset or property that generates revenue or cash flow, even if the asset or property generates negative net cash flow, such as a financial instrument that generates interest or returns, a business that generates revenue, or real property that generates rental income.

(d) A "**lineal heir**" is a direct descendant of a decedent, such as a child or grandchild.

(e) "**Related hospital and prescription drug services**" includes any hospital services or prescription drug services that are paid for by Long-Term Care Medicaid.

(f) A "**sibling**" is a direct descendant of a decedent's parents, such as a brother or sister.

### 4.108.2 Estate Recovery

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  (1) Died on or after January 1, 1994,
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  (3) Were 55 years old or older when they received those services.

#### 4.108.2.1 Estate Recovery Procedure

(a) Vermont Medicaid shall attempt to recover from estates by filing a claim as a creditor of the estate with the probate court.

(b) If the decedent was married, or has surviving children who are blind or disabled as defined by the Social Security Administration, or has surviving children under the age of 21, Vermont Medicaid shall only ~~file its claim~~ pursue recovery after:

(1) The decedent's spouse is deceased,

(2) The decedent's blind or disabled children, if any, are deceased or the Social Security Administration deems the child(ren) are no longer disabled after a continuing disability review, including all relevant appeals, and

(3) The decedent's children under the age of 21, if any, have attained the age of 21.

~~7108.3.1~~4.108.2.2 Exemptions from Estate Recovery

~~The department exempts the following assets from estate adjustment or recovery when an heir requests an exemption in writing no later than four months after the publication of notice to creditors of the estate.~~

(a) A decedent's estate may be exempt from estate recovery if recovering from the estate would create an undue hardship for the decedent's survivors or if the estate qualifies for the cost effectiveness exception.

~~A. Homes in trust prior to December 1, 1997:~~

~~The department normally recovers for long-term care Medicaid costs incurred after January 1, 1994. Individuals with homes in revocable trusts who received Medicaid payment of long-term care services before December 1, 1997, however, are exempt from recovery until after May 1, 1998, or, if later, the effective date of the first Medicaid eligibility review completed after December 1, 1997.~~

~~B. When loss of assets would present an undue hardship:~~

(b) ~~An undue hardship~~ The cost effectiveness exception exists only under the following circumstances:

~~The department will not seek adjustment or recovery from assets when that adjustment or recovery would present an undue hardship to the decedents family members, as specified below and in rule 7108.3.~~

(1) *Estate value under $7,500.* ~~It is an undue hardship to recover from an estate with assets under $7,500~~. When an estate with assets is valued under $7,500, Vermont Medicaid has determined that it is not cost effective to pursue recovery. In such estates, Vermont Medicaid will not file a claim or otherwise pursue recovery.

(c) An undue hardship exists only under the following circumstances:

~~1.~~ (~~2~~1) *Income-producing assets*. It is an undue hardship to recover an income-producing asset from an estate if the only way to recover from the asset is for the asset to be sold and either:

~~Undue hardship exists when adjustment or recovery from an income-producing asset can be made only if the asset, alone or in combination with other related assets, is sold and either or both of the following conditions are met:~~

~~a.~~ (A) ~~The assets sold are the~~ The income producing asset is the sole source of income for the decedent's spouse, parent~~s~~(s), child~~ren(ren)~~, or sibling~~s(s), or~~

~~b.~~

(B) As a result of the sale, it is likely the decedent's spouse, parent~~s(~~s), child~~ren(ren)~~, or sibling~~s(~~s) would qualify for public assistance (including, but not limited to, Reach Up benefits, SSI/AABD, general or emergency assistance, or TANF or TANF/MOE benefits from another state).

~~C. Estates with personal property valued at less than $2,000:~~

~~The department will not seek recovery where the estate inventory filed with the probate court consists only of personal property that does not exceed $2,000 in value, such as home furnishings, apparel, personal effects, and household goods.~~

~~The department will not seek to recover assets for which the department has imposed a penalty period of ineligibility for Medicaid coverage of long-term care services related to the transfer of those assets.~~

~~(3)~~(2) *Homestead*. It is an undue hardship to recover a homestead under the following conditions.

(A) *Sibling occupancy*. If the decedent's sibling has been living in a home continuously for at least one year immediately before the date the decedent began receiving long-term care services, it is an undue hardship to recover the home.

(B) *Child occupancy*. If the decedent's child has been living in a home continuously for at least two years immediately before the date the decedent began receiving long-term care services, and the decedent's child provided care that allowed the decedent to remain at home, it is an undue hardship to recover the home.

(C) *Lineal heir retention*. If subsection (i), and one or both of subsections (ii) and (iii), are met, it is an undue hardship to recover the first $250,000 in fair market value of a home. Vermont Medicaid shall apply this exemption by reducing the amount of its claim by the fair market value of the home or $250,000, whichever is lesser. If the decedent willed a home to multiple heirs, each heir must meet the requirements of this subsection (C). If one or more heirs do not meet the requirements of this subsection (C), their share of the homestead is subject to Medicaid estate recovery.

(i) Only the decedent's siblings or lineal heirs may inherit the home.

(ii) The heir's gross family income is below 300 percent of the federal poverty level.

(iii) The heir or their spouse provided significant services or financial support to the decedent that enabled the decedent to delay receiving long-term care services for at least six months. The decedent need not have been a Medicaid beneficiary at the time the heir or their spouse provided the services or support. The heir need not have been the sole provider of services or support.

4.108.2.3 Procedure for Applying for Exemptions from Estate Recovery

(a) An individual who has a legal claim to a homestead under 4.108.2.2 may apply for an exemption from estate recovery. The exemption must be requested in writing before the estate formally closes. The application must clearly state the grounds for requesting an exemption from estate recovery and must provide supporting documentation to demonstrate that the exemption applies. Vermont Medicaid shall respond to the application in writing within 28 days of receipt.

(b) If Vermont Medicaid determines that an exemption from estate recovery applies, Vermont Medicaid shall reduce the amount of its claim accordingly:

(1) If an estate is valued under $7,500 within the meaning of section 4.108.2.2(b)(1), Vermont Medicaid shall withdraw its claim.

(2) If the estate includes an income-producing asset within the meaning of section 4.108.2.2(b)(2), Vermont Medicaid shall reduce its claim by an amount sufficient to ensure that the asset need not be sold.

(3) If the estate includes a homestead within the meaning of section 4.108.2.2(b)(3), Vermont Medicaid shall either reduce its claim by an amount sufficient to ensure that the home need not be sold or, in the case of subsection 4.108.2.2(b)(3)(C), shall reduce its claim as calculated by that section.

(c) If Vermont Medicaid determines that an exemption from estate recovery does not apply, Vermont Medicaid shall not reduce its claim.

~~7108.3.2 Hardship Exemptions for Homesteads~~

~~At any time before closure of the probate estate, an heir may assert that adjustment or recovery against the homestead would be an undue hardship and that the homestead should be exempt from adjustment or recovery for the costs of Medicaid long-term care services. The department shall exempt a decedents home from estate adjustment or recovery based on undue hardship when one or more of the following three conditions have been established to the departments satisfaction.~~

~~A. A sibling has been living in the home continuously for at least one year immediately before the date the decedent began receiving long-term care services.~~

~~B. A son or daughter has been living in the home continuously for at least two years immediately prior to the date the decedent began receiving long-term care services and provided care that allowed the decedent to remain at home.~~

~~C. Conditions (1), (2), and (3) below have been met.~~

~~1. The fair market value of the homestead is less than $250,000. If the fair market value of the homestead exceeds this amount, the first $250,000 in fair market value shall be exempt from estate recovery and any equity value in excess of $250,000 shall be subject to the provisions of rule 7108.3.~~

~~2. A sibling or lineal heir of the deceased Medicaid beneficiary will inherit the homestead. A lineal heir is a direct descendant, such as a child or grandchild.~~

~~3. The heir meets one or both of conditions (a) and (b) below.~~

~~a. The heir has gross family income below 300 percent of the federal poverty level. No income exclusions or deductions are allowed. The income of the persons presented in the following table is included in the heirs gross family income, provided that they are living in the heirs household.~~

~~Heir's Household~~

| ~~Type of Heir~~ | ~~Family Members, If Living in the Heirs Household~~ |
|---|---|
| ~~Adult 18 years or older; or person younger than 18 and emancipated~~ | ~~Heir~~<br>~~Heirs spouse or civil union partner~~<br>~~Heirs biological or adoptive child or stepchild~~ |
| ~~Person younger than 18 and not emancipated~~ | ~~Heir~~<br>~~Heirs parent~~<br>~~Heirs stepparent~~<br>~~Heirs biological or adoptive sibling, stepsibling, or half sibling, if younger than 18 and not emancipated~~ |

~~b. The heir demonstrates that significant services or financial support provided to the deceased person by heirs meeting condition (2) or the spouses of such heirs enabled the person to avoid long-term care or delay it at least six months. It is not necessary for the deceased person to have been a Medicaid beneficiary when the services or financial support were provided. Services may have been provided in combination with services provided by governmental or other private entities.~~

~~To meet condition (b), the services or financial support must fall into one or both of the following two categories:~~

~~i. Medical or remedial care or support services that were:~~

- ~~medically necessary;~~
- ~~provided directly by the heir or the heir's spouse without compensation, or purchased with the heir's funds; and~~
- ~~provided while the deceased person required medical care and services consistent with the level of care standard for level III residential care homes at a frequency averaging no fewer than three times per week or, if provided less frequently, constituting the equivalent expenditure of time or money.~~

~~The department shall not verify the level of care unless it has a reasonable basis for questioning that the level III standard was met.~~

~~ii. Other services or financial support at least as significant as the care or services described in category (i).~~

~~When there are two or more heirs, the full value of the homestead is exempt from Medicaid estate adjustment or recovery only if each heir meets conditions (1), (2), and (3) above. When one or more heirs do not meet conditions (1), (2), and (3), the percentage of the value of the homestead corresponding to their share is subject to Medicaid estate adjustment or recovery.~~

~~7108.3.3 Adjusting Claims Against Homesteads~~

~~An estate includes all real and personal property and other assets listed on an inventory filed in the probate court. The probate court oversees the distribution of assets to heirs and the payment of the decedent's outstanding debts, which requires creditors to submit proof of their claims to the court.~~

~~The probate court judge compares the total value of claims filed by creditors to the total value of available assets in the estate. The court determines which assets are available to pay debt~~

~~When any heir meets the department's undue hardship criteria as specified in rule 7108.3, some or all of these available assets may be exempt from adjustment or recovery by the department under these rules. Nonexempt assets are those subject to the department's claim because an heir has not met the undue hardship criteria. Creditors other than the department are not subject to these exemptions.~~

~~When the total available assets are insufficient to pay all claims, the probate court prioritizes the debts and prorates each claim according to law. Each creditor collects the resulting percentage of its claim.~~

~~If there are sufficient nonexempt assets to allow the department to collect its full percentage, it does so. If the nonexempt assets allow the department to collect only a partial amount of its share after the court's proration, it collects that amount. The department shall maintain its original claim so it can be prorated along with all other creditors claims according to law. The department notifies the court of its decision on the homestead exemption. If the department grants a homestead exemption, it shall inform the court of the maximum payment it will accept against its claim. The department determines the maximum payment it will accept by subtracting the amount of the exemption from the amount of the department's claim.~~

~~7108.3.4 Retroactive Homestead Exemptions~~

~~The undue hardship exemption applicable to homesteads shall be effective for any probate estate opened after June 30, 1999. Heirs seeking the exemption from July 1, 1999, through the effective date of this policy must submit their claim to the department's Coordination of Benefits unit in the Office of Vermont Health Access within 60 days following receipt of proper notice from the department. In the sole discretion of the commissioner, the department may make exceptions to the 60-day rule when an heir establishes undue hardship due to lack of notice, a medical need, or natural disaster. Heirs seeking an exemption from the 60-day submission requirement must sign an affidavit describing the condition that prevented them from complying with the 60-day submission requirement and submit the affidavit along with supporting documentation to the commissioner.~~

~~7108.3.5 Long-Term Care Insurance Partnership Exemption~~

~~The department will exempt assets or resources pursuant to rule 4242.2 in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified State long-term care insurance partnership policy whether or not an heir requests an exem~~