441—75.28(249A) Recovery.

75.28(1) *Definitions.* For the purposes of this rule, the following definitions apply:

"Administrative overpayment" means medical assistance incorrectly paid to or for the client because of continuing assistance during the appeal process or allowing a deduction for the Medicare Part B premium in determining client participation while the department arranges to pay the Medicare premium directly.

"Agency error" means medical assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the department.
6. Failure to make prompt revisions in medical payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former Medicaid member.

"Client error" means medical assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information or gave false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. "Client error" also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.15(249A).

"Premiums paid for medical assistance" means monthly premiums assessed to a member or household for Medicaid or IHAWP coverage.

75.28(2) *Amount subject to recovery.* The department will recover from a client all Medicaid funds incorrectly expended to or on behalf of the client and all unpaid premiums assessed by the department for medical assistance. The incorrect expenditures or unpaid premiums may result from client or agency error or administrative overpayment.

75.28(3) *Notification.* All clients will be promptly notified when it is determined that assistance was incorrectly expended or when assessed premiums are unpaid.

a. Notification of incorrect expenditures will include:

(1) The person for whom assistance was paid;
(2) The period during which assistance was incorrectly paid;
(3) The amount of assistance subject to recovery; and
(4) The reason for the incorrect expenditure.

b. Notification of unpaid premiums will include:

(1) The amount of the premium; and
(2) The month covered by the medical assistance premium.

75.28(4) *Source of recovery.* Recovery will be made from the client or from parents of children under the age of 21 when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

75.28(5) *Repayment.* The repayment of incorrectly expended Medicaid funds shall be made to the department. However, repayment of funds incorrectly paid to a nursing facility, a Medicare-certified skilled nursing facility, a psychiatric medical institution for children, an ICF-ID, or a mental health institute enrolled as an inpatient psychiatric facility may be made by the client to the facility. The department will then recover the funds from the facility through a vendor adjustment.

75.28(6) *Appeals.* The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

75.28(7) *Estate recovery.* Medical assistance, including the amount the state paid to a managed care organization (MCO) for provision of medical services, also called capitation fees, is subject to recovery from the estate of a Medicaid member, of the member's surviving spouse, or of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for

Medicare cost sharing or for benefits described in Section 1902(a)(10)(E) of the Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.53(2)*"d."* The classification of the debt is defined in Iowa Code section 633.425(7).

a. Definitions. In addition to the definitions in subrule 75.28(1), the following definitions apply:

"Capitated payment/rate" means a monthly payment to the contractor on behalf of each member for the provision of health services under the contract. Payment is made regardless of whether the member receives services during the month.

"Estate." For the purpose of this subrule, the "estate" of a Medicaid member, a surviving spouse, or a surviving child shall include all real property, personal property, or any other asset in which the member, spouse, or surviving child had any legal title or interest at the time of death, or at the time a child reaches the age of 21, to the extent of that interest. An estate includes but is not limited to interest in jointly held property, retained life estates, and interests in trusts.

"Managed care organization" or *"MCO"* means an entity that:

1. Is under contract with the department to provide services to Medicaid recipients, and
2. Meets the definition of "health maintenance organization" in Iowa Code section 514B.1.

b. Debt due for member 55 years of age or older. Receipt of medical assistance when a member is 55 years of age or older creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1, 1994.

c. Debt due for member under the age of 55 in a medical institution.

(1) Receipt of medical assistance creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1, 1994, when the member:

1. Is under the age of 55;
2. Is a resident of a nursing facility, an ICF-ID, or a mental health institute; and
3. Cannot reasonably be expected to be discharged and return home.

(2) If the member is discharged from the facility and returns home before staying six consecutive months, no debt will be assessed for medical assistance payments made on the member's behalf for the time in the institution.

(3) If the member remains in the facility for six consecutive months or longer or dies before staying six consecutive months, the department will presume that the member cannot or could not reasonably be expected to be discharged and return home and a debt due will be established. The department will notify the member of the presumption and the establishment of a debt due.

d. Request for a determination of ability to return home. Upon receipt of a notice of the establishment of a debt due based on the presumption that the member cannot return home, the member or someone acting on the member's behalf may request that the department determine whether the member can or could reasonably have been expected to return home.

(1) When a written request is made within 30 days of the notice that a debt due will be established, no debt due will be established until the department has made a decision on the member's ability to return home. If the determination is that there is or was no ability to return home, a debt due will be established for all medical assistance as of the date of entry into the institution.

(2) When a written request is made more than 30 days after the notice that a debt due will be established, a debt due will be established for medical assistance provided before the request even if the determination is that the member can or could have returned home.

e. Determination of ability to return home. When the member or someone acting on the member's behalf requests a determination, the department will determine if the member can or could have returned home.

(1) The department cannot make a determination until the member has been in an institution at least six months or after the death of the member, whichever is earlier. The department will notify the member or the member's representative and the department of the determination.

(2) If the determination is that the member can or could return home, Iowa Medicaid will establish the date the return is expected or could have been expected to occur.

(3) If the determination is that the member cannot or could not return home, a debt due will be established unless the member or the member's representative asks for a reconsideration of the decision. The department will notify the member or the member's representative of the reconsideration decision.

(4) If the reconsideration decision is that the member cannot or could not return home, a debt due will be established against the member unless the decision is appealed pursuant to 441—Chapter 7. The appeal decision will determine the final outcome for the establishment of a debt due and the period when the debt is established.

f. Debt collection.

(1) A nursing facility participating in the medical assistance program shall notify the department upon the death of a member residing in the facility by submitting a form prescribed by the department.

(2) Upon receipt of the form or a report of a member's death through other means, the department will request a statement of the member's assets from the member's personal representative. The representative shall sign and return a form prescribed by the department indicating whether assets remain and, if so, what the assets are and what higher priority expenses exist.

EXCEPTION: The procedures in this subparagraph are not necessary when a probate estate has been opened because those procedures provide for an inventory, an accounting, and a final report of the estate.

g. Waiving the collection of debt.

(1) The department will waive the collection of the debt created under this subrule from the estate of the member to the extent that collection of the debt would result in either of the following:

1. Reduction in the amount received from the member's estate by a surviving spouse or by a surviving child who is under the age of 21, blind, or permanently and totally disabled at the time of the member's death.

2. Creation of an undue hardship for the person seeking a waiver of estate recovery. Undue hardship exists when total household income is less than 200 percent of the FPL for a household of the same size; total household resources do not exceed $10,000; and application of estate recovery would result in deprivation of food, clothing, shelter, or medical care such that life or health would be endangered. For this purpose, "income" and "resources" will be defined as being under FIP.

(2) To apply for a waiver of estate recovery due to undue hardship, the person shall provide a written statement and supporting verification to the department within 30 days of the notice of estate recovery pursuant to Iowa Code section 249A.53(2).

(3) The department will determine whether undue hardship exists on a case-by-case basis. Appeals of adverse decisions regarding an undue hardship determination may be filed in accordance with 441—Chapter 7.

h. Amount waived. If collection of all or part of a debt is waived pursuant to paragraph 75.28(7)*"g,"* to the extent that the person received the member's estate, the amount waived will be a debt due from the following:

(1) The estate of the member's surviving spouse, upon the death of the spouse.

(2) The estate of the member's surviving child who is blind or has a disability, upon the death of the child.

(3) A surviving child who was under 21 years of age at the time of the member's death, when the child reaches the age of 21.

(4) The estate of a surviving child who was under 21 years of age at the time of the member's death, if the child dies before reaching the age of 21.

(5) The hardship waiver recipient, when the hardship no longer exists.

(6) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient.

i. Impact of asset disregard on debt due. The estate of a member who is eligible for Medicaid under subrule 75.82(5) will not be subject to a claim for Medicaid paid on the member's behalf up to the amount of the assets disregarded by asset disregard. Medicaid paid on behalf of the member before these conditions will be recovered from the estate, regardless of the member's having purchased precertified or approved insurance.

j. *Interest on debt.* Interest will accrue on a debt due under this subrule in accordance with Iowa Code section 249A.53(2)*"e."*

k. *Reimbursement to a county.* If a county reimburses the department for medical assistance provided under this subrule and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in Iowa Code chapter 633C, the department will reimburse the county on a proportionate basis.

[**ARC 9763C**, IAB 11/26/25, effective 1/1/26]