

Support Medicaid Estate Recovery Clean Up

SUPPORT: HB 855 (Del. Cousins)

Virginia's Medicaid Estate Recovery laws are inconsistent with current practice, and the statute has not been updated in over 40 years. Although regulatory changes have been made, the last change was made in 2013.

Both statute and regulations need to be updated to match current practices.

A 2019 study by MACPAC found that, nationally, only half of one percent of fee-for-service LTSS spending was recouped in estate recovery.ⁱ Pursuit of modest estates contributes to **generational poverty and wealth inequity**, disproportionately burdening people of color. It also causes stress on grieving families who often do not understand the estate recovery process. Due to restrictions on Medicaid eligibility for LTSS, older adults covered by Medicaid have few assets, so **administrative costs of pursuing recoveries often outweigh the amount recovered**.

There is currently little public-facing information accessible to grieving families on how the estate recovery process operates. This bill seeks to clean up the statute and regulation and **create easily accessible public information** that individuals facing estate recovery can understand and utilize when seeking waivers or resolving complicated estate issues.

HB 855 aligns Virginia statute, regulations, and DMAS's collection practices:

- Defines estate in statute and aligns it with probate law.
- Moves § 32.1-327 into the same estate recovery statute section.
- Clarifies that waiver of recovery against low-income individuals is permanent when hardship would result from the recovery.
- Puts in statute that recovery is limited to what is required under federal law.
- Directs that recovery of managed care payments is the lesser of the portion of the capitated rate that is attributable to recoverable services or the capitated rate. When estate recovery was last amended in statute, Virginia did not have managed care.

This bill seeks to align statute, regulation, and practice and directs DMAS to make information on the process easily accessible on its website so grieving families have better resources to understand their options.

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ⁱ [Chapter 3: Medicaid Estate Recovery: Improving Policy and Promoting Equity](#)