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Administering Medicaid Estate Claims When the Recipient of Assistance was a Native American Indian or Alaskan Native Village Tribal Member

- (1) When the Department has a claim against the Estate of a deceased Native American Indian or Alaskan Native Village tribal member, certain exemptions from recovery apply. The following income, resources and property are exempt from Medicaid estate recovery:
 - (a) Income and resources that are specifically exempt by law from Medicaid estate recovery, such as:
 - (A) Interests in and income derived from tribal land and other resources currently held in trust status; and
 - (B) Judgment funds from the Indian Claims Commission and the United States Court of Federal Claims.
 - (b) Ownership interest in trust or non-trust property, including real property and improvements:
 - (A) Located on a reservation (any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act and Indian allotments);
 - (B) Located near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or
 - (C) For any federally recognized tribe not described in paragraphs (A) and (B) of this subsection, located within the most recent boundaries of a prior federal reservation.
 - (c) Income left as a remainder in an Estate, derived from property described in sections (1)(a) and (b) of this rule, that was collected by an Indian, by a tribe, or by a tribal organization and distributed to one or more Indians, as long as the personal

representative of the Estate can clearly trace and document that the income came from the protected property.

- (d) As long as the personal representative of the Estate can clearly trace and document that it came from the protected sources:
 - (A) An ownership interest left as a remainder in an Estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights; and
 - (B) Income derived from these sources that is collected by an Indian, a tribe, or a tribal organization and distributed to one or more Indians.
 - (e) Ownership interest in and usage rights to items not covered by subsections (a) through (d) of this section that have unique religious, spiritual, traditional or cultural significance.
 - (f) Rights that support subsistence or a traditional life style according to applicable tribal law or custom.
- (2) Protection of non-trust property described in sections (1)(a) and (b) of this rule is limited to circumstances when it passes from an Indian (as defined in section 4 of the Indian Health Care Improvement Act, Pub. L. No. 94-437) to:
- (a) One or more relatives (by blood, adoption or marriage), including Indians not enrolled as a member of a tribe and non-Indians, such as spouses and step-children, who would be protected as family members by the tribe;
 - (b) A tribe or tribal organization; or
 - (c) One or more Indians.
- (3) The following *are* subject to Medicaid estate recovery:

- (a) Native American Indian and Alaskan Native tribal member ownership interest in assets and property, both real and personal, that are not described in sections (1) and (2) of this rule.
- (b) Any income or assets left as a remainder in the Estate that do not derive from protected property or sources described in sections (1) and (2) of this rule.

Statutory/Other Authority: ORS [409.050](#), [410.070](#), [414.105](#)

Statutory/Other Implemented: ORS [414.106](#), [416.340](#)

There are no previous rules dated January 1, 2014 or later.

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