



State of Utah
Office of Recovery Services

TEFRA Liens and BMC Collections



Legislative Intent Response

Legislative Intent

The Legislature intends that the Office of Recovery Services provide a report to the Office of the Legislative Fiscal Analyst by September 15, 2020 detailing the following for the estate recovery program:

- 1) the amount of FY 2020 collections and projections for the FY 2021 and FY 22 and reasons for the trend;
- 2) the impact of TEFRA liens and other changes from S.B. 241 (2018 G.S.); and,
- 3) what collection efforts are based on federal law and which are based on state law only.

Collections, Actual and Projected

2020 Actual	2021 Projections (as of 9/20)	2022 Projections (as of 9/20)
\$5,123,161	\$5,020,842	\$5,020,842

At the beginning of each state fiscal year, the projections for the following two fiscal years are calculated as an average of the three most recent completed fiscal years. The projections are adjusted periodically through the year upon request of the Legislative Fiscal Analyst, and as the year progresses, the projections fluctuate based on the percentage of collections for the previous year's same time period compared to the current year.

Prior year performance is the best indicator of current and future year performance for this program. Any other sort of prediction would have to attempt to predict the number of deaths that would be subject to Estate Recovery as well as the recoverable value of the estates.

Looking over the most recent five years, while there has been a modest upward trend in collections, it is not a consistent increase each year.



The increase in 2019 and 2020 compared to years prior is most like a result of more staff being devoted to this specific collection activity on a more consistent basis in preparation for the implementation of TEFRA liens.

TEFRA liens were never expected to yield a measurable increase in Estate Recovery Collections.

Impact of TEFRA Liens and S.B. 241 Changes

As defined in U.C.A. 26-19-102:

" 'TEFRA lien' means a lien, authorized under the Tax Equity and Fiscal Responsibility Act of 1982, against the real property of an individual prior to the individual's death, as described in 42 U.S.C. Sec. 1396p."

The Office of Recovery Services (ORS) has used liens placed after an individual's death in the estate recovery program since its inception. TEFRA liens can be placed prior to the individual's death in the following circumstances:

- (a) the individual is an inpatient in a care facility;
- (b) the individual is required, as a condition of receiving services under the state plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs; and
- (c) the department determines that the individual cannot reasonably be expected to:

- (i) be discharged from the care facility; and
- (ii) return to the individual's home.

The ability to place liens prior to the individual's death allows ORS to take steps to prevent the sale of property subject to recovery and protects the state's interest in recovering Medicaid funds where appropriate.

This timing also allows ORS to notify the individual (and most likely that individual's family or potential heirs) of the existence of the lien and upcoming obligation to the state as early as possible rather than waiting until after the death when the heirs are trying to resolve all financial issues and perhaps sell the property.

Aside from the timing of the lien placement, and the resulting ability to provide better notice to the individual and the heirs, there is little difference between a TEFRA lien and the traditional lien practices followed by ORS.

Estate Recovery: Federal vs. State Law

The primary federal statute laying out the requirements for the estate recovery and TEFRA programs is found in 42 USC 1396p. 42 USC 1396p(b) clearly outlines the requirement for estate recovery efforts:

(b) ADJUSTMENT OR RECOVERY OF MEDICAL ASSISTANCE CORRECTLY PAID UNDER A STATE PLAN

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a) (1)(B), the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate but only for medical assistance consisting of—

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan (but not including medical assistance for medicare cost-sharing or for benefits described in section 1396(a)(10)(E) of this title).

While many of the details of the estate recovery program are federally mandated, the federal statute has some areas where the State can elect different options. The best examples of this are the choice of whether to have a TEFRA program (Utah recently elected to use this option) and whether to use the narrow or expanded definition of Estate (Utah uses the expanded definition).

At this time, ORS does not undertake any collection efforts in the estate recovery program that do not use state law as the basis for ORS's authority. U.C.A §26-19-405 is the primary basis for the estate recovery program and U.C.A. §26-19-5 is the primary basis for the TEFRA program. While ORS's collection efforts for Medicaid are all based on state law, all of the state statutes are written to comply with federal mandates for participation in the Medicaid program.