

WRIGHT ABSHIRE ATTORNEYS

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ELDER LAW NEWS

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Member, National Academy
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Inside This Issue

- ◆ Are You Ready For March 1, 2005?
- ◆ Speaking Events

Thanks

Thank you for trusting our firm with your legal needs. When nursing home care is necessary, our goal is to help elder citizens preserve their life savings to the extent which the law allows.

Are You Ready for March 1, 2005?

Many older Texans may not be aware that March 1, 2005, may be a critical date for them. Individuals who apply for Medicaid-funded nursing home care (or for certain community-based services) before March 1, 2005, and who are approved for those services, will be exempt from Medicaid estate recovery. Individuals age 55 and older who apply for such services on or after March 1, 2005, are subject to Medicaid estate recovery.

The term “estate recovery” refers to an authority under which the state Medicaid agency (the Texas Health and Human Services Commission or “HHSC”) asserts a claim against the property of deceased Medicaid recipients for the cost of covered services provided during their lifetimes. In other words, if you are age 55 or older and apply for Medicaid-funded nursing home care or certain community-based services on or after March 1, 2005, the state may require reimbursement from your estate after you die, leaving little for your family to inherit.

Actually, federal law has required Medicaid estate recovery since 1993, but Texas (and several other states) ignored the law for a full decade. But that is now history. In June 2003, the 78th Texas Legislature passed an enabling statute requiring HHSC to implement a Medicaid Estate Recovery Program (“MERP”). Since that time, HHSC has been in the process of developing official rules for the program. HHSC has published the following on its web site at <http://www.hhsc.state.tx.us/medicaid/EstateRecovery/ER1.html>:

- (1) In January 2004, a “framework” for estate recovery;
- (2) In April 2004, proposed rules for estate recovery;
- (3) In December 2004, revised proposed rules for estate recovery; and
- (4) In February 2005, final rules for estate recovery.

On March 1, 2005, the final rules take effect.

The Texas program rules require estate recovery against probate assets (i.e., property which passes to your heirs through your will or the law of inheritance if you leave no will), which includes your homestead. But the state could later expand the program to

Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, A Professional Corporation, located in Bellaire. Wright is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law. Both Wright and Abshire are Certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person’s specific case, but should be considered general information.

allow recovery against non-probate assets as well. The rules do allow for certain exemptions from estate recovery, as well as for waiving the recovery claim in situations of undue hardship or lack of cost effectiveness. Nevertheless, many people will find that, beginning March 1, 2005, nursing home Medicaid becomes, in effect, a loan, which is due and payable from their estates after they die.

If you or anyone you know currently needs nursing home or community-based care, **now** is the time to act. By filing your application before March 1, 2005, your estate may be permanently protected against any future Medicaid estate recovery claim in Texas.

But even if there is no current need for long-term care, you should know that estate recovery can be avoided through Medicaid planning. For maximum effectiveness, such planning should be done in consultation with an elder law attorney in advance of need.

Wright Abshire is available to assist you with Medicaid applications, Medicaid planning, wills, special needs trusts, probate, durable powers of attorney for health care, guardianships and advance directives.



S P E A K I N G E V E N T S

February 23, 2005 – West Houston Medical Center
12141 Richmond Avenue · Houston
12:00 p.m. – 1:00 p.m.

Wesley E. Wright will present a continuing education topic for social workers and nurses regarding Medicaid and the new Estate Recovery Program in Texas.

February 24, 2005 – Mariner Health Cypresswood
10851 Crescent Moon Drive · Houston
12:00 p.m. – 1:00 p.m.

Wesley E. Wright will present a continuing education topic for social workers and nurses regarding Medicaid and the new Estate Recovery Program in Texas.

March 7, 2005 – AARP, Northwest Chapter
1520 Candlelight Lane · Houston
10:00 a.m. – 10:30 a.m.

Wesley E. Wright will discuss the new Medicaid Estate Recovery Program in Texas.

March 8, 2005 – West Oaks Nursing Home
Family Residents' Council

Wesley E. Wright will discuss the new Medicaid Estate Recovery Program in Texas.

SPEAKERS

If you are interested in having an elder law attorney from Wright Abshire speak at an event, or for continuing education for social workers and nurses, please contact Amy at (713) 660-9595.

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