

Attorneys Help with Medicaid Estate Recovery

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on August 19, 2009.

Since 1993, federal law has required the states to do Medicaid estate recovery. This means that the State must attempt to recover from the estates of deceased Medicaid recipients the costs of certain long-term-care "LTC" services, including nursing home costs, paid by Medicaid after age 55.

Texas and a handful of other states resisted implementation of the federal mandate for many years. Even so, it was inevitable that all states would eventually have to comply with the law. In 2003, the Texas Legislature enacted House Bill 2292, the enabling legislation for estate recovery to begin in this state.

In Texas, estate recovery applies only to covered LTC services received on or after March 1, 2005. Often, the single most valuable asset subject to estate recovery, and which the decedent had hoped to pass to his/her heirs, is the homestead.

The Texas Health and Human Services Commission, the Medicaid agency in this state, has ultimate responsibility for the Medicaid Estate Recovery Program "MERP." However, many of the administrative functions have been delegated to the Department of Aging and Disability Services, and the actual collections are handled by a contractor called Health Management Services, Inc "HMS." Thus, HMS is often the primary point of contact that the decedent's heirs have with the MERP.

Often heirs of deceased Medicaid recipients make the mistake of assuming that HMS is the final authority on all matters pertaining to estate recovery. That is, the heirs accept at face value whatever they are told by HMS staff regarding whether a claim will be filed and the amount of the claim. It is important to remember that HMS represents the State in the estate recovery process. It does not represent the interests of the decedent's family or heirs. For this reason, HMS's position may be in direct opposition to the best interests of the heirs.

The Texas MERP rules allow numerous exemptions from estate recovery, certain deductions from the estate recovery claim, and waivers of estate recovery based on undue hardship. There are special rules addressing undue hardship waivers involving a homestead. The rules further allow for a review of the denial of a request for an undue hardship waiver. Because HMS is the State's representative (not the heirs' representative), it may not assist the heirs in the pursuit of allowable exemptions and deductions.

Thus, it is important for the heirs of a deceased Medicaid recipient to engage their own representative who will work to protect their interests. The single best representative of the heirs is an elder law attorney. These attorneys know the Medicaid program and the estate recovery rules better than anyone. In 2003, when the estate recovery rules were being drafted, the Texas Chapter of the National Academy of Elder Law Attorneys submitted its own recommendations to the State. These recommendations may have served to keep the rules less restrictive than they might otherwise have been. Elder law attorneys know all of the options available to the heirs and which strategies work best in a given situation.

So, if you are heir to an estate involving a Medicaid claim, do not short change yourself. Contact a qualified elder law attorney to ensure that all appropriate exemptions, deductions, and waivers are pursued as allowed by law and regulations. And remember that in protecting your own personal interests you do no disservice to the government. The government would not have written these exemptions, deductions, and waivers into law and regulation if it had not intended for them to be used.