

Don't Miss Opportunity to Protect Your Home from Estate Recovery

Many clients planning for long term care are anxious about the consequences of using the Medicaid long term care program to finance their long term care, and rightfully so. They fear that if they access benefits, the Medicaid Estate Recovery Program will automatically take their home upon their death. The bad news is that the Medicaid Estate Recovery Program fights hard to reclaim funds from the homestead at the time of death for monies paid out for the Medicaid recipient's care. The good news is that with proper planning the home can be protected from Medicaid estate recovery.

Due to a law passed over eleven years ago, the state of Texas has the ability to make claims against estates of Medicaid recipients of certain Medicaid services (nursing facility services, home and community-based services and intermediate care facility services) if the Medicaid recipient was 55 years or older when the services were provided. The State of Texas calculates the funds spent on the Medicaid recipient daily and attempts to recover the funds upon the Medicaid beneficiary's death from their probate estate.

Some estates by definition will be exempt from Medicaid Estate Recovery. The most common exemption is the existence of certain surviving family members of the Medicaid beneficiary. The state is prohibited from initiating estate recovery against the estate if a spouse, a child under the age of 21, or a disabled child of any age survives the beneficiary. Additionally, if there is a surviving unmarried adult child of any age residing in the homestead for at least a year prior to the Medicaid beneficiary's death, estate recovery can be avoided. Evidence of the exemption must be proven. Such evidence might include: a death certificate listing surviving spouse, a birth certificate listing age of surviving child, an eligibility letter from Social Security indicating disability onset, or evidence of domicile for an adult child residing in the home.

Another exception to Medicaid estate recovery exists when recovery would cause an undue hardship on the heirs. Undue hardships can be proven when the heirs or beneficiaries who would receive the homestead make a living from the asset, such as a family farm or family business. Another way to prove an undue hardship is when the homestead is less than \$100,000 and one or more of the children the Medicaid beneficiary has income that is 300% below the federal poverty level. A claim will also not be made if recovery is not cost-effective.

Placing a Lady Bird deed or transfer on death deed on the home and thus, avoiding probate, is the most common and efficient way to protect the home from an estate recovery claim. These deeds not only protect the home from a potential Medicaid estate recovery claim but also allow the grantor to transfer an interest in the home without incurring a Medicaid transfer of assets penalty. The only interest conveyed is one to receive the property if the grantor still owns the property at death. The use of the deed also avoids probate because the property transfers immediately upon the death of the grantor without the necessity of an estate administration.

Even if no statutory exemptions exist and the deceased Medicaid beneficiary failed to properly plan, ways to protect the home from estate recovery still exist. One way is to prove that the state did not

follow the complicated law to prove-up the claim. Another way to reduce the State's claim is to present well-documented records and receipts for expenses related to the homestead and to the Medicaid beneficiary's care paid by family members.

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