MERP Doesn't Have to be a Worrisome Prospect

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on December 12, 2012.

The Medicaid Estate Recovery Program in Texas is comparable to an invoice presented to the heirs of someone who used long-term care Medicaid services, often referred to as the "Medicaid Death Tax."

Considering the costs of 24-hour long-term care for one year or more could easily match or exceed the value of a Medicaid beneficiary's homestead. In Texas the average cost is around $72,000 per year, when a recipient passes away and MERP sends a bill to the representative of the estate, the amount can be shocking.

However, for anyone applying for Medicaid for the aged and disabled, MERP doesn't have to be a worrisome prospect.

MERP will seek repayment from all belongings of the estate, and the homestead is usually the most valuable remaining asset. Texas limits collection to the probate estate and collects by filing a probate claim in the estate of the defendant; but the total amount recovered will not exceed the value of the estate assets.

In Texas, MERP is a Class 7 claimant, meaning there are six other types of creditors who are paid off before MERP, like funeral expenses, costs of administration, secured claims, delinquent child support, taxes, etc. After the six other types of claims are settled, MERP collects from whatever is left over.

The assets of any Texas resident 55 or older who applied for and received certain long-term care services on or after March 1, 2005, including nursing home services, home and community-based services, and related hospital and prescriptions expenses are subject to MERP.

The state now processes claims via a private contractor essentially acting as a debt collection agency. Health Management Services "HMS" began its role as collection agency in 2007, and has become more aggressive in its efforts to pursue claims.

The average number of claims filed a month, according to the program, is 3,419, but from 2007 through 2011. During the same four years, the program recouped a gross amount of just $19 million from 7,568 of those cases.

The law limits MERP to pursuing claims where there is no surviving spouse, no surviving child under 21, nor a surviving child of any age who is blind or disabled. Neither can a claim be established if there is an unmarried adult child who resided continuously in the decedent's home for at least a year prior to the time of the Medicaid recipient's death. Undue hardship waivers may also be considered exemptions, and any attempt at recovery must be cost-effective.

If you are planning for long-term care, do not think that your heirs will receive nothing if you avail yourself of long-term care Medicaid services. With planning, most of your assets can still pass to your heirs in accord with your wishes, including your home.

The rules and regulations regarding the Medicaid Estate Recovery Program are extremely complex. If you should receive a Notice to File a Claim against the Estate from DADS/HMS, do not panic. The best thing to do in this situation is to contact an experienced elder law attorney regarding your rights as heir of the estate. The better road to take is to make a plan while the Medicaid recipient is still alive.