

# Medicaid Proposes Exemption of Real Property

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on January 20, 2010

For many years, disqualification for Medicaid benefits based on ownership of non-homestead real property has been one of the more difficult obstacles to overcome. An in-state homestead always has been an exempt asset for Medicaid eligibility purposes.

There are no restrictions on size or acreage, although the homestead of a single individual that is valued above a certain amount may render that individual ineligible for Medicaid to help with nursing home costs. And while the home is exempt for eligibility purposes, the Medicaid program still may file a claim against the home (as part of the probate estate) when the individual dies. The authority to file such a claim against the individual's probate estate is referred to as Medicaid estate recovery.

Despite the homestead exemption, the value of non-homestead real property has always counted against the \$2,000 Medicaid asset limit. The only exception has been if the property can be characterized as "property essential to self-support," such as business property. So, Medicaid applicants owning such property often have found the door to Medicaid closed to them, at least until such time as they could sell the property and spend the proceeds down to the \$2,000 asset limit.

At long last, relief may be in sight. The Texas Medicaid program has published proposed rules that allow non-homestead real property to be considered an exempt asset. The two criteria for exempting the property are as follows:

- (1) Reasonable efforts are being made to sell the property; and
- (2) The property would cause the individual to be resource-ineligible for Medicaid if its value is counted against the \$2,000 asset limit.

There is no time limit on the exemption of real property placed for sale. The exemption applies as long as reasonable efforts to sell the property continue.

The proposed rule stipulates that when and if the property does sell, the individual's equity in the proceeds received will not count as an asset until the first day of the next month. This gives the individual an opportunity to spend down the proceeds, or then otherwise shelter through legitimate means, before the end of the month in which they are received, thus ensuring no break in Medicaid eligibility or coverage.

In proposing this rule change, the Texas Medicaid program is incorporating a rule that has long been in effect for the federal Supplemental Security Income ("SSI") program, which is a cash assistance program closely related (in terms of rules and methodology) to the nursing home Medicaid program.

This is a big change for the Texas Medicaid program. It potentially opens the door for more people to qualify for Medicaid up front, without first having to sell their non-homestead real property and spend down the proceeds of the sale.

While state Medicaid officials report the above rule is not yet in effect, and while the exact implementation date may be uncertain, it is encouraging to know this change is on the horizon.

The above is one example of how complicated the Medicaid program is and how quickly and dramatically the rules of this program can change. It virtually is impossible for a lay person to keep abreast of the program's continually evolving rules. For this reason, it is inadvisable for anyone to undertake Medicaid planning without first consulting a certified elder law attorney (CELA). For these attorneys, keeping up with Medicaid and other public benefit programs is their full-time job. Thus, they are well-equipped to represent you and your family in planning for Medicaid, applying for benefits, and maintaining eligibility.