

# Will I Lose My Home if I Accept Medicaid in a Nursing Home

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on March 25, 2009.

The answer is maybe. In 1965 when President Johnson signed into law the Medicaid program, there was a portion of the new Act that authorized the states to implement an estate recovery program. These programs allowed the states to seek reimbursement from the decedent's estate for benefits paid on behalf of the decedent. In 1993, this authority was changed from voluntary to mandatory.

Subject to certain exceptions, the decedent's assets are subject to Medicaid estate recovery to the extent that benefits were paid to the beneficiary after 55 years of age. Since the homestead is generally the most valuable asset in the decedent's estate, and is not counted as an asset to determine Medicaid eligibility, it is the primary target of estate recovery upon the death of the beneficiary.

The Deficit Reduction Act (DRA) of 2005 exempts the homestead from being counted as a resource against the beneficiary in an amount up to \$500,000 for an individual if he or she intends to return to the home and of any value for a couple. But those considering nursing home Medicaid eligibility must look beyond the initial eligibility determination and consider what will happen upon the death of the beneficiary. Most people with a home do not have a problem with eligibility since the allowable values of the home are so high. The critical point that must be considered is the point in time that the beneficiary passes away.

The DRA provides clear exemptions from estate recovery and if the beneficiary qualifies for an exemption, then the decedent's estate avoids estate recovery. Unfortunately, the exemptions are conditional. The facts that may give rise to an exemption if the person died today may not exist at the time of the beneficiary's death.

For example, Mr. and Mrs. Smith own a home valued at \$150,000 at the time Mr. Smith enters the nursing home and applies for Medicaid. Since a couple may own a home of any value and still qualify for Medicaid, the home will not impede eligibility. The couple is happy that they can keep the home, and are also pleased when made aware that there will be no estate recovery against an estate in which the Medicaid beneficiary is survived by a spouse. The subsequent reliance on this exemption can be detrimental if one is unaware of the fact that approximately thirty percent of the community spouses die first. If the community spouse precedes the spouse in the nursing home in death, then unless other exemptions or protections are available, the house will be subject to an estate recovery claim.

The adverse effect of the estate recovery process is that it places potential applicants for Medicaid in fear of losing their homestead due to the receipt of benefits. This places elderly couples and even individuals in a position in which they will sometimes avoid entry into a nursing home out of fear of losing their home and stay in their own home even though it is detrimental to their health or the health of another, such as the spouse. An experienced elder law attorney will be able to come up with a plan of protection that will most likely help the person in need obtain Medicaid benefits without losing the home to estate recovery in the end.

