



Medicaid Estate Recovery

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Overview

Medicaid Estate Recovery

Exceptions

Estate

Claims



Medicaid
Estate
Recovery –
Common
Questions

“Will Medicaid
come after
us?”

“Will Medicaid
take the
house?”

“Won’t
Medicaid get
everything?”

There are limits
to the reach of
the State



Medicaid Estate Recovery

Since 1993: Every state must establish a program to recover Medicaid expenses from the estates of recipients
42 U.S.C. § 1396p(b)(1)(B)

- Known as, "Estate Recovery"



States can impose personal liens on personal or real property
42 U.S.C. § 1396p(a)



States can seek to recover from the Medicaid recipient's estate
42 U.S.C. § 1396p(b)(1)(A)



States may adopt an expanded definition

Medicaid Estate Recovery

- It may seem counter-intuitive that states can impose liens on personal and real property when the Medicaid recipient must be impoverished to receive benefits
- Frequently, the residence a Medicaid recipient is permitted to retain is titled in the name of a deceased recipient
- Federal law: a state must seek to recover against the residence in order to qualify for the Medicaid program. *West Virginia v. U.S. Dep't of Health & Human Servs.*, 289 F.3d 281, 284 (4th Cir. 2002).

Medicaid Estate Recovery

Each state is required to seek reimbursement from the probate estate of any Medicaid beneficiary, of any age, receiving “long-term care.” 42 U.S.C. § 1396p(b)(1).



Restrictions:

State must wait until the death of the community spouse 42 U.S.C. § 1396p(b)(2)

No recovery against the estate if survived by a child who is blind, disabled, or under 21. 42 U.S.C. § 1396p(b)(2)(A)

Medicaid Estate Recovery

- Federal Law:
 - States may impose expanded recovery to include: joint tenancy interests, life estates, and other interests that lapse at death
 - No mechanism set forth to do so 42 U.S.C. § 1396p(b)(4)(B)
- Most states have deferred from expanding the definition of *estate* beyond that of a probate estate
- Many states have legislation to expand *estate recovery*

Estate – The Delaware Statute

- **25 Del. C. § 5001 Definitions**
 - “Estate” means all real property, as well as all personal property which constitutes assets of the individual's estate as described in Chapter 19 of Title 12.
 - “Long-term care” means a service provided in a long-term care facility or in the home, under federally approved home and community-based services, as an alternative to institutionalization.

Estate – The Delaware Statute

- **25 Del. C. § 5002 Liens; notice.**

(a) any individual who is 55 years of age or older when the individual receives services in a long-term care facility ..., a lien shall ... against all real property of such individual, ... upon approval ... and receipt of, services ... on that individual's behalf, ...by the Department

(b) No lien may be imposed on an individual's home ... if any of the following persons is lawfully residing in the home:

- (1) The spouse of the individual;
- (2) The individual's child who is either under the age of 21, blind or permanently and totally disabled; or
- (3) A sibling of the individual who has an equity interest in the home and who was residing in the home for a period of at least 1 year immediately prior to the date of the individual's admission to the long-term care facility.

Estate – The Delaware Statute

(c) The lien shall attach to real property ... at the Recorder of Deeds office in the county where such real property is located.

(e) Any lien imposed ... shall dissolve and be null and void upon the individual's discharge from the long-term care facility and return home.

Estate – The Delaware Statute

- **25 Del. C. § 5003 Estate recovery.**

[a]ny individual receiving long-term care ... the Department shall seek recovery ... of such individual ... from the individual's estate or upon sale of property subject to a lien. The Department will seek recovery of moneys ... from all periods ... on behalf of the individual only:

- (1) After the death of the individual and the death of a surviving spouse who was residing in the home on a continuous basis; and

Estate – The Delaware Statute

- (2) In the case of liens on an individual's home, when there is no:
 - a. Surviving child who is blind or disabled as defined in ... 42 U.S.C. §§ 1381-1383f who was residing in the home on a continuous basis immediately prior to the death of the individual; or
 - b. Nondisabled child or sibling of the individual lawfully residing in the home, who has resided there for a period of at least 2 years immediately prior ... to a long-term care ..., who has ... resided there ... and who ... provided the care that permitted the individual to reside in the home rather than in a long-term care facility; or
 - c. Minor child ... residing in the home on a continuous basis immediately prior to the death of the individual, until that child reaches majority.

Estate – The Delaware Statute

- **25 Del. C. § 5004 Voluntary reimbursement.**

The Department shall accept reimbursement for medical assistance it has rendered when voluntarily offered by a current or former recipient of long-term care or someone acting on the recipient's behalf to offset any recovery under § 5003 of this title.

- **25 Del. C. § 5005 Undue hardship.**

The Department shall, by October 13, 1994, establish procedures under which the Department shall waive the application of § 5003 of this title if it would work an undue hardship. However, a waiver granted pursuant to this section shall remain in effect only as long as the undue hardship condition continues.

Claims

The state may assert a claim against an estate in the same manner pursuant to 12 Del. C. § 2104

“[t]he claimant may deliver or mail to the personal representative a written statement of claim indicating its basis . . .” 12 Del. C. § 2104(1)

The state routinely mails an estate recovery letter to the Medicaid recipient’s personal representative (if there is one) within a few months after the recipient’s death

Often, the recipient’s Personal Representative is not the Personal Representative of the estate

In this instance, the claim is not properly asserted

State has filed claims with Register of Wills to avoid sending to incorrect party

Conclusion

- Federal Law:
 - States are required to seek reimbursement from Medicaid recipients' estates with restrictions
 - There are instances where a state cannot file a lien
- Delaware
 - State can recover only after death of both individual and spouse who was residing in the home
 - No lien on individual's home if: (1) spouse resides in home (2) child under 21, blind, or permanently disabled, or (3) sibling with an equitable interest in the residence resides there at least one year prior to individual's admission to the long-term care facility
 - Claim must be delivered to the Personal Representative

Thank You

Any Questions?





Contact Us

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