

Elder Law: The Pennsylvania Medical Assistance Estate Recovery Program

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Medicaid (Medical Assistance in Pennsylvania) is the government program that covers healthcare costs for individuals with limited assets and income. With regard to older Pennsylvanians, Medical Assistance is the program that pays for long-term skilled nursing home care and long-term skilled care in the community through the Home and Community Based Aging Waiver Program. Medical Assistance imposes strict limits on assets for both programs and has an income cap for the Aging Waiver.

Unless among the minorities who have long-term care insurance, many individuals who require skilled nursing facility care pay thousands of dollars out-of-pocket every month before exhausting available assets to qualify for Medical Assistance benefits. However, even with such strict asset limits, some assets are exempt from the calculation of net worth such as an applicant's home, income producing property, a family business and a protected cash amount for both the applicant and their spouse. In other words, individuals who qualify for Medical Assistance often still own valuable assets while receiving benefits and also upon their deaths.

What is the Pennsylvania Estate Recovery Program?

Since 1994 in Pennsylvania, states have been permitted to recover from the estates of deceased Medical Assistance recipients to help recoup funds up to the amount of any benefits paid on the recipient's behalf. Beyond enactment and publication of the law, no further notice about the program is required to be given to recipients. The Department of Public Welfare does have an informational brochure about the program that is sometimes provided to Medical Assistance recipients upon approval for benefits. However, frequently families are unaware or have a misunderstanding of the Estate Recovery Program until a claim attaches upon the death of their loved one.

Pennsylvania currently permits the Department of Public Welfare to collect assets in the *probate* estate of a Medical Assistance recipient if:

- The recipient received services while over age 55;
- The recipient received services within the last five years prior to death;
- The recipient's estate is valued at greater than \$2,400; and
- The recipient received nursing facility services, home and community based services, or related hospital and prescription drug services.

The most commonly collected asset is the home of a Medical Assistance recipient because this asset is exempt for the initial financial eligibility determination and is often part of a recipient's probate estate upon death.

What is a probate estate?

After a person dies, legal title of his or her property and assets must be transferred to the named heirs or heirs at law. If an asset has a joint owner with survivorship rights, such asset will automatically pass to the surviving owner upon the death of the first owner. If an asset has a

named beneficiary (such as a life insurance policy) the named beneficiary will be able to legally claim ownership of the asset upon the death of the insured. However, if no joint ownership with survivor rights exists or no beneficiary has been named, the asset or property will be subject to the probate process.

Probate often refers to the act of presenting a will to a court officer for filing, but in a more general sense, probate refers to the method by which an estate is administered and processed through the legal system. An example of a probate asset is a house owned solely by a person upon death. If the deceased person had a will naming her son as the beneficiary of the home, the will would need "probated" in order to transfer legal title of the home to the son. In the context of an estate recovery claim, if a claim existed, the state's claim would take priority over the bequest to the son. If the amount of Medical Assistance benefits paid exceeded the value of the house, the son would basically receive nothing from his parent's estate.

What should I know?

The threat of an Estate Recovery claim can often be avoided through proper Medical Assistance planning prior to an application for benefits. Pre-planning before benefits are needed is always the best defense in any scenario. However, if your loved one is already on benefits there are many planning techniques that can be implemented after the fact to protect exposed assets.

If you or a loved one are facing nursing care needs and you have questions about the Pennsylvania Medical Assistance Estate Recovery Program and how to plan accordingly, please contact our office.