



What Should Personal Injury Lawyers Know about the Medical Assistance Estate Recovery Program?

By Julian E. Gray, CELA*
March 28, 2021

Many of our clients access Medicaid (Medical Assistance in PA) for a variety of short and long term healthcare needs both before and after an accident. Therefore, accounting for Medicaid benefits is paramount in settling many personal injury cases. However, obtaining or preserving prospective Medicaid benefits is just one aspect of the planning process. The other part involves mitigating financial loss after the death of the Medicaid recipient to recapture of debt owed to the Department of Human Services (“DHS”). But, you say, wait a minute! I negotiated the Medicaid lien when the case settled years ago and DHS was paid in full. You are correct, but that resolution was for past Medicaid expenditures. Many of our mutual clients who are injured with long term medical needs will rely on Medicaid for the rest of their lives - and then there is the ultimate lien resolution at death!

Back in the early 90’s, Pennsylvania adopted its Medical Assistance Estate Recovery Program (MAER) to recoup Medicaid dollars spent during the lifetimes of people in the various Medicaid programs throughout the Commonwealth. While the roots of PA’s program are in Federal law, each state has its own rules, and some states are more aggressive than others when it comes to collecting this debt.

So, who is affected?

Only individuals age 55 years and older who received Long Term Care Medical Assistance-funded benefits for the following services:

- Enrolled in Community HealthChoices (CHC).
- Nursing facility care.
- Home and community-based services; and
- Any related hospital care and prescription drug services provided while receiving nursing facility care or care at home or in a community setting.

The claim of DHS only “ripens” at the death of the individual who received Medicaid services; and only for people age 55 or older. Contrast this with the payback scenario of a statutory Special Needs Trust which requires payback at any age of the decedent upon termination of the Trust.

Furthermore, Pennsylvania’s MAER is limited to claiming against the probate estate of the decedent. Other states have what is known as “expanded Estate Recovery” which means non-probate assets can be subject to the claim by DHS. Some examples include trust property and jointly held assets. So, in Pennsylvania, avoiding probate means avoiding the MAER claim, no matter how large it is.

What’s this all mean to the plaintiff attorney and his or her client when settling a case? It’s just one more example of taking into consideration the short and long term factors of planning for a client with a long term disability. No one wants the surprise years in the future of a client or his family member having to repay DHS pursuant to an MAER claim, especially when it could have been avoided with proper planning.

Here’s a common example. Upon settling an injury case, one of the most popular big ticket items on the wish list of the disabled plaintiff is to finally purchase their own home. Since the home is typically exempt for continued Medicaid benefits, it flies under the radar during the lifetime of the client until he or she dies. Then, pursuant to the MAER statute, the personal representative must (not should or may) send notice to DHS requesting a statement of claim and unfortunately, repay all those Medicaid services provided to the client while living in their home that was purchased with the settlement proceeds.

The good news is that there are planning techniques available to protect settlement proceeds from future estate recovery claims, whether those proceeds are held in real estate or other types of investments. Looking ahead, way ahead, for the injured plaintiff can yield a greater asset protection scenario for the ultimate reconciliation with DHS.

The attorneys at Julian Gray Associates have assisted numerous personal injury attorneys, their clients and families to maximize their clients’ results. For a no obligation, confidential discussion of a pending matter, please contact Julian at 412-458-6000 or visit SaveYourSettlement.com

*Certified as an Elder Law Attorney by the National Elder Law Foundation under authorization of the Pennsylvania Supreme Court.