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What Is Estate Recovery?

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Among the many terms that arise in connection with Medicaid planning is the concept of **Estate Recovery**, which is the process by which the government recoups part of the Medicaid benefits paid on behalf of a Medicaid applicant during their lifetime.

Under the Medicaid or Medical Assistance (MA) program in all states, in order to qualify, clients must expend or otherwise divest their countable assets until those assets are not more than a (very low) level permitted under the laws of the state in which the clients are living.

Depending on the specific manner in which an applicant's assets are spent down or divested, an applicant may also be ineligible for MA for an additional period of time after their assets reach the permitted level. Certain assets are, however, considered *exempt* (or non-countable) and are therefore not counted toward an individual's eligibility during their lifetime. For many people, the most significant exempt asset is their home. Subject to certain requirements, an applicant's (and/or spouse's) interest in a primary residence is ordinarily not counted toward the applicant's MA eligibility.

However, the notion of the family home as being "exempt" is a bit misleading because of the Estate Recovery program.

Under the Estate Recovery program in most states, the government agency charged with administering MA benefits (the Department of Human Service or DHS in Pennsylvania) will normally have a claim against a decedent's estate equal to the amount of MA benefits paid on behalf of a deceased MA applicant during their lifetime.

Insofar as the home is an asset of the decedent's estate, the home will be subject to the government's "Estate Recovery" claim, i.e., its claim for reimbursement of skilled nursing care costs paid during the deceased

applicant's lifetime. For that reason, it is perhaps more accurate to view the exemption as a *deferral* of (rather than an *exemption* from) a family's obligation to expend its own assets to pay for the applicant's skilled nursing care. Because the home is one of the few assets not counted toward an applicant's MA eligibility, it is the asset most likely to ultimately be subject to Estate Recovery.

In some states, Estate Recovery is expansively applied to reach assets besides those in the decedent's probate estate (i.e., assets titled in the decedent's name and which are subject to administration as part of their estate). However, in many states, including Pennsylvania, Estate Recovery is limited to the decedent's (probate) estate.

That in turn makes the titling of a decedent's assets a critical part of Medicaid planning.

For example, a home titled solely in the deceased MA recipient's individual name ordinarily *will* be subject to Estate Recovery, whereas a home titled in the name of their spouse (or jointly with their spouse) will normally *not* be subject to Estate Recovery.

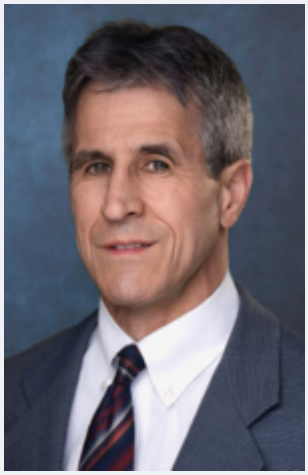
Estate Recovery also places responsibility (and potential legal exposure) for payment on the person(s) administering the decedent's estate (such as an Executor). An Executor is responsible for inquiring with the applicable government agency to find out whether a decedent received MA benefits during their lifetime that give rise to an Estate Recovery Claim against the estate.

The government then has a finite period of time (45 days in Pennsylvania) to respond by notifying the Executor of the existence and extent of any such claims against the decedent's estate. If an Executor disregards or fails to make a proper inquiry about Estate Recovery and therefore fails to pay an Estate Recovery claim against the estate, the Executor can be held personally responsible for payment. **The potential for Estate Recovery is yet another reason why most Executors are well advised to seek legal counsel in administering an estate.**

There are certain exceptions to an estate's obligation for Estate Recovery, including in cases where imposition of the Estate Recovery would cause undue hardship to beneficiaries of the estate or other persons. However, such exceptions are generally subject to various requirements and are normally narrowly construed. Also, the burden of proving that all of the requirements are met falls upon the person(s) seeking the waiver.

For all of the above reasons, it behooves practitioners and clients to have an understanding of Estate Recovery and its application to an applicant's Medicaid planning.

If you have questions about Estate Recovery, Medicaid, or have other Elder Law or Estate Planning concerns, please contact one of our Elder Law Attorneys or call 814-459-2800.



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