

medicaid estate recovery

As our population ages, more and more seniors are turning to the Medicaid program for assistance in paying for long-term nursing home care.

by **ROBERT EMMITT and GEORGE FEKARIS**

Those who are fortunate enough to qualify for Medicaid benefits will have some or all of their nursing home care expenses paid for by Medicaid. Most seniors, once admitted to the nursing home, will live out the remainder of their lives with the assistance of skilled nursing care. However, once a Medicaid recipient passes away, this is not the end of the story for purposes of the Medicaid program.

In 2007, Michigan passed a law that allows the State to recover the costs paid for by the Medicaid Program from assets owned by the Medicaid beneficiary at that person's death. This law is commonly known as the Estate Recovery Law. Although the law was passed in 2007, it did not receive approval from the federal government. Notice has now been given that Michigan will begin to implement its Estate Recovery Law for Medicaid beneficiaries starting July 1, 2011.

In order to qualify for Medicaid benefits in the first place, an applicant must have less than \$2,000.00 in countable assets. However, an applicant is permitted to retain certain assets that are treated as "non-countable" in determining Medicaid eligibility. In most cases, the only asset of significant value that a Medicaid beneficiary owns at the time of their death is their home. The Estate Recovery Law is designed to enable the State of Michigan to be reimbursed from the value of assets that remain in a Medicaid beneficiary's estate. In other words, the State of Michigan will attempt to be reimbursed from the proceeds of the sale of the Medicaid beneficiary's home.

Certain exemptions have been written into the law. For instance, if the Medicaid beneficiary's home is still occupied by their spouse or child (if the child is blind, disabled, or under



age 21). Additionally, the homestead may be exempt if occupied by a relative of the Medicaid beneficiary who provided care to the Medicaid beneficiary for at least two years prior to the beneficiary's admission to a nursing home. Additionally, a hardship exemption may be obtained to protect a homestead which is of low or depressed value as compared to other homesteads in the same county. Finally, an exemption may be available for a family farm,

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business, or other income-producing asset if they are the primary source of income to the survivors.

Perhaps, what is most important about the Estate Recovery Law as it is currently written is that estate only seeks to recover against assets that pass through a probate estate. Thus, if the assets remaining to a Medicaid beneficiary upon their death passed to their survivors without the necessity of going through probate court estate proceeding, then the State of Michigan will make no claim against such assets. With proper planning, and through the advice and assistance of a qualified attorney, a Medicaid beneficiary may take full advantage of the exemptions noted to protect or exempt their assets from estate recovery after they have passed away.

The field of Medicaid Planning has been rapidly evolving due to numerous changes to laws and regulations which affect this area of practice. Currently, there are proposals within the State legislature to make further modifications to the Estate Recovery Act to limit exemptions that are available to a Medicaid beneficiary and broaden the scope of estate recovery's reach. Therefore, it is important to meet with an attorney who is well-versed in this area and aware of the frequent shifts in the Medicaid Planning landscape. With proper planning with a qualified professional, the maximum value of assets may remain in the hands of a surviving spouse or other family members who depend upon family assets for their support and security. ■

For further information or to schedule an appointment, please contact Morello Law Group, P.C. and Gerald M. Morello, Jr., Esq. at 734 281-6464 (1800 Biddle Ave., Wyandotte) or visit their Web site: www.morellolawgroup.com