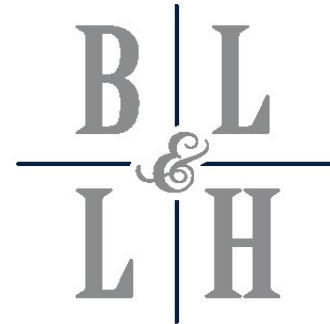


Estate Recovery 101
Jackson Area Estate
Planning Council
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Presented by:
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Estate Recovery in a nutshell

- Any probate estate of an individual over the age of 55, who was receiving some sort of Long-Term Care service through Medicaid, will be subject to Estate Recovery in Michigan.

Estate Recovery Statutes

- The Estate Recovery program in Michigan is administered by the Department of Health and Human Services pursuant to MCL 400.112g-k.
 - [https://www.legislature.mi.gov/\(S\(w2wsvgogrd33sxresi3fcgxz\)\)/m illeg.aspx?page=getobject&objectname=mcl-400-112g](https://www.legislature.mi.gov/(S(w2wsvgogrd33sxresi3fcgxz))/m illeg.aspx?page=getobject&objectname=mcl-400-112g)
- 42 USC 1396p –Liens, adjustments and recoveries, and transfers of assets.

Estate Administration & Estate Recovery



Carefully determine if assets are subject to a probate estate.



Follow normal procedures.



Priority established in MCL 700.3805 still controls.



Where to begin?

- Confirm decedent was subject to estate recovery.
 - Over age 55
 - Received Long Term Care Services through Medicaid
 - A probate estate exists.



Estate Recovery Questionnaire

- Upon the death of a Medicaid Recipient, the Department of Health and Human Services sends an Estate Recovery Questionnaire, to seek information about assets subject to a claim.
- Questionnaire asks very broad questions which may cover assets not subject to recovery.
- Most families would provide unnecessary information based on questions.
- If decedent does not leave an estate subject to Estate Recovery, do not complete questionnaire, but do respond to satisfy inquiry.

Estate Recovery Questionnaire continued

If decedent has an estate subject to estate recovery, carefully complete the questionnaire listing only probate assets, and claiming any relevant Exemptions or Hardship Waivers.

Failure to claim an Exemption or Hardship Waivers may lead to a denial.

Methods for Avoiding Estate Recovery

Preplan to avoid assets from being subject to probate administration.

Examples:

- Joint bank accounts;
- Transfer on Death/Pay on Death designations;
- Beneficiary designations;



Ladybird Deeds

- Enhanced Life Estate Deed
 - Land Title standard 9.3
 - Medicaid policy specifically defines execution of a Lady Bird Deed as NOT divestment.
 - Can be done when a person is in a facility receiving Medicaid benefits.
 - Must name a remainderman, can be a Trust.

Statutory Exemptions

- Statutory Exemptions under MCL 400.112(g)(6):
 - Surviving spouse
 - Surviving disabled child
 - Caretaker relative*
 - Caveat – if the individual never entered an institution, this will be treated as a hardship. See SPA 16-0005.*
 - Sibling with equity interest in the real property who both currently resides in the home and has resided there for at least two years prior to the decedent's death. *

*The State may request a lien on the property, as both situations are dependent on the applicant remaining in home.

Undue Hardship Waiver

- These are defined in the Michigan Department of Health and Human Services State Plan Amendment (SPA) 16-0005 pursuant to (g)(3)(e): https://www.michigan.gov/documents/mdhhs/SPA_16-0005_536936_7.pdf
- To qualify for an Undue Hardship Waiver, the estate subject to recovery must either be the primary income-producing asset of the applicant (i.e., farm) or be a home of modest value.
- Both "tracks" are means-tested.

Undue Hardship Waiver Home of Modest Value

- To meet the criteria for a home of modest value under the Undue Hardship Waiver, the estate home must be valued at 50% or less of the average price of homes in the county, as of the date of the Medicaid recipient's death, and the applicant must also meet the means test. Both prongs must be satisfied for a Hardship to be granted.
- The 50% value is typically calculated using SEV x 2 as the FMV of the property. If an applicant feels that this number does not accurately represent the property's value, a certified appraisal will be accepted.

Undue Hardship Waiver Means Test

- Under the means test, the applicant must have less than \$10,000 in total household resources (this includes bank accounts, retirement accounts, real property, etc.) and the total household income of the applicant is less than 200% of the Federal Poverty Level for a household of that size.
- Reminder: Individuals who do not meet the definition of undue hardship as found in 400.112g (caretaker, no institution). Must pass means test!

Deferral Not Exemption

- If the Undue Hardship Waiver is granted, there would be a deferral of the Estate Recovery claim for as long as the applicant remained in the house.
- The applicant would also have to submit documentation for the means test annually to prove that the hardship still exists.
- The Department may also put a lien on the property, depending on the value of the property and whether it is cost-effective to do so.
- Upon the sale of the home, or death of the applicant, the Department's claim could be reinstated.

Sec. **3805**. (1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.
- (f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, [42 USC 1396p](#).
- (g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.
- (h) Debts and taxes with priority under other laws of this state.
- (i) All other claims.

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EPIC's
Priorities
Still Control



Priority of payments

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance. (Surviving spouse & minor or dependent children MCL 700.2402. \$24,000)
- (d) Family allowance. (Surviving Spouse & minor or dependent children MCL 700.2403. \$29,000)
- (e) Exempt property. (Surviving spouse, or if none, adult children, who are not expressly excluded pursuant to MCL 700.2404 (4) \$16,000).

Small Estates & Next of Kin (SOS)

If assets are being transferred via Petition and Order or Affidavit of Successor's Interest, the Department could make a claim if:

- Over allowance limits;
- No other exemption or hardship exists;
- Relatively rare, but not impossible.

Next of Kin through Secretary of State

- Not a part of probate estate.

Valid Claim

- Request a breakdown of the services provided.
- Confirm accuracy.
 - Errors can happen.
- Pay claim in proper order of administration.



Keep in Mind

- Outstanding debts to the nursing home, or medical expenses of last illness do not have priority over the Estate Recovery Claim.
- This includes payment of Patient Pay Amount.
- As some of the exemptions/hardship waivers are temporary, the best plan is to avoid a probate estate for the applicant too!
- Best defense is a good offense. Pre-plan if possible!



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