

Medi-Cal Estate Recovery and Ways to Avoid It

In previous editions of this weekly email newsletter, we have explored the need for long-term care planning as part of a comprehensive estate plan, the ethics of Medi-Cal planning, how to find and pay for the right nursing home, resource limitations which apply to Medi-Cal eligibility, and three particular strategies to qualify for Medi-Cal long term care benefits when an applicant has too much in the way of assets, including asset spenddown, asset conversion, and asset transfers.

We also examined two types of assets which can be used to special advantage in Medi-Cal planning: irrevocable, single-premium, and immediate annuities, and retirement accounts.

We then discussed how Medi-Cal limits the amount of income a recipient is allowed to keep and ways to protect that income, if needed, for the support of the recipient's spouse.

In this edition and upcoming editions, we will shift our attention away from Medi-Cal qualification and instead look for ways in which to avoid the "Medi-Cal lien."

But first, an explanation of what we mean by the "Medi-Cal lien." Technically speaking, it's not even a lien at all, in the sense of a mortgage or a tax lien, rather it's merely an unsecured claim, similar to an unpaid credit card, made by Medi-Cal upon the estate of a Medi-Cal recipient after he or she dies (and his or her spouse, if any) for repayment of medical benefits paid during his or her lifetime, limited to the value of the recipient's estate at the time of death.

Example: John Anderson, a widower, lived in a nursing home for the last 5 years of his life, paid for in part by Medi-Cal, and in part by his monthly income checks. He owned a home worth \$350,000 and received Medi-Cal nursing home benefits over the last 5 years of \$125,000. At the time of his death, Medi-Cal will submit a claim against his estate for reimbursement of benefits paid to John during his life of \$125,000.

Example: Same assumptions as last example, except the home is worth only \$75,000 at the time of John's death. Medi-Cal will limit its claim against the estate to \$75,000, the value of John's estate at the time of death.

Example: Same assumptions as first example, except John is survived by his wife, Wendy. As long as Wendy is beneficiary of John's estate and is alive, the state will not make an estate recovery claim against either John's estate or John's wife, Wendy. However, upon Wendy's death, the state will make a claim against her estate for reimbursement of benefits paid to John during his life of \$125,000.

All assets passing at death to beneficiaries through probate, *revocable* living trusts, and joint tenancies, will be subject to the estate claim. Even though the home is an exempt, or non-countable, asset for purposes of Medi-Cal eligibility, it, too, will be subject to an estate claim. For the time being, the only significant assets that escape an estate claim are beneficiary designation-type accounts, such as life insurance policies, annuity contracts, and retirement accounts payable to beneficiaries other than the estate of the Medi-Cal recipient. However, it's just a matter of time before the state adopts rules and regulations to subject these types of assets to estate claims as well. The law already allows the state to collect against these types of assets, but the state has not gone through its formal rule-making process to implement the law.

If assets pass to beneficiaries before the state has a chance to submit its claim, such as termination of a revocable living trust, or by operation of law in the case of joint tenancies with rights of survivorship, the beneficiaries will be personally liable for the claim up to the value of the inheritance they received.

There are two circumstances in which the state cannot make an estate claim: the first is one in which the beneficiary is a minor child (under the age of 21) of the Medi-Cal recipient; and the second is one in which the beneficiary is a permanently and totally disabled adult child of the Medi-Cal recipient. If the child is receiving Supplemental Security Income (SSI) or Social Security Disability Income (SSDI), he or she is likely to qualify as “permanently and totally disabled.”

There are other ways to avoid the estate recovery claim, and we will address them in future editions of this weekly email newsletter.

Editor’s Note: This article is one in a series of articles dedicated to the need for long-term care planning in a comprehensive estate plan and how to pay for nursing home care without going broke. This information is for general informational purposes only and does not constitute legal advice. Please do not rely on the limited information given here. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state. *Unfortunate and costly mistakes can be made if you do not know what you are doing.* Before taking any steps to protect assets, you are strongly urged to consult with an elder law attorney who is competent in this area of the law so that you will understand all of the ramifications of your actions, including but not limited to property, estate, gift, and income tax; financial and estate planning considerations; and even possible *criminal sanctions*.

If you need help in planning for long-term care as part of a comprehensive estate plan or finding the right nursing home or paying for it without going broke, please give us a call. We can help!

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