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Medicaid Estate Recovery- the Problem with Expanded Medicaid

Expanded Medicaid Could Cost Some People their Inheritance

As many of you know, the State of New Hampshire is allowed by federal law to file liens against property and to recover from the estates of Medicaid recipients who have died.

See www.dhhs.nh.gov/oos/eru/index.htm for an explanation of how this works normally. Such liens and recoveries are only for Medicaid recipients who are age 55 or older. **Your estate assets for this purpose include assets in the name of the estate, most assets held in joint tenancy, revocable trusts and most life estates.**

Federal Law: Medicaid Agencies may (but are not required to) file liens against such assets as part of the eligibility process except in the case of the family home if he or she is reasonably expected to be discharged and to return home, 42 U.S.C. § 1396p(a)(1)(B)(ii) (and some other exceptions)

Those of us who work in Elder Law are well familiar with this in the nursing home context. However, the same concept applies to those who receive Medicaid help from several other programs such as Aid to the Permanently and Totally Disabled (APTD) cash assistance and/or from individuals who have received OAA, ANB, Medicaid for Employed Adults with Disabilities (MEAD), or APTD medical assistance (Medicaid).

Expanded Medicaid

So how does this work with Expanded Medicaid? Under the Affordable Care Act (Obamacare), the states had the option of accepting an expanded version of Medicaid. The idea was that while the very poor had Medicaid for health insurance, there were those who could not afford private health insurance even with the ACA subsidies. Accordingly, those people with an income (MAGI- Modified Adjusted Gross Income) of 138% of the federal poverty limit can be eligible for Medicaid to purchase health insurance through the ACA Exchange for them. As noted, there are income limits but **no asset limits**. Thus, recipients may well own homes or other assets but have fairly low income levels. ***If the recipient is between the ages of 55 and 65, the State of New Hampshire can recover any amounts paid on the recipient's behalf from his/her estate.***

With monthly premiums for the Exchange insurance, this can add up in a hurry.

Managed Medicaid

Managed Medicaid raises the ante. With managed Medicaid, the State of New Hampshire pays a flat fee (called a capitated fee) to a management company for case management. The cost of case management is also a cost recoverable from the estates of the recipients. ***So even if the recipient is healthy and never actually receives medical treatment, the cost of the insurance and/or the cost of the case manager may be recovered from the estate. Such recovery may be well in excess of the total value of the estate.***

What to do?

One possible solution is to gift property now, either to children or to a properly drafted irrevocable trust. Since assets aren't counted, there is no look back period. This, of course, runs the risk that the individual will require nursing home care before the end of that look back period- 5 years or 60 months. If so, that person will be deemed disqualified from Medicaid for a period of time equal to the value of the asset transferred. If that happens, only a hardship appeal can offer a chance of receiving proper care.

Several states have changed their rules and will not pursue estate recovery in this situation. New Hampshire has so far not changed any such rule.

If you or a family member are between the ages of 55 to 65, and you are eligible for Expanded Medicaid, you should consult with a competent Elder Law Attorney

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