

State Recovers Medicaid Costs from Estates

Q: My mother recently died in a nursing home where she was getting Medicaid benefits. I am the executor of her estate, and my lawyer says I have to notify the Ohio Attorney General so the state can recover assets to pay for the Medicaid benefits she received. Why must I do that?

A: Federal law requires Ohio to try to recover money from your mother's "estate" for Medicaid services paid on her behalf while she was alive. In order to qualify for Medicaid, a person must have used up all of her assets. If your mother left assets after her death, the government has a right to recover the Medicaid money that was spent on her behalf. Assuming your mother was a permanent nursing home resident, the state may recover her assets regardless of her age when she died or how long she was a nursing home resident. If she had stayed in the community, however, the state would only be able to recover from her estate if she was more than 55 years of age. The state can only recover from an estate after the Medicaid beneficiary and his or her spouse has died.

Q: Who recovers the assets?

A: The Ohio Attorney General's Office administers the estate recovery program on behalf of the Ohio Department of Job and Family Services, although sometimes estate recovery claims may be handled by private attorneys on behalf of the Attorney General.

Q: How will I know if the state will try to recover Medicaid costs from my mother's estate?

A: Assuming you are a beneficiary of your mother's estate, you will need to know if your mother's estate owes money to the state. If there is a probate proceeding, you must notify the Attorney General's Office within 30 days of your appointment as the estate's executor. After you have provided notice, the Attorney General will file a claim with your mother's estate. In cases where there is no probate estate, the Attorney General's Office will send out letters to most, but probably not all, Medicaid recipients requesting information about what assets existed when the Medicaid recipient died.

Q: What assets can the state recover?

A: Up until 2005, the state could only try to recover from probate assets, but in House Bill 66, the definition of "estate" was expanded to include any property in which the Medicaid recipient had any interest at the time of death. This includes assets in a living trust, joint assets, transfer-on-death and payable-on-death assets, and life estates.

Q: Does the state have a time limit in which to recover the assets?

A: Ohio law provides that the Attorney General's office must present its estate recovery claim to the person responsible for the decedent's estate within 90 days after receipt of notice from the

responsible party or one year after the Medicaid recipient's death, whichever is later.

Q: Are there exceptions to estate recovery?

A: The state cannot recover against assets passed to the surviving spouse during the survivor's lifetime. Also, if the assets pass to a child under 21, or a blind or disabled child of any age, no recovery is allowed. In addition, the Ohio Department of Job and Family Services may grant an undue hardship waiver against recovery on a case-by-case basis. Generally, this request will only be granted if the estate's beneficiary was financially dependent on the Medicaid recipient and recovery would deprive the beneficiary of necessary food, clothing, or shelter, or require the beneficiary to receive public assistance.

8/23/2010

This "Law You Can Use" column was provided by the Ohio State Bar Association. It was prepared by James C. Bates, an attorney in the Brecksville law firm of Daniel P. Seink Co. Ltd.



Search Law You Can Use

Create PDF via PDFmyURL.com



11

Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

