Medicaid Estate Recovery in Texas

Travis Weaver • The Weaver Firm • Texas Elder Law

Objectives

- Understand Medicaid Estate Recovery (MERP)
    - What does it cover and not cover
- Review planning tools and exemptions
- Discuss hardship waivers and case law

What is MERP?

- Medicaid Estate Recovery Program
  - Enforced by HMS in Texas
- Federal authority under Medicaid law
  - Not a lien but title companies don’t like
- Texas uses limited probate estate recovery
  - Or do they??

MERP Basics

- Received benefits after age 55 and after March 1, 2005
- Medicaid in nursing home, CAS, CLASS, HCS… several more
- Certain prescriptions
- Contact all three HHSC agencies

MERP questionnaire

- Complete to start the process
- Be careful what you say and make sure to include evidence
- Preferably use a lawyer
- Follow up once submitted

MERP Estate

An estate is property, such as money, a house, or other things of value that a person leaves to family members or others (heirs) when he or she dies. MERP does not apply to all property that a person may own.

Why MERP Matters

Families expect inheritance and quick sales

Nursing home costs can be substantial

- I've never seen a claim for under $20000

Probate exposure creates recovery risk

- If we open an administration, we open the door for a claim

Primary Planning Goal

- Keep assets outside probate
  - ELED or TODD
- Coordinate Medicaid eligibility with estate planning
  - Third Party SNT
- Review ownership and beneficiary designations
  - Make sure accounts go POD or TOD to avoid potential recovery or creditor door

Revocable Living Trusts

- Avoid probate
- Retain client control
- Avoid MERP
- Still countable for Medicaid eligibility

Lady Bird Deeds

Enhanced life estate deeds or ladybird deeds
Avoid probate
Retain full owner control
Often avoid MERP if drafted correctly (later discussion)
Around longer than TODD
POAs can revoke and sign

Transfer on Death Deeds

Statutory transfer mechanism
Recorded during lifetime
Avoid probate administration
POA CANNOT revoke
Forms can change and so can the law
When does it vest?

POD and Beneficiary Designations

- Bank accounts
- Retirement accounts
- Insurance proceeds
- Direct transfer outside probate
- IRA and 401K rules

MERP Exemptions

Surviving spouse
Adult child living in house for care more than 2 years
Minor child
Disabled child under SSA guidelines
Certain hardship situations but very rare

More MERP Exemptions

- Value of estate is less than $10,000
- Cost of selling property is more than it is worth
- Medicaid costs under $3000 (haha)

Undue hardship

The estate property was a family business, farm, or ranch for at least 12 months before the person on Medicaid dies and is the main source of income for the heirs.

Heirs need help from federal government to get money back

Person who died was a crime victim

Caregiver Child Exception

Child lived in home
Provided care delaying institutionalization
Documentation is essential and I always get a doctor’s letter

Hardship Waivers

Prevent undue hardship
Time-sensitive applications
Fact-intensive analysis

Texas Case ELED

Wright v. Jones

Ladybird deed(s) gone wrong
Proper planning can avoid
Talk to your family members about probate plans and inheritance
Changing Estate plan+blended family+dementia=litigation

Have a good form and make sure it is clear about when property vests

Read the opinion…we rarely get appellate cases and some poor clerk worked hard

Texas HHSC v. Burt

- Husband and wife medicaid
- Texas Supreme Court
- Can we buy a house during medicaid qual period?
- Actual presence in the house and intent is the rule

Attorney Practice Tips

Review deeds carefully
Coordinate planning documents
Audit beneficiary designations annually

Key Takeaways

MERP can often be avoided
Probate planning is critical
Simple tools create major protection