

### **1. WHAT IS THE MEDICAID ESTATE RECOVERY (MER) PROGRAM?**

Medicaid Estate Recovery is a federally mandated program that began in Ohio January 1, 1995. When a Medicaid recipient dies, the MER Program attempts to recover from their estates what Medicaid paid for services provided. MER is only from the estates of Medicaid recipients aged 55 years or older in the amount of all Medicaid benefits correctly paid after the individual attained age 55 and Medicaid benefits correctly paid to a person of any age that was permanently institutionalized.

### **2. WHAT MEDICAID SERVICES ARE SUBJECT TO RECOVERY BY THE MER PROGRAM?**

Medicaid services subject to MER are defined as any medical assistance correctly paid by Medicaid. However for those Medicaid recipients age 55 and older and not permanently institutionalized, the amount Medicaid paid for Medicare Cost Sharing Programs, such as QMB (Qualified Medicare Beneficiary), SLMB (Special Low Income Medicare Beneficiary) or QI-1 (Qualified Individuals-1), after January 1, 2010 is not subject to estate recovery.

**3. WHAT IS AN MER ESTATE?** The MER estate includes all real and personal property in which the Medicaid recipient had any legal interest at the moment before death including

assets conveyed to others at death via survivorship, transfer-on-death and living trusts. The MER program is permitted recovery to the extent of the deceased Medicaid recipient's interest in such property. Note that after the death of the Medicaid recipient, any property Medicaid determined exempt for purposes of determining Medicaid eligibility is no longer exempt and is subject to MER recovery.

### **4. WHO ADMINISTERS THE PROGRAM?**

In Ohio, the Ohio Department of Job and Family Services (ODJFS) and the Ohio Attorney General's Office (AGO) administer the MER Program. At the time of application or re-application for Medicaid, the County Department of Job and Family Services (CDJFS), through JFS Form 07400, informs Medicaid recipients of the MER Program.

### **5. WHEN ARE MEDICAID COSTS RECOVERED?**

By law, MER can only be made after the death of the Medicaid recipient. But MER cannot occur even then if the Medicaid recipient has

- (a) a surviving spouse or
- (b) a child under age twenty-one or
- (c) a child over age twenty-one who is
  - blind; or
  - permanently and totally disabled as determined by Social Security.

### **6. WHAT ARE THE MEDICAID ESTATE RECOVERY METHODS?**

MER recovery methods vary depending on the asset type and whether a Probate estate was opened for the deceased. Recovery methods used by ODJFS include filing a creditor's claim in a Probate estate, filing an Affidavit on Facts Relating to Title, collection letters and Medicaid Liens.

### **7. WILL ODJFS FILE A MEDICAID LIEN ON MY REAL ESTATE?**

No. Though ODJFS has statutory authority to impose Medicaid Liens on real estate owned by Medicaid recipients during their lifetime under certain circumstances per RC § 5111.111, ODJFS has chosen not to exercise this option. In the past though, the Department did file post-death Medicaid liens on real estate owned by Medicaid recipients, however, the Department no longer files such liens except on rare occasions. ODJFS now files Affidavits on Facts Relating to Title.

### **8. WHAT IS AN AFFIDAVIT ON FACTS RELATING TO TITLE?**

Affidavits on Facts Relating to Title are authorized to be filed in the county recorder's office by Ohio Revised Code § 5301.252 for the purpose of stating facts that may affect title to real estate. ODJFS is filing such affidavits against real estate in which the Medicaid recipient had a legal interest

at the moment before death. The affidavit states the facts and amount of the Medicaid Estate Recovery claim and further states that this claim may represent a valid claim against the real estate.

Such affidavits have the practical effect of putting a question (cloud) on the title of the real estate. In other words, a potential buyer may want the affidavit on file satisfied or otherwise removed prior to purchasing the property. By filing Affidavits on Facts Relating to Title, ODJFS forces the owners of real estate to deal with its MER claim prior to selling the real estate. This method of recovering MER claims is especially useful when real estate passes outside of the Probate estate via a survivorship deed, transfer-on-death (TOD) deed or similar arrangement. MER reporting forms must be completed by the surviving tenant or TOD beneficiary and sent to the MER program administrator per RC §§ 5302.221 and 5309.082. Real estate included in the deceased's Probate estate is subject to the claims of creditors including MER.

### **9. HOW DOES ODJFS KNOW WHEN A PROBATE ESTATE IS FILED?**

If the decedent was fifty-five years of age or older at the time of death or permanently institutionalized, the person responsible for the estate must determine whether the decedent was,

at any time, a Medicaid recipient. The “person responsible for the estate” means the executor, administrator, commissioner, or person who filed for release from administration of an estate in Probate court.

If so, the administrator must complete and file with Probate court, a MER reporting form that lists all the assets that are part of the Medicaid recipient’s estate. RC § 2117.061(D). A knowing false statement on the form is a first degree misdemeanor. The person responsible for an estate must also mark the appropriate box on the appropriate Probate form to indicate compliance with the requirements listed above. Probate court must then mail a copy of the MER reporting form to the MER Program administrator, who may then file a MER claim against the estate.

#### **10. WHAT IF THERE IS NO REAL ESTATE OR PROBATE ESTATE?**

Sometimes a Medicaid recipient dies owning very little other than some personal belongings and a personal needs account. In such cases the MER recovery method may be a letter to the next of kin setting forth the MER claim and requesting information about the deceased’s assets. Note that OAC § 5101:3-3-16.5(H) sets forth what happens to the funds in a PNA account upon the resident’s death. Generally, a MER claim will not be pursued against minimal assets.

**11. CAN MER BE AVOIDED?** The best way to avoid MER is to transfer assets from the Medicaid recipient to his/her spouse prior to death. Such transfers are in fact required by Medicaid within one year of Medicaid eligibility, but should be transferred as soon as possible. If the Medicaid recipient died owning assets, tell MER if there is a surviving spouse, minor or disabled child (of any age), which will preclude recovery.

ODJFS is also required to forgo recovery where it would work an undue hardship. What constitutes an undue hardship is assessed on a case-by-case basis and the circumstances must be compelling. The granting of an undue hardship waiver may involve either a permanent waiver of recovery efforts, or a temporary deferral or postponement of recovery while the hardship exists, including negotiation of a modified recovery agreement or the imposition of a lien on property.

#### **12. CAN I GET HELP WITH MY MER CLAIM?**

**CLAIM?** Yes. Pro Seniors’ Legal Hotline for Older Ohioans offers free legal advice over the telephone to Ohio residents age 60 and older. Call (800) 488-6070 to schedule an appointment.

Pro Seniors provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If a matter cannot be resolved over the phone, seniors are referred to other Pro Seniors’ staff or community resources for more in-depth assistance.

In southwestern Ohio, Pro Seniors’ staff attorneys handle matters that many private attorneys do not, such as Medicare, Medicaid, SSI, financial abuse and landlord/tenant problems. Pro Seniors may also refer seniors to a private attorney on our referral panel. Many of these attorneys have agreed to handle cases at a fee seniors can afford.

Pro Seniors’ long-term care ombudsmen work with residents of southwestern Ohio to protect their rights and resolve complaints about nursing facilities and home care.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors’ free Legal Hotline or consult an attorney in elder law. © Copyright 2011

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3 of 6



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