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Medicaid Estate Recovery

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 can only seek recovery 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.

What Medicaid Services Are Subject To Recovery By MER?

Medicaid services subject to MER are defined as any medical assistance correctly paid by Medicaid, including managed care premiums, called capitation payments. 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 recovery.

What Is The 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.

Who Administers The MER Program?

The Ohio Department of Medicaid (ODM) 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 ODM Form 07400, informs Medicaid recipients of the MER Program.

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.

Furthermore, no recovery may be made from the home while either of the following Medicaid recipient's relatives lawfully reside in the home:

a) A sibling who resided in the home for at least one year immediately before the date the Medicaid recipient was permanently institutionalized; or
b) A child who resided in the home for at least two years immediately before the Medicaid recipient was permanently institutionalized, and on a continuous basis since that time, and provided care that delayed institutionalization.

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 ODM include filing a creditor's claim in a Probate estate, filing an Affidavit on Facts Relating to Title, collection letters and Medicaid Liens.

Will ODM File A Medicaid Lien On My Real Estate During My Lifetime?

No. Though ODM has statutory authority to impose Medicaid Liens on real estate owned by Medicaid recipients during their lifetime under limited circumstances, ODM does not exercise this option. However, ODM has filed post-death Medicaid liens on real estate after the death of the Medicaid recipient. ODM also files Affidavits on Facts Relating to Title on the surviving spouse's home, although it will be removed if the surviving spouse wants to sell the home.

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 for the purpose of stating facts that may affect title to real estate. ODM 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.

Depending on the wording, such affidavits may put a question (cloud) on the title of the real estate. In other words, a potential buyer usually wants the affidavit on file removed prior to purchasing the property. By filing Affidavits on Facts Relating to Title, the Attorney General will receive notice of the potential sale of the property.

In addition, MER reporting forms must be completed by a surviving tenant or TOD beneficiary and sent to the MER program administrator. Real estate included in the deceased's Probate estate is subject to the claims of creditors, including MER.

How Does ODM 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. 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.

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 (PNA). 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. After death of a Medicaid recipient who resided in a nursing home, the home can use the PNA account for funeral expenses. Otherwise, the home is to pay the funds to the resident's estate representative. If there is none, the home pays these funds to ODM.

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.

ODM 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.

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