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ELDER LAW ALERT

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Michigan Adopts “Probate Only” Estate Recovery Law

Michigan has adopted an “estate recovery” law.

Estate recovery means that people who receive Medicaid benefits for nursing home level care can be subject to having to repay the state for the costs of their care after they die. Typically, that means a claim against the home of the Medicaid beneficiary.

Prior to passage of the bill, Michigan was the only state in the nation that did not have such a law. Since 1993 the federal government has required all states to have an estate recovery law. Michigan has been out of compliance with that federal law since that time. Shortly after her election, Governor Granholm signaled a strong desire to impose this law on Michigan residents.

That’s the bad news. On a brighter note, the law as adopted, provides many protections and opportunities to avoid the potentially harsh impact of estate recovery. The key elements of the law are:

1. Only applies to the probate assets. Assets in revocable trusts are expressly not reachable. Assets that pass by joint ownership, beneficiary designations, payment on death designations, and life estates, would also not be reached by estate recovery.
2. If assets are in the probate estate, the following exemptions are applied:
 - a. Family farm, business or other “income producing assets” are exempt if they are the “primary” source of income to the “survivors.”

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- b. If the homestead is subject to estate recovery, recovery only applies to that portion of the value which is above 50% of the average price of a home in the county where the home is located.
 - c. The homestead is completely exempt from recovery if occupied by the spouse or child (blind, disabled or under age 21) of the Medicaid recipient [although there is language in the law that might allow a claim to be made when spouse dies – if s/he leaves property in a probate estate].
 - d. The homestead is completely exempt from recovery if occupied by a relative of the Medicaid recipient (within fifth degree of kinship) and if that relative provided care to the Medicaid beneficiary for at least two years, thereby keeping Medicaid recipient deinstitutionalized.
 - e. The homestead is exempt from recovery if the Medicaid recipient's sibling is a joint owner and lives in the home.
- 3. Any recovery is capped at actual costs of Medicaid medical services paid for on behalf of the Medicaid recipient, without interest.
 - 4. No estate recovery program will be implemented until "approval of the federal government is obtained."

What people need to do about Estate Recovery

If an individual or their spouse is receiving long term care Medicaid benefits, or expects to be receiving long term care Medicaid benefits, they should have their estate plan reviewed to make sure the assets are set up in such a way so as to avoid being subject to estate recovery.

Watch Out for Scams

The passage of Estate Recovery will give rise to new scams. Unscrupulous individuals will use this news to try to scare senior citizens into purchasing products that are not in their best interests. Individuals over age 55 can expect to be invited to more seminars and to be solicited by the usual suspects: annuity salespeople, reverse mortgage brokers and "living trust" mill operators – each of whom may claim that estate recovery is another reason to purchase their products. Before making any financial or legal decision regarding the impact of estate recovery, individuals should consult with a qualified trusted advisor with whom they have an established relationship. Individuals should avoid falling victim to high pressure scare tactics.