

# LEGAL ALERT

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## MEDICAID “ESTATE RECOVERY” COMES TO MICHIGAN

By Adam M. Lett, Attorney and Kristen A. Campbell, Attorney

In September, Michigan became the last state in the country to adopt Medicaid cost recovery legislation. The new law requires the Department of Community Health to implement a program to recover costs paid by Medicaid for people who lived in nursing homes or received in-home care services before their death. Although it is contingent upon approval by the Federal Government, it is fairly certain that Michigan residents will be subject to Medicaid cost recovery as early as the first of the year. However, only people who qualify for Medicaid after September 30, 2007 are potentially subjected to Medicaid cost recovery.

The Medicaid cost recovery program is targeted at the estate of a deceased individual, which is one reason why it is often referred to as “estate recovery.” Specifically, the estates of deceased persons who receive Medicaid assistance during their lifetime will receive a claim from the State for the cost of the decedent’s care. However, the new law operates only to recover assets that are part of an estate that passes through the traditional probate system. If there are assets in a probate estate, expenses of probate administration, funeral expenses and statutory allowances are paid before the assets are subject to Medicaid cost recovery.

Moreover, at least part of the value of a home that goes through probate is protected. If the homestead is in the probate estate, the only portion subject to estate recovery is the value of the homestead that exceeds 50% of the average price of the homes in the county where the Medicaid recipient’s home is located. For example, suppose a home passing

through probate is worth \$100,000 and that the average value of a home in the county where it is located is \$150,000. Half of the value of the average home in that county is exempt, meaning \$75,000 of the \$100,000 estate would be exempt from estate recovery. Also certain limited instances exist where the entire value of a house in a probate estate is excluded from estate recovery, such as when the house is occupied by a spouse, children who are minors or relatives with disabilities. Finally, there is no estate recovery against probate assets that are the “primary-income producing asset of the survivors,” including, but not limited to, a family farm or business.

Alternatively, assets that pass by the operation of law are entirely excluded from estate recovery. For example, excluded from estate recovery are:

- Assets with beneficiary designations
- Assets held jointly with rights of survivorship
- Assets with Transfer or Payable on Death designations
- Assets that are held in and pass subject to a revocable trust
- Life Estates

While much of the proposed estate recovery legislation purposely includes various safeguards, proper and specific planning is necessary to ensure that the safeguards are effectively utilized. For instance, having a Will may not be enough to avoid Medicaid cost recovery in instances where an individual would otherwise be eligible for such protection. An estate plan that circumvents

Medicaid cost recovery might require a living trust and/or changes in various beneficiary designations. For those who already have a trust, they will need to ensure that it is properly funded.

The law directs that the Department of Community Health will work with the Centers for Medicaid Services to determine the circumstances in which the State will seek estate recovery from the "community spouse" (the spouse of the Medicaid recipient). As such, every community spouse should contemplate an estate plan that avoids probate and circumvents the interests of the institutionalized spouse.

For single people, permissible planning options include the utilization of ladybird deeds, jointly held bank accounts and/or the divestment of

vehicles and other exempt property once eligibility is established, since the transfer of exempt property generally is not considered a divestment by Medicaid standards.

Finally, one should be wary of those seeking to use the passage of estate recovery simply to sell a quick one size fits all solution or products that are not needed. Protecting yourself and your estate from the potential consequences of estate recovery requires a thorough analysis of your entire estate plan, which is the specific role of your Smith Haughey Rice & Roegge Estate Planning and/or Elder Law Attorney.

*Adam can be reached directly at 231.486.4507 or alett@shrr.com. Kristen can be reached directly at 231.486.4542 or kcampbell@shrr.com.*

## Smith Haughey Rice & Roegge Business & Individual Planning Practice Group

George F. Bearup, Co-chair 231.486.4510	Rachel Brochert Roe, Co-chair 231.486.4503	James G. Black 616.458.4253	T. J. Ackert 616.458.3638	Charles B. Judson 231.486.4519
Robert C. Stone 616.458.3622	Richard C. Kraus 517.318.5653	Jeffrey R. Wonacott 231.486.4509	Aileen M. Leipprandt 616.458.5298	Robert W. Parker 231.486.4504
Randall L. Velzen 616.458.3644	Jeffrey J. McManus 231.486.4554	Daniel M. Morley 231.486.4538	Stephanie A. Neal 616.458.9481	Adam M. Lett 231.486.4507
Kirk W. Morgan 616.458.3319	Mary R. Pigorsh 616.458.9463	Ann-Mary Petroskey 231.486.4557	Melissa E. Whitman 231.486.4540	Kristen Campbell 231.486.4542
Scott D. Harvey 231.486.4545	Jason R. Thompson 231.486.4543	Joseph E. Belsito 616.458.2490	Sharon M. Kelly, Of Counsel 734.730.2048	Patrick J. Wilson, Of Counsel 231.486.4541
Stephen C. Chambers Of Counsel 231.486.4546	Maurice Schoenberger Of Counsel 517.332.3030			