

ESTATE PLANNING LEGAL ALERT

No Escaping Estate Recovery Liens

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The Court of Appeals recently published a key decision *In re Estate of Keyes*, which has a profound impact on individuals who currently receive Medicaid benefits. The *Keyes* case found that the Department of Community Health (DCH) can recover Medicaid benefits from the estate of a Medicaid recipient under Michigan's estate recovery program, even though the Medicaid recipient did not receive notice of the possibility of estate recovery at the time of their initial enrollment for Medicaid benefits.

In 2007, the Michigan legislature amended its Medicaid statutes to direct DCH to establish an estate recovery program. However, federal approval of this estate recovery program was required before DCH could implement its program. The federal government approved DCH's estate recovery program in July 2011.

The *Keyes* case centered around two conflicting portions of Michigan's Medicaid statutes. One subsection of the statute provided that DCH was required to receive federal approval of the circumstances under which Medicaid recipients would be exempt from the estate recovery program because of a hardship. The subsection included the following language:

"At the time an individual enrolls in medicaid for long-term care services, [DCH] shall provide to the individual written materials explaining the process for applying for a waiver from estate recovery due to hardship."

Yet another subsection of the statute required DCH to:

"...provide written information to individuals seeking medicaid eligibility for long-term care services describing the provisions of the Michigan medicaid estate recovery program, including, but not limited to, a statement that some or all of their estate may be recovered."

In April 2010, Mrs. Keyes (Esther) was admitted to a nursing home and began to receive Medicaid benefits through DCH. In 2010, Esther did not receive notice that her estate could be subject to estate recovery because the federal government had not yet approved the notice proposed by DCH. In 2012, Esther's son, Robert Keyes (Robert), signed a Medicaid application form to renew Esther's benefits, which contained language that acknowledged that Esther's estate could be subject to estate recovery.

Esther died in 2013. DCH brought a claim against Esther's estate under Michigan's estate recovery program. Esther's estate denied the claim. DCH sued Esther's estate. The trial court sided with Esther's estate based on the statute which required notice at the time an individual *enrolls* in Medicaid. DCH appealed and the Court of Appeals reversed the trial court.

In its opinion, the Court of Appeals held that if it read the subsection of the statute which required notice at the time of enrollment, by itself, Esther's estate would prevail.

However, because the statute also included the subsection which required notice when an individual seeks medicaid eligibility, the Court of Appeals was required to read both subsections together with one another. Because one subsection required notice when an individual “enrolls” and the other subsection merely required notice to individuals who seek medicaid, the Court of Appeals presumed that the distinction of the timing of the notice was intentional.

The question addressed by the Court of Appeals was *did Esther receive proper notice of the potential of Medicaid when Robert signed the 2012 renewal application, or was Esther required to receive this notice at the time she initially enrolled for Medicaid in 2010?* The Court of Appeals held that Esther was properly notified that her estate could be subject to estate recovery, because DCH provided her notice of the potential of estate recovery when she sought Medicaid benefits in 2012. DCH was not required to provide notice to Esther when she enrolled in Medicaid in 2010.

Keyes is a published decision. Therefore it is binding authority on all courts. As a result, the estate of any individual who began to receive Medicaid benefits prior to the federal government’s approval of Michigan’s estate recovery program in 2011 is subject to a claim for estate recovery upon death, and the imposition of a lien on the decedent’s probate assets.

Avoiding estate recovery liens is becoming an important part of estate planning these days. If you have questions about this article or avoiding estate recovery liens, please contact attorney Kevin Huss or any of the estate planning attorneys of Smith Haughey.



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