

# MICHIGAN MEDICAID WANTS TO TAKE YOUR HOME STARTING JULY 1, 2011

Courtesy of the Elder Law Firm of Anderson Associates, P.C.

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Starting July 1, 2011 Michigan Medicaid plans to recover Medicaid payments made to a client against the value of this recipient's home. This is called **Medicaid Estate Recovery** against the probate estate. Here is how it works.

Assume Mary, a widow, enters a nursing home. Mary owns a home in her name valued at \$100,000 and has \$2,000 in cash. Mary obtains Medicaid during her 2 year stay in the nursing home prior to her passing. Medicaid spent \$90,000 on her care and files a \$90,000 claim against her home in probate. Medicaid recovers the \$90,000 and her children receive the \$10,000 balance.

The reason why the primary asset at risk for Medicaid Estate Recovery is the family home is because the only assets which you can keep and still receive Medicaid is your home and \$2,000. Any cash subject to probate will also be recovered by Michigan.

## **How to Avoid Michigan's Probate – Only Estate Recovery**

Michigan's probate-only Estate Recovery will only claim the home in the sole name of an unmarried Medicaid recipient upon death.

There are four home title options which will avoid Michigan's Estate Recovery. Tax and two other Medicaid issues must also be considered.

The following compares the title options:

**Revocable Living Trust:** This is generally not a good option because a home in a living Trust loses its exempt status under Michigan Medicaid and fails to start the 60-month look-back period. Also, the home's taxable assessment will uncap at death.

**Joint Ownership Deed With Survivorship:** This deed may be the best option. It avoids the Revocable Living Trust trap and starts the 60-month look-back period running. If structured as a Lion-Cub deed in that the parent keeps 99% and a child gets 1%, failure to achieve the 60-month look-back period is not a problem because the Medicaid penalty period-which is based on the 1% given away - will be nominal.



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Moreover, this is the only deed-type which prevents uncapping the taxable assessment upon death, as a result the Supreme Court's decision on March 10, 2011 in Klooster v. City of Charlevoix.

**Life Estate Deed:** This deed starts the 60-month look-back period but it results in a substantial penalty period if the owner enters a nursing home within 60-months.

Another problem is that this deed will cause the home's taxable assessment to uncap upon death of the owner. The Lady Bird deed is a type of a life estate deed.

**Irrevocable Trust:** An *irrevocable trust* should only be used if the 60-month look-back period can be achieved. Its advantages include a method to avoid loss of sale proceeds if the home has to be sold and it avoids **expanded** estate and **lien** forms of Medicaid Estate Recovery.

## **Our Recommendation**

For most situations, Anderson Associates recommends the use of the joint ownership Lion-Cub deed for the home.

## **What About Future Law Changes**

The 1993 federal Medicaid law authorizes states to adopt the following forms of Estate Recovery programs:

**Probate-Only:** This is the program in Michigan and in some other states.

**Medicaid-Lien:** Wisconsin and several other states place a **lien** against the home when an unmarried person enters a nursing home.

**Expanded Estate:** Utah and several other states file claims against joint property, life estates and Revocable Living Trust (all of which are considered an expanded concept of an estate).

**Legislation has been introduced in Lansing to adopt both Medicaid liens and expanded estate forms of Estate Recovery.**

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## Application to Married Couples

If the healthier spouse is at home, there can be no Estate Recovery. The problem is that the at-home spouse may unexpectedly die first – in which event the home may later be taken under Estate Recovery.

## Conclusion

Preplanning is vital if you want to protect your home from Medicaid and take advantage of tax laws. The monitoring of future law changes is also vital. Anderson Associates offers a newsletter and annual meeting service in our Longevity Program to keep you up-to-date with law changes. The knowledge and experience of a Certified Elder Law Attorney is recommended in this complicated area.

Anderson Associates is led by Certified Elder Law Attorney, Robert C. Anderson who serves on the Board of Directors of the National Academy of Elder Law Attorneys (NAELA) and possesses a Masters of Law in Taxation. Stewart D. Hakola is an experienced associate attorney with Anderson Associates of 148 W. Hewitt, Marquette, MI 49855. Anderson Associates has served over 7,000 families in the Upper Peninsula and Northern Wisconsin. We have six offices throughout the Upper Peninsula and northern Wisconsin. Reach us at 906-228-6212 or at [www.upelderlaw.com](http://www.upelderlaw.com).

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1. The designation of Certified Elder Law Attorney is awarded by the National Elder Law Foundation, which is accredited by the American Bar Association.



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