

MEDICAID ESTATE RECOVERY

© 2006 Nursing Home Ombudsman Agency of the Bluegrass, Inc.

You may have heard that Kentucky will take the house of a nursing home resident who uses the Medicaid program. Well, that is true but there are exceptions. Prior to April 2003, Kentucky did not “take the home” but due to escalating Medicaid costs, the state had to implement more stringent policies regarding application for Medicaid assistance in nursing homes and in community based programs.

The program is known as the **Medicaid Estate Recovery Program** and this is how it works. For full and complete information please go to your local Department for Community Based Services. This *Info Sheet* is just intended to give you the general idea of how this concept works.

Kentucky Medical Assistance Program (KMAP) has some new rules. They now have an interest in a person’s property at the point when they apply for Medicaid. The Department for Community Based Services case worker who handles a person's request to receive Medicaid benefits will ask an applicant bring a property valuation (PVA) report to the office prior to application. The value of the house will be considered to be an asset which can be used to pay for the person’s stay in the nursing home. So, if the house is worth \$100,000, that means that the person has that much money available which can be applied to their nursing home stay prior to Medicaid being willing to pay the bill

The applicant will be expected to put the house on the market at a fair price. Who is subject to this policy? Anyone who applies to receive services in a nursing home or who applies to receive home and community based services as an alternative to nursing home care. The only exception is if the **prospective resident** writes a letter to Medicaid and states that they plan to return home within the next six months. In that event, Medicaid will hold off on requiring that the house be sold and the proceeds be used to pay the bill at the nursing home.

There are exceptions to this policy. The house will not be “taken” if it is needed by a spouse or a disabled minor child. The house is also exempt if it is occupied by relatives who moved in with the person at least two years prior to the application for Medicaid, *if* the move was for the express purpose of preventing the elder from being institutionalized. The house has to be deeded to these relatives.

If the house was not sold prior to the application for Medicaid, it is still available for “recovery” upon the death of the Medicaid recipient. The estate of the deceased has to pay the bills of the deceased. The KMAP bill is just one of many "bills" the estate has to cover. Once the spouse or disabled child no longer needs the house, or if the house was not deeded to those relatives who moved in to prevent institutionalization, then the house is up for grabs by the state. But, only to the amount of money the state paid to care for the resident. If there is any money left over, it remains in the estate of the deceased resident.

What is covered by the policy? A homestead of any value, any personal property which is "exempt" when the client applies for KMAP and tax exempt retirement funds (IRA KEOGH, pension etc.) Property is defined as everything the executor lists as property for Probate Court.

If the house is not recoverable because it is occupied by a child with disabilities or a child under

the age of 21, then the estate is exempt and Kentucky never again tries to recover it. In the case of a child with disabilities, the estate will be exempt only if the estate is deeded to that disabled child. If there is a living spouse the estate will be exempt. An SSI check stub or a birth certificate will serve to determine a child's disability. Kentucky has no lien laws and will not pursue a claim to the "second degree".

Here are the rules regarding family farms or family businesses. If it is a working farm or a family business and there is income that shows up on an income tax form, it is exempt as long as the family's income does not exceed \$50,000 per person in the family unit. For example, if there are two parents and two children, \$200,000 of the income from the farm or business is exempt. In other words, the remaining family must be dependent upon the farm or business for livelihood.

What about homestead property? Kentucky regulations only allow property to be given away to the same people who qualify for after-death exemptions plus a relative who cares for someone in order to prevent institutionalization. This must be someone who has moved in with the relative (moved in with them, or had them in their home for two years) and kept them out of a nursing home. The client can give the home away to them or to siblings who have prevented institutionalization by giving care for one year and who own a portion of the property in question.