



Medicaid & Your Home

Q: Has state law changed regarding a Medicaid lien against your home?

A: Yes. The legal change doesn't affect whether or not Medicaid places a lien on your home--but it does affect whether they can collect or not. Here's the background:

Most seniors hope that someday their children will inherit their home, but they worry that a catastrophic medical bill--like a \$5,000-a-month nursing home expense--could leave them with a lien on their home. Medicaid, the state/federal health insurance plan that covers nursing home care for most seniors, will place liens on homes. But the issue is: what happens when they try to collect on that lien?

Up until July 1, 2003, the state only would try to collect on a lien if your home ended up in Probate Court. For example, if an elder died and had no one else's name on the deed to their home, his or her house would pass into Probate, where the court would determine what the elder's will (if any) said. But if that same elder put a spouse's or child's name on the deed, the house automatically passes to the other owner, without going to Probate. A house listed in joint tenancy, with two names, would not be subject to Medicaid collection--because it never would go to Probate Court.

But as of July 1, 2003, a new law was passed in Massachusetts regarding what property the state could try to collect on once a Medicaid recipient died. The state changed the rules to expand the definition of "estate" to include any assets the person owned immediately before death "and other assets that would pass to a survivor, heir, or assignee of the decedent through joint tenancy, tenancy by the entirety, life estate, living trust, right of survivorship, beneficiary designation, or other arrangement."

Under this wider definition, the state could now collect on a lien placed on a house that never went to Probate, such as a joint tenancy or even a living trust agreement. The broader definition was supposed to bring in another \$10 million for the state. But the new law never went into effect, because last winter, the legislature voted to suspend the law until June 30, 2004.

When that suspension ran out, the General Court voted to repeal the broadened definition of "estate", and go back to the narrower, Probate-Court-only version. Governor Mitt Romney then vetoed the legislature's change--but in the end--the lawmakers overrode his veto, leaving families with more protection for their home.

So after all these changes, current state law says that if an elder puts their spouse's name on the deed, or a family member, the house won't go to Probate, and therefore a Medicaid lien will not be collected. However, if a family tries to sell the house of a person who has gone into a nursing home, Medicaid can recover the cost of any Medicaid services provided after April 1, 1995. Repayment to Medicaid does not have to occur while a sibling is living there, as long as the sibling has been in the home for at least one year. A child who has been living in the house for two years or longer, and who can show he or she was providing care to the elder, can also request the repayment be delayed.

Elderly homeowners should talk to an elder law attorney about their estate and the impact of Medicaid law before they might need long term care services. To get a list of elder law attorneys in your area, call 1-800 Age Info and press "3".