

ELDER LAW TODAY

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Estate Recovery

Henry and Marge Smith have lived on their family farm in Kansas for over forty years. Recently, Henry suffered a stroke and was told by his doctor he needed nursing home care. "Finding a nursing home is not the problem," Marge says when she comes to your office. "There is a nursing home in town where my parents lived for several years. Our family was very happy with the care they received. My concern is finding the money to pay for his care."

She starts to sob when she says "I don't want to lose the farm... it has been in Henry's family for years and we want to leave it to our children. I don't have enough money to pay for very long... and if Henry applies for benefits, the state will take the farm." She was told by a friend (whose mother was in a nursing home) that she would have to sell the farm and spend the proceeds on nursing home care before she could qualify Henry for benefits. One of her neighbors told her she would not have to sell the farm, but upon Henry's death, the state would take the farm to reimburse itself for the Medicaid benefits they paid on Henry's behalf. She asks you "What should I do?"

First, you tell Marge the good news - she does not need to sell the farm to qualify Henry for benefits. (In Kansas, an applicant's residence is exempt if the applicant's spouse continues to reside there). Then, you explain that the state will not take the farm when he dies, but after both Henry and Marge pass away, the state does have the right to recover the benefits they paid on Henry's behalf. This process is called estate recovery. "Estate Recovery?"

Federal law requires each state to recover the costs of long-term care services from the estates of Medicaid recipients. In other words, each state has the right to make a *claim* against an *estate* of an individual who receives Medicaid benefits. In the case of a married couple, recovery cannot be made before the death of the surviving spouse. So, if

Henry passes away before Marge, the state will actually make a claim against Marge's estate.

"Does that mean they will take the farm after I die... that I cannot leave it to my children?" she asks. You explain that with the proper estate planning, Marge may be able to pass the farm to her children.

Unfortunately, it's not enough to simply avoid probate. Federal law actually allows states to expand the definition of "estate" to include any property an individual had at his or her death, including joint bank accounts, accounts with pay-on-death beneficiaries, life estates in real property, real estate held in joint tenancy and property held in living trusts. So even non-probate assets are at risk. Medicaid estate recovery rules are complicated and vary significantly state-to-state. You should consult an Elder Law Attorney who practices Medicaid law before drafting any type of estate plan with the intent of qualifying for Medicaid or the hopes of avoiding estate recovery.

Services Available

Adrian & Pankratz, P.A. offers the following Elder Law services:

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| Division of Assets | Long Term Care Planning |
| Guardianship | Powers of Attorney |
| Estate Planning | Wills |
| Living Trusts | Special Needs Trusts |



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