



## HON. FRANSHENEKA “FRAN” WATSON

Associate Judge Lily U. Leal

HARRIS COUNTY PROBATE COURT FIVE

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### **Probating a Will as a Muniment of Title? Seeking a Determination of Heirship with an Order of No Administration?**

#### **You must address Medicaid!**

Most attorneys realize the Court cannot sign either an order probating a will as a muniment of title or a determination of heirship with an order of no administration unless the Decedent had no debts other than debts secured by liens on real estate. However, some attorneys are not aware that if the Decedent applied for and received Medicaid benefits on or after March 1, 2005, the State-run Medicaid Estate Recovery Program (MERP) could affect whether their clients can proceed with either a muniment or a request for an order of no administration. **Because Texas has not adopted a Medicaid-lien approach to Medicaid recovery, claims for Medicaid recovery in Texas are debts of the estate.**

**Therefore, before seeking either a muniment order or an order of no administration, it is imperative that attorneys consult with their clients about whether the deceased received Medicaid benefits.** If the deceased did apply for and receive any Medicaid benefits on or after March 1, 2005, attorneys must then thoroughly investigate whether the Medicaid Estate Recovery Program (MERP) has any claim against the estate.



If there is a MERP claim, the debt must be paid before the Court can sign an order for a muniment or an order of no administration.

#### **The Court requires the following to be included in the Proof of Death & Other Facts for Muniments of Title and for Determinations of Heirship with No Administration**

The Court cannot probate a will as a muniment of title or sign an heirship order with no administration unless the testimony – reduced to writing in a Proof of Death and Other Facts – includes whichever of the following statements is supported by the facts:

- “The Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.”

**OR**

- “The Decedent did apply for and receive Medicaid benefits on or after March 1, 2005, but there is no Medicaid claim against the estate.” **If Decedent received Medicaid, you MUST ALSO either**
  - file a MERP Certification that Decedent’s estate is not subject to a MERP claim (see <https://hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertificationform.pdf>)

OR

- include in the Proof of Death and Other Facts sufficient information to prove that a MERP claim will not be filed because of one of the following reasons:
  - The Decedent died before the age of 55
  - There is a spouse who is still alive
  - There is a child under 21 years of age

## A few Medicaid Estate Recovery Program (MERP) FAQs

Texas Health and Human Services (HHS) is now the state agency in charge of the Medicaid Estate Recovery Program (MERP). The HHS general web address is <https://hhs.texas.gov/>.

### Two important links for information about MERP:

- Information regarding MERP is available at <https://hhs.texas.gov/laws-regulations/legal-information/your-guide-medicaid-estate-recovery-program>
- For MERP FAQs: <https://hhs.texas.gov/laws-regulations/legal-information/medicaid-estate-recovery-program/medicaid-estate-recovery-program-faqs>

MERP was formerly handled by the Department of Aging and Disability Services (DADS), which is in the process of being absorbed by HHS. Note that there are still some links to nonexistent DADS websites and forms imbedded in some of the MERP forms.

### A few snips from the HHS website regarding MERP:

#### How will heirs or personal representatives find out if the state will file a claim?

The estate recovery contractor will send a Notice of Intent to File a Claim (NOI) within 30 days of when they receive notice of the death of a Medicaid recipient. The NOI will be mailed to the decedent's estate representative, guardian, power of attorney or family members who have acted on behalf of the recipient, if their name and address are known. The NOI will include information on the program, a list of questions for you to complete and return, and an undue hardship waiver request form.

#### Are there times when the state will not ask for money back?

Yes, the state will not ask for money when:

- There is a spouse who is still alive.
- There is a child under 21 years of age.
- There is a child of any age who is blind or permanently and totally disabled under Social Security requirements.
- The value of the estate is \$10,000 or less.
- The amount of Medicaid costs is \$3,000 or less.
- There is an unmarried adult child who lived full-time in the Medicaid person's home for at least one year before this person died.
- The cost of selling the property is more than the property is worth.

Also, the state will not ask for money when this would cause an undue hardship for the heirs.

How can I get more information on Medicaid estate recovery?

[hhs.texas.gov/MERP](https://hhs.texas.gov/MERP)  
[merp@hpsc.state.tx.us](mailto:merp@hpsc.state.tx.us)

HHS contracts with Health Management Systems, Inc. (HMS) for the administration of the Medicaid Estate Recovery Program. For information regarding a specific case, call HMS toll-free at 800-641-9356.

Upon receipt of a clearance letter from HMS, estate representatives of deceased Medicaid recipients should contact HHS Long-term Care Provider Services by calling 512-438-2200, option 4. Long-term Care Provider Services determines if there are other outstanding Medicaid claims against the estate that may be recoverable through other assets and if HHS is the residual beneficiary of the assets. Examples of assets potentially payable to HHS include trusts, annuities, torts (such as injury lawsuits, legal settlements or awards) and non-Medicaid insurance coverage.

If you have a problem or complaint you should first discuss it with the MERP program. Many times they can explain specific policies or correct the problem immediately. If your problem or complaint is not resolved to your satisfaction, you can contact the HHS Office of the Ombudsman by calling 1-877-787-8999 or by making an online submission at [hhs.texas.gov/ombudsman](https://hhs.texas.gov/ombudsman).