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# Scales Elder Law Newsletter

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## Losing your Home to the Medicaid Death Tax: Expanded Estate Recovery

*Breaking with tradition because of the urgency of the topic, this month's column is guest-written by Attorney Jeffrey A. Marshall, managing attorney and a principal of Marshall, Parker & Associates, LLC. He is certified as an elder law attorney (CELA) by the National Elder Law Foundation, and he has been very active in recent months in organizing opposition to the expansion of estate recovery contained in Governor Rendell's current budget. You can read more about Attorney Marshall and his practice at his firm website, [www.paelderlaw.com](http://www.paelderlaw.com).*

Money is tight in Harrisburg. And tough times can lead to terrible decisions. One example is the Governor's current budget proposal to expand estate recovery, which is part of House Bill 1351.

Estate recovery is based on a federal law that requires Pennsylvania to try to recoup the costs of long-term care paid by Medicaid. In a curious exercise of government mandated age discrimination, the recovery program only applies to people who are over age 55.

Medicaid, not Medicare, is the largest government source of payment of long-term care. Most people who reside in nursing homes have part of the cost of their care paid by Medicaid. And many frail seniors who are able to reside at home with help from their family also get limited financial assistance from Medicaid.

As a result of the estate recovery laws, if Medicaid helps pay for your care, your estate is forced to repay the government after you die. The program is, in effect, a Medicaid "death tax" imposed only on the non-wealthy elderly. Although Pennsylvania and its citizens bear the costs and burdens of collection, most of the money collected goes to the federal government.

Estate recovery was first implemented in Pennsylvania in 1994. For the past 15 years, Pennsylvania has wisely limited its scope to the minimum required by federal law – collection from the probate estate of the recipient of Medicaid. This means that, at the death of a Medicaid recipient, a jointly owned home or farm can pass free of state lien to the surviving spouse.

Unfortunately, in a misguided attempt to collect additional revenues, the Governor has now broken with tradition and proposed expanding estate recovery to reach jointly owned assets. Here is an example of how his proposal will work.

When John came back from Korea he took over working the family farm. Eventually, John and his wife Mary inherited the farm from John's parents. John and Mary were always "dirt poor." But they worked hard their whole lives and raised two fine sons. They were proud when both of the boys became farmers themselves and decided to work with their father on the family farm.

Many years later Mary's health declined. The family cared for her at home for as long as it could, but eventually she had to move to a nursing home. John could not fully afford the nearly \$8,000 a month cost and so Medicaid paid for part of it. Three weeks after Mary's death, John received a letter that said Pennsylvania was owed the \$111,412 that Medicaid paid for Mary.

Under current law, the family farm is not exposed to this state lien. Despite Mary's illness, John can keep the farm and pass it on to his boys when he dies. But if expanded estate recovery is enacted, the state will have a lien against the farm. John and the boys may be unable to borrow to finance the farm's operation. And when John dies, the state lien has to be paid. Most likely, the farm will have to be sold.

Expanded estate recovery will apply to any type of asset in which an older Medicaid recipient has any interest at death. This will include joint accounts, trusts, life insurance, annuities "and other assets in which the deceased individual had any legal title or interest at the time of death." The expansion will add delay, uncertainty and cost to real estate transactions, life insurance claims, retirement accounts, and the handling of any interests owned by any decedent.

But even worse, the fear of losing their home to estate recovery deters seniors from getting the care they may desperately need. As a result, organizations like the Alzheimer's Association [and AARP] oppose expansion of recovery.

Much more than money is at stake in the battle over expanded estate recovery. Thousands of Pennsylvania families are struggling, often magnificently, to do the right thing for their loved ones. We need to support our families and caregivers, not take their property.

Expanded estate recovery is part of the Governor's budget proposal and will likely be enacted this summer unless citizens make their voices heard in Harrisburg. Call, write or e-mail the Governor and your state legislators and tell them you oppose expanded estate recovery.

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Kemp Scales, CELA,\* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie, Titusville, and Pittsburgh. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788 or by e-mail at [Info@ScalesLawOffices.com](mailto:Info@ScalesLawOffices.com).

\*Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.



## The Colonel's Corner

*From Attorney Scales' 921-year old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.*

Two older women who had known each other for years were talking, when one said to the other:

"I'm terribly embarrassed to ask you this, but what is your name?"

The other woman just glared at her friend for about 30 seconds, and then said to her, "When do you need to know?"

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This old guy was talking to his neighbor telling him about the new hearing aid he just got. "It cost a fortune, but it was worth it. It works perfectly."

"Really," said the neighbor. "What kind is it?"

"Ten thirty."