

# Understanding Idaho Medicaid Estate Recovery

Douglas Fleenor, Idaho Deputy Attorney General

[DouglasFleenor@dhw.idaho.gov](mailto:DouglasFleenor@dhw.idaho.gov)

208-332-7961

# Overview

- \* Joint Federal and State program
- \* Medicaid was originally part of 1960's Great Society programs to help the poor, elderly, and disabled
- \* Huge burden on federal and state budgets
- \* Budget issues, artificial impoverishment, and goal of fairness led to Estate Recovery
- \* Encouraged 1982, mandated 1993

# Basics

- \* Medicaid vs Medicare
  - Welfare vs Insurance
- \* Medicaid Long Term Care
  - Long Term Services and Support, age 55
- \* Attorney General Structure

# Rules

## \* Eligibility

- 42 U.S.C. 1382
- Idaho Code § 56-209(e)
- IDAPA 16.03.05

## \* Recovery

- 42 U.S.C. 1396p
- Idaho Code § 56-218
- IDAPA 16.03.09

# State Recovery

- \* Case Referrals from Idaho Department of Health & Welfare Estate Recovery Office
- \* Average monthly recovery: \$911,233
- \* Average monthly writeoffs: \$19,451,215

# Types of Cases

- \* Probate
- \* Real Property

# Exemptions to Collections

- \* Surviving Spouse
- \* Minor or Disabled Child
- \* Undue Hardship
  - Income-producing property
  - Estate value under \$500
  - Estate recovery would impoverish heirs

# Probate

- \* Any interest Recipient had in property is included in estate for Medicaid Recovery purposes
- \* PR must give written notice to the Department - Idaho Code §§ 15-801(d) and 56-218(5).
  - Time limit for Department making a claim does not begin to run until notice is received
  - Providing notice is not optional (unlike publishing and known creditors)



# Probate

- \* PR must properly administer the estate
- \* Department will file a claim
- \* If insolvent, no need for PR to file disallowance
- \* Department's claim is contingent if surviving spouse or disabled child

# Life Estate

- \* Tables: IDAPA 16.03.04.837
- \* Peterson, 340 P.3d at 1152 (2014)
- \* Oliverson??

# Real Property

- \* Improper Transfers
- \* Foreclosures

# Improper Transfer

- \* Recipient improperly transferred property during or after lookback period
  - 5 years prior to applying or while receiving benefits
  - Did not receive fair market value

# Oliverson

- \* Facts
  - \* Harris (daughter, seller); Drury (buyer)
  - \* RP worth \$62k
  - \* Dept initially asked for LE interest of \$41k (claim is \$141k)
  - \* Jan 29, 1996 – QCD from Oliverson to Harris, retaining Life estate
  - \* Feb 29, 1996 – Dorothy Oliverson application for assistance (AFA)
  - \* Oliversons died
  - \* April 9, 2010 Dept Lien filed (renewed in 2015)
  - \* July 30, 2014, Harris sold to Drury
  - \* Drury files quiet title action
- \* Drury claims AFA was 2004, but admits that if AFA is within 3 years of 1996 transfer, then transfer could be set aside

# Oliverson

- \* Take Aways
  - \* Life estate interest is included in estate of recipient for Medicaid recovery purposes (Look back period doesn't apply)
  - \* If transfer of remainder is done within look back period, the entire property is recoverable.
  - \* Timing of Deed and AFA indicated Medicaid planning
  - \* Settlement of \$62k, so taxpayers still pay the other \$80k of Medicaid expenses.
  - \* Other half of suit was between Title Company and Daughter

# Foreclosure

- \* Appearance in 3<sup>rd</sup> party foreclosure
- \* Initiate Foreclosure
  - 1 year after death
  - Abandoned
  - 2 years unpaid taxes

# Divorce??

- \* Law professor recent article
  - Divorce has been his common solution for income tax, estate tax planning for years
  - Comes down to his example of spouse receiving \$500,000 inheritance.
  - Have not seen that case, but have seen several divorces, but live together and don't split up property