

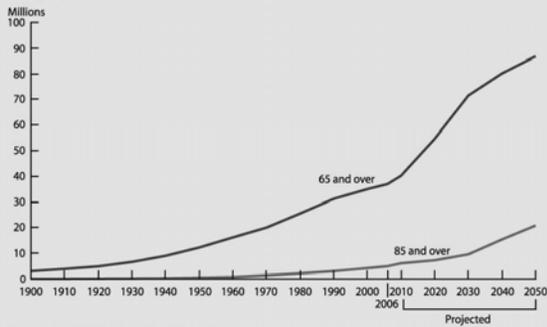
MA Liens and Estate Recovery

Minnesota Department of Human Services
Benefit Recovery Section
Special Recovery Unit
Saint Paul, Minnesota
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Dale B. Kitzke
Staff Attorney

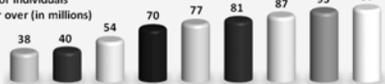
Number of people age 65 and over, by age group, selected years 1900–2006 and projected 2010–2050



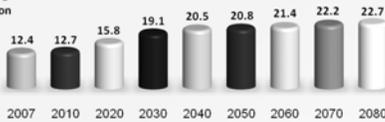
Note: Data for 2010–2050 are projections of the population.
Reference population: These data refer to the resident population.
Source: U.S. Census Bureau, Decennial Census, Population Estimates and Projections.

The Aging U.S. Population

Number of individuals
age 65 or over (in millions)



Percentage of
Population



Source: U.S. Social Security Administration
2007 OASDI Trustees Report (April 2007), Table VA.2



OVERVIEW

- Introduction
 - Background of Medical Assistance
- Federal Overview
- State Overview
 - 2005 changes
 - 2009 changes
- Case Law
 - Jobe
 - Barg
 - Grote
- 2009 Bulletin
- Questions



Legislative History

- Federal Medicaid Program
 - 1965, Inception of the program
 - States allowed to recover
 - 1982, Tax Equity and Fiscal Responsibility Act (TEFRA)
 - Liens allowed prior to death
 - 1993, Omnibus Budget Reduction Act (OBRA)
 - States required to carry out Medicaid recovery program
 - 2005, Deficit Reduction Act (DRA)
 - Requirement that the state be named a beneficiary on annuities



FEDERAL STATUTE

- Federal definition of ESTATE
 - 42 USC §1396p(b)(B)(4)
 - The term estate, with respect to a deceased individual:
 - » Shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and
 - » May include, at the option of the State, any other real and personal property and other assets in which the individual has any legal title or interest at the time of death, including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estates, living trusts, or other arrangements.

FEDERAL STATUTE

- 42 U.S. Code §1396p
 - Covers estate recovery of state MA programs
 - Restricts recovery in situations where recipient is:
 - » 55 years of age or older
 - » Is institutionalized with no reasonable expectation of discharge
 - No recovery when recipient passes and:
 - » Survived by a "Community" spouse, child under 21, child who is blind, or a child who is permanently disabled
 - No recovery from a lien on a recipient's home when:
 - » A sibling resides in the home for 1 year
 - » A child resides in the home for 2 years and provided care

State Statute



- Minn. Stat. §256B.15
 - Covers Minnesota's estate recovery
 - Recovery is limited to individuals that receive MA, GAMC, and AC. §256B, §256D, and §256B.0913
 - Minnesota Policy:
 - That individuals or couples, either or both of whom participate in the MA program, use their own assets to pay their share of the total cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state. §256B.15, Subd. 1(a)
 - All laws, rules, and regulations governing or involved with a recovery of MA shall be liberally construed to accomplish their intended purposes. §256B.15, Subd. 1(a)(4)

State Statute



- Minnesota's Definition of Estate
 - Probate estate
 - §524.1-201
 - The person's interest or proceeds of those interests
 - 2003 Minnesota expanded its definition of "estate" as allowed under federal statute
 - 2009 legislative change clarified Minnesota's policy on the scope of recovery from the surviving spouse's estate

State Statute



- Estate Recovery:
 - A claim is allowed if the recipient who received MA was:
 - › Over 55 years of age;
 - › Of any age residing in a Medical Institution for 6 months or longer and could not reasonably be expected to return home; or
 - › Received General Assistance Medical Care under §256D
 - The claim is delayed if survived by:
 - › a surviving spouse; or
 - › a child under the age of 21, or a child of any age who is blind or permanently disabled.

State Statute



- Estate Recovery:
 - An estate recovery is first paid from the proceeds of nonhomestead assets if recipient is survived by:
 - Sibling- who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization
 - Child or grandchild- who resided in the recipient's home for at least two years immediately before the recipient's institutionalization and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and that the care permitted the recipient to remain in the home rather than the institution.

State Statute



- Affidavit of Collections
 - The county is allowed to recover from the use of this form when the following conditions are met:
 - Recipient has been deceased for at least 30 days
 - An estate has not been opened
 - The asset consists entirely of personal property
 - The value of the estate, less liens and encumbrances is \$50,000.00 or less
- SNT, Annuities, and TODD

MA Liens

- Covered under Minnesota Statute §514.980-§514.985.
 - Filed by DHS Special Recovery Unit after a request is sent by the County
- Allowed when an individual received MA and owns property in Minnesota on or after the time when:
 - Recipient was institutionalized in a LTCF
 - Inpatient in a hospital
 - ICF-MR

MA Liens

- Exceptions:
 - It is a homestead of the recipient's spouse;
 - It was the homestead of the recipient and the following people reside in the property:
 - Recipient's child who is under 21;
 - Recipient's child who is permanently disabled, regardless of age;
 - Recipient's child who is blind, regardless of age
 - A sibling who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization; or
 - A child who resided in the recipient's home for at least two years immediately before the recipient's institutionalization and continuously since the date of institutionalization and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and that the care permitted the recipient to remain in the home rather than the institution.

Legislative History of Minnesota Estate Recovery \$ MA Property Liens			
Example No 1.  \$100,000	Subject to Estate Recovery • Home or other real property owned by recipient • Personal Property (Auto, bank accounts, etc.)	MN Law since 1967 Federal Law since 1993	\$ Recovery against full value of estate • Recover before any portion passes to heirs/survivors. Recovery up to \$100,000 in this example • Subject to exceptions provided by law
Example No 2.  \$100,000	Subject to MA Lien Recovery • Home or other real property owned by recipient and placed in life estate with children	Law 1993-2003 • Property sold before recipient dies • Property sold after recipient dies	\$ Recovery from value of life estate interest • Use life estate mortality table (90 yrs old = 28221 x 100,000 = \$28,221) • \$0 No Recovery; Clients interest ended at death
Example No. 2  \$100,000	Subject to MA Lien Recovery • Home or other real property owned by recipient and placed in life estate with children after Aug. 1, 2003	Law since 2003 • Property sold before or after recipient dies	Recover from value of life estate interest • Value property using the life estate mortality table at the time of death.

Legislative History of Minnesota Estate Recovery: Probate & Non-Probate Assets			
Probate Property Passed to heirs/Survivors through probate	Subject to Estate Recovery • Home or other real property owned by recipient • Personal property (auto, bank accounts, etc.)	MN Law since 1967 Federal Law since 1993	\$ Recovery against full value of estate • Recover before any portion passes to heirs/survivors. Recovery up to \$100,000 in this example • Subject to exceptions provided by law
Non-Probate Property/Assets Assets Passed to Heirs/Survivors Outside Probate	Property Held In Life Estate or Joint Tenancy Property in Irrevocable Trust and Annuities	Law 1993-2003 Property sold before recipient dies • Property sold after recipient dies Law since 2003 • Property sold before or after recipient dies DRA	\$ Recovery from value of life estate interest • Use life estate mortality table (90 yrs old = 28221 x 100,000 = \$28,221) • \$0 No Recovery; Clients interest ended at death Recover from value of life estate interest • Value property using the life estate mortality table at the time of death. Allow Recovery; DHS as Beneficiary

History of Estate of Recovery

In re Estate of Grote:
766 N.W.2d 82 (Minn. Ct. App. 2009)

- **Conflict with Precedent:**
 - Recovery is disallowed by the recent decision by the MN Supreme Court, *In re Estate of Barg*; in the alternative the recovery is limited to one-half of the value of the jointly owned property
- **Holding:**
 - Medical assistance benefit reimbursement is allowed from the estate of a surviving spouse from assets of the estate that were jointly-owned property at any time during the marriage and the recovery is allowed on the entirety of any property owned in joint tenancy at the time of the death of the recipient that has passed into the estate of the surviving spouse is available for recovery of benefits paid for the recipient.

In re Estate of Barg

752 N.W.2d 52 (Minn. 2008)

- Method of Valuation
 - What method should be used to determine the interest value of assets at the death of the community spouse.
- District Court
 - Probate method was the proper method to determine interest. Recipient retains a life estate.
- Appellate Court
 - Property law is the proper method to determine interest. Recipient retains 1/2 interest in property.
- Supreme Court
 - Spousal recovery not preempted but limited to the interest the recipient held at death.



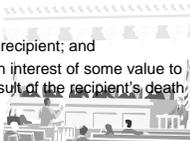
Barg Issues

- Does Federal Law Preempt Minnesota Statute § 256B.15 from recovery of Medicaid benefits paid for a predeceased recipient spouse from the estate of the surviving spouse?
- What is the proper scope of recovery from a surviving spouse's estate?



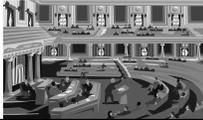
Court Opinion

- Preemption is disfavored due to the overall purpose of federal legislation and to the fact that federal law preempts recovery from a Medicaid recipient's estate until after the death of the surviving spouse.
- The court relied upon state property law informed by principles of state probate code and stated that if recovery is to be allowed, the interest of the recipient must be:
 - An interest recognized by state law;
 - An interest which was held at death of the recipient; and
 - The interest resulted in a conveyance of an interest of some value to the surviving spouse that occurred as a result of the recipient's death.



2009 Legislative Changes

- Expand definition of estate
 - Clarify the ability to recover in the estate of the surviving spouse
 - Recognize marital property interest as a legal title interest for purpose of MA estate recovery
 - Limits recovery to the value of property in the estate that was marital property or jointly owned property at any time during the marriage
 - CMS approval



2009 Legislative Changes

- Homestead Hardship Waiver
 - Surviving Occupant
 - Allow delayed recovery for a surviving occupant of a homestead
 - Must determine:
 - Ownership interest, occupied 180 days prior, own dwelling
 - Must provide notice of claim
 - CMS approval



2009 Legislative Changes

- Medicare Cost Sharing
 - Effective January 1, 2010
 - Claims will no longer include QMB, SLMB, QI
 - Waiting for CMS guidance
- Affidavit of Collection
 - Change of value of recovery by affidavit
 - Net value of \$50,000 or less



2009 Legislative Changes

Transfer on Death Deeds ("TODD")

What they are and how they have
an effect on estate recovery



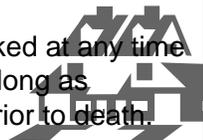
Authorization

- 2008 Legislation
 - Minn. Stat. §507.071
- Only applies to those who pass away on or after May 18, 2008.



What is a TODD

- A way to convey real property to one or more grantee beneficiaries upon the death of the grantor(s) without the cost of probate or granting interest prior to death.
 - No interest is transferred until after the death of the grantor.
 - The TODD may be revoked at any time by the grantor owner as long as revocation is recorded prior to death.



Definitions

- **Beneficiary or Grantee Beneficiary:** Party to whom an owner grants future interest in Minnesota real property.
- **Owner:** person having an ownership interest in all or party of the real property to be conveyed or transferred by a TODD.
 - Does not include a spouse who joins the deed for the sole purpose of releasing statutory or marital interest.

Who can be a Grantee Beneficiary

- Spouse
- Children
- Relatives
- Friends
- Charitable Organizations
- Trustee of a Trust
- Corporations

Grantee Beneficiary

- Owner not required to have grantee beneficiary's :
 - Consent
 - Signature
 - Agreement
- The grantee may disclaim his/her interest in the property as provided by Minn. Stat. §501B.86
- Grantor may designate multiple grantees to take title as j/t, t/c, etc....

Ability to designate successor

- A grantor may designate successor beneficiaries if the grantee shall predecease.
 - If the TODD makes a class gift, such as “to my grandchildren” without naming the grandchildren in the TODD, a probate proceeding will be necessary.
- Grantor may designate the TODD void if grantee dies before grantor.
 - Can not be revoked by the provisions of a will.



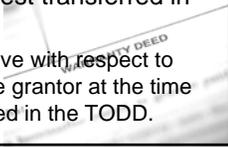
Grantee Lineal Descendant

- If a grantee beneficiary is the grandparent or the lineal descendent of a grandparent of the grantor and fails to survive the grantor, the issue of the grantee beneficiary who survived the grantor take in place of the deceased grantee beneficiary.
 - This language matches the antilapse provision in the Minnesota Probate Code.



Multiple Deeds

- If two or more TODDs are recorded, the last TODD recorded is the effective deed.
- If grantor owner conveys the property to a third party subsequent to recording a TODD, that interest conveyed to a third party shall make the interest transferred in the TODD ineffective.
 - The TODD remains effective with respect to the interest still held by the grantor at the time of grantor's death described in the TODD.



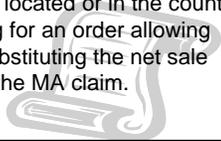
Rights of Creditors

- The interest transferred to the grantee after the death of the grantor is subject all encumbrances the property was subject to during the grantor's lifetime.
 - This includes any claim for MA not already satisfied by the grantor's estate.



Clearance Certificate

- Any person claiming an interest in real property conveyed by a TODD must apply to a county agency in the county where the real estate is located for a clearance certificate to release Public Assistance claims and liens on real property.
 - County can force the sale by petitioning the probate court where the property is located or in the county where a probate is pending for an order allowing sale of the real property substituting the net sale proceeds so they can pay the MA claim.



Contact DHS

Property Liens:

A-I	Ina Minehan	651-431-3193
J-O	Denise Meyer	651-431-3158
P-Z	Greg Lulic	651-431-3152

Policy Questions:

Dale Klitzke 651-431-3108
dale.klitzke@state.mn.us

Questions?