

**PRESENTED AT**

26<sup>th</sup> Annual Estate Planning, Guardianship, and Elder Law Conference

August 08, 2024  
San Antonio, Texas

**THE MEDICAID ESTATE RECOVERY PROGRAM UPDATE**  
**What's New, What's Not, What's Coming**

**Jennifer L Coulter**

Jennifer L Coulter  
Townsend Allala, Coulter & Kludt, PLLC  
El Paso, Texas

[jen@elpasoelderlaw.com](mailto:jen@elpasoelderlaw.com)

915-533-0007

## Table of Contents

<b>Introduction</b> .....	<b>1</b>
<b>What is New</b> .....	<b>1</b>
Refunds .....	1-2
Adult Unmarried Child Exemption .....	2-3
2011 Form 80001 .....	3-4
Reduction for Home Maintenance and Care Payments.....	4-5
<b>What's Not</b> .....	<b>6</b>
Who is MERP? .....	6-7
Dependent Administrations .....	7-8
<b>What's Coming (Maybe)</b> .....	<b>9</b>
The Stop Unfair Medicaid Estate Recoveries Act .....	9
<b>Conclusion</b> .....	<b>9</b>
MERP Decision Tree .....	
Exhibit 1 .....	
Exhibit 2 .....	
Exhibit 3 .....	
Exhibit 4 .....	
Exhibit 5 .....	
Exhibit 6 .....	
Exhibit 7 .....	
Exhibit 8 .....	
Exhibit 9 .....	

## THE MEDICAID ESTATE RECOVERY PROGRAM UPDATE

### What's New, What's Not, What's Coming

By: Jennifer Coulter

#### I. Introduction

The Medicaid Estate Recovery Program (MERP) can be difficult to navigate at times. Many of the steps often necessary in evaluating and defending against a MERP claim can be difficult to find. While the general rules governing the program can be found in Title 1 Chapter 373 of the Texas Administrative Code, it is not the only source of law from which the rules are drawn. Successfully navigating the program also depends heavily on understanding some of the custom and accommodation (or lack thereof) in the actual administration of the program. This paper will attempt to provide an update to previous presentations on items that are either new or previously uncovered, the things where we as practitioners are still finding sticking points, and what might be coming in MERP legislation.

#### II. What's New/Previously Not Covered

##### i. Refunds

It sometimes happens that HMS, Inc. is incorrectly paid on an invalid claim. For example, I received a call from an attorney whose mother's estate had a MERP claim. When the attorney sold her mother's home, the title company paid the proceeds to HMS to cover the MERP claim. However, in discussing the claim with the attorney, we found that one of the statutory exemptions applied. In another case, my office became involved in a probate after issues with the initial probate attorney pushed the client to hire a new firm to finish the probate. In doing so, we obtained a release on the MERP claim as a result of HMS, Inc. blowing their 70 day timeline to provide the initial claim summary. When we told the client that the MERP claim was released and the home would not need to be sold, she asked "What happens to the \$28,000 we paid them from our own pockets at the advice of our old attorney?"

In both these cases, funds were paid that should not have been. A refund was necessary. Fortunately, HMS, Inc. means it when they say that they do not intend to collect on bad claims. <sup>1</sup>In both cases, after appropriate steps were taken, refunds were quickly issued.

Steps for refunds:

In order to obtain a refund of incorrectly paid MERP claims, one must:

1. Provide proof sufficient to HMS, Inc. to show that the MERP claim is invalid. How this is done will depend on the actual reason for the claim being invalid. Use the attached MERP Decision Tree to determine what proof is necessary.
2. Once HMS, Inc. has agreed that the claim is invalid, complete Form 4109, Application for Texas Identification Number.
3. E-mail to Jolene Guignet at [jolene.guignet@gainwelltechnologies.com](mailto:jolene.guignet@gainwelltechnologies.com) the following:
  - a. Proof that the claim is invalid (if you've already received a Withdrawal of Claim, simply include the Withdrawal of Claim);
  - b. Form 4109, Application for Texas Identification Number;
  - c. Proof of payment made to HMS, Inc. such as copy of check or settlement statement if payment was made by a title company; and
  - d. Address and individual to whom refund should be made out.

ii. Adult Unmarried Child exemption

One of the many exemptions to recovery is where there is an adult child of the Medicaid recipient who resides in the Medicaid recipient's home and who was residing in the Medicaid recipient's home for at least one year prior to the Medicaid recipient's death. <sup>2</sup> It is a useful exemption, especially since it is a full release from the MERP claim, not only for the home. <sup>3</sup> It also need not be asserted within 60 days of the Notice of Intent to File Claim as a hardship waiver must be. <sup>4</sup> Instead, it can be presented at any time and regardless of whether or not the adult unmarried child is the distributee of the Medicaid recipient's estate. <sup>5</sup>

---

<sup>1</sup> While HMS, Inc. does mean that they do not want to collect on bad claims, they will not go out of their way to determine if a claim is valid or not or if funds paid to them are funds that should have been paid to them. The onus is entirely on the client, and, therefore, on us, to ensure that only valid claims are paid and only from probate assets.

<sup>2</sup> 1 Tex. Admin. Code §373.307(a)(3).

<sup>3</sup> *Id.*

<sup>4</sup> See *id.*

<sup>5</sup> *Id.*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: MERP Defense

Also available as part of the eCourse

[Medicaid Planning: What You Need to Know \(2024\)](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"MERP Defense"