

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**

(1) 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

(2) 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