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INDIANA MEDICAID ESTATE RECOVERY – INDIANA READY TO GET MORE AGGRESSIVE?

Recently, the Indiana State Department of Administration, on behalf of Indiana's Family and Social Services Administration (FSSA), posted a Request for Proposals to contract with multiple attorneys for Indiana Medicaid estate recovery. The Request for Proposals is at http://www.in.gov/idoa/proc/bids/rfp-11-84/ . It appears Indiana plans to get much more aggressive in Medicaid estate recovery, including opening probate estates. Contracts are scheduled to be awarded September 19, 2011.

The FSSA wants the attorneys selected to perform a broad range of responsibilities including preparing petitions to open probate estates as creditors, filing claims in probate estates, filing liens on real property, and pursuing non-probate assets. Indiana reportedly recovered over $9,700,000 from recipients in 2007.

The Indiana Medicaid estate recovery statute is found at I.C. Sec. 12-15-9-1. Indiana's Medicaid estate recovery laws allow FSSA to collect from probate estate assets, as well as from the non-probate estate assets of a deceased recipient. There can be no estate recovery while a surviving spouse or minor is living. Indiana also has lien laws that allow Medicaid to place liens on real estate owned by a Medicaid recipient. Also, in the event it does not file a lien on real estate held by a recipient, Medicaid can within five (5) months of the date of death open an estate administration, file its claim and force the sale of the real property to pay its claim.

During the 2010-11 Indiana legislative session, FSSA attempted to exempt Medicaid estate claims from I.C. Sec. 29-1-7-15.1(b), which provides that real estate in an decedent's estate cannot be sold to pay claims if an estate is not opened within five (5) months after death. Indiana attorneys testified against this provision and it was removed from legislation passed in the 2010-11 Indiana legislative session. However, the legislature referred this issue to the 2011 summer Probate Code Study Commission to study "how the probate code should be amended to permit the sale of real estate located in Indiana to satisfy a claim by ... [Medicaid, the U.S., or a state or subdivision of the state] against a decedent regardless of whether letters testamentary or of administration are issued within five (5) months of the decedent's death." Section 22, Senate Enrolled Act 331.

Long term care facilities should keep Indiana's renewed estate recovery focus in mind as they consider collecting their receivables that are due from deceased residents. Facilities will want to ensure that they have settled payment issues before a resident dies, as Medicaid will be more active in opening estates and asserting their priority claim.

If you have questions about this matter, please contact Todd J. Selby at (317) 977-1440 or Sean Fahey at (317) 977-1472 or your regular Hall Render attorney.

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