



## Elder Law Advisor

Summer 2020

*The health and safety of our employees and clients is paramount. Ruder Ware remains committed to implementing and complying with CDC, state, and local public health authority recommendations. Our Elder Law Team is available to meet with you via telephone or virtual meetings.*

***In 2014, my parents created a life estate deed and named their four children as the remaindermen on the deed. They received Medicaid benefits. Can the state now put a lien on the home to recover those Medicaid benefits?***

The answer depends on when the deed was signed. Wisconsin is a state that has “expanded estate recovery,” which means it can seek recovery for Medicaid benefits from certain assets your parents owned that do not go through the probate process. Beginning August 1, 2014, life estates became subject to this expanded estate recovery process. If your parents created their life estate prior to August 1, 2014, then it would not be subject to recovery (although their overall probate estates or other assets may be). However, if the life estate deed was created after August 1, 2014, the state may pursue recovery.



“Wisconsin spends approximately 50 percent of its total Medicaid budget to provide long-term care services. The money recovered is returned to the programs and used to pay for care for other members. Long-term care services for which the program seeks repayment include nursing home services, home care services, and community-based long-term care program services.”

- Wisconsin Department of Health Services

***My mom is in a nursing home and on Medicaid. She still owns her home, but with her children. The children want to know if they are able to sell or rent the home? If so, what do they do with the monthly rent or proceeds from the sale?***

Yes, you can rent or sell the home. Living in a nursing home or receiving Medicaid does not stop your mother from selling or renting her home. However, as a co-owner, your mother must receive her share of the rental income or the proceeds of the sale. If you rent the home, your mother’s rental income becomes part of her income that is paid to the nursing home each month. If you sell the home, your mother’s share of the sale proceeds will likely make her ineligible for Medicaid until the funds are spent down. There are options for your mother’s proceeds to help her shorten any period of ineligibility, or even help her avoid being ineligible at all. She can use the proceeds to make purchases allowed by Medicaid (called “exempt assets”), such as prepaying for her funeral, purchasing an automobile, or buying items of personal property.



### ***Are you prepared?***

The current COVID-19 pandemic has shown us there is no better time to put together a comprehensive estate plan than now.

A comprehensive estate plan must include documents to assist you while you are living, as well as documents to direct your wishes after your death.

Documents needed while you are living should include a power of attorney for finances and a power of attorney for health care. These power of attorney documents allow you to name people to make financial and health care decisions for you when you are unable to do so. Selecting those individuals now will help make sure you have the help you may need in times of crisis. In addition, power of attorney documents help avoid the need for your family to go to court to have a guardian appointed for you.

To direct your wishes after death, your will or trust should be up to date. As you review your documents, helpful questions to ask are: Has your financial situation changed since your last review? Has a law change impacted your plan? Have your wishes changed? Are the people you named to carry out your wishes still the right choices?



***My mother-in-law is in a nursing home and is mentally and physically incapacitated. She has run out of funds and needs to apply for Medicaid. We do not have a power of attorney or guardianship. Is it necessary to have a guardianship for her before she can receive Medicaid?***

Unfortunately, your situation is a prime example of why we urge everyone to execute a financial power of attorney and a health care power of attorney. In Wisconsin, if you are incapacitated and do not have a valid power of attorney for finances, a guardian of the estate (i.e., the guardian named to handle your financial affairs) must sign the application for Medicaid. In addition to signing the application, you may also need a guardian of the estate to access the financial information necessary to complete and accompany the Medicaid application.



## In WI, Medicaid Covers:



1 in 8 adults,  
ages 19-64



1 in 3 children



5 in 9 nursing  
home residents



1 in 3 individuals  
with disabilities



1 in 7 Medicare  
beneficiaries

## Nationally Medicaid Pays For:



1 in 6 dollars in the health  
care system



1 in 2 dollars on long-term  
services and supports

Source: Henry J Kaiser Family Foundation

## About the Authors

### Attorney Aric Burch



Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

### Attorney Jessica Merkel



At Ruder Ware, Jessica provides counsel on the use of irrevocable trusts for asset protection, medical assistance eligibility, and special needs trusts. Jessica engages families by listening, empathizing, and supporting their choices to achieve their goals. In addition, she counsels clients on estate and trust planning, taxation, powers of attorney, probate, and trust administration.

### Attorney Mark Munson, CELA



Mark's skillset and experience allows families to focus on caring for one another while he tirelessly works on getting them the legal results, outcomes, and benefits they're entitled to receive. He focuses his practice in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility as well as probate and estate administration, trust administration, and guardianship.

## Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship

## Elder Law Team

**ATTORNEYS**  
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