

MEMORANDUM

To: Nathaniel Sterling, Chair

From: Ellen M. Klem, Observer

Re: Readability Expert's Report, *To Help Enrollees and Their Families Understand Estate Recovery Notices*

Date: December 6, 2007

Attached is the readability expert's report, *To Help Enrollees and Their Families Understand Estate Recovery Notices*, I mentioned Saturday. Carol Schreter, Ph.D., the author of the report, can be reached at C.Schreter@comcast.net.

As I mentioned, the report is specific to Medicaid estate recovery notices, but readers may find the information applicable to the form of transfer on death deed and the form revocation of a transfer on death deed.

Please feel free to contact me at (202) 662-8689 if you have any questions.

To Help Enrollees and Their Families Understand
Estate Recovery Notices

In a society where laws are geared to the protection of private property, the Medicaid Estate Recovery (ER) process is, at best, an awkward situation. It is initiated by Health Department officials not used to the role of creditor. The debtors are old people in failing health. Liens may encumber the elder's home, a significant part of a person's identity. This legal process claims their last remaining assets, what might otherwise go to family caregivers, as heirs.

Letters announce the state's rights and actions to elder Medicaid enrollees and their families. How do you make this correspondence clear and readable to the affected parties -- who may, or may not, have access to professional advisors such as lawyers or bank officers? How can this correspondence minimize the confusion of elders and their heirs as they await explanations from professionals?

This review of ER correspondence is based on the principle that those most affected have a right to understand what is going on, even where professional advisors are involved.

To create a list of best practices for this study, the ABA identified documents from 16 states where the intended readers seemed to be Medicaid enrollees and their families. This included 5 Estate Recovery brochures, 8 pre-death TEFRA lien notices, and 8 post-death claim notices. This material was then reviewed by a non-lawyer with experience writing for the public.

Pre-Death Notices

To better understand the risks involved when state officials write enrollees and their families about the ER process, consider these two negative examples from pre-death TEFRA lien notices.

- **Vague Title.** NOTICE OF POTENTIAL CLAIM # _____. With such a vague title, will this letter be recognized by enrollees and families as more critical than all that other correspondence that comes from Medicare and Medicaid? No hint here that someone is putting a lien on someone else's house.
- **Anticipates a death.** An in-house form initiated by an Estate Recovery Unit for the Health Department's staff attorney is sent to enrollees, along with a cover letter. Imagine receiving a lien notice with identifying information such as this at the top:

Date of death: _____ Still living X

Best Practices on Pre-Death Notices

By comparison, what follows is a composite of best practices drawn from 8 states, to help make ER pre-death correspondence more clear, readable and sensitive to the feelings of enrollees and their families. Consider using these ideas in your state's pre-death TEFRA lien notices.

- **Make the document title specific and visible.** Make it big and bold, using a 14 pt typeface. Consider using the commonly understood term "real estate," instead of "real property." For example: **NOTICE OF INTENT TO FILE A MEDICAL ASSISTANCE REAL ESTATE LIEN.**
- **Name the legal owner/s of the affected property.** This will be especially useful to acknowledge joint ownership, and the complications therein.
- **Include a street address,** not just a legal address, of any real estate affected by a lien. This will greatly help a lay reader recognize what this letter is about, and its import. For example, put 815 Fairview Rd., not Lot 5 Block 6, which is not recognizable information.
- **Addressed to Whom?** Some pre-death notices speak of "the above mentioned recipient" throughout the correspondence. Most letters start with "Dear Recipient" or "Dear Recipient or Authorized Representative." It seems that documents directed only to the enrollee are more clear, direct and sensitive. This leads to a more gentle tone such as: We are writing to advise you about ...your home.
- **Use a typeface suitable for older eyes.** Assume that this correspondence is to be read by older eyes. Even the children of enrollees are likely to be aging baby boomers. So use a 12 pt typeface, not smaller. Use a **bold font** for emphasis, or even throughout the letter. Wider spacing between lines on the page is also useful to emphasize a critical item. (As done on the previous page where the line spacing of 1.5 emphasizes one sentence.)
- **Avoid using acronyms** for government offices, such DHS for Department of Health Services, as much as possible. As to funding sources, Medicaid is the more commonly understood word, as compared to AABD Medical Assistance, AABD cash, or AABD client.
- **Pose and answer questions.** Employ a bold typeface, set apart, as might be used in a public information brochure. For example: What is a lien and how does it affect your ownership in your property?
- **Provide an easily accessible contact for questions:** Provide a phone number and/or person to call with questions, not just an address. Some states provide a local phone number as well as an (800) number.
- **Separate out the text regarding the Fair Hearing or Appeal Process.** Examples:
 - For information about appeal rights, see next page.
 - Title that page clearly, such as: How to Request a Hearing.
 - Underline where helpful, such as: Do this within 30 days. Do that within 60 days.

Use Your Public Information Brochure as a Guide

If your state has a public information brochure about property liens and estate claims, consider using the brochure as a guide in writing a pre-death or TEFRA lien notice. Such brochures tend to be clear and readable. They are more likely to contain the items listed above as best practices.

These brochures are also more likely to include a broader, more sensitive explanation of ER actions. For example, many pre-death ER lien notices start with: "Pursuant to law # ____." By contrast, one ER brochure explains: The amount repaid can then be used to pay for medical care for others who need it.

Post-Death Notices

The 8 sets of post-death notices selected for this review all opened with an expression of sympathy. For example: Please accept our condolences for the death of _____. We regret having to bring up business at a time like this, but it is important that you are apprised of information pertaining to the estate.

The post-death correspondence reviewed was quite varied in content. It could have included post-death lien notices, questionnaires regarding the value of remaining assets, notice of Medicaid estate claims, or a petition to the court. States may have several stages of letters from the Estate Recovery Unit to a family member or personal representative.

The post-death notices, understandably, contain more legal terms. Even so, readability for family members requires a minimum of legal jargon, especially where the state is requesting information. A non-lawyer in the ER office might be asked to write the post-death notices, to find a way to translate a sentence such as this: Therefore, please provide [our office] with formal service of any estate administration regarding the above mentioned recipient by promptly mailing an actual copy of said notice, and any pleading and orders.

Best Practices on Post-Death Notices

In addition to the tips listed above, states use these tactics on post-death notices to help family members understand the Estate Recovery process.

- **Start each letter with an expression of sympathy.**
- **Emphasize: This does not mean you are personally responsible for this debt.**
- **Clearly state the amount of the debt owed.** With the identifying information listed at the top of the letter, put: Medicaid Estate Claim: \$_____. Later in the letter, explain that this sum may increase if additional bills are received.

- **Describe recovery waivers and exclusions briefly in the letter.** Provide more detail in an attachment, upon request, or after a telephone discussion. Avoid long outlines with several layers of indented text.
- **Invite the family member to phone** the ER office and discuss this matter.
- **With questionnaires to be returned,** is the deadline reasonable? Consider enclosing a self-addressed return envelope.

In sum, if you agree that elders and their families, those most affected, have a right to understand Estate Recovery notices, then consider adopting these "best practices" used by other states.