**GALVESTON COUNTY PROBATE COURT**

Galveston County Justice Center

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Galveston, Texas 77551-4180

Probating a Will as a Muniment of Title?

You must address Medicaid!

Most attorneys realize the Court cannot sign an order probating a will as a muniment of title 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. **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 a muniment order, 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.

**The Court requires the following to be included in the Proof of Death & Other Facts for Muniments of Title**

**The Court cannot probate a Will as a monument of title 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 not Medicaid claim against the estate.” **If Decedent received Medicaid, you MUST ALSO file a MERP Certification that Decedent’s estate is not subject to a MERP claim.** See link for Merp form.

<https://hhs.texas.gov/sites/default/files//documents/services/aging/txmerpcertificationform.pdf>