

**17. How do you ask for a hardship waiver?** Write a letter explaining the situation and why the Department of Public Welfare should not use the house to pay the debt. Give as many details as possible about how estate recovery would cause problems and would not be fair for the person living in the house. If possible, ask a lawyer to look at the letter before you send it. Make a copy of the letter for yourself and mail the original letter certified, return receipt requested, to:

Estate Recovery Program  
Post Office Box 8486  
Harrisburg, PA 17105-8486

**Legal Assistance in Philadelphia**

If you are 60 years old or older, you may qualify for free legal assistance from our office. Call or visit us:

Community Legal Services  
North Philadelphia Law Center  
1410 West Erie Avenue  
Tel: 215.227.2400, Fax: 215.227.6486

[www.clsphila.org](http://www.clsphila.org)



This brochure was sponsored by



**WHAT YOU SHOULD  
KNOW ABOUT  
YOUR HOUSE  
WHEN YOU ENTER A  
NURSING HOME OR  
RECEIVE CARE AT HOME**



**This brochure is for anyone who owns a home and may receive Medical Assistance to pay for their care in a nursing home or in the community.**

**For more information or to talk to a lawyer, contact Community Legal Services at 215.227.2400.**



This brochure was sponsored by  
Philadelphia Corporation for Aging.  
[www.pccares.org](http://www.pccares.org)

June 2014

**1. Do I have to turn my house over to the nursing home when I move there?**

Absolutely not. If the state is going to help pay for your nursing care through a Medical Assistance Nursing Home Grant, you may have to give some or most of your income to the nursing home each month. You do not have to sign over the deed of your house to receive nursing home care.

**2. Will the state try to take my house while I'm in the nursing home?**

No. The state will not take your house while you are living in the nursing home or anywhere else. The state has a program called "Medical Assistance Estate Recovery" through which it tries to get back the money it paid for long-term care (nursing home-type services) in a nursing home, through the Aging Waiver program, or through the LIFE program. Medical Assistance Estate Recovery happens only after the long-term care recipient has died.

**3. What is Medical Assistance Estate Recovery?**

The law requires that Pennsylvania try to pay itself back for the long-term care services it has provided to people 55 years of age or older in certain situations. The state tries to get money or assets from the estates of people who have received long-term care through the Medical Assistance program. The Department of Public Welfare (DPW) handles this.

**4. What is an estate?** An estate is the property owned entirely or in part by a person after the person's death. For the purpose of Medical Assistance Estate Recovery, only the "probate" estate matters. The probate estate is the property that would be handled by an executor (if you have a will) or an administrator after your death. Whether your house is part of your probate estate depends on how the deed is written. See #7, #8, and #9.

**5. I don't own anything but my house and I want to leave that to my children. What will happen to the house after I die?**

The state has a legal right to recover money from your probate estate, including your house, even if you have a will giving the house to your children. Whoever is handling your affairs after you die should tell DPW about the property in your probate estate. DPW will tell that person how much money is owed. The house may have to be sold to pay the debt. This brochure also explains some situations in which the state will not try to collect the debt.

**If I Move to a Nursing Home, Who Can Keep the House After I Die?**

**6. What if my husband or wife is still living in the house?** The state will not try to take your house if you have a spouse, a child less than 21 years old,

or an adult child who has a disability.

**7. What if both my name and my spouse's name are on the deed?** If the deed says "tenancy by the entirety" or "joint tenancy with right of survivorship," your spouse will get the house free and clear when you die. The state will not be able to recover any money from the house. If the deed is in both your names but does not have these words written on it, talk to a lawyer.

**8. What if only my name is on the deed?** If the deed is in your name only, nothing will happen to the house until your surviving wife or husband dies, your disabled son or daughter dies (or is no longer disabled), and all your children have turned 21 years old. When all of these things have happened, the state may try to take the house.

**9. What if only my spouse's name is on the deed?** Then you do not legally own the house. If your spouse's name is on the deed and you die first, the house will not be part of your estate. In that case, the state will not be able to recover any money from the house after your death. However, if your spouse living in the house dies before you, you may inherit the house. If you receive long-term care services through the Medical Assistance program while

you own the house, the state may try to take it after you die. If there is no will, talk to an attorney.

**10. We never really "got married" but we lived together as husband and wife. Do these rules still apply to us?** Yes, if you can show that you married under common law before January 1, 2005. Talk to a lawyer about how to do this.

### Rules for Transferring Property

**11. Can I give my house away before I enter the nursing home?** Yes, but the law specifies to whom you can give your house without the gift making you ineligible for Medical Assistance for some period of time. You can legally transfer title (ownership) to your husband or wife, your child who is under 21 years old, or your adult child who is disabled.

You may also transfer title to your brother or sister if that person already owns part of the house and has lived in it for at least a year before you go into a nursing home.

You may also transfer title to your adult son or daughter who has lived in the house with you for at least two years before you moved to a nursing home and cared for you so that you could stay at home longer.

**12. How do I transfer title?** It is very important that you talk with a lawyer before you try to transfer title. You could have problems that make it difficult for the house to be transferred legally. Also, you want to make sure that you transfer title in a way that protects your right to live in the house and manage it until you move somewhere else.

**13. I am not sure who owns the house because it was passed down by family members. Can I still give the house to my children who have been taking care of me?** Your children will not legally own the house unless title to the house has been legally transferred to them. Talk to a lawyer about how to do this. If they do not legally own the house, the state may try to use the house to pay the debt from your Medical Assistance services.

**14. Can I sell my house to my children or anyone else?** Yes. If you sell it for "fair market value" (what it is worth), the state will not try to take your house. However, the money you receive from the sale, after expenses are taken out, must be used to pay for your care.

**15. Can I give my house to anyone else so the state will not take it?** No. The law does not allow you to avoid Medical Assistance Estate Recovery by

transferring legal title to a relative (except as explained in #11) or anyone else unless they pay fair market value for it. Talk to a lawyer if you have questions about this.

### Other Important Information

**16. What if I die without transferring title to my niece who has cared for me? Can she keep the house?** DPW will forgive the debt and let her keep the house if she meets three conditions:

- 1) *She must have lived in the house for at least two years before you moved to a nursing home or while you were receiving home care through the Medical Assistance Waiver Program AND*
- 2) *She must have provided you care or support while living with you those two years so you could remain at home AND*
- 3) *She must have no other permanent residence.*

**If people are taking care of your home (paying taxes, utility bills, repair costs, or other expenses) while you're in a nursing home or receiving care at home, the amount they spend may be subtracted from what DPW collects.**

**Talk to a lawyer for more information about hardship waivers. There may be other important reasons that Medical Assistance Estate Recovery would cause serious problems for someone who needs to live in your house after your death.**