



LEWIS THOMASON

## IN RE ESTATE OF TANNER: The Tennessee Supreme Court Addresses the Estates of Tennessee Residents

By J. Eric Butler

Medicaid was established in 1965 under the Social Security Act to provide medical assistance for qualified low-income persons. From its inception, Medicaid has served as a form of “welfare” medicine – a means-tested entitlement program providing medical benefits to low-income beneficiaries. The Medicaid program was designed to be “a cooperative endeavor in which the Federal Government provides financial assistance to participating States to aid them in furnishing health care to needy persons.”<sup>1</sup> In return for each state agreeing to establish a Medicaid plan satisfying certain provisions of the Social Security Act, *Before any probate estate may be closed pursuant to title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the bureau of TennCare evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau.*

the Federal government agreed to pay a specified percentage of the total amount expended for medical assistance under the state plan.<sup>2</sup>

The Tennessee General Assembly opted to participate in the Medicaid program with the enactment of the Medical Assistance Act of 1968.<sup>3</sup> Prior to 1993, the Medicaid program permitted states to recover medical costs paid by Medicaid



from a beneficiary’s estate. In the Omnibus Budget Reconciliation Act of 1993, however, Congress required states to recover costs from the estates of deceased beneficiaries in the face of rapidly escalating medical costs.<sup>4</sup> Beginning on January 1, 1994, the Tennessee Bureau of TennCare began administering the Federal Medicaid program to Tennessee residents. The Tennessee Medical Assistance Act provided: “It is the legislative intent ... that the bureau of TennCare strive vigorously to recoup any TennCare funds expended or a decedent after the date of death.”<sup>5</sup> To carry out the General Assembly’s stated intent, the Medical Assistance Act, prior to 2007, further provided:

*Before any probate estate may be closed pursuant to title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the bureau of TennCare evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau.*<sup>6</sup>

Title 30 of the Tennessee Code (“Probate Code”) contains the statutes governing the administration of decedent’s estates. One such provision is found in Section 30-2-310 (a) of the Probate Code, which generally provides that any creditor’s claim not filed against an estate within one-year of the decedent’s date of death shall forever be barred. Section 30-2-310(b) contains a more specific provision applicable to the State of Tennessee, stating that “all claims and demands not filed by the state with the probate court clerk...before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.”

Over the years, the Tennessee Court of Appeals has struggled with the application of the one-year statute of limitations found in Section 30-2-310 of the Probate Code, particularly where the estate has never been opened for probate or has been offered for probate more than one year after the decedent’s date of death. Ultimately, a split developed among the sections of the Tennessee Court of Appeals over the issue of whether the Bureau of TennCare should be barred from seeking to recover medical benefits paid to a decedent during life under the Tennessee Medical Assistance Act. The Western Section of the Tennessee Court of Appeals issued opinions holding

that the Bureau of TennCare was barred from seeking to recover medical benefits from a decedent's estate if the Bureau's claim was filed more than one year after the decedent's date of death.<sup>7</sup> Conversely, the Middle Section of the Tennessee Court of Appeals ruled that the Bureau of TennCare could seek to recover medical benefits from a decedent's estate despite the one-year statute of limitations since the Medical Assistance Act required the personal representative to obtain a release from the Bureau to close the estate.<sup>8</sup>

On January 14, 2004, Martha M. Tanner died intestate at ninety-six years of age while a resident of a nursing home facility. During her stay at the nursing home, the Bureau of TennCare paid approximately \$250,000 in medical benefits on behalf of Ms. Tanner under the Medicaid program. At her death, Ms. Tanner's estate consisted of approximately \$2,000 in cash, some personal property, and her residence with an estimated value of \$167,000. Ms. Tanner's estate was not offered for probate until well over one-year after her date of death. During the probate process, the Bureau filed a claim seeking to recover the medical benefits paid on behalf of Ms. Tanner from the assets in her estate. Ms. Tanner's son, the administrator of her estate, objected to the Bureau's claim as being filed outside the one-year statute of limitations in Section 30-2-310(b) of the Tennessee Probate Code. The probate court and the Tennessee Court of Appeals sided with Ms. Tanner's son and ruled that the Bureau's claim was barred by the applicable one-year statute of limitation. In turn, the Bureau requested an appeal to the Tennessee Supreme Court.

On October 7, 2009, the Tennessee Supreme Court issued its ruling in *In re Estate of Tanner*, a much anticipated decision by the Tennessee bench and bar. The Tennessee Supreme Court began its analysis of the case by noting that it was dealing with the relevant statutes as they existed in 2004 at the date of Ms. Tanner's death.<sup>9</sup> The Bureau argued that the statute of limitations in Section 30-2-310 of the Probate Code does not apply to the Bureau's claims because the Bureau is not a "creditor". The Tennessee Supreme Court disagreed, stating "the Bureau's right of recovery constituted a claim or demand subject to the statute of limitations." In the alternative, the Bureau argued that Section 71-5-116 of the Tennessee Code, as it existed at Ms. Tanner's

death, created an exception for the recovery of medical benefits paid by TennCare regardless of the general statute of limitations applicable to creditor's claims against an estate. The court, examining the statutory language in existence at the time of Ms. Tanner's death, agreed with the Bureau's alternative argument, stating:

[B]ecause section 71-5-116©(2) imposes an ongoing responsibility to pay the debt, and that responsibility cannot be discharged without a waiver or release even after a year has elapsed, the section 30-2-310(b) bar is tolled until a release or waiver is obtained...Our conclusion, therefore, is that at the time of Ms. Tanner's death, section 71-5-116(c) permitted adjustment or recovery from an estate until a waiver or release was granted by the Bureau, regardless of any limitations on ordinary claims imposed by section 30-2-310(b).

The court was careful to acknowledge, however, that the General Assembly amended Section 71-5-116 in 2006 to more clearly define the relationship between the Medical Assistance Act and the Probate Code as it relates to the Bureau's claims against estates.<sup>10</sup> In its present form, Section 71-5-116(d) of the Medical Assistance Act provides:

Within sixty (60) days of the date of issuance of either letters of administration or letters testamentary, the personal representatives of decedents shall provide notice of the death of any individual age fifty-five (55) years of age or older to the bureau of TennCare, in a format to be specified by the bureau, shall state whether the decedent was a TennCare recipient and shall request a release from the bureau of TennCare pursuant to subdivision ©(2), and an affidavit confirming notice shall be filed pursuant to § 30-2-301(b)(3)[.]

Personal representatives of decedents shall provide the notice to creditors specified in § 30-2-306 to the bureau of TennCare, if the decedent was a TennCare recipient. *If a notice to creditors is provided to the bureau, the bureau shall file a claim for recovery in accordance with the requirements of title 30, chapter 2, part 3.* (emphasis added)

The Tennessee Supreme Court acknowledged that the statutory amendments, while not applicable to Ms. Tanner's estate, "established that the Bureau must, in at least some situations, comply with the

title 30 claim-filing process.” It remains to be seen how Tennessee courts will deal with the Bureau’s claims against the estates of Tennessee residents who die after January 1, 2007, an issue left unresolved in the Tennessee Supreme Court’s decision in *In re estate of Tanner*<sup>11</sup>.

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<sup>1</sup> *Harris v. McRae*, 448 U.S. 297, 308 (1980)

<sup>2</sup> 42 U.S.C. § 1396b

<sup>3</sup> *In re Estate of Daugherty*, 166 S.W.3d 185, 189 (Tenn. Ct. App. 2004); see also Tenn. Code Ann. § 71-5-101 et seq.

<sup>4</sup> *West Virginia v. Dep’t of Health and Human Servs.*, 289 F.3d 281, 284 (4<sup>th</sup> Cir.2002); see also 42 U.S.C. § 1396p.

<sup>5</sup> Tenn. Code Ann. § 71-5-116(c)(1) (1995 & Supp. 2002). The stated legislative intent is carried over into the amended statute and codified at Section 71-5-116(d).

<sup>6</sup> Tenn. Code Ann. § 71-5-116© (2) (1995 & Supp. 2002).

<sup>7</sup> See, e.g., *In re Estate of Henkel*, 2007 WL 4117791 (Tenn. Ct. App. Nov. 16, 2007); *In re Estate of Anderson*, 2007 WL 4116223 (Tenn. Ct. App. Nov. 16, 2007).

<sup>8</sup> See *In re Estate of Roberts*, 2008 WL 2415520 (Tenn. Ct. App. June 11, 2008).

<sup>9</sup> As the court noted in its opinion, the General Assembly enacted significant amendments to Section 71-5-116 of the Tennessee Code in 2006, which added two new subsections addressing the relationship between the Medical Assistance Act and the Probate Code. *In re Estate of Tanner*, 2009 WL 3191703, at \*5 (Tenn.2009)

<sup>10</sup> 2006 Tenn. Pub. Acts ch. 639 (effective January 1, 2007)