

INVESTIGATIONS

# BURDEN OF PROOF

Inside one woman's fight against Texas' Medicaid Estate Recovery Program.

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*(Illustrations by Clay Rodery)*

***Editor's Note:*** This is part 2 of a series on Medicaid Estate Recovery Program collections in Texas. For part 1, see our ***July/August 2024 issue***.

**I**n April 2024, Anne-Marie Boyd got a call from her brother, who sounded frantic after opening a letter from Health Management Systems, Inc. (HMS), an Irving company that serves as the State of Texas' Medicaid estate recovery contractor.

"They're going to take the house away," he told her. Her older brother was 60 and, years prior, had suffered a brain injury that made it extra challenging for him to understand the letter's dense language, so he read it aloud. (He declined an interview, and Boyd requested he not be named.)

Alarmed, Boyd took off on the four-hour drive from her home in Hot Springs, Arkansas, to the tiny northeast Texas town of Hughes Springs, where her brother lived. She felt sick from the stress. Their mother's death from a heart attack two months earlier had come as a shock, and the funeral was scheduled in only days. On top of that, she now feared that her brother, who'd spent the past 14 years living in the family home and taking care of their mom, would soon have nowhere to go.

When she arrived, her brother was distraught. "He was not himself," she recalled.

Boyd studied the letter carefully. She had never heard of the Medicaid Estate Recovery Program (MERP), a program created by a 1993 federal law that requires states to recoup funds from the estates of deceased Medicaid recipients, age 55 and over, who had received long-term care services covered by the government. After suffering a stroke, their mother, Marilyn, spent two and a half years in a nursing home paid for by Medicaid. Now the state wanted its money back.

"It was like wild animals pouncing on meat," Boyd said.

Since 2006, the Texas Health and Human Services Commission (HHS) has hired HMS to handle the MERP administrative process from start to finish, paying the company a 12.5 percent commission on any recovered funds, up to \$4.8 million a year, according to the company's current contract. HMS is owned by Gainwell Technologies, which is owned in turn by a private equity firm, Veritas Capital, worth \$50 billion. (Gainwell continues to operate under the name HMS.) Last year, HMS received more than \$731,000 as a commission on the MERP claims it recovered in Texas.

The main function of HMS is to act as a bill collector. According to its contract, the company is supposed to handle all paperwork for MERP claims, staff a 1-800 number, and help answer questions. HMS employees are required to understand Texas' MERP rules and related state laws, but they are not allowed to offer advice. When callers pose even basic questions about how to get claims on their family homes dismissed, they are often left without answers, according to multiple *Observer* interviews and a trove of complaints obtained through a public records request. This also often means

that when families are hit with enormous six-figure claims, no one advocates on their behalf; HMS is there only to collect.

## “THIS PROGRAM IS SO CRUEL.”

Because qualifying for Medicaid means not having more than \$2,000 in the bank, the only assets remaining for HMS to target are typically a car and a family home.

Two HMS representatives declined to answer *Observer* questions about how the company handles complaints or how many calls it receives. Cecile Fradkin, a Gainwell Technologies spokesperson, responded only by writing in an email that “the company does not comment on individual client contracts or agreements.”

Standard MERP paperwork sent to families briefly mentions two ways to get a claim dismissed: through an exemption or a hardship waiver. For an exemption, families are given two weeks to provide proof that someone living in the home is a surviving spouse of the deceased Medicaid recipient, a child under the age of 21, a blind or disabled child of any age, or an unmarried adult child who had lived in the home for at least a year prior to the death. For a hardship waiver, family members have 60 days to provide proof that repaying the money or forfeiting a home to repay it would cause “**undue hardship**” (simply losing one’s inheritance does not suffice). Both options require extensive documentation.

Texas currently has nearly 30,000 open MERP cases—ongoing efforts to recoup money—according to data supplied by HHS.

The state requires HMS to field calls from people targeted for MERP collections. Yet the *Observer* interviewed several Texas family members who appear to have qualified for an exemption or waiver, but who were distressed

after losing a loved one and received little to no assistance from HMS in navigating the process. Multiple people said they were ignored by the company and received help with claims only after contacting legislators, the media, or attorneys.

Based on a review of summaries of 172 MERP-related complaints filed with the HHS Office of the Ombudsman, as well as interviews with attorneys, public officials, and five families who became mired in the collections process, the *Observer* found that HMS has allegedly denied people exemptions for which they appeared to qualify, sent out claim letters to surviving relatives of estates without a home or car, or failed to respond to recorded requests for help made to its 1-800 number.

HMS is the largest MERP contractor in the country, operating in Texas and 12 other states. Referring to states as “customers,” the company promises to use “an aggressive approach to guarding our customers’ Estate Recovery program policies,” according to an HMS proposal.

In Texas alone, HMS has recovered more than \$102 million since 2006.

**A**fter reading the collection letter carefully, Boyd saw that her brother qualified for an exemption as an unmarried adult child who had lived in the home longer than a year.

Because her brother struggled with memory issues and didn’t have access to a computer, he asked Boyd, his authorized legal representative, to help gather and submit the paperwork necessary to prove his residency. Boyd tried everything she could to prove her brother deserved an exemption. The process seemed odd to her, since all of the HMS letters were already addressed to him at that house. “I mean, they know where he lives,” she said.

But, to prove residency, the contractor asks for numerous documents. A questionnaire, which was included with the letter, asked for “verification of single status from the Bureau of Vital Statistics, birth certificate, copy of

income tax return the year prior to the recipient's death, copy of Texas driver's license, copy of bank statements or utility bills in heir's name verifying the homestead address for one year prior to the recipient's death, employer's records verifying the homestead address," and the unmarried adult child's birth date and Social Security number.

HMS also wanted to know the fair market value of the home, which added to Boyd and her brother's fear that the state aimed to recover the only asset of value that their mother had left to them: a ranch-style home on three acres.

They carefully reviewed the long list of requested items and sent everything that they could. But her brother did not have a checking account and didn't have a utility bill in his name. "Why would he? Everything was in our mom's name," Boyd said.

She sent a copy of his driver's license, birth certificate, car insurance policies, and a bill from DISH Network, certain that would be enough. But, then, they got another letter stating that the documentation was insufficient. Boyd was stunned.

She called the number listed on the letter multiple times, leaving voicemail messages that were never returned. "After eight calls, I lost count," she said. When someone finally answered, the employee sounded as if they were reading off a script. Boyd tried to convey that this was no small matter, that her brother was in danger of becoming homeless.

But nothing seemed to be enough. After months, angry that she seemed to be getting nowhere, Boyd searched online. "I started Googling HMS. I started Googling Gainwell Technologies, and I Googled MERP and how to avoid it. I made it my mission." For weeks, she stayed up until 3 a.m., reading everything she could find.

Boyd isn't the only one who's had issues interacting with HMS. Through an open records request, the *Observer* found that from January 2015 to May 2024, 172 people had gone beyond the company's normal 1-800 troubleshooting line, searched the HHS website, and filled out yet another form to file a formal complaint with the HHS ombudsman regarding MERP.

Other states gather demographic information about MERP claims that shows that people targeted under the program more often live in rural communities and are more often people of color. But the State of Texas compiles MERP collection data only by county—and does not track race or ethnicity of those targeted.

In response to a records request, the *Observer* was provided only with heavily redacted summaries of the complaints about the MERP collection process. (The agency redacted all names, including those of state legislators who'd called on behalf of constituents.)

The most common issue, according to the redacted complaint summaries, was that HMS did not answer or return calls or answer basic questions about claims. Yet even after finding that HMS was unresponsive, the HHS ombudsman referred some people back to the company's 1-800 number, the same number they'd been calling to no avail. According to the HHS website, complainants are encouraged to discuss any issues with HMS first because "they can explain specific policies or correct the problem immediately."

One complainant called the company "incompetent," stating that it lost his email address after he'd emailed. Another claimed that the contractor said it never received the documents needed for an exemption, even though they were sent via FedEx and the complainant had a confirmation number indicating they had been delivered. Yet another stated that the company re-requested the same documents it had previously confirmed receiving. In at least one case, HMS reopened a closed case of a woman who had already qualified for a hardship waiver.

Several people alleged that HMS mishandled documents, complaint summaries show. Four people received claim letters from the company alleging they owed money because they were deceased when they were, in fact, alive.

One man, who received in-home care, reported "that MERP falsely declared him dead, sent his wife a condolence letter, and asked her to pay \$68,000 for services rendered." The ombudsman summary said he wants HMS to know "he's not deceased" and "no one is returning his calls." Another wrote: "I just received a letter from HMS informing me my mother who I just spoke with on

the phone TODAY, 7/19/19, died on 02/08/2019. I don't know where you get your information.”

After dealing with HMS for four years with no resolution, another complainant stated that they'd “lost all confidence in government agencies.”

It's unclear why Texas families are forced to jump through so many hoops, when, according to the contractor's own vendor proposal, HMS claims it collects extensive information on Medicaid recipients and their heirs before mailing claim letters. Per its proposal, the company identifies new MERP cases through death certificates, then reviews marital status data from the Bureau of Vital Statistics to determine if there is a surviving spouse who would qualify for an exemption. If so, the proposal says it closes the case to “minimize [its] intrusion on families when they are grieving.”



Additionally, the proposal says HMS also gets referrals from Social Security Administration death reports, nursing homes, attorneys, and anonymous sources to find new recovery cases to pursue. Using a government database, the contractor says it then calculates how much the claim is worth and sends out claim letters. The company begins with a Notice of Intent, which opens with condolences and states there is a claim against the estate.

Roughly a month later, most relatives receive a second document, an Estate Claim Letter, which includes the exact amount of the claim, HMS' finding that no exemptions exist, and the address for where to send a payment. By that point, HMS has already identified the estimated value of a home and knows whether recovery would be “cost effective.”

Even though HMS sends a letter shortly after a Medicaid recipient dies, the state usually can't force debt repayment until family members try to sell a house or go through probate proceedings.

Yet some complainants say they find the tone of the form letters used for MERP collections to be threatening and hard to understand. The letters use legal jargon, such as referring to a "Class 7 claim," without much explanation. In Texas, MERP funds are collected through the probate Class 7 claim process, which means that if the deceased person had any debts, the state is the seventh creditor in line to collect money from the estate after others are paid.

Like Boyd, many people targeted by HMS incorrectly assume the state would put a lien on their family home to collect Medicaid debts. But state officials say this is not allowed in Texas. When the *Observer* reached out to HHS to ask whether the state would force a home sale or whether residents are forcibly evicted as part of the collections program, Jeremy Fuchs, an HHS press officer, wrote, "In Texas, MERP does not place liens, take possession of property or require heirs to move."

However, this critical piece of information is absent from all HMS correspondence reviewed by the *Observer*. It's also not found on the HHS website. As a result, some live with the prevailing fear they could be booted out of a family home.

Hannah Diamond, a policy advocate with Justice in Aging, a nonprofit based in Washington, D.C., told the *Observer* that transparency about the MERP collection process really varies across states. "That's a choice the state is making by not having clear information or not having those consumer protections up front and center," Diamond said.

Last year, Democratic state Senator Royce West's office received a complaint from a constituent who believed the HMS letters were a scam. The letters have the HMS logo, but the email contact is Gainwell Technologies, creating confusion for some. When entering hms.com, people are led to Gainwell's homepage. West's office has worked with HHS and the Office of the Inspector General to make sure the letters look more like official state documents. In a statement to the *Observer*, West said: "The Medicaid Estate Recovery cases



my office has worked on have been ones where it was reasonably clear the surviving family qualified for one of the exceptions, and properties were not seized.”

For people like Boyd, the aggressive tone of the letters made it sound inevitable that the state would come for the family home. At one point, the family received five letters a month. The letters were identical except that from May to June, the claim amount increased from around \$100,000 to more than \$160,000. The letters repeated the claim that to the best of HMS’ knowledge, there was “no unmarried adult child residing continuously in the decedent’s homestead for at least one year prior to the time of the Medicaid recipient’s death.”

In the margins of one letter, Boyd drew an arrow next to the sentence and wrote, “There is.”

At one point, she remembers pacing around her living room, yelling out loud to herself. “All of a sudden I said a prayer and God started telling me to go to the state attorney general’s office, the governor’s office, the mayor’s office—do whatever you can. I even wrote a letter to the department head of Health and Human Services,” she said.

Critics of MERP say that relatively well-off families tend to know how to shield their assets while still qualifying for Medicaid. The lowest-income families, meanwhile, are disproportionately targeted for collections and can lose their inheritance in one fell swoop.

That means that MERP collections and housing insecurity go hand in hand. “It’s dual-pronged. Not only are you contributing to increased homelessness, but you’re also preventing individuals from being able to escape poverty by maintaining that critical asset,” Diamond said. “You’re also punishing people for being poor.”

Last year, U.S. Representative Jan Schakowsky, an Illinois Democrat, introduced the Stop Unfair Medicaid Recoveries Act to repeal the federal law mandating MERP. In a legislative hearing, Schakowsky shared how one of her constituents received funds from Medicaid to be her mother’s in-home personal care attendant. After the mother died, the daughter was hit with a

\$77,000 MERP claim, essentially clawing back the cost of labor she had provided.

“This program is so cruel,” Schakowsky said at the hearing. “It’s been all over the newspapers about what a scandal it is that they go after the money of dead people.”

Schakowsky also pointed out that the program doesn’t work. According to a 2021 report by the Medicaid and CHIP Payment and Access Commission (MACPAC), MERP recouped less than 1 percent of national spending on long-term care services.

Her bill did not pass.

**B**oyd was surprised that it was easier to reach someone with the Texas Attorney General’s Office than with HMS. She explained her situation to a state attorney and was told that her brother’s driver’s license should have been enough to prove his residence to qualify for the exemption.

In a last-ditch effort to reach someone at HMS, she sent an email last August to a general email account, outlining all the actions she’d taken to try to help her brother apply for an exemption, including everyone she’d contacted and what she’d learned about the company through her research.

Within a couple of days, she got a call from Jolene Guignet, a high-level attorney at Gainwell. She said Guignet apologized, then requested one more document: an affidavit verifying her brother’s single status. They went to have the affidavit notarized, then sent in that form. A few days later, Guignet emailed a copy of a letter stating that MERP was releasing its claim on the estate.

Boyd said that the stress of dealing with MERP for nearly five months gave her high blood pressure and put a “complete halt” on being able to grieve the

loss of her mother. Her brother felt constantly afraid inside the place he'd long called home.

Ultimately, Boyd thinks mentioning in her email to HMS that she'd contacted someone at the attorney general's office lit a fire that allowed the claim to be dismissed. Though the victory was slow in coming, she concluded that HMS should not have "messed with me."