



# Keep Your Farm Healthy, Even If You Aren't

In the event of long-term medical care, take these steps to safeguard your assets by knowing your rights.

BY C. DAN CAMPBELL

**W**ith the graying of agriculture, it's an all-too-common scenario: A farmer or spouse is in failing health and goes into a nursing home. Questions are left unanswered. What will happen financially? Will the farmer lose the farm?

Fortunately, says C. Dan Campbell, a lawyer certified by the Texas Board of Legal Specialization in estate planning and probate law, there is a way to protect those farm and related assets while still allowing the person in the nursing home to qualify for Medicaid. Here are some scenarios Campbell offers.

## Scenario 1

The husband is still at home. His spouse is in a nursing home. There are a farming operation (various farms located miles apart), cattle, tractors and other farm equipment, a farm bank account and vehicles used in the farming operation at stake.

The couple also have non-farm assets: their homestead located in town, one vehicle, savings, checking accounts, etc.

**ELIGIBILITY CRITERIA.** The prospects are good of protecting the farming operation and related assets—as well as the homestead, car and a significant portion of their personal assets—and getting the wife on Medicaid.

The relevant Medicaid provision is “Resources Essential to Self Support.” The Medicaid Eligibility Handbook provides that property used in the client’s trade or business is excluded regardless of value or rate of return.

The property must be in current use, or it must have been used previously, and there must be a

reasonable expectation of it being used again. This may be land and buildings, equipment and supplies, inventory, livestock, motor vehicles and liquid assets (money in bank accounts) needed for the business.

The critical question is whether the owner “materially participates” in the farm or other business. If so, the income should be reported on Schedule F (for a farm or ranch) or Schedule C (for another type of business) on the client’s federal income tax return. Self-employment tax would be due on the income, of course.

If these criteria are met, the assets will be exempt and not considered for Medicaid qualification purposes of the spouse in the nursing home.

Also, the farm income will not be considered to be the income of the spouse in the nursing home. Thus, the spouse at home can retain 100% of the farm income for himself.

However, it is critically important that the farming operation not be under a cash lease, because if ▶

it is reported as rental income (on Schedule E of the tax return), it will not qualify as “resources essential to self support” and will therefore not be exempt for Medicaid purposes.

In order to be exempt as “resources essential to self support,” the farmer or rancher must be actively involved or materially participating in producing the income.

## Scenario 2

The farmer or rancher is single. If the person is mentally competent and can materially participate, this provision may be available—even if the farmer is already in a nursing home.

If that person is not mentally competent but has a durable power of attorney in place, the agent under the power of attorney may be able to materially

participate on behalf of the farmer or rancher.

### LEGAL IMPLICATIONS.

However, in the case of a single person, all of the farm’s net income will have to be paid to the nursing home.

Another concern is that when the Medicaid recipient dies, there may be an estate recovery claim the state will have against the farm or ranch for the value of the Medicaid services provided while the person was in the nursing home.

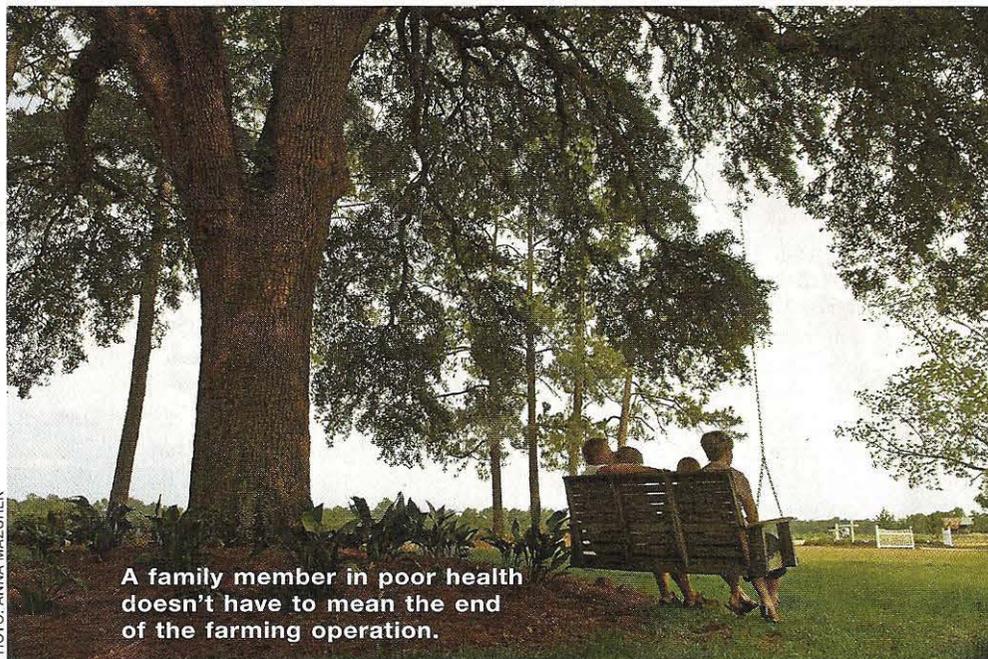
Medicaid Estate Recovery programs (MERP) vary from state to state. There also may be legal ways to avoid

MERP, again, depending on the particular state’s laws where the farmer or rancher resides.

The field of Medicaid law is a very complex, constantly changing area of the law. Although Medicaid law is federal law, each state has its own interpretation of its provisions.

It is critically important that the client have the counsel of a lawyer who is well-versed in this highly specialized area of law in his or her state before embarking on the Medicaid/asset protection planning addressed in this article.

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**A family member in poor health doesn't have to mean the end of the farming operation.**

PHOTO: ANNA MAZUREK

**MATERIAL PARTICIPATION.** The farmer or rancher will be considered as materially participating if he meets one of the following criteria:

- ▶ The owner engages in periodic advice and consultation with the tenant (assuming the land is leased under a crop-share arrangement), inspection of the production activities, and furnishing of machinery, equipment, livestock and production expenses.
- ▶ The owner makes management decisions that affect the success of the farming operation.
- ▶ The owner performs a specified amount of physical labor to produce the products raised.

If the owner does not meet the full requirements listed above, his involvement in crop/cattle production is nevertheless significant.

If the farmer is currently under a cash lease and reporting under schedule E, it may be possible to start a new lease or amend the existing lease to contain the above provisions to make it a material participation lease agreement.

C. Dan Campbell is a board-certified lawyer by the Texas Board of Legal Specialization of the State Bar of Texas in estate planning and probate law. He is also a certified public accountant. To reach him with questions, call 940-696-5015, or e-mail [odancampbell1@aol.com](mailto:odancampbell1@aol.com).