

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 374

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
(MCL 400.1 to 400.119b) by adding sections 112g, 112h, 112i, 112j,
and 112k.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 112G. (1) SUBJECT TO SECTION 112C(5), THE DEPARTMENT OF
2 COMMUNITY HEALTH SHALL ESTABLISH AND OPERATE THE MICHIGAN MEDICAID
3 ESTATE RECOVERY PROGRAM TO COMPLY WITH REQUIREMENTS CONTAINED IN
4 SECTION 1917 OF TITLE XIX. THE DEPARTMENT OF COMMUNITY HEALTH SHALL
5 WORK WITH THE APPROPRIATE STATE AND FEDERAL DEPARTMENTS AND
6 AGENCIES TO REVIEW OPTIONS FOR DEVELOPMENT OF A VOLUNTARY ESTATE
7 PRESERVATION PROGRAM. BEGINNING NOT LATER THAN 180 DAYS AFTER THE

1 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND
2 EVERY 180 DAYS THEREAFTER, THE DEPARTMENT OF COMMUNITY HEALTH SHALL
3 SUBMIT A REPORT TO THE SENATE AND HOUSE APPROPRIATIONS
4 SUBCOMMITTEES WITH JURISDICTION OVER DEPARTMENT OF COMMUNITY HEALTH
5 MATTERS AND THE SENATE AND HOUSE FISCAL AGENCIES REGARDING OPTIONS
6 FOR DEVELOPMENT OF THE ESTATE PRESERVATION PROGRAM.

7 (2) THE DEPARTMENT OF COMMUNITY HEALTH SHALL ESTABLISH AN
8 ESTATE RECOVERY PROGRAM INCLUDING VARIOUS ESTATE RECOVERY PROGRAM
9 ACTIVITIES. THESE ACTIVITIES SHALL INCLUDE, AT A MINIMUM, ALL OF
10 THE FOLLOWING:

11 (A) TRACKING ASSETS AND SERVICES OF RECIPIENTS OF MEDICAL
12 ASSISTANCE THAT ARE SUBJECT TO ESTATE RECOVERY.

13 (B) ACTIONS NECESSARY TO COLLECT AMOUNTS SUBJECT TO ESTATE
14 RECOVERY FOR MEDICAL SERVICES AS DETERMINED ACCORDING TO SUBSECTION

15 (3) (A) PROVIDED TO RECIPIENTS IDENTIFIED IN SUBSECTION (3) (B) .
16 AMOUNTS SUBJECT TO RECOVERY SHALL NOT EXCEED THE COST OF PROVIDING
17 THE MEDICAL SERVICES. ANY SETTLEMENTS SHALL TAKE INTO ACCOUNT THE
18 BEST INTERESTS OF THE STATE AND THE SPOUSE AND HEIRS.

19 (C) OTHER ACTIVITIES NECESSARY TO EFFICIENTLY AND EFFECTIVELY
20 ADMINISTER THE PROGRAM.

21 (3) THE DEPARTMENT OF COMMUNITY HEALTH SHALL SEEK APPROPRIATE
22 CHANGES TO THE MICHIGAN MEDICAID STATE PLAN AND SHALL APPLY FOR ANY
23 NECESSARY WAIVERS AND APPROVALS FROM THE FEDERAL CENTERS FOR
24 MEDICARE AND MEDICAID SERVICES TO IMPLEMENT THE MICHIGAN MEDICAID
25 ESTATE RECOVERY PROGRAM. THE DEPARTMENT OF COMMUNITY HEALTH SHALL
26 SEEK APPROVAL FROM THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID
27 REGARDING ALL OF THE FOLLOWING:

1 (A) WHICH MEDICAL SERVICES ARE SUBJECT TO ESTATE RECOVERY
2 UNDER SECTION 1917(B) (1) (B) (i) AND (ii) OF TITLE XIX.

3 (B) WHICH RECIPIENTS OF MEDICAL ASSISTANCE ARE SUBJECT TO
4 ESTATE RECOVERY UNDER SECTION 1917(A) AND (B) OF TITLE XIX.

5 (C) UNDER WHAT CIRCUMSTANCES THE PROGRAM SHALL PURSUE RECOVERY
6 FROM THE ESTATES OF SPOUSES OF RECIPIENTS OF MEDICAL ASSISTANCE WHO
7 ARE SUBJECT TO ESTATE RECOVERY UNDER SECTION 1917(B) (2) OF TITLE
8 XIX.

9 (D) WHAT ACTIONS MAY BE TAKEN TO OBTAIN FUNDS FROM THE ESTATES
10 OF RECIPIENTS SUBJECT TO RECOVERY UNDER SECTION 1917 OF TITLE XIX,
11 INCLUDING NOTICE AND HEARING PROCEDURES THAT MAY BE PURSUED TO
12 CONTEST ACTIONS TAKEN UNDER THE MICHIGAN MEDICAID ESTATE RECOVERY
13 PROGRAM.

14 (E) UNDER WHAT CIRCUMSTANCES THE ESTATES OF MEDICAL ASSISTANCE
15 RECIPIENTS WILL BE EXEMPT FROM THE MICHIGAN MEDICAID ESTATE
16 RECOVERY PROGRAM BECAUSE OF A HARDSHIP. AT THE TIME AN INDIVIDUAL
17 ENROLLS IN MEDICAID FOR LONG-TERM CARE SERVICES, THE DEPARTMENT OF
18 COMMUNITY HEALTH SHALL PROVIDE TO THE INDIVIDUAL WRITTEN MATERIALS
19 EXPLAINING THE PROCESS FOR APPLYING FOR A WAIVER FROM ESTATE
20 RECOVERY DUE TO HARDSHIP. THE DEPARTMENT OF COMMUNITY HEALTH SHALL
21 DEVELOP A DEFINITION OF HARDSHIP ACCORDING TO SECTION 1917(B) (3) OF
22 TITLE XIX THAT INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

23 (i) AN EXEMPTION FOR THE PORTION OF THE VALUE OF THE MEDICAL
24 ASSISTANCE RECIPIENT'S HOMESTEAD THAT IS EQUAL TO OR LESS THAN 50%
25 OF THE AVERAGE PRICE OF A HOME IN THE COUNTY IN WHICH THE MEDICAID
26 RECIPIENT'S HOMESTEAD IS LOCATED AS OF THE DATE OF THE MEDICAL
27 ASSISTANCE RECIPIENT'S DEATH.

1 (ii) AN EXEMPTION FOR THE PORTION OF AN ESTATE THAT IS THE
2 PRIMARY INCOME-PRODUCING ASSET OF SURVIVORS, INCLUDING, BUT NOT
3 LIMITED TO, A FAMILY FARM OR BUSINESS.

4 (iii) A REBUTTABLE PRESUMPTION THAT NO HARDSHIP EXISTS IF THE
5 HARDSHIP RESULTED FROM ESTATE PLANNING METHODS UNDER WHICH ASSETS
6 WERE DIVERTED IN ORDER TO AVOID ESTATE RECOVERY.

7 (F) THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF COMMUNITY
8 HEALTH MAY REVIEW REQUESTS FOR EXEMPTIONS AND PROVIDE EXEMPTIONS
9 FROM THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM FOR CASES THAT
10 DO NOT MEET THE DEFINITION OF HARDSHIP DEVELOPED BY THE DEPARTMENT
11 OF COMMUNITY HEALTH.

12 (G) IMPLEMENTING THE PROVISIONS OF SECTION 1396P(B)(3) OF
13 TITLE XIX TO ENSURE THAT THE HEIRS OF PERSONS SUBJECT TO THE
14 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM WILL NOT BE UNREASONABLY
15 HARMED BY THE PROVISIONS OF THIS PROGRAM.

16 (4) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT SEEK MEDICAID
17 ESTATE RECOVERY IF THE COSTS OF RECOVERY EXCEED THE AMOUNT OF
18 RECOVERY AVAILABLE OR IF THE RECOVERY IS NOT IN THE BEST ECONOMIC
19 INTEREST OF THE STATE.

20 (5) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT IMPLEMENT A
21 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM UNTIL APPROVAL BY THE
22 FEDERAL GOVERNMENT IS OBTAINED.

23 (6) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT RECOVER
24 ASSETS FROM THE HOME OF A MEDICAL ASSISTANCE RECIPIENT IF 1 OR MORE
25 OF THE FOLLOWING INDIVIDUALS ARE LAWFULLY RESIDING IN THAT HOME:

26 (A) THE MEDICAL ASSISTANCE RECIPIENT'S SPOUSE.

27 (B) THE MEDICAL ASSISTANCE RECIPIENT'S CHILD WHO IS UNDER THE

1 AGE OF 21 YEARS, OR IS BLIND OR PERMANENTLY AND TOTALLY DISABLED AS
2 DEFINED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.

3 (C) THE MEDICAL ASSISTANCE RECIPIENT'S CARETAKER RELATIVE WHO
4 WAS RESIDING IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME FOR A
5 PERIOD OF AT LEAST 2 YEARS IMMEDIATELY BEFORE THE DATE OF THE
6 MEDICAL ASSISTANCE RECIPIENT'S ADMISSION TO A MEDICAL INSTITUTION
7 AND WHO ESTABLISHES THAT HE OR SHE PROVIDED CARE THAT PERMITTED THE
8 MEDICAL ASSISTANCE RECIPIENT TO RESIDE AT HOME RATHER THAN IN AN
9 INSTITUTION. AS USED IN THIS SUBDIVISION, "CARETAKER RELATIVE"
10 MEANS ANY RELATION BY BLOOD, MARRIAGE, OR ADOPTION WHO IS WITHIN
11 THE FIFTH DEGREE OF KINSHIP TO THE RECIPIENT.

12 (D) THE MEDICAL ASSISTANCE RECIPIENT'S SIBLING WHO HAS AN
13 EQUITY INTEREST IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME AND WHO
14 WAS RESIDING IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME FOR A
15 PERIOD OF AT LEAST 1 YEAR IMMEDIATELY BEFORE THE DATE OF THE
16 INDIVIDUAL'S ADMISSION TO A MEDICAL INSTITUTION.

17 (7) THE DEPARTMENT OF COMMUNITY HEALTH SHALL PROVIDE WRITTEN
18 INFORMATION TO INDIVIDUALS SEEKING MEDICAID ELIGIBILITY FOR LONG-
19 TERM CARE SERVICES DESCRIBING THE PROVISIONS OF THE MICHIGAN
20 MEDICAID ESTATE RECOVERY PROGRAM, INCLUDING, BUT NOT LIMITED TO, A
21 STATEMENT THAT SOME OR ALL OF THEIR ESTATE MAY BE RECOVERED.

22 (8) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT CHARGE
23 INTEREST ON THE BALANCE OF ANY MICHIGAN MEDICAID ESTATE RECOVERY
24 PAYMENTS.

25 (9) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT PLACE OR
26 RECORD A LIEN ON QUALIFYING PROPERTY UNDER THE TAX EQUITY AND
27 FISCAL RESPONSIBILITY ACT OF 1982, PUBLIC LAW 97-424 (TEFRA).

Senate Bill No. 374 (H-2) as amended September 26, 2007

1 SEC. 112H. FOR THE PURPOSES OF SECTIONS 112G TO 112J:

2 (A) "ESTATE" MEANS ALL PROPERTY AND OTHER ASSETS INCLUDED
3 WITHIN AN INDIVIDUAL'S ESTATE THAT IS SUBJECT TO PROBATE
4 ADMINISTRATION UNDER ARTICLE III OF THE ESTATES AND PROTECTED
5 INDIVIDUALS CODE, 1998 PA 386, MCL 700.3101 TO 700.3988, EXCEPT [ASSETS
6 OTHERWISE SUBJECT TO CLAIMS UNDER SECTION 3805(3) OF THE ESTATES AND
7 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.3805, ARE NOT PART OF
8 THE ESTATE.]

9 (B) "PROPERTY" MEANS THAT TERM AS DEFINED IN SECTION 1106 OF
10 THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
11 700.1106.

12 SEC. 112I. REVENUE COLLECTED THROUGH MICHIGAN MEDICAID ESTATE
13 RECOVERY ACTIVITIES SHALL BE USED TO FUND THE ACTIVITIES OF THE
14 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM. ANY REMAINING BALANCES
15 SHALL BE TREATED AS AN EXPENDITURE CREDIT FOR LONG-TERM CARE
16 SUPPORT AND SERVICES IN THE MEDICAL SERVICES APPROPRIATION UNIT OF
17 THE ANNUAL DEPARTMENT OF COMMUNITY HEALTH APPROPRIATION.

18 SEC. 112J. (1) THE DEPARTMENT OF COMMUNITY HEALTH MAY
19 PROMULGATE RULES FOR THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM
20 ACCORDING TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
21 306, MCL 24.201 TO 24.328.

22 (2) NOT LATER THAN 1 YEAR AFTER IMPLEMENTATION OF THE MICHIGAN
23 MEDICAID ESTATE RECOVERY PROGRAM AND EACH YEAR AFTER THAT, THE
24 DEPARTMENT OF COMMUNITY HEALTH SHALL SUBMIT A REPORT TO THE SENATE
25 AND HOUSE APPROPRIATIONS SUBCOMMITTEES WITH JURISDICTION OVER
26 DEPARTMENT OF COMMUNITY HEALTH MATTERS AND THE SENATE AND HOUSE
27 FISCAL AGENCIES REGARDING THE COST TO ADMINISTER THE MICHIGAN
MEDICAID ESTATE RECOVERY PROGRAM AND THE AMOUNTS RECOVERED UNDER

1 THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM.

2 SEC. 112K. THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM SHALL
3 ONLY APPLY TO MEDICAL ASSISTANCE RECIPIENTS WHO BEGAN RECEIVING
4 MEDICAID LONG-TERM CARE SERVICES AFTER THE EFFECTIVE DATE OF THE
5 AMENDATORY ACT THAT ADDED THIS SECTION.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. 204 of the 94th Legislature is enacted into
8 law.