

SENATE BILL No. 404

June 7, 2011, Introduced by Senator KAHN and referred to the Committee on Appropriations.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending sections 112g, 112h, 112i, 112j, and 112k (MCL
400.112g, 400.112h, 400.112i, 400.112j, and 400.112k), as added by
2007 PA 74.

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~~
8 ~~effective date of the amendatory act that added this section and~~
9 ~~every 180 days thereafter, the department of community health shall~~

~~submit a report to the senate and house appropriations subcommittees with jurisdiction over department of community health matters and the senate and house fiscal agencies regarding options for development of the estate preservation program.~~

(2) The department of community health shall establish an estate recovery program including various estate recovery program activities. These activities shall include, at a minimum, all of the following:

(A) **PLACING AND RECORDING LIENS ON MEDICAL ASSISTANCE RECIPIENTS' PROPERTY TO THE EXTENT PERMITTED BY SECTION 1917(A) OF TITLE XIX.**

(B) ~~(a)~~ Tracking assets and services of **MEDICAL ASSISTANCE** recipients of ~~medical assistance~~ that are subject to estate recovery.

(C) ~~(b)~~ Actions necessary to collect amounts subject to estate recovery for medical services as determined according to subsection (3)(a) provided to **MEDICAL ASSISTANCE** recipients identified in subsection (3)(b). Amounts subject to **ESTATE** recovery shall not exceed the cost of providing the medical services. ~~Any~~ **THE DEPARTMENT OF COMMUNITY HEALTH OR ITS AGENT MAY NEGOTIATE ACCELERATED SETTLEMENTS OF ESTATE RECOVERY CLAIMS WITH THE SPOUSE OR HEIRS OF MEDICAL ASSISTANCE RECIPIENTS SUBJECT TO ESTATE RECOVERY IF THE MEDICAL ASSISTANCE RECIPIENT IS UNLIKELY TO RETURN TO HIS OR HER HOME. THE** settlements shall take into account the best interests of the state, ~~and the spouse, and~~ **THE** heirs.

(D) ~~(c)~~ ~~Other~~ **PERFORMING OTHER** activities necessary to efficiently and effectively administer the **ESTATE RECOVERY** program,

1 **INCLUDING RECEIVING INFORMATION AND NOTICES UNDER SECTION 112K.**

2 (3) The department of community health shall seek appropriate
3 changes to the Michigan medicaid state plan and shall apply for any
4 necessary waivers and approvals from the federal centers for
5 medicare and medicaid services to implement the Michigan medicaid
6 estate recovery program. The department of community health shall
7 seek approval from the federal centers for medicare and medicaid
8 regarding all of the following:

9 (a) Which medical services are subject to estate recovery
10 under section 1917(b)(1)(B)(i) and (ii) of title XIX.

11 (b) Which recipients of medical assistance are subject to
12 estate recovery under section 1917(a) and (b) of title XIX.

13 (c) Under what circumstances the program shall pursue recovery
14 from the estates of spouses of **MEDICAL ASSISTANCE** recipients of
15 ~~medical assistance~~ who are subject to estate recovery under section
16 1917(b)(2) of title XIX.

17 **(D) THE MAXIMUM DIVESTITURE LOOK-BACK PERIOD FOR ASSETS THAT**
18 **ARE SUBJECT TO ESTATE RECOVERY UNDER SECTION 1917(C) OF TITLE XIX,**
19 **INCLUDING ASSETS PLACED IN TRUSTS BY THE MEDICAL ASSISTANCE**
20 **RECIPIENT, AND TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.**

21 **(E)** ~~(d)~~ What actions may be taken to obtain funds from the
22 estates of **MEDICAL ASSISTANCE** recipients subject to recovery under
23 section 1917 of title XIX, including notice and hearing procedures
24 that may be pursued to contest actions taken under the Michigan
25 medicaid estate recovery program.

26 **(F)** ~~(e)~~ Under what circumstances ~~the estates of a~~ medical
27 assistance recipients ~~will be~~ **RECIPIENT'S ESTATE IS** exempt from the

Michigan medicaid estate recovery program because of a hardship. At the time an individual enrolls in medicaid for long term care services, the department of community health shall provide to the individual written materials explaining the process for applying for a waiver from estate recovery due to hardship. The department of community health shall develop a definition of hardship according to section 1917(b)(3) of title XIX. that includes, but is not limited to, the following.

THE DEPARTMENT OF COMMUNITY HEALTH SHALL IMPLEMENT THE PROVISIONS OF SECTION 1917(B)(2) OF TITLE XIX TO ENSURE THAT THE HEIRS OF MEDICAL ASSISTANCE RECIPIENTS SUBJECT TO THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM WILL NOT BE UNREASONABLY HARMED BY THE PROVISIONS OF THIS PROGRAM.

~~(i) An exemption for the portion of the value of the medical assistance recipient's homestead that is equal to or less than 50% of the average price of a home in the county in which the medicaid recipient's homestead is located as of the date of the medical assistance recipient's death.~~

~~(ii) An exemption for the portion of an estate that is the primary income producing asset of survivors, including, but not limited to, a family farm or business.~~

~~(iii) A rebuttable presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery.~~

~~(f) The circumstances under which the department of community health may review requests for exemptions and provide exemptions from the Michigan medicaid estate recovery program for cases that do not meet the definition of hardship developed by the department~~

1 ~~of community health.~~

2 ~~—— (g) Implementing the provisions of section 1396p(b)(3) of~~
3 ~~title XIX to ensure that the heirs of persons subject to the~~
4 ~~Michigan medicaid estate recovery program will not be unreasonably~~
5 ~~harmed by the provisions of this program.~~

6 (4) The department of community health shall not seek medicaid
7 estate recovery if the costs of **THAT** recovery exceed the amount of
8 recovery available or if ~~the~~-**ESTATE** recovery is not in the best
9 economic interest of the state.

10 (5) **AN ITEMIZED LIST OF MEDICAID PAYMENTS PROVIDED BY THE**
11 **DEPARTMENT OF COMMUNITY HEALTH IS PRIMA FACIE EVIDENCE IN**
12 **SUBSTANTIATING A CLAIM UNDER THE MICHIGAN MEDICAID ESTATE RECOVERY**
13 **PROGRAM.**

14 ~~—— (5) The department of community health shall not implement a~~
15 ~~Michigan medicaid estate recovery program until approval by the~~
16 ~~federal government is obtained.~~

17 ~~—— (6) The department of community health shall not recover~~
18 ~~assets from the home of a medical assistance recipient if 1 or more~~
19 ~~of the following individuals are lawfully residing in that home.~~

20 ~~—— (a) The medical assistance recipient's spouse.~~

21 ~~—— (b) The medical assistance recipient's child who is under the~~
22 ~~age of 21 years, or is blind or permanently and totally disabled as~~
23 ~~defined in section 1614 of the social security act, 42 USC 1382c.~~

24 ~~—— (c) The medical assistance recipient's caretaker relative who~~
25 ~~was residing in the medical assistance recipient's home for a~~
26 ~~period of at least 2 years immediately before the date of the~~
27 ~~medical assistance recipient's admission to a medical institution~~

~~1 and who establishes that he or she provided care that permitted the
2 medical assistance recipient to reside at home rather than in an
3 institution. As used in this subdivision, "caretaker relative"
4 means any relation by blood, marriage, or adoption who is within
5 the fifth degree of kinship to the recipient.~~

~~6 ——— (d) The medical assistance recipient's sibling who has an
7 equity interest in the medical assistance recipient's home and who
8 was residing in the medical assistance recipient's home for a
9 period of at least 1 year immediately before the date of the
10 individual's admission to a medical institution.~~

~~11 ——— (7) The department of community health shall provide written
12 information to individuals seeking medicaid eligibility for long-
13 term care services describing the provisions of the Michigan
14 medicaid estate recovery program, including, but not limited to, a
15 statement that some or all of their estate may be recovered.~~

~~16 ——— (8) The department of community health shall not charge
17 interest on the balance of any Michigan medicaid estate recovery
18 payments.~~

~~19 ——— (9) The department of community health shall not place or
20 record a lien on qualifying property under the tax equity and
21 fiscal responsibility act of 1982, Public Law 97-424 (TEFRA).~~

22 Sec. 112h. For the purposes of sections 112g to ~~112j~~**112K**:

23 (a) "Estate" means ~~all property and other assets included~~
24 ~~within an individual's estate that is subject to probate~~
25 ~~administration under article III of the estates and protected~~
26 ~~individuals code, 1998 PA 386, MCL 700.3101 to 700.3988, except~~
27 ~~assets otherwise subject to claims under section 3805(3) of the~~

~~estates and protected individuals code, 1998 PA 386, MCL 700.3805,~~
~~are not part of the estate. ALL REAL AND PERSONAL PROPERTY AND OTHER~~
~~ASSETS IN WHICH THE MEDICAL ASSISTANCE RECIPIENT HAD ANY LEGAL~~
~~TITLE OR INTEREST AT THE TIME OF DEATH TO THE EXTENT OF THAT~~
~~INTEREST, INCLUDING, BUT NOT LIMITED TO, ASSETS CONVEYED TO A~~
~~DECEASED MEDICAL ASSISTANCE RECIPIENT'S SURVIVOR, HEIR, OR ASSIGN~~
~~THROUGH JOINT TENANCY, TENANCY IN COMMON, SURVIVORSHIP, LIFE~~
~~ESTATE, LIVING TRUST, OR OTHER ARRANGEMENT.~~

(B) "MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM" MEANS THE
 ESTATE RECOVERY PROGRAM ESTABLISHED UNDER SECTION 112G.

(C) ~~(b) "Property" means that term~~ "PERSONAL REPRESENTATIVE"
 AND "PROPERTY" MEAN THOSE TERMS as defined in section 1106 of the
 estates and protected individuals code, 1998 PA 386, MCL 700.1106.

Sec. 112i. Revenue collected through Michigan medicaid estate
 recovery **PROGRAM** activities shall be used to fund the activities of
 the Michigan medicaid estate recovery program. Any remaining
 balances shall be treated as an expenditure credit ~~for long-term~~
~~care support and services~~ in the medical services appropriation
 unit of the annual department of community health appropriation.

Sec. 112j. ~~(1)~~ The department of community health may
 promulgate rules for the Michigan medicaid estate recovery program
 according to the administrative procedures act of 1969, 1969 PA
 306, MCL 24.201 to 24.328.

~~(2) Not later than 1 year after implementation of the Michigan~~
~~medicaid estate recovery program and each year after that, the~~
~~department of community health shall submit a report to the senate~~
~~and house appropriations subcommittees with jurisdiction over~~

~~1 department of community health matters and the senate and house
2 fiscal agencies regarding the cost to administer the Michigan
3 medicaid estate recovery program and the amounts recovered under
4 the Michigan medicaid estate recovery program.~~

~~5 Sec. 112k. The Michigan medicaid estate recovery program shall
6 only apply to medical assistance recipients who began receiving
7 medicaid long term care services after the effective date of the
8 amendatory act that added this section.~~

9 (1) NOT LATER THAN 30 DAYS AFTER A PERSONAL REPRESENTATIVE IS
10 APPOINTED TO AN ESTATE BY A COURT UNDER THE ESTATES AND PROTECTED
11 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8206, THE
12 PERSONAL REPRESENTATIVE SHALL PROVIDE BY ORDINARY MAIL A PROPERLY
13 COMPLETED MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM REPORTING FORM
14 PRESCRIBED IN SUBSECTION (2) TO THE DEPARTMENT OF COMMUNITY HEALTH.

15 (2) THE DEPARTMENT OF COMMUNITY HEALTH'S THIRD PARTY LIABILITY
16 DIRECTOR SHALL PRESCRIBE A MICHIGAN MEDICAID ESTATE RECOVERY
17 PROGRAM REPORTING FORM. THE FORM SHALL REQUIRE THE PERSONAL
18 REPRESENTATIVE OF THE DECEDENT'S ESTATE TO PROVIDE ALL OF THE
19 FOLLOWING INFORMATION:

20 (A) THE PERSONAL REPRESENTATIVE'S NAME AND CONTACT
21 INFORMATION.

22 (B) A LIST OF ALL THE DECEDENT'S REAL AND PERSONAL PROPERTY
23 AND OTHER ASSETS THAT MAY BE PART OF THE DECEDENT'S ESTATE.

24 (C) THE BIRTH DATE AND SOCIAL SECURITY NUMBER OF THE DECEDENT.

25 (D) THE BIRTH DATE AND SOCIAL SECURITY NUMBER OF THE
26 DECEDENT'S SPOUSE, IF THERE IS A SPOUSE, AND WHETHER THE SPOUSE IS
27 ALIVE AS OF THE DATE THE PERSONAL REPRESENTATIVE SIGNED THE

1 REPORTING FORM REQUIRED UNDER THIS SECTION.

2 (E) WHETHER THE DECEDENT RECEIVED A HARDSHIP WAIVER FOR THE
3 DEBT OF ANOTHER MEDICAL ASSISTANCE RECIPIENT, AND IF SO, THE NAME,
4 SOCIAL SECURITY NUMBER, AND BIRTH DATE OF THE OTHER MEDICAL
5 ASSISTANCE RECIPIENT.