

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1363 (Chairman, Health and Government Operations Committee)  
 (By Request – Departmental – Health and Mental Hygiene)  
 Health and Government Operations

**Maryland Medical Assistance Program - Estate Recoveries**

This departmental bill permits the Department of Health and Mental Hygiene (DHMH) to make a claim against the estate of the surviving spouse of a deceased Medicaid recipient for the amount of Medicaid payments made on behalf of the recipient, unless the surviving spouse is survived by a child who is blind, permanently and totally disabled, or younger than 21.

The bill takes effect July 1, 2004.

**Fiscal Summary**

**State Effect:** DHMH revenues could increase by at least \$76,300 in FY 2006. Future year estimates reflect recoveries from additional estates. No effect on expenditures.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	\$0	\$38,200	\$111,700	\$188,000	\$376,100
FF Revenue	0	38,200	111,700	188,000	376,100
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$0	\$76,400	\$223,400	\$376,000	\$752,200

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** DHMH has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

## Analysis

**Bill Summary:** The surviving spouse's assets are restricted to those passed to the surviving spouse from the deceased Medicaid recipient or by inter vivos gift from the deceased Medicaid recipient. DHMH's claim against the surviving spouse's estate may not be filed later than five years from the date of the Medicaid recipient's death.

The bill changes one of the time periods in which DHMH may file a claim against the estate of a deceased Medicaid recipient from within six months of the first appointment of a personal representative to within six months of the *publication of notice* of the first appointment.

**Current Law:** If an individual dies with assets valued at \$30,000 or less, a small estate is opened. If the small estate has no assets, there is no publication requirement to give notice of the appointment of a personal representative. If assets over \$30,000 later become available to the estate, a regular estate is opened and a personal representative is appointed for the regular estate. This appointment requires publication of notice.

A claim filed by DHMH against the estate of a deceased Medicaid recipient is forever barred against the estate, the personal representative, and the heirs and legatees, unless the claim is presented within the earlier of: (1) six months after the first appointment of a personal representative; or (2) two months after the personal representative mails to DHMH a copy of a notice notifying DHMH that the claim will be barred unless DHMH presents it within two months from receipt of the notice.

An inter vivos gift is made when a donor specifies that the gift take effect while the donor is still living, as contrasted with testamentary gift which takes effect on the death of the donor.

**Background:** In circumstances where a Medicaid recipient dies without any assets, there is no publication requirement to give notice of the appointment of a personal representative to handle the estate. In 2002, there were four cases in which a Medicaid recipient died without assets; however, in each of these cases suit had been filed to recover for sustained injuries. DHMH was not able to file a claim against these estates once the estates received settlements from litigation, because DHMH's claim had been barred by the statute of limitations.

**State Fiscal Effect:** DHMH revenues could increase by at least \$76,300 (50% general funds, 50% federal funds) beginning in fiscal 2006 from claims made against surviving spouses' estates. This estimate assumes DHMH would make claims against 14 estates in fiscal 2006, with an average recovery of \$5,450 per estate. Future year estimates reflect

recoveries against 41 estates in fiscal 2007, 69 estates in fiscal 2008, and 138 estates in fiscal 2009.

In addition, DHMH could recover additional funds from estates now not required to publish notice of the appointment of a personal representative, beginning in fiscal 2006. There are insufficient data to estimate potential revenues from this provision.

Federal fund revenues recovered from estates would be remitted to the federal government.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene (Medicaid),  
Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2004  
mam/jr

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