
By: Chairman, Environmental Matters Committee (Departmental - Health and Mental Hygiene)

Introduced and read first time: January 17, 1996

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 1996

CHAPTER _____

1 AN ACT concerning

2 **Maryland Medical Assistance Program - Recovery of Payments**

3 FOR the purpose of prohibiting the Department of Health and Mental Hygiene from
4 filing a claim against the estate of a deceased Maryland Medical Assistance
5 Program (Program) recipient, ~~except when~~ unless the claim is presented within a
6 certain time; requiring attorneys representing certain Program recipients to notify
7 the Department before the occurrence of certain events ~~related to the Department's~~
8 ~~right of subrogation and, under certain circumstances, to allow a certain time~~ under
9 certain circumstances; authorizing the Department to recover certain Program
10 payments from the estate of the surviving spouse of a deceased Program recipient
11 under certain circumstances; restricting certain Program claims to certain assets;
12 requiring certain ~~institutions~~ persons to pay the Program certain funds of certain
13 deceased recipients under certain circumstances; requiring certain ~~institutions~~
14 persons to provide certain notice to the Program under certain circumstances;
15 requiring the Program to pay certain funeral expenses under certain circumstances;
16 specifying certain terms and conditions of discharge and release; prohibiting certain
17 personal representatives from withdrawing certain funds unless under certain
18 circumstances; requiring the Program to transfer certain funds under certain
19 circumstances; making certain technical corrections; and generally relating to the
20 recovery of payments by the Maryland Medical Assistance Program.

21 BY repealing and reenacting, with amendments,
22 Article - Estates and Trusts
23 Section 8-103
24 Annotated Code of Maryland
25 (1991 Replacement Volume and 1995 Supplement)

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1 BY repealing and reenacting, with amendments,
2 Article - Health - General
3 Section 15-120, 15-121, 15-121.1, and 15-121.2
4 Annotated Code of Maryland
5 (1994 Replacement Volume and 1995 Supplement)

6 BY adding to
7 Article - Health - General
8 Section 15-121.4
9 Annotated Code of Maryland
10 (1994 Replacement Volume and 1995 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Estates and Trusts**

14 8-103.

15 (a) Except as otherwise expressly provided by statute with respect to claims of the
16 United States and the State, all claims against an estate of a decedent, whether due or to
17 become due, absolute or contingent, liquidated or unliquidated, founded on contract,
18 tort, or other legal basis, are forever barred against the estate, the personal
19 representative, and the heirs and legatees, unless presented within the earlier of the
20 following dates:

21 (1) 6 months after the date of the decedent's death; or

22 (2) Two months after the personal representative mails or otherwise delivers
23 to the creditor a copy of a notice in the form required by § 7-103 of this article or other
24 written notice, notifying the creditor that his claim will be barred unless he presents the
25 claim within 2 months from the mailing or other delivery of the notice.

26 (b) A claim for slander against an estate of a decedent which arose before the
27 death of the decedent, is barred even if an action was commenced against and service of
28 process was effected on the decedent before his death.

29 (c) A claim against the estate based on the conduct of or a contract with a
30 personal representative is barred unless an action is commenced against the estate within
31 six months of the date the claim arose.

32 (d) Nothing in this section shall affect or prevent an action or proceeding to
33 enforce a mortgage, pledge, judgment or other lien, or security interest upon property of
34 the estate.

35 (e) If the decedent had been duly served with process before his death, nothing in
36 this section shall affect an action for injuries to the person and/or damage to property
37 which was commenced against the decedent.

38 (F) A CLAIM FILED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
39 AGAINST THE ESTATE OF A DECEASED MARYLAND MEDICAL ASSISTANCE

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1 PROGRAM RECIPIENT, AS AUTHORIZED UNDER § 15-121(A) OF THE HEALTH -
2 GENERAL ARTICLE, IS FOREVER BARRED AGAINST THE ESTATE, THE PERSONAL
3 REPRESENTATIVE, AND THE HEIRS AND LEGATEES, UNLESS THE CLAIM IS
4 PRESENTED WITHIN THE EARLIER OF THE FOLLOWING DATES:

5 (1) 6 MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL
6 REPRESENTATIVE; OR

7 (2) 2 MONTHS AFTER THE PERSONAL REPRESENTATIVE MAILS OR
8 OTHERWISE DELIVERS TO THE DEPARTMENT'S DIVISION OF MEDICAL ASSISTANCE
9 RECOVERIES A COPY OF A NOTICE IN THE FORM REQUIRED UNDER § 7-103 OF THIS
10 ARTICLE OR OTHER WRITTEN NOTICE, NOTIFYING THE DEPARTMENT THAT THE
11 CLAIM SHALL BE BARRED UNLESS THE DEPARTMENT PRESENTS ITS CLAIM WITHIN 2
12 MONTHS FROM THE MAILING OR OTHER DELIVERY OF THE NOTICE.

13 **Article - Health - General**

14 15-120.

15 (a) If a Program recipient has a cause of action against a person, the Department
16 shall be subrogated to that cause of action to the extent of any payments made by the
17 Department on behalf of the Program recipient that result from the occurrence that gave
18 rise to the cause of action.

19 (b) (1) AN ATTORNEY REPRESENTING A PROGRAM RECIPIENT IN A CAUSE
20 OF ACTION TO WHICH THE DEPARTMENT HAS A RIGHT OF SUBROGATION SHALL
21 NOTIFY THE DEPARTMENT PRIOR TO FILING A CLAIM, COMMENCING AN ACTION,
22 OR NEGOTIATING A SETTLEMENT.

23 (2) THE ATTORNEY SHALL NOTIFY THE DEPARTMENT IN ADVANCE OF
24 THE RESOLUTION OF A CAUSE OF ACTION AND SHALL ALLOW REASONABLE TIME
25 FOR THE DEPARTMENT TO ESTABLISH ITS SUBROGATED INTEREST.

26 (C) (1) Any Program recipient or attorney, guardian, or personal representative
27 of a Program recipient who receives money in settlement of or under a judgment or award
28 in a cause of action in which the Department has a subrogation claim shall, after receiving
29 written notice of the subrogation claim, hold that money, for the benefit of the
30 Department, to the extent required for the subrogation claim, after deducting applicable
31 attorney fees and litigation costs.

32 (2) A person who, after written notice of a subrogation claim and possible
33 liability under this paragraph, disposes of the money, without the written approval of the
34 Department, is liable to the Department for any amount that, because of the disposition,
35 is not recoverable by the Department.

36 (3) The Department may compromise or settle and release its subrogation
37 claim if, in its judgment, collection of the claim will cause substantial hardship:

38 (i) To the Program recipient; or

39 (ii) In a wrongful death action, to the surviving dependents of a
40 deceased Program recipient.

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1 (4) (i) The Department is not liable for payment of or contribution to any
2 attorney fees or litigation costs of any Program recipient or attorney, guardian, or
3 personal representative of any Program recipient.

4 (ii) The deduction of applicable attorney fees and litigation costs
5 under [subsection (b)(1) of this section] PARAGRAPH (1) OF THIS SUBSECTION may not
6 be considered as payment for or contribution to those fees or costs by the Department.

7 15-121.

8 (a) (1) In accordance with applicable federal law and rules and regulations,
9 including those under Title XIX of the Social Security Act, the Department may make
10 claim against the estate of [a]:

11 (I) A deceased Program recipient for the amount of any medical
12 assistance payments under this title; OR

13 (II) THE SURVIVING SPOUSE OF A DECEASED PROGRAM
14 RECIPIENT FOR THE AMOUNT OF MEDICAL ASSISTANCE PAYMENTS MADE ON
15 BEHALF OF THE DECEASED PROGRAM RECIPIENT UNDER THIS TITLE, UNLESS THE
16 SURVIVING SPOUSE AT THE TIME OF THE SURVIVING SPOUSE'S DEATH IS SURVIVED
17 BY A CHILD WHO IS:

18 1. LESS THAN 21 YEARS OF AGE;

19 2. BLIND; OR

20 3. PERMANENTLY AND TOTALLY DISABLED.

21 (2) THE ASSETS OF THE ESTATE OF THE SURVIVING SPOUSE SUBJECT TO
22 THE DEPARTMENT'S CLAIM UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL
23 BE RESTRICTED TO THOSE ASSETS THAT PASSED TO THE SURVIVING SPOUSE FROM
24 THE DECEASED PROGRAM RECIPIENT UPON THE DEATH OF THE DECEASED
25 PROGRAM RECIPIENT BY:

26 (I) TESTAMENTARY DISPOSITION;

27 (II) DISTRIBUTION UNDER THE LAWS OF INTESTATE SUCCESSION;

28 (III) RIGHT OF SURVIVORSHIP FROM PROPERTY HELD IN TENANCY
29 BY THE ENTIRETY OR IN JOINT TENANCY;

30 (IV) A REMAINDER INTEREST FROM A LIFE TENANCY; OR

31 (V) RECEIPT BY INTER VIVOS GIFT FROM THE DECEASED
32 PROGRAM RECIPIENT.

33 (b) The claim shall be waived by the Department if, in its judgment, enforcement
34 of the claim will cause substantial hardship to the surviving dependents of the deceased.

35 15-121.1.

36 (a) If a Program recipient has a claim for any medical, hospital or disability
37 benefits under Article 48A, § 539 of the Code, the Department shall be subrogated to

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1 that claim to the extent of any payments made by the Department on behalf of the
2 Program recipient that results from the occurrence that gave rise to the claim less:

3 (1) Applicable attorney's fees; and

4 (2) Any rights for loss of income.

5 (b) AN ATTORNEY REPRESENTING A PROGRAM RECIPIENT UNDER THIS
6 SUBTITLE ON A CLAIM TO WHICH THE DEPARTMENT HAS A RIGHT OF
7 SUBROGATION SHALL NOTIFY THE DEPARTMENT PRIOR TO FILING THE CLAIM.

8 (C) (1) Any Program recipient or attorney, guardian, or personal representative
9 of a Program recipient who receives money for a claim to which the Department has a
10 subrogation claim shall, after receiving written notice of the subrogation claim, hold that
11 money, for the benefit of the Department, to the extent required for the subrogation
12 claim, after deducting applicable attorney's fees.

13 (2) A person who, after written notice of a subrogation claim from the
14 Department and possible liability under this paragraph, disposes of the money, without
15 the written approval of the Department, is liable to the Department for any amount that,
16 because of the disposition, is not recoverable by the Department.

17 (3) The Department may compromise or settle and release its subrogation
18 claim if, in its judgment, collection of the claim will cause substantial hardship to the
19 Program recipient or in a wrongful death action, the surviving dependent of a deceased
20 Program recipient.

21 15-121.2.

22 (a) If a Program recipient has a claim for any medical, hospital, or disability
23 benefits under Article 48A, § 541 of the Code, the Department shall be subrogated to
24 that claim to the extent of any payments made by the Department on behalf of the
25 Program recipient that results from the occurrence that gave rise to the claim, less
26 applicable attorney's fees.

27 (b) AN ATTORNEY REPRESENTING A PROGRAM RECIPIENT UNDER THIS
28 SUBTITLE ON A CLAIM TO WHICH THE DEPARTMENT HAS A RIGHT OF
29 SUBROGATION SHALL NOTIFY THE DEPARTMENT PRIOR TO FILING THE CLAIM.

30 (C) (1) Any Program recipient, attorney, guardian, or personal representative of
31 a Program recipient who receives money for a claim to which the Department has a
32 subrogation claim shall, after receiving written notice of the subrogation claim, hold that
33 money, for the benefit of the Department, to the extent required for the subrogation
34 claim, after deducting applicable attorney's fees.

35 (2) A person who, after written notice of a subrogation claim from the
36 Department and possible liability under this paragraph, disposes of the money, without
37 the written approval of the Department, is liable to the Department for any amount that,
38 because of the disposition, is not recoverable by the Department.

39 (3) The Department may compromise or settle and release its subrogation
40 claim if, in its judgment, collection of the claim will cause substantial hardship to the

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1 Program recipient or in a wrongful death action, the surviving dependent of a deceased
2 Program recipient.

3 15-121.4.

4 (A) A BANK, SAVINGS ASSOCIATION, OR OTHER FINANCIAL INSTITUTION, OR
5 A HEALTH CARE INSTITUTION AS DEFINED UNDER § 19-301 OF THIS ARTICLE, THAT
6 MAINTAINS A CHECKING ACCOUNT, SAVINGS ACCOUNT, OR OTHER LIQUID
7 FINANCIAL ACCOUNT FOR A ~~MEDICAL ASSISTANCE PROGRAM~~ RECIPIENT SHALL
8 PAY THE PROGRAM THE MONEYS HELD IN THE ACCOUNT OF THAT RECIPIENT TO
9 WHICH THE PROGRAM HAS A CLAIM UPON RECEIPT OF AN AFFIDAVIT FROM A
10 PROGRAM REPRESENTATIVE THAT MEETS THE CONDITIONS OF SUBSECTION (B) OF
11 THIS SECTION.

12 (B) THE AFFIDAVIT FROM THE PROGRAM SHALL STATE THAT THE ACCOUNT
13 HOLDER OR DEPOSITOR:

14 (1) HAS DIED, AND PROVIDE THE DATE OF DEATH; AND

15 (2) WAS A ~~MEDICAL ASSISTANCE PROGRAM~~ RECIPIENT.

16 (C) THE PROGRAM MAY NOT SUBMIT AN AFFIDAVIT TO WITHDRAW FUNDS
17 UNDER SUBSECTION (A) OF THIS SECTION IF THE PROGRAM HAS DETERMINED THAT
18 THE DECEASED ~~PROGRAM~~ RECIPIENT:

19 (1) WAS NOT AT LEAST 55 YEARS OF AGE WHEN RECEIVING ANY
20 MEDICAL ASSISTANCE BENEFITS; OR

21 (2) HAD AT THE TIME OF DEATH:

22 (I) A SURVIVING SPOUSE;

23 (II) A SURVIVING CHILD LESS THAN 21 YEARS OF AGE; OR

24 (III) A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY AND
25 TOTALLY DISABLED.

26 (D) A HOSPITAL OR A NURSING FACILITY SHALL PROVIDE TIMELY
27 NOTIFICATION TO THE PROGRAM OF THE DEATH OF ANY RESIDENT WHO IS A
28 ~~MEDICAL ASSISTANCE PROGRAM~~ RECIPIENT AND AT LEAST 55 YEARS OF AGE.

29 (E) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,
30 IN ANY CASE IN WHICH THE PROGRAM HAS RECEIVED FUNDS UNDER SUBSECTION
31 (A) OF THIS SECTION, THE PROGRAM SHALL PAY REASONABLE FUNERAL EXPENSES
32 FOR THE DECEASED RECIPIENT FROM THESE FUNDS IF:

33 (I) A TIMELY APPLICATION FOR PAYMENT OF FUNERAL
34 EXPENSES HAS BEEN FILED WITH THE PROGRAM THAT CERTIFIES THAT:

35 1. EVERY PERSON LEGALLY RESPONSIBLE FOR THE
36 SUPPORT OF THE DECEDENT IS UNABLE TO PAY THE EXPENSES; AND

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1 2. THE DEGREE TO WHICH OTHER RESOURCES, INCLUDING
2 DEATH BENEFITS AVAILABLE TO THE ESTATE OF THE DECEDENT, ARE
3 INSUFFICIENT TO PAY THE FUNERAL EXPENSES; AND

4 (II) THE PROGRAM HAS DETERMINED THAT THE CERTIFICATION
5 IS TRUE.

6 (2) (I) THE PROGRAM'S PAYMENT MAY NOT EXCEED \$1,500 FOR
7 FUNERAL EXPENSES.

8 (II) SUBJECT TO THE PROHIBITION UNDER SUBPARAGRAPH (I) OF
9 THIS PARAGRAPH, THE PROGRAM SHALL PAY THE DIFFERENCE BETWEEN \$1,500
10 AND THE FUNDS OTHERWISE AVAILABLE FOR FUNERAL EXPENSES.

11 (F) A PAYMENT UNDER SUBSECTION (A) OF THIS SECTION IN GOOD FAITH TO
12 THE PROGRAM SHALL DISCHARGE AND RELEASE THE TRANSFEROR FROM ANY
13 LIABILITY OR RESPONSIBILITY FOR THE TRANSFER IN THE SAME MANNER AND
14 WITH THE SAME EFFECT AS IF THE PROPERTY HAD BEEN TRANSFERRED,
15 DELIVERED, OR PAID TO A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
16 DECEDENT.

17 (G) A PERSONAL REPRESENTATIVE FOR THE ESTATE OF A PROGRAM
18 RECIPIENT MAY NOT WITHDRAW FUNDS FROM A CHECKING, SAVINGS, OR OTHER
19 LIQUID FINANCIAL ACCOUNT UNLESS:

20 (1) THE DECEDENT:

21 (I) WAS LESS THAN 55 YEARS OF AGE WHEN RECEIVING ALL
22 MEDICAL ASSISTANCE BENEFITS; OR

23 (II) HAD AT THE TIME OF DEATH:

24 1. A SURVIVING SPOUSE;

25 2. A SURVIVING CHILD LESS THAN 21 YEARS OF AGE; OR

26 3. A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY
27 AND TOTALLY DISABLED; OR

28 (2) (I) THE PERSONAL REPRESENTATIVE NOTIFIES THE PROGRAM 10
29 DAYS IN ADVANCE OF THE FUNDS THAT THE REPRESENTATIVE SEEKS TO
30 WITHDRAW; AND

31 (II) THE PROGRAM APPROVES THE WITHDRAWAL.

32 (H) THE PROGRAM SHALL TRANSFER TO THE ESTATE OF A DECEASED
33 RECIPIENT:

34 (1) ANY FUNDS EXCEEDING THE MEDICAL ASSISTANCE EXPENDITURES
35 TO BE REIMBURSED TO THE PROGRAM AND FUNERAL EXPENSES AS PROVIDED
36 UNDER SUBSECTION (E) OF THIS SECTION WHEN A PERSONAL REPRESENTATIVE
37 APPOINTED FOR THE ESTATE OF THAT PERSON REQUESTS THOSE FUNDS; OR

1 (2) ANY AMOUNTS WITHDRAWN UNDER SUBSECTION (A) OF THIS
2 SECTION, UPON RECEIPT OF AN AFFIDAVIT VERIFIED BY A PROGRAM
3 REPRESENTATIVE THAT THE DECEASED RECIPIENT HAD AT THE TIME OF DEATH A
4 SURVIVING SPOUSE, A SURVIVING CHILD LESS THAN 21 YEARS OF AGE, OR A
5 SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY AND TOTALLY DISABLED.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 1996.