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HB 163/96 - ENV

1997 Regular Session
7r0619

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

Introduced and read first time: January 27, 1997

Rule 32(e) suspended

Assigned to: Finance

A BILL ENTITLED

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 unless the claim is presented within a certain time;
6 requiring attorneys representing certain Program recipients to notify the
7 Department before the occurrence of certain events under certain circumstances;
8 authorizing the Department to recover certain Program payments from the estate of
9 the surviving spouse of a deceased Program recipient under certain circumstances;
10 restricting certain Program claims to certain assets; requiring certain persons to pay
11 the Program certain funds of certain deceased recipients under certain
12 circumstances; requiring certain persons to provide certain notice to the Program
13 under certain circumstances; requiring the Program to pay certain funeral expenses
14 under certain circumstances; specifying certain terms and conditions of discharge
15 and release; prohibiting certain personal representatives from withdrawing certain
16 funds unless under certain circumstances; requiring the Program to transfer certain
17 funds under certain circumstances; making certain technical corrections; and
18 generally relating to the recovery of payments by the Maryland Medical Assistance
19 Program.

20 BY repealing and reenacting, with amendments,
21 Article - Estates and Trusts
22 Section 8-103
23 Annotated Code of Maryland
24 (1991 Replacement Volume and 1996 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article - Health - General
27 Section 15-120, 15-121, 15-121.1, and 15-121.2
28 Annotated Code of Maryland
29 (1994 Replacement Volume and 1996 Supplement)

30 BY adding to
31 Article - Health - General

2

1 Section 15-121.4
2 Annotated Code of Maryland
3 (1994 Replacement Volume and 1996 Supplement)

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

6 **Article - Estates and Trusts**

7 8-103.

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

14 (1) 6 months after the date of the decedent's death; or

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

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

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

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

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

31 (F) A CLAIM FILED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
32 AGAINST THE ESTATE OF A DECEASED MARYLAND MEDICAL ASSISTANCE
33 PROGRAM RECIPIENT, AS AUTHORIZED UNDER § 15-121(A) OF THE HEALTH -
34 GENERAL ARTICLE, IS FOREVER BARRED AGAINST THE ESTATE, THE PERSONAL
35 REPRESENTATIVE, AND THE HEIRS AND LEGATEES, UNLESS THE CLAIM IS
36 PRESENTED WITHIN THE EARLIER OF THE FOLLOWING DATES:

37 (1) 6 MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL
38 REPRESENTATIVE; OR

39 (2) 2 MONTHS AFTER THE PERSONAL REPRESENTATIVE MAILES OR
40 OTHERWISE DELIVERS TO THE DEPARTMENT'S DIVISION OF MEDICAL ASSISTANCE

3
1 RECOVERIES A COPY OF A NOTICE IN THE FORM REQUIRED UNDER § 7-103 OF THIS
2 ARTICLE OR OTHER WRITTEN NOTICE, NOTIFYING THE DEPARTMENT THAT THE
3 CLAIM SHALL BE BARRED UNLESS THE DEPARTMENT PRESENTS ITS CLAIM WITHIN 2
4 MONTHS FROM THE RECEIPT OF THE NOTICE.

5 **Article - Health - General**

6 15-120.

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

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

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

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

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

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

30 (i) To the Program recipient; or

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

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

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

4

1 15-121.

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

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

7 (II) THE SURVIVING SPOUSE OF A DECEASED PROGRAM
8 RECIPIENT FOR THE AMOUNT OF MEDICAL ASSISTANCE PAYMENTS MADE ON
9 BEHALF OF THE DECEASED PROGRAM RECIPIENT UNDER THIS TITLE, UNLESS THE
10 SURVIVING SPOUSE AT THE TIME OF THE SURVIVING SPOUSE'S DEATH IS SURVIVED
11 BY A CHILD WHO IS:

12 1. LESS THAN 21 YEARS OF AGE;

13 2. BLIND; OR

14 3. PERMANENTLY AND TOTALLY DISABLED.

15 (2) THE ASSETS OF THE ESTATE OF THE SURVIVING SPOUSE SUBJECT TO
16 THE DEPARTMENT'S CLAIM UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL
17 BE RESTRICTED TO:

18 (I) THOSE ASSETS THAT PASSED TO THE SURVIVING SPOUSE
19 FROM THE DECEASED PROGRAM RECIPIENT UPON THE DEATH OF THE DECEASED
20 PROGRAM RECIPIENT BY:

21 1. TESTAMENTARY DISPOSITION;

22 2. DISTRIBUTION UNDER THE LAWS OF INTESTATE
23 SUCCESSION;

24 3. RIGHT OF SURVIVORSHIP FROM PROPERTY HELD IN
25 TENANCY BY THE ENTIRETY OR IN JOINT TENANCY; OR

26 4. A REMAINDER INTEREST FROM A LIFE TENANCY; OR

27 (II) RECEIPT BY INTER VIVOS GIFT FROM THE DECEASED
28 PROGRAM RECIPIENT.

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

31 15-121.1.

32 (a) If a Program recipient has a claim for any medical, hospital or disability
33 benefits under Article 48A, § 539 of the Code, the Department shall be subrogated to
34 that claim to the extent of any payments made by the Department on behalf of the
35 Program recipient that results from the occurrence that gave rise to the claim less:

36 (1) Applicable attorney's fees; and

37 (2) Any rights for loss of income.

5

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

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

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

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

17 15-121.2.

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

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

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

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

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

39 15-121.4.

40 (A) A BANK, SAVINGS ASSOCIATION, OR OTHER FINANCIAL INSTITUTION, OR
41 A HEALTH CARE INSTITUTION AS DEFINED UNDER § 19-301 OF THIS ARTICLE, THAT
42 MAINTAINS A CHECKING ACCOUNT, SAVINGS ACCOUNT, OR OTHER LIQUID

6

1 FINANCIAL ACCOUNT FOR A PROGRAM RECIPIENT SHALL PAY THE PROGRAM THE
2 MONEYS HELD IN THE ACCOUNT OF THAT RECIPIENT TO WHICH THE PROGRAM HAS
3 A CLAIM UPON RECEIPT OF AN AFFIDAVIT FROM A PROGRAM REPRESENTATIVE
4 THAT MEETS THE CONDITIONS OF SUBSECTION (B) OF THIS SECTION.

5 (B) THE AFFIDAVIT FROM THE PROGRAM REPRESENTATIVE SHALL STATE
6 THAT THE ACCOUNT HOLDER OR DEPOSITOR:

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

8 (2) WAS A PROGRAM RECIPIENT.

9 (C) THE PROGRAM REPRESENTATIVE MAY NOT SUBMIT AN AFFIDAVIT TO
10 WITHDRAW FUNDS UNDER SUBSECTION (A) OF THIS SECTION IF THE PROGRAM
11 REPRESENTATIVE HAS DETERMINED THAT THE DECEASED PROGRAM RECIPIENT:

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

14 (2) HAD AT THE TIME OF DEATH:

15 (I) A SURVIVING SPOUSE;

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

17 (III) A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY AND
18 TOTALLY DISABLED.

19 (D) A HOSPITAL OR A NURSING FACILITY SHALL PROVIDE TIMELY
20 NOTIFICATION TO THE PROGRAM REPRESENTATIVE OF THE DEATH OF ANY
21 RESIDENT WHO IS A PROGRAM RECIPIENT AND AT LEAST 55 YEARS OF AGE.

22 (E) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,
23 IN ANY CASE IN WHICH THE PROGRAM REPRESENTATIVE HAS RECEIVED FUNDS
24 UNDER SUBSECTION (A) OF THIS SECTION, THE PROGRAM REPRESENTATIVE SHALL
25 PAY REASONABLE FUNERAL EXPENSES FOR THE DECEASED RECIPIENT FROM
26 THESE FUNDS IF:

27 (I) A TIMELY APPLICATION FOR PAYMENT OF FUNERAL
28 EXPENSES HAS BEEN FILED WITH THE PROGRAM REPRESENTATIVE THAT CERTIFIES
29 THAT:

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

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

35 (II) THE PROGRAM REPRESENTATIVE HAS DETERMINED THAT
36 THE CERTIFICATION IS TRUE.

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

7

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

4 (F) A PAYMENT UNDER SUBSECTION (A) OF THIS SECTION IN GOOD FAITH TO
5 THE PROGRAM SHALL DISCHARGE AND RELEASE THE TRANSFEROR FROM ANY
6 LIABILITY OR RESPONSIBILITY FOR THE TRANSFER IN THE SAME MANNER AND
7 WITH THE SAME EFFECT AS IF THE PROPERTY HAD BEEN TRANSFERRED,
8 DELIVERED, OR PAID TO A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
9 DECEDENT.

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

13 (1) THE DECEDENT:

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

16 (II) HAD AT THE TIME OF DEATH:

17 1. A SURVIVING SPOUSE;

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

19 3. A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY
20 AND TOTALLY DISABLED; OR

21 (2) (I) THE PERSONAL REPRESENTATIVE NOTIFIES THE PROGRAM 10
22 DAYS IN ADVANCE OF THE DATE THAT THE REPRESENTATIVE SEEKS TO WITHDRAW
23 FUNDS; AND

24 (II) THE PROGRAM APPROVES THE WITHDRAWAL.

25 (H) THE PROGRAM SHALL TRANSFER TO THE ESTATE OF A DECEASED
26 RECIPIENT:

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

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

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1997.