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HB 163/96 - ENV

1997 Regular Session  
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**By: Chairman, Finance Committee (Departmental - Health and Mental Hygiene)**

Introduced and read first time: January 27, 1997

Rule 32(e) suspended

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 19, 1997

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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 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; providing for the construction of this Act;~~  
18 making certain technical corrections; and generally relating to the recovery of  
19 payments by the Maryland Medical Assistance 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,

2

1 Article - Health - General  
2 Section 15-120, ~~15-121~~, 15-121.1, and 15-121.2  
3 Annotated Code of Maryland  
4 (1994 Replacement Volume and 1996 Supplement)

5 ~~BY adding to~~  
6 ~~Article - Health - General~~  
7 ~~Section 15-121.4~~  
8 ~~Annotated Code of Maryland~~  
9 ~~(1994 Replacement Volume and 1996 Supplement)~~

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

12 **Article - Estates and Trusts**

13 8-103.

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

20 (1) 6 months after the date of the decedent's death; or

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

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

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

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

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

37 (F) A CLAIM FILED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
38 AGAINST THE ESTATE OF A DECEASED MARYLAND MEDICAL ASSISTANCE  
39 PROGRAM RECIPIENT, AS AUTHORIZED UNDER § 15-121(A) OF THE HEALTH -

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1 GENERAL ARTICLE, IS FOREVER BARRED AGAINST THE ESTATE, THE PERSONAL  
2 REPRESENTATIVE, AND THE HEIRS AND LEGATEES, UNLESS THE CLAIM IS  
3 PRESENTED WITHIN THE EARLIER OF THE FOLLOWING DATES:

4 (1) 6 MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL  
5 REPRESENTATIVE; OR

6 (2) 2 MONTHS AFTER THE PERSONAL REPRESENTATIVE MAILES OR  
7 OTHERWISE DELIVERS TO THE DEPARTMENT'S DIVISION OF MEDICAL ASSISTANCE  
8 RECOVERIES A COPY OF A NOTICE IN THE FORM REQUIRED UNDER § 7-103 OF THIS  
9 ARTICLE OR OTHER WRITTEN NOTICE, NOTIFYING THE DEPARTMENT THAT THE  
10 CLAIM SHALL BE BARRED UNLESS THE DEPARTMENT PRESENTS ITS CLAIM WITHIN 2  
11 MONTHS FROM THE RECEIPT OF THE NOTICE.

12 **Article - Health - General**

13 15-120.

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

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

22 (2) THE ATTORNEY SHALL NOTIFY THE DEPARTMENT IN ADVANCE OF  
23 THE RESOLUTION OF A CAUSE OF ACTION AND SHALL ALLOW ~~REASONABLE TIME~~  
24 ~~FOR THE DEPARTMENT~~ THE DEPARTMENT 3 BUSINESS DAYS FROM THE RECEIPT OF  
25 THE NOTICE TO ESTABLISH ITS SUBROGATED INTEREST.

26 (3) THIS SUBSECTION MAY NOT BE CONSTRUED TO CREATE A CAUSE OF  
27 ACTION FOR NOTIFYING OR FAILING TO NOTIFY THE DEPARTMENT.

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

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

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

40 (i) To the Program recipient; or

4

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

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

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

9 ~~15-121.~~

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

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

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

20 1. ~~LESS THAN 21 YEARS OF AGE;~~

21 2. ~~BLIND; OR~~

22 3. ~~PERMANENTLY AND TOTALLY DISABLED.~~

23 ~~(2) THE ASSETS OF THE ESTATE OF THE SURVIVING SPOUSE SUBJECT TO~~  
24 ~~THE DEPARTMENT'S CLAIM UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL~~  
25 ~~BE RESTRICTED TO:~~

26 ~~(I) THOSE ASSETS THAT PASSED TO THE SURVIVING SPOUSE~~  
27 ~~FROM THE DECEASED PROGRAM RECIPIENT UPON THE DEATH OF THE DECEASED~~  
28 ~~PROGRAM RECIPIENT BY:~~

29 1. ~~TESTAMENTARY DISPOSITION;~~

30 2. ~~DISTRIBUTION UNDER THE LAWS OF INTESTATE~~  
31 ~~SUCCESSION;~~

32 3. ~~RIGHT OF SURVIVORSHIP FROM PROPERTY HELD IN~~  
33 ~~TENANCY BY THE ENTIRETY OR IN JOINT TENANCY; OR~~

34 4. ~~A REMAINDER INTEREST FROM A LIFE TENANCY; OR~~

35 ~~(II) RECEIPT BY INTER VIVOS GIFT FROM THE DECEASED~~  
36 ~~PROGRAM RECIPIENT.~~

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

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1 15-121.1.

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

6 (1) Applicable attorney's fees; and

7 (2) Any rights for loss of income.

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

11 (2) THIS SUBSECTION MAY NOT BE CONSTRUED TO CREATE A CAUSE OF  
12 ACTION FOR NOTIFYING OR FAILING TO NOTIFY THE DEPARTMENT.

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

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

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

26 15-121.2.

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

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

35 (2) THIS SUBSECTION MAY NOT BE CONSTRUED TO CREATE A CAUSE OF  
36 ACTION FOR NOTIFYING OR FAILING TO NOTIFY THE DEPARTMENT.

37 (C) (1) Any Program recipient, attorney, guardian, or personal representative of  
38 a Program recipient who receives money for a claim to which the Department has a  
39 subrogation claim shall, after receiving written notice of the subrogation claim, hold that

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1 money, for the benefit of the Department, to the extent required for the subrogation  
2 claim, after deducting applicable attorney's fees.

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

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

11 ~~45-121.4.~~

12 ~~(A) A BANK, SAVINGS ASSOCIATION, OR OTHER FINANCIAL INSTITUTION, OR~~  
13 ~~A HEALTH CARE INSTITUTION AS DEFINED UNDER § 19-301 OF THIS ARTICLE, THAT~~  
14 ~~MAINTAINS A CHECKING ACCOUNT, SAVINGS ACCOUNT, OR OTHER LIQUID~~  
15 ~~FINANCIAL ACCOUNT FOR A PROGRAM RECIPIENT SHALL PAY THE PROGRAM THE~~  
16 ~~MONEYS HELD IN THE ACCOUNT OF THAT RECIPIENT TO WHICH THE PROGRAM HAS~~  
17 ~~A CLAIM UPON RECEIPT OF AN AFFIDAVIT FROM A PROGRAM REPRESENTATIVE~~  
18 ~~THAT MEETS THE CONDITIONS OF SUBSECTION (B) OF THIS SECTION.~~

19 ~~(B) THE AFFIDAVIT FROM THE PROGRAM REPRESENTATIVE SHALL STATE~~  
20 ~~THAT THE ACCOUNT HOLDER OR DEPOSITOR:~~

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

22 ~~(2) WAS A PROGRAM RECIPIENT.~~

23 ~~(C) THE PROGRAM REPRESENTATIVE MAY NOT SUBMIT AN AFFIDAVIT TO~~  
24 ~~WITHDRAW FUNDS UNDER SUBSECTION (A) OF THIS SECTION IF THE PROGRAM~~  
25 ~~REPRESENTATIVE HAS DETERMINED THAT THE DECEASED PROGRAM RECIPIENT:~~

26 ~~(1) WAS NOT AT LEAST 55 YEARS OF AGE WHEN RECEIVING ANY~~  
27 ~~MEDICAL ASSISTANCE BENEFITS; OR~~

28 ~~(2) HAD AT THE TIME OF DEATH:~~

29 ~~(I) A SURVIVING SPOUSE;~~

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

31 ~~(III) A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY AND~~  
32 ~~TOTALLY DISABLED.~~

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

36 ~~(E) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,~~  
37 ~~IN ANY CASE IN WHICH THE PROGRAM REPRESENTATIVE HAS RECEIVED FUNDS~~  
38 ~~UNDER SUBSECTION (A) OF THIS SECTION, THE PROGRAM REPRESENTATIVE SHALL~~

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1 ~~PAY REASONABLE FUNERAL EXPENSES FOR THE DECEASED RECIPIENT FROM~~  
2 ~~THESE FUNDS IF:~~

3 ~~(I) A TIMELY APPLICATION FOR PAYMENT OF FUNERAL~~  
4 ~~EXPENSES HAS BEEN FILED WITH THE PROGRAM REPRESENTATIVE THAT CERTIFIES~~  
5 ~~THAT:~~

6 ~~1. EVERY PERSON LEGALLY RESPONSIBLE FOR THE~~  
7 ~~SUPPORT OF THE DECEDENT IS UNABLE TO PAY THE EXPENSES; AND~~

8 ~~2. THE DEGREE TO WHICH OTHER RESOURCES, INCLUDING~~  
9 ~~DEATH BENEFITS AVAILABLE TO THE ESTATE OF THE DECEDENT, ARE~~  
10 ~~INSUFFICIENT TO PAY THE FUNERAL EXPENSES; AND~~

11 ~~(II) THE PROGRAM REPRESENTATIVE HAS DETERMINED THAT~~  
12 ~~THE CERTIFICATION IS TRUE.~~

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

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

18 ~~(F) A PAYMENT UNDER SUBSECTION (A) OF THIS SECTION IN GOOD FAITH TO~~  
19 ~~THE PROGRAM SHALL DISCHARGE AND RELEASE THE TRANSFEROR FROM ANY~~  
20 ~~LIABILITY OR RESPONSIBILITY FOR THE TRANSFER IN THE SAME MANNER AND~~  
21 ~~WITH THE SAME EFFECT AS IF THE PROPERTY HAD BEEN TRANSFERRED,~~  
22 ~~DELIVERED, OR PAID TO A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE~~  
23 ~~DECEDENT.~~

24 ~~(G) A PERSONAL REPRESENTATIVE FOR THE ESTATE OF A PROGRAM~~  
25 ~~RECIPIENT MAY NOT WITHDRAW FUNDS FROM A CHECKING, SAVINGS, OR OTHER~~  
26 ~~LIQUID FINANCIAL ACCOUNT UNLESS:~~

27 ~~(1) THE DECEDENT:~~

28 ~~(I) WAS LESS THAN 55 YEARS OF AGE WHEN RECEIVING ALL~~  
29 ~~MEDICAL ASSISTANCE BENEFITS; OR~~

30 ~~(II) HAD AT THE TIME OF DEATH:~~

31 ~~1. A SURVIVING SPOUSE;~~

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

33 ~~3. A SURVIVING CHILD WHO WAS BLIND OR PERMANENTLY~~  
34 ~~AND TOTALLY DISABLED; OR~~

35 ~~(2) (I) THE PERSONAL REPRESENTATIVE NOTIFIES THE PROGRAM 10~~  
36 ~~DAYS IN ADVANCE OF THE DATE THAT THE REPRESENTATIVE SEEKS TO WITHDRAW~~  
37 ~~FUNDS; AND~~

38 ~~(II) THE PROGRAM APPROVES THE WITHDRAWAL.~~

1           ~~(H) THE PROGRAM SHALL TRANSFER TO THE ESTATE OF A DECEASED~~  
2 ~~RECIPIENT:~~

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

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

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