



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

January 23, 2020

The Honorable William C. Smith, Jr., Chairman
Senate Judicial Proceedings Committee
2 East Miller Senate Office Bldg.
Annapolis, MD 21401-1991

Re: SB 150 – Estates and Trusts – Estate Recoveries – Presentation of Claims Against Medicaid Recipients – Letter of Concern

Dear Chairman Smith and Committee Members:

The Maryland Department of Health (Department) submits this letter of concern for SB 150 – Estates and Trusts – Estate Recoveries – Presentation of Claims Against Medicaid Recipients.

SB 150 adds language to the current statute requiring the Department to file a claim against the estate of a deceased Maryland Medical Assistance Program recipient within six (6) months after the first publication of notice of the first appointment of a personal representative. Under the current statute, the Department is able to file a claim within six (6) months of the third publication of notice. Therefore, SB 150 would shorten the time in which the Department is able to file an estate claim to recover Medicaid payments made on behalf of a deceased recipient.

Section 8-103(f) of the Estates and Trusts Article, Annotated Code of Maryland, is designed to give the Department's Medicaid program more time to file its claim than general creditors, as a means of protecting the public taxpayer. Allowing the Department more time to file is beneficial to the State and the taxpayer because it allows the Department to file claims and recover funds as appropriate. Additionally, this process is in line with the original intent of the statute. During the time allotted to file claims, the Department must (a) research local newspapers in the State, (b) investigate whether or not the deceased individual was a Medicaid recipient, (c) determine the amount the Department has spent on the deceased individual, and (d) determine whether any exemptions to the Department's ability to recover from the deceased individual exist. All of these activities can take a significant amount of time. Further limiting the timeframe in which a claim can be filed will be to the detriment of the Maryland and federal taxpayer, resulting in a possible revenue loss of \$480,000 per year. The total amount of Medicaid payments recovered from estates in calendar year 2019 was \$8.6 million, with an average claim of \$30,000.

The issue of timely filing of claims against estates has arisen in numerous court cases, where estate representatives have sought to prevent Medicaid's recovery due to an incorrect interpretation of the current statute, asserting that the first publication of notice starts the six (6) month time limit.

Specifically, the Department is currently engaged in ongoing litigation concerning this issue and strongly believes this bill has been proposed by members of the Estates and Trust section of the Maryland Bar Association in an attempt to undermine those active legal proceedings. The Department is set to deliver oral argument on February 12, 2020, in the Maryland Court of Special Appeals for a case regarding this exact issue. The Department appreciates the need for clarity in statute, but respectfully suggests that if it is necessary to specify which publication starts the clock, it should be the third, in order to preserve the original intent of the statute.

SB 150, as written, would prevent the State from legitimate and appropriate recoveries for federal and State expenditures for Medicaid services. Furthermore, it cannot credibly be suggested that the reduction of time afforded the Department to file its estate claim under the bill (by two (2) weeks, i.e., the difference between the first notice of publication and the third notice, which are made in three (3) consecutive weeks) has a detrimental impact on estate administration.

I hope this information is useful. If you would like to discuss this further, please contact Director of Governmental Affairs, Webster Ye, at (410) 260-3190 or webster.ye@maryland.gov.

Sincerely,



Robert R. Neall
Secretary

cc: The Honorable Chris West