

SUBSTITUTE FOR

SENATE BILL NO. 374

(As amended, September 20, 2007)

A bill to amend 1939 PA 280, entitled  
"The social welfare act,"  
(MCL 400.1 to 400.119b) by adding sections 112g, 112h, 112i, 112j,  
and 112k.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 112G. (1) SUBJECT TO SECTION 112C(5), THE DEPARTMENT OF  
2   COMMUNITY HEALTH SHALL ESTABLISH AND OPERATE THE MICHIGAN MEDICAID  
3   ESTATE RECOVERY PROGRAM TO COMPLY WITH REQUIREMENTS CONTAINED IN  
4   SECTION 1917 OF TITLE XIX. <<THE DEPARTMENT OF COMMUNITY HEALTH SHALL  
5   WORK WITH THE APPROPRIATE STATE AND FEDERAL DEPARTMENTS AND AGENCIES TO  
6   REVIEW OPTIONS FOR DEVELOPMENT OF A VOLUNTARY ESTATE PRESERVATION  
7   PROGRAM. BEGINNING NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF  
8   THE AMENDATORY ACT THAT ADDED THIS SECTION AND EVERY 180 DAYS THEREAFTER,  
9   THE DEPARTMENT OF COMMUNITY HEALTH SHALL SUBMIT A REPORT TO THE SENATE  
10   AND HOUSE APPROPRIATIONS SUBCOMMITTEES WITH JURISDICTION OVER DEPARTMENT  
11   OF COMMUNITY HEALTH MATTERS AND THE SENATE AND HOUSE FISCAL AGENCIES  
12   REGARDING OPTIONS FOR DEVELOPMENT OF THE ESTATE PRESERVATION PROGRAM.>>

7           (2) THE DEPARTMENT OF COMMUNITY HEALTH SHALL ESTABLISH AN

1 ESTATE RECOVERY PROGRAM INCLUDING VARIOUS ESTATE RECOVERY PROGRAM  
2 ACTIVITIES. THESE ACTIVITIES SHALL INCLUDE, AT A MINIMUM, ALL OF  
3 THE FOLLOWING:

4 (A) PLACING AND RECORDING LIENS ON QUALIFYING MEDICAL  
5 ASSISTANCE RECIPIENT PROPERTY.

6 (B) TRACKING ASSETS AND SERVICES OF RECIPIENTS OF MEDICAL  
7 ASSISTANCE THAT ARE SUBJECT TO ESTATE RECOVERY.

8 (C) ACTIONS NECESSARY TO COLLECT AMOUNTS SUBJECT TO ESTATE  
9 RECOVERY FOR MEDICAL SERVICES AS DETERMINED ACCORDING TO SUBSECTION  
10 (3) (A) PROVIDED TO RECIPIENTS IDENTIFIED IN SUBSECTION (3) (B) .  
11 AMOUNTS SUBJECT TO RECOVERY SHALL NOT EXCEED THE COST OF PROVIDING  
12 THE MEDICAL SERVICES. ANY SETTLEMENTS SHALL TAKE INTO ACCOUNT THE  
13 BEST INTERESTS OF THE STATE AND THE SPOUSE AND HEIRS.

14 (D) OTHER ACTIVITIES NECESSARY TO EFFICIENTLY AND EFFECTIVELY  
15 ADMINISTER THE PROGRAM.

16 (3) THE DEPARTMENT OF COMMUNITY HEALTH SHALL SEEK APPROPRIATE  
17 CHANGES TO THE MICHIGAN MEDICAID STATE PLAN AND SHALL APPLY FOR ANY  
18 NECESSARY WAIVERS AND APPROVALS FROM THE FEDERAL CENTERS FOR  
19 MEDICARE AND MEDICAID SERVICES TO IMPLEMENT THE MICHIGAN MEDICAID  
20 ESTATE RECOVERY PROGRAM. THE DEPARTMENT OF COMMUNITY HEALTH SHALL  
21 SEEK APPROVAL FROM THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID  
22 REGARDING ALL OF THE FOLLOWING:

23 (A) WHICH MEDICAL SERVICES ARE SUBJECT TO ESTATE RECOVERY  
24 UNDER SECTION 1917 (B) (1) (B) (i) AND (ii) OF TITLE XIX.

25 (B) WHICH RECIPIENTS OF MEDICAL ASSISTANCE ARE SUBJECT TO  
26 ESTATE RECOVERY UNDER SECTION 1917 (A) AND (B) OF TITLE XIX.

27 (C) UNDER WHAT CIRCUMSTANCES THE PROGRAM SHALL PURSUE RECOVERY

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1 FROM THE ESTATES OF SPOUSES OF RECIPIENTS OF MEDICAL ASSISTANCE WHO  
2 ARE SUBJECT TO ESTATE RECOVERY UNDER SECTION 1917(B)(2) OF TITLE  
3 XIX.

4 (D) WHAT ACTIONS MAY BE TAKEN TO OBTAIN FUNDS FROM THE ESTATES  
5 OF RECIPIENTS SUBJECT TO RECOVERY UNDER SECTION 1917 OF TITLE XIX,  
6 INCLUDING NOTICE AND HEARING PROCEDURES THAT MAY BE PURSUED TO  
7 CONTEST ACTIONS TAKEN UNDER THE MICHIGAN MEDICAID ESTATE RECOVERY  
8 PROGRAM.

9 (E) UNDER WHAT CIRCUMSTANCES THE ESTATES OF MEDICAL ASSISTANCE  
10 RECIPIENTS WILL BE EXEMPT FROM THE MICHIGAN MEDICAID ESTATE  
11 RECOVERY PROGRAM BECAUSE OF A HARDSHIP. AT THE TIME AN INDIVIDUAL  
12 ENROLLS IN MEDICAID FOR LONG-TERM CARE SERVICES, THE DEPARTMENT OF  
13 COMMUNITY HEALTH SHALL MAKE AVAILABLE TO THE INDIVIDUAL WRITTEN  
14 MATERIALS EXPLAINING THE PROCESS FOR APPLYING FOR A WAIVER FROM  
15 ESTATE RECOVERY DUE TO HARDSHIP. THE DEPARTMENT OF COMMUNITY HEALTH  
16 SHALL DEVELOP A DEFINITION OF HARDSHIP ACCORDING TO SECTION  
17 1917(B)(3) OF TITLE XIX THAT INCLUDES, BUT IS NOT LIMITED TO, THE  
18 FOLLOWING EXEMPTIONS:

19 (i) THE PORTION OF THE VALUE OF THE MEDICAL ASSISTANCE  
20 RECIPIENT'S HOMESTEAD THAT IS EQUAL TO OR LESS THAN 50% OF THE  
21 AVERAGE PRICE OF A HOME IN THE COUNTY IN WHICH THE MEDICAID  
22 RECIPIENT'S HOMESTEAD IS LOCATED AS OF THE DATE OF THE MEDICAL  
23 ASSISTANCE RECIPIENT'S DEATH.

24 (ii) THE PORTION OF AN ESTATE THAT IS THE <<PRIMARY>> INCOME  
-PRODUCING  
25 ASSET OF SURVIVORS, INCLUDING, BUT NOT LIMITED TO, A FAMILY FARM OR  
26 BUSINESS.

27 (F) THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF COMMUNITY

1 HEALTH MAY REVIEW REQUESTS FOR EXEMPTIONS AND PROVIDE EXEMPTIONS  
2 FROM THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM FOR CASES THAT  
3 DO NOT MEET THE DEFINITION OF HARDSHIP DEVELOPED BY THE DEPARTMENT  
4 OF COMMUNITY HEALTH.

5 (G) IMPLEMENTING THE PROVISIONS OF SECTION 1396P(B)(3) OF  
6 TITLE XIX TO ENSURE THAT THE HEIRS OF PERSONS SUBJECT TO THE  
7 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM WILL NOT BE UNREASONABLY  
8 HARMED BY THE PROVISIONS OF THIS PROGRAM.

9 (4) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT SEEK MEDICAID  
10 ESTATE RECOVERY IF THE COSTS OF RECOVERY EXCEED THE AMOUNT OF  
11 RECOVERY AVAILABLE OR IF THE RECOVERY IS NOT IN THE BEST ECONOMIC  
12 INTEREST OF THE STATE.

13 (5) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT IMPLEMENT A  
14 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM UNTIL APPROVAL BY THE  
15 FEDERAL GOVERNMENT IS OBTAINED.

16 (6) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT PLACE A LIEN  
17 ON THE HOME OF A MEDICAL ASSISTANCE RECIPIENT IF 1 OR MORE OF THE  
18 FOLLOWING INDIVIDUALS ARE LAWFULLY RESIDING IN THAT HOME:

19 (A) THE MEDICAL ASSISTANCE RECIPIENT'S SPOUSE.

20 (B) THE MEDICAL ASSISTANCE RECIPIENT'S CHILD WHO IS UNDER THE  
21 AGE OF 21 YEARS, OR IS BLIND OR PERMANENTLY AND TOTALLY DISABLED AS  
22 DEFINED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.

23 (C) THE MEDICAL ASSISTANCE RECIPIENT'S CHILD WHO WAS RESIDING  
24 IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME FOR A PERIOD OF AT LEAST  
25 2 YEARS IMMEDIATELY BEFORE THE DATE OF THE MEDICAL RECIPIENT'S  
26 ADMISSION TO A MEDICAL INSTITUTION AND WHO ESTABLISHES THAT HE OR  
27 SHE PROVIDED CARE THAT PERMITTED THE MEDICAL ASSISTANCE RECIPIENT

1 TO RESIDE AT HOME RATHER THAN IN AN INSTITUTION.

2 (D) THE MEDICAL ASSISTANCE RECIPIENT'S SIBLING WHO HAS AN  
3 EQUITY INTEREST IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME AND WHO  
4 WAS RESIDING IN THE MEDICAL ASSISTANCE RECIPIENT'S HOME FOR A  
5 PERIOD OF AT LEAST 1 YEAR IMMEDIATELY BEFORE THE DATE OF THE  
6 INDIVIDUAL'S ADMISSION TO A MEDICAL INSTITUTION.

7 (7) THE DEPARTMENT OF COMMUNITY HEALTH SHALL PROVIDE WRITTEN  
8 INFORMATION TO INDIVIDUALS SEEKING MEDICAID ELIGIBILITY FOR LONG-  
9 TERM CARE SERVICES DESCRIBING THE PROVISIONS OF THE MICHIGAN  
10 MEDICAID ESTATE RECOVERY PROGRAM, INCLUDING, BUT NOT LIMITED TO, A  
11 STATEMENT THAT SOME OR ALL OF THEIR ESTATE MAY BE RECOVERED.

12 (8) THE DEPARTMENT OF COMMUNITY HEALTH SHALL NOT CHARGE  
13 INTEREST ON THE BALANCE OF ANY MICHIGAN MEDICAID ESTATE RECOVERY  
14 PAYMENTS.

15 SEC. 112H. FOR THE PURPOSES OF SECTIONS 112G TO 112J:

16 (A) "ESTATE" MEANS ALL PROPERTY AND OTHER ASSETS INCLUDED  
17 WITHIN AN INDIVIDUAL'S ESTATE THAT IS SUBJECT TO PROBATE  
18 ADMINISTRATION UNDER ARTICLE III OF THE ESTATES AND PROTECTED  
19 INDIVIDUALS CODE, 1998 PA 386, MCL 700.3101 TO 700.3988.

20 (B) "PROPERTY" MEANS THAT TERM AS DEFINED IN SECTION 1106 OF  
21 THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL  
22 700.1106.

23 SEC. 112I. REVENUE COLLECTED THROUGH MICHIGAN MEDICAID ESTATE  
24 RECOVERY ACTIVITIES SHALL BE USED TO FUND THE ACTIVITIES OF THE  
25 MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM. ANY REMAINING BALANCES  
26 SHALL BE TREATED AS AN EXPENDITURE CREDIT FOR LONG-TERM CARE  
27 SUPPORT AND SERVICES IN THE MEDICAL SERVICES APPROPRIATION UNIT OF

1 THE ANNUAL DEPARTMENT OF COMMUNITY HEALTH APPROPRIATION.

2 SEC. 112J. THE DEPARTMENT OF COMMUNITY HEALTH MAY PROMULGATE  
3 RULES FOR THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM ACCORDING  
4 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL  
5 24.201 TO 24.328.

6 SEC. 112K. THE MICHIGAN MEDICAID ESTATE RECOVERY PROGRAM SHALL  
7 ONLY APPLY TO MEDICAL ASSISTANCE RECIPIENTS WHO BEGAN RECEIVING  
8 MEDICAID LONG-TERM CARE SERVICES AFTER THE EFFECTIVE DATE OF THE  
9 AMENDATORY ACT THAT ADDED THIS SECTION.

10 Enacting section 1. This amendatory act does not take effect  
11 unless Senate Bill No. 204 of the 94th Legislature is enacted into  
12 law.