

Act No. 74
Public Acts of 2007
Approved by the Governor
September 30, 2007
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EFFECTIVE DATE: September 30, 2007

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Senator Switalski

ENROLLED SENATE BILL No. 374

AN ACT to amend 1939 PA 280, entitled "An act to protect the welfare of the people of this state; to provide general assistance, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to prescribe certain duties of certain other state departments, officers, and agencies; to make an appropriation; to prescribe penalties for the violation of the provisions of this act; and to repeal certain parts of this act on specific dates," (MCL 400.1 to 400.119b) by adding sections 112g, 112h, 112i, 112j, and 112k.

The People of the State of Michigan enact:

Sec. 112g. (1) Subject to section 112c(5), the department of community health shall establish and operate the Michigan medicaid estate recovery program to comply with requirements contained in section 1917 of title XIX. The department of community health shall work with the appropriate state and federal departments and agencies to review options for development of a voluntary estate preservation program. Beginning not later than 180 days after the effective date of the amendatory act that added this section and every 180 days thereafter, the department of community health shall submit a report to the senate and house appropriations subcommittees with jurisdiction over department of community health matters and the senate and house fiscal agencies regarding options for development of the estate preservation program.

(2) The department of community health shall establish an estate recovery program including various estate recovery program activities. These activities shall include, at a minimum, all of the following:

(a) Tracking assets and services of recipients of medical assistance that are subject to estate recovery.

(b) Actions necessary to collect amounts subject to estate recovery for medical services as determined according to subsection (3)(a) provided to recipients identified in subsection (3)(b). Amounts subject to recovery shall not exceed the cost of providing the medical services. Any settlements shall take into account the best interests of the state and the spouse and heirs.

(c) Other activities necessary to efficiently and effectively administer the program.

(3) The department of community health shall seek appropriate changes to the Michigan medicaid state plan and shall apply for any necessary waivers and approvals from the federal centers for medicare and medicaid services to implement the Michigan medicaid estate recovery program. The department of community health shall seek approval from the federal centers for medicare and medicaid regarding all of the following:

(a) Which medical services are subject to estate recovery under section 1917(b)(1)(B)(i) and (ii) of title XIX.

(b) Which recipients of medical assistance are subject to estate recovery under section 1917(a) and (b) of title XIX.

(c) Under what circumstances the program shall pursue recovery from the estates of spouses of recipients of medical assistance who are subject to estate recovery under section 1917(b)(2) of title XIX.

(d) What actions may be taken to obtain funds from the estates of recipients subject to recovery under section 1917 of title XIX, including notice and hearing procedures that may be pursued to contest actions taken under the Michigan medicaid estate recovery program.

(e) Under what circumstances the estates of medical assistance recipients will be exempt from the Michigan medicaid estate recovery program because of a hardship. At the time an individual enrolls in medicaid for long-term care services, the department of community health shall provide to the individual written materials explaining the process for applying for a waiver from estate recovery due to hardship. The department of community health shall develop a definition of hardship according to section 1917(b)(3) of title XIX that includes, but is not limited to, the following:

(i) An exemption for the portion of the value of the medical assistance recipient's homestead that is equal to or less than 50% of the average price of a home in the county in which the medicaid recipient's homestead is located as of the date of the medical assistance recipient's death.

(ii) An exemption for the portion of an estate that is the primary income-producing asset of survivors, including, but not limited to, a family farm or business.

(iii) A rebuttable presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery.

(f) The circumstances under which the department of community health may review requests for exemptions and provide exemptions from the Michigan medicaid estate recovery program for cases that do not meet the definition of hardship developed by the department of community health.

(g) Implementing the provisions of section 1396p(b)(3) of title XIX to ensure that the heirs of persons subject to the Michigan medicaid estate recovery program will not be unreasonably harmed by the provisions of this program.

(4) The department of community health shall not seek medicaid estate recovery if the costs of recovery exceed the amount of recovery available or if the recovery is not in the best economic interest of the state.

(5) The department of community health shall not implement a Michigan medicaid estate recovery program until approval by the federal government is obtained.

(6) The department of community health shall not recover assets from the home of a medical assistance recipient if 1 or more of the following individuals are lawfully residing in that home:

(a) The medical assistance recipient's spouse.

(b) The medical assistance recipient's child who is under the age of 21 years, or is blind or permanently and totally disabled as defined in section 1614 of the social security act, 42 USC 1382c.

(c) The medical assistance recipient's caretaker relative who was residing in the medical assistance recipient's home for a period of at least 2 years immediately before the date of the medical assistance recipient's admission to a medical institution and who establishes that he or she provided care that permitted the medical assistance recipient to reside at home rather than in an institution. As used in this subdivision, "caretaker relative" means any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the recipient.

(d) The medical assistance recipient's sibling who has an equity interest in the medical assistance recipient's home and who was residing in the medical assistance recipient's home for a period of at least 1 year immediately before the date of the individual's admission to a medical institution.

(7) The department of community health shall provide written information to individuals seeking medicaid eligibility for long-term care services describing the provisions of the Michigan medicaid estate recovery program, including, but not limited to, a statement that some or all of their estate may be recovered.

(8) The department of community health shall not charge interest on the balance of any Michigan medicaid estate recovery payments.

(9) The department of community health shall not place or record a lien on qualifying property under the tax equity and fiscal responsibility act of 1982, Public Law 97-424 (TEFRA).

Sec. 112h. For the purposes of sections 112g to 112j:

(a) "Estate" means all property and other assets included within an individual's estate that is subject to probate administration under article III of the estates and protected individuals code, 1998 PA 386, MCL 700.3101 to 700.3988, except assets otherwise subject to claims under section 3805(3) of the estates and protected individuals code, 1998 PA 386, MCL 700.3805, are not part of the estate.

(b) "Property" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

Sec. 112i. Revenue collected through Michigan medicaid estate recovery activities shall be used to fund the activities of the Michigan medicaid estate recovery program. Any remaining balances shall be treated as an expenditure credit for long-term care support and services in the medical services appropriation unit of the annual department of community health appropriation.

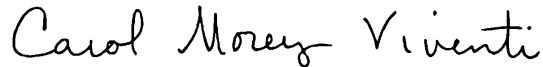
Sec. 112j. (1) The department of community health may promulgate rules for the Michigan medicaid estate recovery program according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Not later than 1 year after implementation of the Michigan medicaid estate recovery program and each year after that, the department of community health shall submit a report to the senate and house appropriations subcommittees with jurisdiction over department of community health matters and the senate and house fiscal agencies regarding the cost to administer the Michigan medicaid estate recovery program and the amounts recovered under the Michigan medicaid estate recovery program.

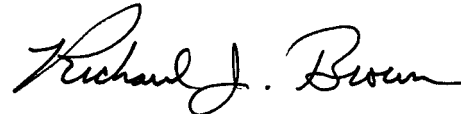
Sec. 112k. The Michigan medicaid estate recovery program shall only apply to medical assistance recipients who began receiving medicaid long-term care services after the effective date of the amendatory act that added this section.

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor