

June 18, 2009

Dear Representative,

As budget negotiations intensify, AARP would like to bring to your attention provisions of legislation that proposes changes in the Public Welfare Code, HB 1351, we feel would cause tremendous hardship to numerous individuals and ultimately cost Pennsylvania more in Medicaid long-term care funds.

Section 1412 of HB 1351 makes changes in the way Pennsylvania approaches the recovery of assets from the estates of individuals who qualify for Medicaid long-term care assistance. You may recall that Pennsylvania made changes in this law a few years ago, extending the “look-back” period for the transfer of assets. The alterations that are proposed in this year’s budget legislation go much farther and will prove extremely harmful, especially in situations where a Medicaid long-term care recipient has a spouse still living in a home jointly owned by the couple.

The AARP National Board of Directors has adopted policies which attempt to achieve fairness in the rules for the treatment of assets in cases where eligibility for Medicaid long-term care assistance has been determined. An analysis of the provisions of Section 1412 of HB 1351 shows this legislation violates AARP policies in the following ways:

- The Proposal for expanded estate recovery in HB 1351 expands the reach of PA’s estate recovery program to non-probate assets. It overrides the collective common and statutory law on real estate, probate, estate and trust administration, insurance claims and debt collections. It would affect entireties property, life estates, joint ownership, trusts, insurance and “any other interest a decedent may have.”
- The proposed change is especially unfair to the spouse who remains at home after his or her spouse is institutionalized. Generally, these “community spouses” are women who do not have substantial pensions or Social Security earnings and whose savings have already been diminished by Medicaid spend-down rules. Under HB 1351, the Commonwealth would also impose a lien on their home, which sharply limits the ability of the community spouse to use the home equity for his or her own retirement needs. It would be impossible for the community spouse to sell or mortgage the property without addressing the claim
- The language in HB 1351 establishes a system of the “government is right until proven wrong” for its lien collection. The bill establishes a one-sided system for redress of any disputes about the Commonwealth’s lien which fails to respect the common law or statutory principles of property law (both real estate and personal property), probate, trust and estate law. As a simple example, this would permit the Commonwealth to recover against life estates – and give the Commonwealth the sole power to place a value on the life estate for such recovery purposes, despite the fact that the life estate would appear to extinguish with the death of the Medicaid recipient. Currently, disputes about competing claims against probate property are resolved in the Orphans’ Court or in certain instances

within the DPW administrative system. HB 1351 would change this balance and give all authority to DPW.

- HB 1351 dramatically changes the law in a way that adversely affects life estates, trusts, joint tenancy property, and life insurance policies that are central to most people's estate planning. These changes would be retroactive and therefore would affect any person who dies after July 1, 2009, even if their estate plans were prepared prior to that date.
- Federal regulations prohibit states from placing liens on the property of Medicaid recipients who receive LTSS in the home and community. HB 1351 specifically applies to recipients of home and community based services.

AARP's goal in long-term care services is to reach a point where Pennsylvania's spending on nursing homes and home and community services is roughly equal. But increasing the difficulty for "community" spouses to continue to live at home, as would happen should the provisions of Section 1412 of HB 1351 be enacted, would force more of these individuals into institutional care. And placing liens on the property of a Medicaid recipient receiving care in the community lessens the potential that the individual will remain in the community.

AARP believes in fairness in estate recovery. We do not believe individuals should "hide" assets in order to qualify for Medicaid long-term care services. But these provisions will not stop that practice, especially among individuals with means. These new rules are most likely to impact the lower-income couple who can't afford an attorney and still live at home but have suffered a setback that requires long-term care services. Under the provisions of HB 1351, it is much more likely that both spouses will end up in institutional care instead of the healthier spouse remaining in the community where he or she should be.

Finally, the few states that have enacted these strict recovery provisions have discovered they weren't the huge source of revenues they might have imagined. The 2009-10 budget is not magically going to be balanced should these changes be adopted. Perhaps a few million will be saved in the first year – but at what cost, both financially over the long-term and emotionally to those impacted by these changes?

AARP urges the General Assembly to strike section 1412 of HB 1351 as the budget is considered. Our current law on estate recovery does not need the addition of these provisions to protect us against those trying to cheat the system.

Sincerely,



Richard Chevrefils
State Director
AARP Pennsylvania