

Pennsylvania Association of Elder Law Attorneys

*A State Chapter of the National Academy of Elder Law Attorneys
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Why Expanding Estate Recovery is Bad for Pennsylvania

- 1. Frail seniors who need long term care must spend most of their assets before receiving any help from Medicaid. But they are allowed to keep a home or family farm of modest value. If married, a jointly owned home or farm can eventually pass to a surviving caregiver spouse free from state claim. Section 1412 of HB 1351 would change the law to put a claim against the homes and family farms of older married couples if one of them needs to apply for Medical Assistance.**

HB 1351 vastly expands the ability of the state to seek recovery from an estate to repay the Medicaid program. In no other public benefit or public welfare program must persons forfeit equity in their home to repay the Commonwealth or the Federal government for funds expended on their behalf.

The potential change in the law is especially unfair to the spouse who remains at home after the other spouse seeks Long Term Care. It would be impossible for the community spouse to sell or mortgage the property without first addressing the claim.

- 2. The proposed “Expanded Estate Recovery Plan” will generate little revenue for the state and cause a lot of pain for elderly Pennsylvanians.**

The Department of Public Welfare (DPW) projects that the net revenue generated for Pennsylvania from the new estate recovery rule in Section 1412 of HB 1351 will be only \$1,200,000 in FY 2009, and \$2,600,000 in FY 2010. DPW’s efforts will primarily benefit the Federal government because most of the money collected must be turned over to the Federal government as a condition of Pennsylvania’s participation in the Federal Medicaid program.

While Pennsylvania may gain a couple million dollars to add to the multi-Billion Medicaid Program, the unplanned costs are likely to be enormous and the proposal will have devastating effects on numerous Pennsylvania Senior citizens.

- 3. Passing Section 1412 of HB 1351 could hurt critical funding for Pennsylvania’s Medicaid Program.**

If passed this proposal may disqualify Pennsylvania from receiving the augmented Federal Medical Assistance Percentage (FMAP) provided for under the terms of the American Recovery and Reinvestment Act of 2009. States can obtain the enhanced FMAP only if they meet specified conditions, one of which is maintaining the “eligibility standards, methodologies, and procedures” in effect on July 1, 2008. Changing the exemptions of property subject to estate recovery is arguably a just such a change which means this proposal could endanger many millions in Federal funds.

4. The proposed change would cause major title and conveyancing problems for real and personal property, mark a return of Welfare Liens and require a huge new and costly compliance infrastructure in DPW.

The proposed DPW estate recovery plan drastically affects entireties property, life estates, joint ownership, trusts, insurance and “any other interest a decedent may have.”

DPW’s proposed system would impose an automatic -- but largely invisible – lien on real property. Because the receipt of Medicaid benefits is a non-record event, conveyancers would be required to ascertain whether such benefits were received for every type of survivorship conveyance, including trusts and “any other interest”. This presents an unreasonable burden on conveyancers and would create significant uncertainty and delay in title transactions.

Pennsylvania has had institutional experience with welfare liens prior to 1994, where general welfare liens caused abandoned housing especially in the modest housing markets. Pennsylvania took the wise step of repealing welfare liens against real estate in August of 1994. HB 1351, in its present form, would return the practice of welfare liens, targeted at the elderly and senior citizens who have spouses who have used the Medicaid system.

The automatic invisible lien would also apply to life insurance policies. Insurance companies would therefore need to obtain clearance from the Pennsylvania Medicaid program before paying claims to named beneficiaries. It is unrealistic to expect DPW to efficiently handle an influx of tens of thousands of new requests for releases in a timely manner, as well.

5. The proposed change unfairly limits the rights of redress for affected individuals.

Unlike eligibility determinations, which impact primarily the applicant, the impact of post-death allocations of liens is on persons who are not applying for benefits. As such, these individuals are constitutionally entitled to a fair system of adjudication of any Commonwealth liens that are purported to affect their property interests. A court-based system of adjudication of disputes should be required for protection and allocation of property interests against claims by creditors such as the Commonwealth.

6. Other organizations opposed to expanded estate recovery as proposed in HB1351:

- Alzheimer’s Association, Greater Pennsylvania and Delaware Valley Chapters
- AARP Pennsylvania Chapter
- Insurance Federation of Pennsylvania
- Pennsylvania Bar Association
- Pennsylvania Land Title Association
- Philadelphia Bar Association

Conclusion: Protect Pennsylvania Senior Citizens and Businesses. Oppose Section 1412 of HB 1351.