
To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: February 5, 2020

Subject: **HB393** – Estates and Trusts – Estate Recoveries – Presentation of Claims Against Medicaid Recipients

Position: **Support**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports House Bill 393 – Estates and Trusts – Estate Recoveries – Presentation of Claims Against Medicaid Recipients.**

Section 8-103 of the Estates and Trusts Article of the Maryland Code provides a limitation on the presentation of claims against an estate. General creditors are subject to the limitations period provided in 8-103(a), which is the earlier of (i) six months after the date of the decedent's death and (ii) two months after the personal representative mails or otherwise delivers notice to the creditor. Section 7-103 of the Estates and Trusts Article of the Maryland Code requires the register to have a notice of the personal representative's appointment published in a newspaper of general circulation in the county of appointment once per week in three successive weeks, announcing the appointment and address of the personal representative and notifying creditors to present their claims in accordance with Section 8-103(a).

For claims to be filed by the Maryland Department of Health (MDH) against the estate of a deceased Maryland Medical Assistance Program recipient, the limitations period is extended beyond the time available to general creditors. Section 8-103(f) provides that a claim filed by MDH must be filed within the earlier of (i) six months after publication of notice of the first appointment of a personal representative and (ii) two months after the personal representative mails or otherwise delivers notice to MDH.

Because Section 7-103 requires the notice to be published once per week for three successive weeks and the timing language in Section 8-103(f)(1) is tied to "publication of notice of the first appointment," several orphans' courts have been asked to address which publication controls – the first notice that is published (because that is the notice that controls for similar purposes under Section 7-104 relating to the delivery to the register of the "first published newspaper notice"), or the third notice that is published (because that is when notice is effectively complete). The orphans' courts appear consistently to apply the first publication as the one that controls, but recently on a

de novo appeal, a circuit court applied the third publication. This has led to uncertainty among practitioners and inconsistency among the judges in application.

HB393 revises Section 8-103(f) to insert the word FIRST before “publication of notice of the first appointment.” The addition of this single word will clarify that it is the first publication, and not the third, that will control for purposes of applying the limitations period for MDH. This will effectuate the historically consistent application by the orphans’ court of this Section, as well as provide conformity with other sections of the Estates and Trusts Article, specifically Section 7-104, which refers to the “first published newspaper notice” as being the effective notice for purposes of that section.

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