



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 5, 2019

The Honorable Luke Clippinger, Chair
House Judiciary Committee
Room 101, House Office Building
Annapolis, MD 21401-1991

Re: House Bill 393 Estates and Trusts - Estate Recoveries - Presentation of Claims Against Medicaid Recipients – Letter of Opposition

Dear Chair Clippinger and Committee Members:

The Maryland Department of Health (Department) submits this letter of opposition for HB 393 – Estates and Trusts – Estate Recoveries – Presentation of Claims Against Medicaid Recipients. The Department opposes HB 393 as written, and respectfully requests that the Committee either:

1. Hold the bill pending the resolution of an appellate case currently before the Court of Special Appeals; or
2. Adopt the Department's attached amendments.

HB 393 adds language to the current statute requiring the Department to file a claim against the estate of a deceased Maryland Medical Assistance Program recipient within six (6) months after the first publication of notice of the first appointment of a personal representative. Under the current statute, the Department is able to file a claim within six (6) months of the third publication of notice. Therefore, HB 393 would shorten the time in which the Department is able to file an estate claim to recover Medicaid payments made on behalf of a deceased recipient.

The Department opposes the bill, as currently drafted, for the following main reasons:

1. **Pending litigation before the Court of Special Appeals** -- this bill is premature. The Department is currently engaged in ongoing litigation on this issue. The Department is set to deliver oral arguments on February 12, 2020, in the Maryland Court of Special Appeals for a case regarding this exact issue.
2. **HB 393 may reduce Maryland general fund revenues by as much as \$8.6 million** - based on the total amount of Medicaid payments recovered from estates in calendar year 2019.

3. On January 23, 2020, the Department proposed an amendment at the Senate cross-file hearing in the Judicial Proceedings Committee (SB 150) requiring the 6-month timeframe to begin after the third publication, instead of the proposed first publication. At the hearing, the advocate for the bill agreed to the amendment, as the goal of the bill is to provide clarity. At that time, the Judicial Proceedings Committee voted unanimously to adopt the Department's amendment to SB 150 and it was reported favorably with amendments. However, yesterday (February 4, 2020), the amendment was withdrawn on the Senate Floor due to a new concern raised by an advocate of the bill that was not brought up at the original hearing.

The Department wholeheartedly concurs with the advocates of this bill on the need for statutory clarity, therefore in an effort to move forward, it respectfully submits the attached amendments. I hope this information is useful. If you would like to discuss this further, please contact Director of Governmental Affairs, Webster Ye, at (410) 260-3190 or webster.ye@maryland.gov.

Sincerely,



Robert R. Neall
Secretary

MDH Amendments to House Bill 393

AMENDMENT NO. 1

On page 2, line 3 strike "**FIRST**" and substitute "**THIRD**".

RATIONALE:

The Department recognizes the need for statutory clarity, but requires the additional two (2) weeks in order to recover all legitimate and appropriate State expenditures for Medicaid services.

AMENDMENT NO. 2

On page 2, line 5 insert "**(2) 6 MONTHS AFTER THE FIRST PUBLICATION OF NOTICE OF THE FIRST APPOINTMENT OF A PERSONAL REPRESENTATIVE OF A SMALL ESTATE; OR**" and renumber accordingly.

RATIONALE:

This amendment addresses the concern voiced by the Chair-Elect of the Estate and Trust Law Section of the Maryland State Bar Association after expressing her support of the Department's amendment at the initial Senate hearing on January 23, 2020. Small estate proceedings only require one (1) publication of notice, therefore this amendment carves out an exception to address that issue.