

As Introduced

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H. B. No. 681

Representatives LaRe, Brennan

**Cosponsors: Representatives Carruthers, Hillyer, Williams, Gross, Richardson,
Dell'Aquila**

A BILL

To amend section 5162.21 and to enact section 1
5162.213 of the Revised Code regarding the 2
Medicaid Estate Recovery Program. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5162.21 be amended and section 4
5162.213 of the Revised Code be enacted to read as follows: 5

Sec. 5162.21. (A) As used in ~~this section and section~~ 6
~~5162.211~~ sections 5162.21 to 5162.213 of the Revised Code: 7

(1) "Estate" includes both of the following: 8

(a) All real and personal property and other assets to be 9
administered under Title XXI of the Revised Code and property 10
that would be administered under that title if not for section 11
2113.03 or 2113.031 of the Revised Code; 12

(b) Any other real and personal property and other assets 13
in which an individual had any legal title or interest at the 14
time of death (to the extent of the interest), including assets 15
conveyed to a survivor, heir, or assign of the individual 16

through joint tenancy, tenancy in common, survivorship, life 17
estate, living trust, or other arrangement. 18

(2) "Institution" means a nursing facility, ICF/IID, or a 19
medical institution. 20

(3) "Permanently institutionalized individual" means an 21
individual to whom all of the following apply: 22

(a) Is an inpatient in an institution; 23

(b) Is required, as a condition of the medicaid program 24
paying for the individual's services in the institution, to 25
spend for costs of medical or nursing care all of the 26
individual's income except for an amount for personal needs 27
specified by the department of medicaid; 28

(c) Cannot reasonably be expected to be discharged from 29
the institution and return home as determined by the department 30
of medicaid. 31

(4) "Qualified state long-term care insurance partnership 32
program" means the program established under section 5164.86 of 33
the Revised Code. 34

(5) "Time of death" shall not be construed to mean a time 35
after which a legal title or interest in real or personal 36
property or other asset may pass by survivorship or other 37
operation of law due to the death of the decedent or terminate 38
by reason of the decedent's death. 39

(B) To the extent permitted by federal law, the department 40
of medicaid shall institute a medicaid estate recovery program 41
under which the department shall, except as provided in 42
divisions (C) and (E) of this section, and subject to division 43
(D) of this section, do all of the following: 44

(1) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of a permanently institutionalized individual of any age, seek adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a lien imposed under section 5162.211 of the Revised Code;

(2) For the costs of medicaid services, including long-term care related prescription drug products, the medicaid program correctly paid or will pay on behalf of an individual described in this division, seek adjustment or recovery from the individual's estate. This division applies to individuals fifty-five years of age or older who is not a permanently institutionalized individual, seek adjustment or recovery from the individual's estate received long-term care in one of the following settings:

(a) A residential care facility, as defined in section 3721.01 of the Revised Code;

(b) A residential facility, as defined in section 5123.19 of the Revised Code;

(c) In-home care, such as home health services;

(d) A nursing facility;

(e) An ICF/IID;

(f) A hospital;

(g) Another similar long-term care setting.

(3) Seek adjustment or recovery from the estate of other individuals as permitted by federal law.

(C) (1) No adjustment or recovery may be made under

division (B) (1) of this section from a permanently 72
institutionalized individual's estate or on the sale of property 73
of a permanently institutionalized individual that is subject to 74
a lien imposed under section 5162.211 of the Revised Code or 75
under division (B) (2) or (3) of this section from an 76
individual's estate while either of the following are alive: 77

(a) The spouse of the permanently institutionalized 78
individual or individual; 79

(b) The son or daughter of a permanently institutionalized 80
individual or individual if the son or daughter is under age 81
twenty-one or, under the "Social Security Act," section 1614, 42 82
U.S.C. 1382c, is considered blind or disabled. 83

(2) No adjustment or recovery may be made under division 84
(B) (1) of this section from a permanently institutionalized 85
individual's home that is subject to a lien imposed under 86
section 5162.211 of the Revised Code while either of the 87
following lawfully reside in the home: 88

(a) The permanently institutionalized individual's sibling 89
who resided in the home for at least one year immediately before 90
the date of the permanently institutionalized individual's 91
admission to the institution and on a continuous basis since 92
that time; 93

(b) The permanently institutionalized individual's son or 94
daughter who provided care to the permanently institutionalized 95
individual that delayed the permanently institutionalized 96
individual's institutionalization and resided in the home for at 97
least two years immediately before the date of the permanently 98
institutionalized individual's admission to the institution and 99
on a continuous basis since that time. 100

(D) In the case of a participant of the qualified state long-term care insurance partnership program, adjustment or recovery required by this section may be reduced in accordance with rules authorized by division (G) of this section.

(E) The department shall, in accordance with procedures and criteria established in rules authorized by division (G) of this section, waive seeking an adjustment or recovery otherwise required by this section if the medicaid director determines that adjustment or recovery would work an undue hardship. The department may limit the duration of the waiver to the period during which the undue hardship exists.

(F) For the purpose of determining whether an individual meets the definition of "permanently institutionalized individual" established for this section, a rebuttable presumption exists that the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case:

(1) The individual declares that he or she does not intend to return home.

(2) The individual has been an inpatient in an institution for at least six months.

(G) Rules adopted under section 5162.02 of the Revised Code shall do both of the following:

(1) For the purpose of division (D) of this section and consistent with the "Social Security Act," section 1917(b)(1)(C), 42 U.S.C. 1396p(b)(1)(C), provide for reducing an adjustment or recovery in the case of a participant of the qualified state long-term care insurance partnership program;

(2) For the purpose of division (E) of this section and

consistent with the standards specified by the United States 130
secretary of health and human services under the "Social 131
Security Act," section 1917(b)(3), 42 U.S.C. 1396p(b)(3), 132
establish procedures and criteria for waiving adjustment or 133
recovery due to an undue hardship. 134

Sec. 5162.213. (A) (1) Upon application, the department of 135
medicaid shall notify each applicant for any medicaid program 136
component subject to the medicaid estate recovery program 137
instituted under section 5162.21 of the Revised Code of the 138
existence of the medicaid estate recovery program, including the 139
information specified in division (B) (1) of this section. 140

(2) The department of medicaid shall again notify each 141
applicant described in division (A) (1) of this section about the 142
medicaid estate recovery program, including the information 143
specified in division (B) (2) of this section, when the 144
application is approved. 145

(3) In addition to the notice required by divisions (A) (1) 146
and (2) of this section, the department also shall create both 147
of the following: 148

(a) A consumer-focused notification that explains in plain 149
language how the medicaid estate recovery program functions, 150
including example scenarios. The department shall engage 151
medicaid consumers to participate in the development and review 152
of the notification and any additional materials that will 153
accompany it. 154

(b) A notification for medicaid enrollees who may be at 155
risk of being subject to the medicaid estate recovery program 156
that lists available resources for consumer support, such as 157
legal aid and estate planning resources. 158

(B) The director of medicaid shall adopt rules to ensure 159
compliance with this section, as follows: 160

(1) The rules shall require the first page of the medicaid 161
application to be a document that includes all of the following 162
information: 163

(a) A statement that if the enrollee is enrolled in any 164
program described by section 5162.21 of the Revised Code, the 165
enrollee's estate may be subject to recovery after the 166
enrollee's death; 167

(b) A list of health care and other services to which the 168
medicaid estate recovery program applies; 169

(c) The per member per month capitation payment, or 170
managed care premium, amount paid by the department to each 171
medicaid managed care organization in the previous calendar 172
year. As used in this division, "capitation payment" has the 173
same meaning as defined in 42 C.F.R. 483.2. 174

(2) The rules shall require that an approved medicaid 175
eligibility determination notice sent to enrollees as required 176
under 42 C.F.R. 435.917 include both the information required 177
under division (B)(1) of this section and a document that 178
contains the following information: 179

(a) How to file a complaint with the department regarding 180
the enrollee's medicaid benefits; 181

(b) How to inquire about the status of medicaid benefits; 182

(c) How to disenroll from the medicaid program. 183

(3) The rules shall specify the form and dissemination of 184
the notifications described in division (A)(3) of this section, 185
including a process for identifying medicaid enrollees who may 186

<u>be at risk of being subject to the medicaid estate recovery</u>	187
<u>program.</u>	188
<u>The rules shall be adopted in accordance with Chapter 119.</u>	189
<u>of the Revised Code.</u>	190
Section 2. That existing section 5162.21 of the Revised	191
Code is hereby repealed.	192