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Helping Older Adults Resolve Legal & Long-Term Care Problems & Fight Medicare Fraud

Before
The Ohio House of Representatives
136th General Assembly
Medicaid Committee
Written Testimony on House Bill 130-
Medicaid Estate Recovery Notification Requirements

By
Miriam H. Sheline
Managing Attorney
Pro Seniors, Inc.
Cincinnati, OH

March 31, 2025

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Executive Director

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Good afternoon, Chairman Gross, Ranking Minority Member Baker, and Committee Members.

Thank you for the opportunity to provide testimony in support of H.B. No. 130 regarding Medicaid Estate Recovery Program notification requirements.

By way of introduction, I am the managing attorney for Pro Seniors, Inc., a non-profit organization located in Cincinnati, Ohio which, among other services, provides a state-wide legal helpline. Any Ohio resident, age 60 or older can call and be scheduled for a telephone appointment with an attorney to receive free legal advice on any issue. In 2024, Pro Seniors scheduled over 13,000 telephone appointments, covering all 88 counties in Ohio.



A large portion of these legal questions relate to Medicaid, including Medicaid Estate Recovery. The typical older Ohioan calling about Medicaid is one who, due to their ill health, now faces nursing home care. Often these are individuals who have never had contact with Medicaid before, but now their retirement and resources are insufficient to pay the \$12,000 per month cost of nursing home care. There is considerable confusion with consumers as to the Medicaid Estate Recovery program, how it will affect them and their families, and what it will cost. This occurs, not just with the Medicaid applicant, but also with their surviving family members.



As addressed by H.B. 130 individuals who apply for Medicaid have no idea the cost of premiums for coverage. Even in instances where their individual medical costs are minimal, they have no understanding that the cost added to their Medicaid Estate Recovery claim could be significantly more. Informed consent, therefore, is the essence of H.B. 130.



Currently, the revelation of the true cost occurs after the Medicaid recipient's death. Surviving spouses and other family members receive notices after the death of their loved one which they interpret as meaning they owe thousands of dollars to the State of Ohio.

In addition, Medicaid Estate Recovery can directly impact their homes. First, liens may be recorded under R.C. 5162.211 after death of the Medicaid recipient against his property owned prior to death. Under Ohio law, real property transfers at death. Thus, said liens are recorded against real property owned by a third party without notice or an opportunity to respond.

Alternatively, an R.C. 5301.252 Affidavit on Facts Relating to Title is recorded stating there is a Medicaid Estate Recovery claim owed to the State of Ohio.

These recorded documents are not sent to the owner of the property. Therefore, surviving spouses and heirs learn of them at some point in the future when it affects their efforts to secure a home equity loan, make improvements to their home, refinance their mortgage, or sell their home. Consider the panic that ensues when a surviving spouse is told there is a \$100,000 lien on her home at the time she is preparing to close on its sale. Usually these are Affidavits of Fact, but title examiners across the state interpret these as liens.

The purpose of an Affidavit of Fact is to record facts that affect title, such as a missing middle initial on an owner's name, or the owner's marital status to clarify whether there is a dower interest. The Medicaid Estate Recovery claim, however, does not relate to the title of the property, but to whether there can be a claim filed in the surviving spouse's estate **after** her death.

The Ohio Department of Medicaid is responsible for the Medicaid Estate Recovery program, which, pursuant to R.C. 5162.21, is to seek recovery from the Medicaid recipient's estate. However, there are exceptions to recovery. Recovery is prohibited during the lifetime of the surviving spouse and adult disabled children. Because of these prohibitions, there should be no encumbrance placed on their property. Filing a lien without notice to the owner with the promise to remove it if it is later learned there is a surviving spouse or living adult disabled child is a taking of the owner's property which cannot be repaired by giving it back later.

It should also be noted that, even after the surviving spouse learns of the Affidavit of Fact, the Affidavit will not be removed until the spouse attempts to sell or encumber her property.

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Included with this testimony are examples of the collection letter sent to heirs, a recorded Affidavit of Fact relating to title, and a recorded Certificate of Lien.

We recognize there is a policy that the State of Ohio seek to recover the medical expenses paid for an Ohioan who needed Medicaid. At the same time, there are prohibitions on Medicaid Estate Recovery in order to protect, and not impoverish, surviving spouses and disabled children. Providing notice and the opportunity to be heard does not interfere with the first policy, but ensures the second, protecting designated family members, is also met.

In summary, providing greater notice to the Medicaid applicant as set forth in H.B. 130 is certainly needed. Medicaid applicants should know the premium costs for their coverage. In addition, however, notice, and the opportunity to respond, needs to be provided to the family of a deceased Medicaid recipient prior to imposing a lien, or even an affidavit, so that the family can demonstrate whether one of the exemptions to Medicaid Estate Recovery exists before the title to their home is affected. Pro Seniors urges the Committee to recommend adoption of H.B. 130 and to add similar notice protections, and the opportunity to respond, to family members of a deceased Medicaid recipient before their home is affected by attempts to collect the Medicaid Estate Recovery claim.

Thank you for granting me the opportunity to offer testimony on this important topic providing protections to Ohio's elder population.



DAVE YOST
OHIO ATTORNEY GENERAL

Giles & Harper, LLC
Attorneys At Law
7247 Beechmont Avenue
Cincinnati, Ohio 45230
(513) 621-0930
(513) 562-8822 (Fax)
OAG@gilesharper.com

December 12, 2023

In regards to: Plaisted Nannette A
CRN: [REDACTED] 819
ACCOUNT NO: [REDACTED] 5078
Total Amount Due: \$ 67,604.28

Dear Bradley Plaisted :

This office has learned that the above-named decedent has passed and we wish to send you our condolences.

In accordance with Federal mandates, the Ohio Department of Medicaid ("ODM") has established the Medicaid Estate Recovery Program, which seeks to obtain repayment of Medicaid monies once a recipient is deceased. Pursuant to Ohio Revised Code §5162.21, ODM has certified a claim for the amount paid for the medical care of the above-named decedent. It is a claim against assets owned by the decedent. It is not a personal debtor of any survivors. If there is a surviving spouse, disabled child or minor child, the claim is deferred for the life of that person. ODM Form 07400 is enclosed for your reference.

I have been appointed as Special Counsel to provide legal services to the State of Ohio and am sending you this notice of a claim requesting repayment for the cost of Medicaid benefits, and to determine what assets of the Decedent's exist that are available to satisfy this debt. This is an attempt to collect a debt and any information obtained will be used for that purpose.

If there is an Executor or an Attorney for the Estate, please forward this letter to them; it is the Estate Executor's responsibility to notify any family members and/or other heirs who might be affected by estate recovery. According to information provided by ODM, you may have information that aids in determining if this is an appropriate case for recovery. Please complete the enclosed form to the best of your knowledge and return to our office within 30 days of the date on this letter. Please mail the information to: Donald W. Harper II, Special Counsel to the Ohio Attorney General, 7247 Beechmont Avenue, Cincinnati, OH 45230 or email the completed form to OAG@gilesharper.com. Additional information can be found by visiting www.ohioattorneygeneral.gov.

Within 30 days of the date of this letter, if we have not received the information or you have not otherwise contacted our office regarding the requested information, I will advise the Ohio Attorney General that the obligations remain unpaid and take whatever action may be appropriate to satisfy the outstanding account balance. If you have any questions, please feel free to contact my office at (513) 621-0930 or contact us at the address noted above. Again, on behalf of the Ohio Attorney General, we are sorry for your loss.

Sincerely,

/s/ Donald W. Harper II

Donald W. Harper II
Special Counsel to the Ohio Attorney General

Enc.

ACCOUNT NO: [REDACTED] 5078
DECEDENT: Plaisted Nannette A

FAX TO: 513-562-8822, EMAIL TO: OAG@GILESHARPER.COM
OR MAIL TO ADDRESS NOTED BELOW

Now comes _____ who is the _____
(Print Name) (Title, Relation to Decedent)

And pursuant to Ohio Law provides the following information regarding the Decedent:

1. The Names, Addresses, and Telephone numbers of next of kin/responsible party and/or person's related to or have information regarding the decedent are:

2. Date of Death of decedent: _____ County of Death: _____

3. Was decedent survived by a spouse? If yes, please list name and address of spouse:

4. Has a probate estate been filed? _____ (Yes, No, Don't know). If so, in what court? _____
What State? _____ County _____, Case Number _____

5. Is there an Attorney representing the Estate or the Executor? _____ (Yes/No/Don't Know). If yes provide the Attorney's Name or the Names, Addresses, and Telephone numbers or next of kin/responsible party who has such information:

6. What counties in Ohio did the decedent reside in the last 10 years?

7. Did decedent ever own or have an interest, of any kind in any real estate in Ohio or any other states? (This includes life estates, joint and survivorship property, transfer on death property and land contracts). If yes, list location of property (include full address, county where it is located and what happened to that property and when).

ACCOUNT NO: [REDACTED] 5078

DECEDENT: Plaisted Nannette A

8. Did the decedent, in the last 5 years, have a bank account? (If so, please list name of bank, balance at time of death, account number (s), and location of funds at this time.)

9. In the last 5 years, did the decedent own any stocks, bonds, antiques, or vehicles? (If so, please identify and provide current location of said assets.)

10. Did the decedent set up a trust of any type? If yes, please provide name and address of current Trustee, date the Trust was created, list of assets funding the trust:

11. Is the decedent a named beneficiary under a will or trust of someone else? If so, please describe:

12. Did the decedent maintain any insurance policies? If so, please provide beneficiary names and addresses:

13. Did anyone pay any portion of the decedent's funeral costs out of pocket? If so, please list the name of the persona, and the amount paid out of pocket:

14. Name of person filling out this form, address, phone number and your relationship to decedent:

I AFFIRM THAT THE INFORMATION PROVIDED WITHIN IS TRUE TO THE BEST OF MY KNOWLEDGE
PURSUANT TO O.R.C. 2921.11.

SIGNED

(Signature of person completing form)

Date

Phone

Ohio Department of Medicaid
OHIO MEDICAID ESTATE RECOVERY

What is estate recovery?

Estate recovery seeks to obtain repayment for the cost of Medicaid benefits once a Medicaid eligible individual is deceased. This happens after the death of a Medicaid individual who was either permanently institutionalized or age 55 and older.

What is an estate?

An estate is all of the real and personal property owned by a Medicaid individual at the time of death, whether or not it passed through probate court.

What Medicaid benefits are subject to estate recovery?

Medicaid payments for services received since January 1995 are subject to estate recovery. Medicare premium assistance payments made after January 1, 2010, are subject to recovery only when the Medicaid individual was permanently institutionalized.

How does estate recovery work?

The estate's executor is responsible for notifying the Ohio Attorney General's (AGO) of a Medicaid individual's death, if the consumer was permanently institutionalized or age 55 or older. Once the AGO has been notified, the AGO will present a claim to the estate.

When does estate recovery take place?

Recovery from the estate will only be made:

- After the death of the Medicaid individual's surviving spouse.
- When the deceased Medicaid individual has no surviving child younger than age 21.
- When the deceased Medicaid individual has no surviving child of any age who is considered blind or disabled under Medicaid regulations.

Does a will protect assets from estate recovery?

No. Ohio's Medicaid program and other creditors are paid before any assets are distributed to heirs or other beneficiaries.

Are there exceptions to estate recovery?

If there is an undue hardship to a survivor, the right to immediate recovery may be delayed or waived. Undue hardship is determined on a case-by-case basis.

Is a person's house subject to estate recovery?

Yes. A Medicaid individual's house may be subject to estate recovery. If the Medicaid eligible individual was permanently institutionalized, any claim from the sale of a house may be delayed while the recipient's sibling or child resides in the home, if specific conditions are met.

Will the Attorney General's Office contact the family of the deceased?

After a Medicaid individual dies, the AGO will send a notice of claim to the estate's executor requesting repayment for the cost of Medicaid benefits. It is the estate executor's responsibility to notify any family members or other heirs who might be affected by the estate recovery. If the estate executor has not been identified to the AGO, the AGO may need to contact the Medicaid individual's family members.

How can the Attorney General's Office be reached?

The Medicaid Estate Recovery Unit of the AGO can be contacted at:

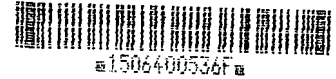
Medicaid Estate Recovery Unit
30 E. Broad Street, 14th Floor
Columbus, OH 43215

Information can be obtained online at <http://www.ohioattorneygeneral.gov/Business/Collections> or by calling the Ohio Medicaid Consumer Hotline at 1-800-324-8680, or by calling your local County Department of Job & Family Services.

AFF
2

15064 00536

Scott Crowley
Hamilton County Recorder's Office
Doc #: 2023-0088298 Type: AFF
Filed: 12/18/23 09:49:41 AM \$34.00
Off.Rec.: 15064 00536 F 2 106



AFFIDAVIT OF FACT RELATING TO TITLE
(ORC §5301.252)

Now comes Affiant herein and being duly sworn, hereby states:

1. He has been appointed as Special Counsel by the Ohio Attorney General to handle accounts under the Medicaid Estate Recovery program.
2. Medicaid Recipient, **Nannette A. Plaisted (aka Nannette Andrea Plaisted)**, deceased, was a Medicaid recipient during her lifetime.
3. The State of Ohio paid \$66,771.92 on behalf of Medicaid Recipient.
4. The State of Ohio may have a claim against the Estate of Medicaid Recipient in the amount of \$66,771.92, plus interest, pursuant to Ohio Revised Code §5162.21 and 42 USC 1396p.
5. Medicaid Recipient was joint owner of property located at **56 Glendale Street, Cincinnati, Ohio 45216**, by virtue of Deed recorded on July 31, 1984, in Book 4292, Page 86, of the Hamilton County, Ohio Recorder's Records, and further identified as:

Situate in the City of Cincinnati, Hamilton County, State of Ohio, and being known, numbered and designated as Lot 12 of Jonathan Gilley's Heirs Subdivision, as recorded in Plat Book 4, page 259 of the Plat Records of Hamilton County, Ohio. Said Lot fronts 50 feet along the north side of Glendale Avenue and extends back northwardly between parallel lines a distance of 158.77 feet on the west line and 159.58 feet on the east line for depth.

Parcel Number: 244-0005-0035

6. By virtue of the real estate described in paragraph five (5) above being in the name of **Nanette Andrea Plaisted**, deceased, the State of Ohio, in the Medicaid Recovery Statute, maintains a one-half (1/2) interest or up to the claim amount, whichever is less, in the said real estate.

7. Medicaid Recipient left a surviving spouse, **Bradley Allen Plaisted**, and by law the Medicaid claim is deferred until the passing of the surviving spouse. The Medicaid claim will become enforceable upon the death of the spouse.
8. The Undersigned should be contacted, at the following address, prior to the transfer of title: Giles & Harper, LLC, Special Counsel, 7247 Beechmont Avenue, Cincinnati, Ohio 45230, (513) 621-0930.

FURTHER AFFIANT SAYETH NAUGHT.

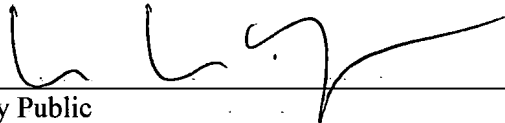


Donald W. Harper II (0089334)
Brian T. Giles (0072806)
Special Counsel to the Ohio Attorney General
7247 Beechmont Avenue
Cincinnati, Ohio 45230
Telephone: (513) 621-0930
Facsimile: (513) 562-8822
oag@gilesharper.com

STATE OF OHIO; COUNTY OF HAMILTON, ss.

Sworn and subscribed before me on this 13 day of December 2023.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cincinnati, Ohio.



Notary Public

Prepared By:
Giles & Harper, LLC
7247 Beechmont Avenue
Cincinnati, Ohio 45230
(513) 621-0930

Type: Mortgages
Kind: LIEN
Recorded: 8/2/2016 3:36:28 PM
Fee Amt: \$0.00 Page 1 of 2
Montgomery County, OH
Willis E. Blackshear Recorder

Exhibit

A

File# 2016-00040901

**CERTIFICATE OF AMOUNT OF MEDICAID RECOVERY
(LIEN ON REAL ESTATE AND PERSONAL PROPERTY
Ohio Revised Code Section 5162.21 (formerly 5111.11)
and 5162.111 (formerly 5111.111), and 42 USC 1396(p)**

DATE: July 28, 2016
RECORDER OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO
DEPARTMENT OF MEDICAID

MONTGOMERY COUNTY
DAYTON, OHIO

PLAINTIFF

VS

MARY J. HOWLAND, THE ESTATE OF MARY J. HOWLAND,
MARSHA HOWLAND, AND ALL OTHER HEIRS OF MARY J.
HOWLAND

TYPE: MEDICAID ESTATE RECOVERY
CLAIM NO. 11005956

DEFENDANT

THE AFOREMENTIONED ASSESSMENT HAS BECOME FINAL BY OPERATION OF LAW FOR THE PURPOSE OF HAVING A LIEN FILED
AGAINST THE REAL AND PERSONAL PROPERTY OF THE ABOVE NAMED PERSON: SEE ATTACHED LEGAL DESCRIPTION.

TO THE COUNTY RECORDER:
PLEASE FILE LIEN AGAINST THE REAL
AND PERSONAL PROPERTY OF THE ABOVE
NAMED PERSON. RETAIN ONE COPY AND
RETURN ONE COPY TO THE UNDERSIGNED
COUNSEL.

AMOUNT: \$157,820.06



PREPARED BY
CHARLES F. GEIDNER,
CO-COUNSEL TO
BRADLEY C. SMITH,
SPECIAL COUNSEL TO THE
ATTORNEY GENERAL OF OHIO
15 W. FOURTH STREET, SUITE 250
DAYTON, OHIO 45402

I hereby certify that MARY J. HOWLAND, was the
Medicaid Recipient for whom the
Ohio Department of Medicaid
paid \$157,820.06 and that this lien is authorized
by Ohio Revised Code Sections 5162.21 and 5162.111
I further certify that the above amount bears interest to the
maximum statutory rate from July 28, 2016.

CHARLES F. GEIDNER, CO-COUNSEL TO
BRADLEY C. SMITH
ATTORNEY FOR OHIO DEPARTMENT OF
MEDICAID AS SPECIAL
COUNSEL TO THE OFFICE OF THE
ATTORNEY GENERAL OF OHIO

Sworn to and subscribed before me
this 29 day of July, 2016

Notary Public