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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 318-
Revise the Medicaid Estate Recovery Program Law
By
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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. 318 regarding revising the Medicaid Estate Recovery Program statutes, R.C. 5162.21 and 5162.211.

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 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, because their retirement and resources are insufficient to pay the $12,000 per month cost of nursing home care need Medicaid for the first time. Many are reluctant to seek Medicaid because of their fears about the Medicaid Estate Recovery program and how it will affect their families.

H.B. 318, while continuing to recognize Ohio's obligation to seek recovery from the Medicaid recipient's property, also seeks to address the impoverishment of non-Medicaid recipient family members, including surviving spouses.

The Ohio Department of Medicaid is responsible for the Medicaid Estate Recovery program, which, pursuant to R.C. 5162.21, seeks recovery from **the Medicaid recipient's** estate. While federal law does not require States to seek adjustment or recovery beyond certain limited circumstances, 42 U.S.C. § 1396p(b)(1)(A), (b)(1)(B)(i), Ohio has gone further.

We strongly support the proposed amendments in H.B. 318. Ohioans turn to Medicaid coverage of long-term care to pay for care of our older adults when they exhaust their resources. With the cost of privately paid nursing homes averaging at least $7,787.00 a month,[1] Ohioans can quickly exhaust their assets paying for long-term care. The proposed amendments in H.B. 318 remove some of the harshest effects of Medicaid Estate Recovery from those least capable of shouldering their expense. We address each of the three major amendments in H.B. 318 as discussed in the Bill Analysis.

- **Waiving adjustment or recovery against an estate when the cost of the Medicaid services to be recovered is (1) less than $20,000 or (2) does not exceed the administrative costs of recovery.**

The proposed amendments to R.C. 5162.21(G)(2) would waive small dollar value claims, freeing the State from the disproportionate expense of pursuing *de minimus* claims. And Ohioans who unexpectedly need Medicaid just to cover a temporary medical insurance need (perhaps they are between jobs) or just for a few weeks of their final illness will no longer have to choose between declining medical care and the harsh financial consequences of Medicaid Estate Recovery.

- **Prohibiting the Department from imposing a lien against the real property of a Medicaid recipient that exceeds 75% of the assessed value of the property.**

The proposed amendments to R.C. 5162.211(B) prohibit imposition of liens against the property of Medicaid recipients that exceed 75% of the assessed value of the property. The 75% cap on liens frees up funds from the sale of the Medicaid recipient's house for payment of other priority claims such as funeral expenses and nursing home debt not covered by Medicaid.

- **Prohibiting the Department of Medicaid from implementing an option permitting recovery under the Medicaid Estate Recovery Program against the estates of Medicaid recipients not expressly required under federal law.**

We strongly support the proposed amendment to R.C. 5162.21(B)(2). As required by federal law, the draft statute still imposes Medicaid Estate Recovery on Ohioans who receive Medicaid coverage of a nursing home or who receive home and community

[1] O.A.C 5160:1-6-06.5(B)(2)(a), Medicaid Eligibility Procedure Letter No. 181.

based services. However, those who need Medicaid coverage to cover basic medical insurance would not be subject to Medicaid Estate Recovery. Many Ohioans enroll in Medicaid just to have some form of medical insurance. Sometimes these individual never or barely use Medicaid, and then later learn that their family home will likely be lost due to Medicaid Estate Recovery. To avoid that result, individuals sometimes cancel Medicaid and chose to go without insurance once they learn of Medicaid Estate Recovery, even when maintaining medical insurance would be in their best interest. This amendment avoids such unnecessarily harsh results and encourages Ohioans to maintain health insurance to cover their medical care.

By removing current R.C. 5162.21(B)(3), the proposed amendments in H.B. 318 clarify that the recovery should be limited to property owned by the Medicaid recipient, while maintaining the exceptions to recovery during the lifetime of the surviving spouse and adult disabled children. Adopting this amendment will assist in limiting Medicaid Estate Recovery to the property owned by the individual who received benefits while seeking to protect and not impoverish surviving spouses and disabled children. However, another amendment is needed to achieve this result because as written, H.B. 318 would still allow liens on homes owned by spouses of permanently institutionalized individuals.

- **To limit the scope of Medicaid Estate Recovery to the requirements of federal law, we request that you also amend to R.C. 5162.21 and 5162.211 to remove the State's ability to place liens on the homes of spouses.**

When an Ohioan in a nursing home qualifies for Medicaid coverage of long-term care, the income of the institutionalized often goes to pay their share of the nursing home cost-of-care, which is called patient liability. A spouse who remains in the community often is left paying all the couple's fixed expenses (*e.g.* property taxes, insurance, utilities), out of their income and perhaps a portion of their spouse's income that remains to them.

A community spouse thus may be paying patient liability to a nursing home while trying hard to pay their remaining bills with what is left of the couple's income. The community spouse may need to draw equity from their home to pay their bills. But under the current version of R.C. 5162.211, the Department of Medicaid can impose a lien on the community spouse's home and property in certain circumstances. These liens limit the ability of the community spouse to sell or mortgage their house to pay the bills. Consider a spouse who has moved to an independent living facility and then attempts to sell a family home that she owns to pay the bills, but cannot due to a $100,000 lien on her home.

Thus, we urge the Committee to adopt additional amendments.

As currently written, at R.C. 5162.21(B)(1) and R.C. 5162.211(B), H.B. No. 318 still allows imposition of liens “against the real property of the recipient’s spouse” although these liens are not authorized by federal law. 42 U.S.C. § 1396p and 42 C.F.R. § 433.36. This contradicts the federal prohibition against any adjustment or recovery from the surviving spouse. 42 U.S.C. § 1396p(b)(2).

The reason for the federal prohibition is clear. Since 1988, Congress recognized the need to prevent the spouse from impoverishment by providing eligibility while protecting certain assets for the spouse. Allowing Medicaid Estate Recovery liens to defeat a community spouse’s ability to remove equity from a home would defeat these protections.

Federal law prohibits estate recovery during the spouse’s lifetime so that the surviving spouse will have access to all resources for her needs. 42 U.S.C. § 1396p(b)(2). H.B. 318 recognizes this goal and with its proposed removal of R.C. 5162.21(B)(3) to limit Ohio’s collection to Medicaid recipient’s property. To avoid all confusion and to prevent impoverishment of community spouses, we urge the committee to also eliminate the references to the spouse’s property noted above in R. C. 5162.211(B) and R.C. 5162.21(D)(1).

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