

**As Introduced**

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**H. B. No. 318**

**Representatives Stephens, Brennan**

**Cosponsors: Representatives Thomas, D., Glassburn, McNally**

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To amend sections 5162.21 and 5162.211 of the 1  
Revised Code to make changes to the law 2  
governing the Medicaid Estate Recovery Program. 3

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

**Section 1.** That sections 5162.21 and 5162.211 of the 4  
Revised Code be amended to read as follows: 5

**Sec. 5162.21.** (A) As used in this section and section 6  
5162.211 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 medical institution.	19 20
(3) "Permanently institutionalized individual" means an individual to whom all of the following apply:	21 22
(a) Is an inpatient in an institution;	23
(b) Is required, as a condition of the medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by the department of medicaid;	24 25 26 27 28
(c) Cannot reasonably be expected to be discharged from the institution and return home as determined by the department of medicaid.	29 30 31
(4) "Qualified state long-term care insurance partnership program" means the program established under section 5164.86 of the Revised Code.	32 33 34
(5) "Time of death" shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.	35 36 37 38 39
(B) To the extent permitted by federal law, the department of medicaid shall institute a medicaid estate recovery program under which the department shall, except as provided in divisions (C) and (E) of this section, and subject to division (D) of this section, do <del>all</del> <u>both</u> of the following:	40 41 42 43 44
(1) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of a permanently	45 46

institutionalized individual of any age, seek adjustment or 47  
recovery from the individual's estate or on the sale of property 48  
of the individual or spouse that is subject to a lien imposed 49  
under section 5162.211 of the Revised Code; 50

(2) For the costs of medicaid services described in 51  
section 1917(b) (1) (B) (i) of the "Social Security Act," 42 U.S.C. 52  
1396p(b) (1) (B) (i), that the medicaid program correctly paid or 53  
will pay on behalf of an individual fifty-five years of age or 54  
older who is not a permanently institutionalized individual, 55  
seek adjustment or recovery from the individual's estate; 56

~~(3) Seek adjustment or recovery from the estate of other-~~ 57  
~~individuals as permitted by federal law.~~ 58

(C) (1) No adjustment or recovery may be made under 59  
division (B) (1) of this section from a permanently 60  
institutionalized individual's estate or on the sale of property 61  
of a permanently institutionalized individual that is subject to 62  
a lien imposed under section 5162.211 of the Revised Code or 63  
under division (B) (2) or (3) of this section from an 64  
individual's estate while either of the following are alive: 65

(a) The spouse of the permanently institutionalized 66  
individual or individual; 67

(b) The son or daughter of a permanently institutionalized 68  
individual or individual if the son or daughter is under age 69  
twenty-one or, under section 1614 of the "Social Security Act," 70  
~~section 1614,~~ 42 U.S.C. 1382c, is considered blind or disabled. 71

(2) No adjustment or recovery may be made under division 72  
(B) (1) of this section from a permanently institutionalized 73  
individual's home that is subject to a lien imposed under 74  
section 5162.211 of the Revised Code while either of the 75

following lawfully reside in the home:	76
(a) The permanently institutionalized individual's sibling	77
who resided in the home for at least one year immediately before	78
the date of the permanently institutionalized individual's	79
admission to the institution and on a continuous basis since	80
that time;	81
(b) The permanently institutionalized individual's son or	82
daughter who provided care to the permanently institutionalized	83
individual that delayed the permanently institutionalized	84
individual's institutionalization and resided in the home for at	85
least two years immediately before the date of the permanently	86
institutionalized individual's admission to the institution and	87
on a continuous basis since that time.	88
(D) In the case of a participant of the qualified state	89
long-term care insurance partnership program, adjustment or	90
recovery required by this section may be reduced in accordance	91
with rules authorized by division (G) of this section.	92
(E) The department shall, in accordance with procedures	93
and criteria established in rules authorized by division (G) of	94
this section, waive seeking an adjustment or recovery otherwise	95
required by this section if the medicaid director determines	96
that adjustment or recovery would work an undue hardship. The	97
department may limit the duration of the waiver to the period	98
during which the undue hardship exists.	99
(F) For the purpose of determining whether an individual	100
meets the definition of "permanently institutionalized	101
individual" established for this section, a rebuttable	102
presumption exists that the individual cannot reasonably be	103
expected to be discharged from an institution and return home if	104

either of the following is the case: 105

(1) The individual declares that he or she does not intend 106  
to return home. 107

(2) The individual has been an inpatient in an institution 108  
for at least six months. 109

(G) Rules adopted under section 5162.02 of the Revised 110  
Code shall do both of the following: 111

(1) For the purpose of division (D) of this section and 112  
consistent with section 1917(b)(1)(C) of the "Social Security 113  
Act," ~~section 1917(b)(1)(C),~~ 42 U.S.C. 1396p(b)(1)(C), provide 114  
for reducing an adjustment or recovery in the case of a 115  
participant of the qualified state long-term care insurance 116  
partnership program; 117

(2) For the purpose of division (E) of this section and 118  
consistent with the standards specified by the United States 119  
secretary of health and human services under section 1917(b)(3) 120  
of the "Social Security Act," ~~section 1917(b)(3),~~ 42 U.S.C. 121  
1396p(b)(3), establish procedures and criteria for waiving 122  
adjustment or recovery due to an undue hardship or for either of 123  
the following: 124

(a) Beginning on the effective date of this amendment, 125  
waiving adjustment or recovery when the costs of medicaid 126  
services the medicaid program correctly paid or will pay on 127  
behalf of an individual are less than twenty thousand dollars. 128  
In subsequent years, the department shall adjust the amount 129  
specified in this division for inflation. 130

(b) Waiving adjustment or recovery when the costs of 131  
medicaid services the medicaid program correctly paid or will 132  
pay on behalf of an individual do not exceed the administrative 133

costs of making the adjustment or recovery. 134

**Sec. 5162.211.** (A) Except as provided in division (B) of 135  
this section and section 5162.23 of the Revised Code, no lien 136  
may be imposed against the property of an individual before the 137  
individual's death on account of medicaid services correctly 138  
paid or to be paid on the individual's behalf. 139

(B) Except as provided in division (C) of this section, 140  
the department of medicaid may impose a lien against the real 141  
property of a medicaid recipient who is a permanently 142  
institutionalized individual and against the real property of 143  
the recipient's spouse, including any real property that is 144  
jointly held by the recipient and spouse. The lien may be 145  
imposed on account of medicaid paid or to be paid on the 146  
recipient's behalf. A lien imposed against the real property of 147  
a medicaid recipient under this section shall not exceed 148  
seventy-five per cent of the assessed value of the property. 149

(C) No lien may be imposed under division (B) of this 150  
section against the home of a medicaid recipient if any of the 151  
following lawfully resides in the home: 152

(1) The recipient's spouse; 153

(2) The recipient's son or daughter who is under twenty- 154  
one years of age or, under section 1614 of the "Social Security 155  
Act," ~~section 1614,~~ 42 U.S.C. 1382c, considered to be blind or 156  
disabled; 157

(3) The recipient's sibling who has an equity interest in 158  
the home and resided in the home for at least one year 159  
immediately before the date of the recipient's admission to the 160  
institution. 161

(D) The medicaid director or a person designated by the 162

director shall sign a certificate to effectuate a lien required 163  
to be imposed under this section. The county department of job 164  
and family services shall file for recording and indexing the 165  
certificate, or a certified copy, in the real estate mortgage 166  
records in the office of the county recorder in every county in 167  
which real property of the recipient or spouse is situated. From 168  
the time of filing the certificate in the office of the county 169  
recorder, the lien attaches to all real property of the 170  
recipient or spouse described in the certificate for all amounts 171  
for which adjustment or recovery may be made under section 172  
5162.21 of the Revised Code and, except as provided in division 173  
(E) of this section, shall remain a lien until satisfied. 174

Upon filing the certificate in the office of the recorder, 175  
all persons are charged with notice of the lien and the rights 176  
of the department of medicaid thereunder. 177

The county recorder shall keep a record of every 178  
certificate filed showing its date, the time of filing, the name 179  
and residence of the recipient or spouse, and any release, 180  
waivers, or satisfaction of the lien. 181

The priority of the lien shall be established in 182  
accordance with state and federal law. 183

The department may waive the priority of its lien to 184  
provide for the costs of the last illness as determined by the 185  
department, administration, attorney fees, administrator fees, a 186  
sum for the payment of the costs of burial, which shall be 187  
computed by deducting from five hundred dollars whatever amount 188  
is available for the same purpose from all other sources, and a 189  
similar sum for the spouse of the decedent. 190

(E) A lien imposed with respect to a medicaid recipient 191

under this section shall dissolve on the recipient's discharge	192
from the institution and return home.	193
<b>Section 2.</b> That existing sections 5162.21 and 5162.211 of	194
the Revised Code are hereby repealed.	195