

SENATE, No. 3489

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 21, 2019

Sponsored by:
Senator JOSEPH P. CRYAN
District 20 (Union)

SYNOPSIS

Limits authority of DHS to impose liens and seek recovery from Medicaid recipient's estate after death.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning liens imposed and recovery sought from
2 Medicaid recipient's estate after death and amending P.L.1979,
3 c.365.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 7 of P.L.1979, c.365 (C.30:4D-7.2) is amended to
9 read as follows:

10 7. a. (1) A lien may be filed against and recovery sought from
11 the estate of a deceased recipient for assistance correctly paid or to
12 be paid on his behalf for **[all services]** nursing facility services,
13 home and community-based services, and hospital and prescription
14 drug services provided concurrently with nursing facility or home
15 and community-based services received when he was 65 years of
16 age or older, except as provided in section 1 of P.L.1981, c.217
17 (C.30:4D-7.2a).

18 (2) In the case of a recipient who became deceased on or after
19 April 1, 1995 for whom a Medicaid payment was made on or after
20 October 1, 1993, a lien may be filed against and recovery sought
21 from the estate of the deceased recipient for assistance correctly
22 paid or to be paid on his behalf for **[all services]** nursing facility
23 services, home and community-based services, and hospital and
24 prescription drug services provided concurrently with nursing
25 facility or home and community-based services received when he
26 was 55 years of age or older, except as provided in section 1 of
27 P.L.1981, c.217 (C.30:4D-7.2a).

28 (3) As used in this section, "estate" includes all real and
29 personal property and other assets included in the recipient's estate
30 as defined in N.J.S.3B:1-1**],** as well as any other real and personal
31 property and other assets in which the recipient had any legal title
32 or interest at the time of death, to the extent of that interest,
33 including assets conveyed to a survivor, heir or assign of the
34 recipient through joint tenancy, tenancy in common, survivorship,
35 life estate, living trust or other arrangement**].**

36 "Estate" shall not include amounts received as reparations or
37 restitution for the loss of liberty or damage to health by the victims
38 of National Socialist persecution; returns of tangible or intangible
39 property seized, misappropriated or lost as a result of National
40 Socialist actions or policies and any cash values in replacement of
41 such property; payments of insurance policies purchased by the
42 victims of National Socialist persecution; and any accumulated or
43 accrued interest on such amounts. National Socialist actions or
44 policies include, but are not limited to, actions and policies taken by

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Germany and other countries, or by organizations and institutions
2 within those countries, against the victims of the Nazi Holocaust.

3 b. A lien may be filed by the division against a third party's
4 property, whether real or personal, or against any interest or estate
5 in property, whether vested or contingent.

6 Subject to section 6 of P.L.1979, c.365 (C.30:4D-7.1), any third
7 party recovery obtained by the division under this subsection shall
8 not be reduced by any counsel fees, costs, or other expenses, or
9 portions thereof, incurred by the recipient or the recipient's
10 attorney.

11 c. A certificate of debt may be filed by the division against
12 such parties and in such a manner as is specified in subsection (h)
13 of section 17 of P.L.1968, c.413 (C.30:4D-17).

14 d. (1) A lien, claim or encumbrance imposed by this act shall be
15 deemed a preferred claim against the recipient's estate and shall
16 have a priority equivalent to that under subsection d. of
17 N.J.S.3B:22-2.

18 (2) In the case of a recipient who became deceased on or after
19 the effective date of P.L.1995, c.289, a lien, claim or encumbrance
20 imposed pursuant to this section shall be deemed a preferred claim
21 against the recipient's estate and shall have a priority equivalent to
22 that under subsection c. of N.J.S.3B:22-2.
23 (cf: P.L.2015, c.124, s.2)

24
25 2. The Commissioner of Human Services shall apply for such
26 State plan amendments or waivers as may be necessary to
27 implement the provisions of this act and to secure federal financial
28 participation for State Medicaid expenditures under the federal
29 Medicaid program.

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31 3. This act shall take effect immediately.
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34 STATEMENT

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36 This bill amends the law governing the State's Medicaid estate
37 recovery program and limits the authority of the Division of
38 Medical Assistance and Health Services (DMAHS) in the
39 Department of Human Services to impose a lien and seek recovery
40 from a Medicaid recipient's estate after death. This bill is designed
41 to allow Medicaid recipients to preserve certain assets and savings
42 for their heirs, while also meeting the minimum federal
43 requirements for the State's Medicaid estate recovery program
44 pursuant to the "Omnibus Budget Reconciliation Act of 1993,"
45 Pub.L.103-66.

46 Currently, New Jersey's Medicaid estate recovery program pursues
47 recovery of payments provided through the Medicaid program for all
48 services received on or after the age of 55. Under this bill, the

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1 DMAHS would be limited to pursuing recovery for costs associated
2 with nursing facility services, home and community-based services,
3 and hospital and prescription drug services provided concurrently
4 with nursing facility or home and community-based services
5 received on or after the age of 55.

6 Additionally, this bill would restrict the definition of “estate” to
7 real and personal property and other assets included in the Medicaid
8 recipient's estate as defined in N.J.S.3B:1-1. In doing so, recovery
9 would be limited to all property and assets that pass from a deceased
10 person to his or her heirs under probate law. Currently, the New
11 Jersey Medicaid estate recovery program utilizes an expanded
12 definition of “estate” which enables DMAHS to also recover from
13 some or all property that bypasses probate, such as life insurance,
14 pension benefits, retirement accounts, and jointly owned real estate
15 and accounts.