



OFFICE
OF THE
PRESIDENT

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CLIFFORD E. HAINES

June 19, 2009

The Honorable Dwight Evans
512-E Main Capitol Bldg.
PO Box 202203
Harrisburg, PA 17120-2203

The Honorable Mario Civera
245 Main Capitol Bldg.
PO Box 202164
Harrisburg, PA 17120-2164

The Honorable Frank Oliver
34E East Wing
PO Box 202195
Harrisburg, PA 17120-2195

The Honorable Matthew E. Baker
115 Ryan Office Bldg.
PO Box 202068
Harrisburg, PA 17120-2068

Dear Leaders:

On behalf of the 29,000-member Pennsylvania Bar Association, I am urging you to oppose Section 1412 of HB 1351 which expands Pennsylvania's Medical Assistance Estate Recovery Program ("MAER") to include the non-probate assets of a Medicaid recipient. This legislation is currently in the House Health and Human Services Committee.

On June 4, 2009, the Pennsylvania Bar Association's House of Delegates approved a recommendation of its Elder Law Section opposing this and any other such legislation which would enlarge estate recovery beyond the probate estate of a Medicaid recipient. A copy of that resolution is attached.

If enacted as written, Section 1412 of HB 1351 will have a devastating effect on spouses of nursing home residents with limited incomes, as they will suddenly be faced with threats to their homeownership. In addition to the personal hardships and liens that many families will face, expansion of estate recovery will also fundamentally alter long-settled concepts of Pennsylvania's real property and estate laws. The result will be costly delays and complications for the settlement of life insurance policies, annuities, trusts, and probate estates, as well as real estate transactions. These complications will apply when anyone over the age of 55 dies, regardless of whether they received Medicaid.

The PBA has taken the position that MAER be limited to claims against the Medicaid recipient's probate estate, and we urge you to oppose Section 1412 of HB 1351, and any similar legislation which would expand the program to include non-probate assets as well.

Thank you for your consideration of our views on this issue.

Sincerely,

Clifford E. Haines
President, Pennsylvania Bar Association

cc: Pennsylvania House Appropriations Committee members
Pennsylvania House Health & Human Services Committee members

PENNSYLVANIA BAR ASSOCIATION

ELDER LAW SECTION

RECOMMENDATION

That the Pennsylvania Bar Association formally adopt the following resolution:

The Pennsylvania Bar Association is concerned with efforts to expand estate recovery, including Section 1412 of House Bill 1351 of 2009 (Printer's Number 1666), introduced on April 28, 2009. Such proposed legislation would enlarge estate recovery beyond the probate estate of a Medicaid recipient. It would allow Pennsylvania's Department of Public Welfare to impose administrative liens against interests created by joint tenancy, tenancy by the entireties, tenancy in common, survivorship, life estate, living trust or other arrangements. Such legislation is likely to create significant complications for estate administration, and will adversely affect ownership and transfer of both real and personal property. Such legislation seeks to impose obligations and administrative penalties that will deter individuals from serving as executors and trustees and lawyers from representing these fiduciaries. The safety of Older Pennsylvanians will be compromised when they refrain from seeking needed long-term support services because of fear of such new liens asserted by the Commonwealth. The PBA takes the position that Pennsylvania's Medical Assistance Estate Recovery Program be limited to claims against the Medicaid recipient's probate estate.