



OFFICE
OF THE
PRESIDENT

100 SOUTH STREET • P.O. BOX 186 • HARRISBURG, PA 17108-0186 • (717) 238-6715 or (800) 932-0311 • FAX (717) 238-1204

CLIFFORD E. HAINES

June 19, 2009

The Honorable Edward G. Rendell
Governor, Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg PA 17120

Re: Expanded Medicaid Estate Recovery (currently HB 1351)

Dear Governor Rendell:

The Pennsylvania Bar Association urges you to withdraw from efforts to expand Pennsylvania's Medicaid Estate Recovery program to non-probate assets. The Pennsylvania Bar Association opposes the change in Commonwealth policy set forth in House Bill 1351 (Section 10, of which would alter Section 1412 of existing law), and also opposes any similar attempts to expand recovery to non-probate assets through legislation tied to other budget initiatives. On June 4, 2009, the Pennsylvania Bar Association's House of Delegates **unanimously** resolved that Pennsylvania's estate recovery program should be limited to claims against the Medicaid recipient's probate estate.

We understand the significant budget challenges facing Pennsylvania; however, our membership takes the position that the modest revenues projected from expanded estate recovery are offset by highly negative consequences, including:

- * Imposition of liens that impair the community spouse's ability to use equity in the family home for her own retirement needs;
- * Imposition of liens that will create long-lasting complications for title of real and personal property, including dramatic implications for joint-owners of family farms;
- * Using the threat of liens to discourage care-needing adults from seeking state assistance for long-term care, preying upon their fears that ill health will further jeopardize the family's financial security;
- * Creating a lien system that will disproportionately impact unsophisticated Pennsylvanians, especially those who have not been able to afford counseling by attorneys or other professionals for estate planning;
- * Creating a lien system that fails to incorporate a disinterested third-party, such as the Pennsylvania Orphans' Court, to resolve inevitable disputes about estate recovery liens affecting non-probate assets.

Further, in no other public benefit or welfare program must persons forfeit equity in their home to repay the Commonwealth or the Federal Government for funds expended on their behalf.

Because expanded estate recovery proposal has such a wide ranging impact on so many Pennsylvania families and businesses, the Pennsylvania Bar Association's resolution garnered express support from the Family Law Section, the Real Property and Probate Law Section, the Solo and Small Firm Section, as well as the Elder Law Section of the Bar. Other organizations that have adopted express opposition to expanded estate recovery include the Pennsylvania Coalition of the Alzheimer's Association, the Pennsylvania Chapter of AARP, and the Pennsylvania Land Title Association.

For these reasons, the Pennsylvania Bar Association, which is the largest association of lawyers in Pennsylvania, respectfully requests that you withdraw your support for any proposal to expand Pennsylvania's Medicaid Estate Recovery Program. Please contact us if you would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Cliff". The signature is written in a cursive, slightly slanted style.

Clifford Haines, Esq.
President, Pennsylvania Bar Association