

SENATE, No. 3759

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 8, 2023

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.

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

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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**
11 **from the estate of a deceased recipient for assistance correctly paid**
12 **or to be paid on his behalf for all services received when he was 65**
13 **years of age or older, except as provided in section 1 of P.L.1981,**
14 **c.217 (C.30:4D-7.2a).]** (deleted by amendment, P.L. _____, c. _____)
15 (pending before the Legislature as this bill)

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

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

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

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

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

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

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

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

21 (cf: P.L.2015, c.124, s.2)

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

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29 3. This act shall take effect immediately.

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STATEMENT

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

44 Currently, New Jersey's Medicaid estate recovery program pursues
45 recovery of payments provided through the Medicaid program for all
46 services received on or after the age of 55. Under this bill, the
47 DMAHS would be limited to pursuing recovery for costs associated
48 with nursing facility services, home and community-based services,

S3759 CRYAN

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1 and hospital and prescription drug services provided concurrently
2 with nursing facility or home and community-based services
3 received on or after the age of 55.

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

14 Finally, the bill makes technical corrections by revising the use of
15 pronouns and removing certain statutory language that no longer
16 applies under current law.