

SENATE. No. 1820

The Commonwealth of Massachusetts

SENATE, March 27, 1995.

The committee on the Judiciary, to whom was referred the message from His Excellency the Governor recommending legislation relative to estate recovery changes in accordance with federal law (House, No. 1451), reports the accompanying bill (Senate, No. 1820).

For the committee,

CHERYL A. JACQUES.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT AMENDING THE MASSACHUSETTS MEDICAID ESTATE RECOVERY STATUTE AS MANDATED BY FEDERAL LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 118E of the General Laws, as amended by
2 section 17 of chapter 161 of the acts of 1993, is hereby amended
3 by striking out section 31 (as in effect until June 30, 1995) and
4 inserting in place thereof the following section:—

5 Section 31. (a) This subsection shall apply to estates of individ-
6 uals dying prior to April first, nineteen hundred and ninety-five.
7 There shall be no adjustment or recovery of medical assistance
8 correctly paid except as follows:

9 (1) *Recovery from the Permanently Institutionalized* From the
10 estate of an individual, regardless of age, who was an inpatient in a
11 nursing facility or other medical institution when he or she received
12 such assistance. Recovery of such assistance shall be limited to
13 assistance provided on or after March twenty-second, nineteen hun-
14 dred and ninety-one.

15 (2) *Recovery from Persons Age 65 and Over* From the estate of
16 an individual who was sixty-five years of age or older when he or
17 she received such assistance.

18 Any recovery may be made only after the death of the surviving
19 spouse, if any, and only at a time when he or she has no surviving
20 child who is under age twenty-one or is blind or permanently and
21 totally disabled. The division shall waive recovery where it would
22 result in undue hardship, as determined in accordance with the
23 procedures and criteria specified in section 32(f) of this chapter.

24 (b) This subsection shall apply to estates of individuals dying on
25 or after April first, nineteen hundred and ninety-five. There shall be
26 no adjustment or recovery of medical assistance correctly paid
27 except as follows:

28 (1) *Recovery from the Permanently Institutionalized* From the
29 estate of an individual, regardless of age, who was an inpatient in a

30 nursing facility or other medical institution when he or she received
31 such assistance. Recovery of such assistance shall be limited to
32 assistance provided on or after March twenty-second, nineteen hun-
33 dred and ninety-one.

34 (2) *Recovery from Persons Age 65 and Over* From the estate of
35 an individual who was sixty-five years of age or older when he or
36 she received such assistance.

37 (3) *Recovery from Persons Age 55 and Over for post-October 1,*
38 *1993 Medicaid* From the estate of an individual who was fifty-
39 five years of age or older when he or she received such assistance,
40 where such assistance was for services provided on or after
41 October 1, 1993.

42 Any recovery may be made only after the death of the surviving
43 spouse, if any, and only at a time when he or she has no surviving
44 child who is under age twenty-one or is blind or permanently and
45 totally disabled. The division shall waive recovery where it would
46 result in undue hardship, as determined in accordance with the
47 procedures and criteria specified in section 32(f) of this chapter.

48 (c) For purposes of this section, "estate" shall mean all real and
49 personal property and other assets includable in the decedent's
50 probate estate under the General Laws.

1 SECTION 2. Chapter 118E of the General Laws, as amended
2 by section 17 of chapter 161 of the acts of 1993, is hereby
3 amended by striking out section 31 as scheduled to take effect on
4 June 30, 1995.

1 SECTION 3. Section 32(a) of said chapter 118E is hereby
2 amended by striking the second paragraph and inserting in place
3 thereof the following paragraph:—

4 In the event a petitioner fails to send copies of the petition and
5 death certificate to the division and the decedent received medical
6 assistance for which the division is authorized to recover under
7 section thirty-one, any person receiving a distribution of assets from
8 the decedent's estate shall be liable to the division to the extent of
9 such distribution.

1 SECTION 4. Section 32 of chapter 118E of the General Laws, as
2 amended by section 17 of chapter 161 of the acts of 1993, is hereby
3 amended by inserting the following new subsection at the end:—

4 (f) When presenting its claim under subsection (b)(1) or (b)(2)
5 of this section, the division shall deliver or mail to the executor or
6 administrator a notice including the following: (1) stating that
7 recovery shall be waived in a case in which undue hardship is
8 demonstrated; (2) specifying the criteria that shall be applied by the
9 division to determine whether undue hardship exists; and (3) speci-
10 fying the division's procedures for the determination of undue hard-
11 ship, which shall include an initial determination concerning undue
12 hardship by the estate recovery unit; written notice to the executor
13 or administrator of the initial determination, and an opportunity
14 for an administrative hearing before the division to appeal this ini-
15 tial determination.

16 The division's criteria for the determination of undue hardship
17 shall include at least the following: whether the estate subject to
18 recovery is the sole income-producing asset of the survivors (where
19 such income is limited) such as a family farm or other family busi-
20 ness, or a homestead of modest value; whether one (or more) of the
21 beneficiaries of the estate of the decedent engaged in substantial
22 caretaking activities on the decedent's behalf at significant personal
23 or financial cost; whether one (or more) of the beneficiaries of the
24 estate of the decedent is experiencing significant financial duress;
25 whether recovery of the claim would likely result in the loss of
26 housing by one (or more) of the beneficiaries of the estate; whether
27 recovery of the claim would result in a substantial likelihood that
28 one (or more) of the beneficiaries of the estate would become inca-
29 pable of self-support and require public assistance.

30 Upon a determination that recovery would result in undue hard-
31 ship, the division shall send written notification to the executor or
32 administrator that the claim is waived.