

Pennsylvania Association of Elder Law Attorneys 2022 Winter Meeting

SESSION 8 - ADVANCED DISCUSSION OF CURRENT ELDER LAW ISSUES

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QUESTION #3 – *Legal issues surrounding the Department of Human Services seeking estate recovery for payments made by Commonwealth to Managed Care Organizations (MCOs). (62 P.S. §1412)*

Pennsylvania Statutes Title 62 P.S. Poor Persons and Public Welfare § 1412. Repayment from probate estates

(a) Notwithstanding any other provision of this act or any other law, the department shall establish and implement an estate recovery program to recover medical assistance paid with respect to individuals who were fifty-five years of age or older at the time that assistance was received. Under this program, the department shall recover from the probate estate of an individual the amount of medical assistance paid for all nursing facility services, home- and community-based services and related hospital and prescription drug services. With the approval of the Governor, the department may expand the estate recovery program by regulation to include medical assistance for services other than those listed in this section and to recover against other real and personal property in which an individual had any legal title or interest at the time of death. The department's claim shall have the priority of a debt due the Commonwealth.

(a.1) Liability for debt shall be as follows:

(1) If property subject to the department's claim is transferred without the department's claim being satisfied, then the executor or administrator transferring such property, if there is one, shall become liable to pay the department's claim.

(2) If property subject to the department's claim is transferred to the extent that the transfer is made without valuable and adequate consideration in money or something worth money at the time of the transfer and without the department's claim being satisfied, then the executor or administrator transferring such property, if there is one, and the person receiving such property shall become liable to pay the department's claim.

(b) The executor or administrator of the estate of a decedent who attained fifty-five years of age shall ascertain whether the decedent received medical assistance during the five years preceding death and, if so, shall give notice to the department to secure from the department a statement of the department's claim for medical assistance consistent with [20 Pa.C.S. § 3392\(3\)](#) and [\(6\)](#) (relating to classification and order of payment). The department must submit its claim to the executor or administrator within forty-five days of receipt of notice or the claim shall be forfeited.

(c) This section shall apply notwithstanding the provisions of section 447. 1