

# HOUSE BILL No. 5827

March 7, 2006, Introduced by Rep. Kolb and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1939 PA 280, entitled "The social welfare act," (MCL 400.1 to 400.119b) by adding sections 112g, 112h, 112i, and 112j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 112G. (1) SUBJECT TO SECTION 112C(4) AND EXCEPT AS  
2           PROVIDED IN SECTION 112C(5)(B), THE DEPARTMENT SHALL ESTABLISH AND  
3           OPERATE THE MICHIGAN ESTATE RECOVERY PROGRAM TO COMPLY WITH  
4           REQUIREMENTS CONTAINED IN SECTION 1917 OF TITLE XIX.

5           (2) THE DEPARTMENT SHALL ESTABLISH AN ESTATE RECOVERY PROGRAM  
6           OR CONTRACT VARIOUS ESTATE RECOVERY PROGRAM ACTIVITIES. THESE  
7           ACTIVITIES SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

8           (A) PLACING AND RECORDING LIENS ON MEDICAL ASSISTANCE

1 RECIPIENT PROPERTY TO THE EXTENT PERMITTED BY SECTION 1917(A) OF  
2 TITLE XIX.

3 (B) TRACKING ASSETS AND SERVICES OF RECIPIENTS OF MEDICAL  
4 ASSISTANCE THAT ARE SUBJECT TO ESTATE RECOVERY.

5 (C) ACTIONS NECESSARY TO COLLECT AMOUNTS SUBJECT TO ESTATE  
6 RECOVERY FOR MEDICAL SERVICES AS DETERMINED ACCORDING TO SUBSECTION  
7 (3)(A) PROVIDED TO RECIPIENTS IDENTIFIED IN SUBSECTION (3)(B).  
8 AMOUNTS SUBJECT TO RECOVERY SHALL BE EQUAL TO THE COST OF PROVIDING  
9 THE MEDICAL SERVICES. THE MEDICAID ESTATE RECOVERY PROGRAM MAY  
10 NEGOTIATE ACCELERATED SETTLEMENTS OF ESTATE RECOVERY CLAIMS WITH  
11 THE SPOUSES AND HEIRS OF RECIPIENTS SUBJECT TO ESTATE RECOVERY IF  
12 THE RECIPIENT IS UNLIKELY TO RETURN TO HIS OR HER HOME. THE  
13 SETTLEMENTS SHALL TAKE INTO ACCOUNT THE BEST INTERESTS OF THE STATE  
14 AND THE SPOUSE AND HEIRS.

15 (D) PERFORM OTHER ACTIVITIES NECESSARY TO EFFICIENTLY AND  
16 EFFECTIVELY ADMINISTER THE PROGRAM, INCLUDING RECEIVING INFORMATION  
17 AND NOTICES RECEIVED UNDER SECTION 2843 OF THE PUBLIC HEALTH CODE,  
18 1978 PA 368, MCL 333.2843.

19 (3) THE DEPARTMENT SHALL SEEK APPROPRIATE CHANGES TO THE  
20 MEDICAID STATE PLAN AND SHALL APPLY FOR ANY NECESSARY WAIVERS AND  
21 APPROVALS FROM THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID  
22 SERVICES TO IMPLEMENT THE MICHIGAN ESTATE RECOVERY PROGRAM. THE  
23 DEPARTMENT SHALL SEEK APPROVAL FROM THE FEDERAL CENTERS FOR  
24 MEDICARE AND MEDICAID REGARDING ALL OF THE FOLLOWING:

25 (A) WHICH MEDICAL SERVICES ARE SUBJECT TO ESTATE RECOVERY  
26 UNDER SECTION 1917(B)(1)(B)(i) AND (ii) OF TITLE XIX.

27 (B) WHICH RECIPIENTS OF MEDICAL ASSISTANCE ARE SUBJECT TO

1 ESTATE RECOVERY UNDER SECTION 1917(A) AND (B) OF TITLE XIX.

2 (C) UNDER WHAT CIRCUMSTANCES THE PROGRAM SHALL PURSUE RECOVERY  
3 FROM THE ESTATES OF SPOUSES OF RECIPIENTS OF MEDICAL ASSISTANCE WHO  
4 ARE SUBJECT TO ESTATE RECOVERY UNDER SECTION 1917(B)(2) OF TITLE  
5 XIX.

6 (D) THE MAXIMUM DIVESTITURE LOOK BACK PERIOD FOR ASSETS THAT  
7 ARE SUBJECT TO ESTATE RECOVERY UNDER SECTION 1917(C) OF TITLE XIX,  
8 INCLUDING ASSETS PLACED IN TRUSTS BY THE MEDICAL ASSISTANCE  
9 RECIPIENT AND ARE TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.

10 (E) WHAT ACTIONS MAY BE TAKEN TO OBTAIN FUNDS FROM THE ESTATES  
11 OF RECIPIENTS SUBJECT TO RECOVERY UNDER SECTION 1917 OF TITLE XIX,  
12 INCLUDING NOTICE AND HEARING PROCEDURES THAT MAY BE PURSUED TO  
13 CONTEST ACTIONS TAKEN UNDER THE MEDICAID ESTATE RECOVERY PROGRAM.

14 (F) UNDER WHAT CIRCUMSTANCES RECIPIENTS WILL BE EXEMPT FROM  
15 THE MEDICAID ESTATE RECOVERY PROGRAM BECAUSE OF A HARDSHIP. THE  
16 DEPARTMENT SHALL DEVELOP A DEFINITION OF HARDSHIP ACCORDING TO  
17 SECTION 1917(B)(3) OF TITLE XIX. THE PROVISIONS OF SECTION  
18 1396P(B)(3) OF TITLE XIX SHALL BE IMPLEMENTED TO ENSURE THAT THE  
19 HEIRS OF PERSONS SUBJECT TO THE MEDICAID ESTATE RECOVERY PROGRAM  
20 WILL NOT BE UNREASONABLY HARMED BY THE PROVISIONS OF THIS PROGRAM.

21 (G) THE DEPARTMENT SHALL NOT SEEK MEDICAID ESTATE RECOVERY IF  
22 THE COSTS OF RECOVERY EXCEED THE AMOUNT OF RECOVERY AVAILABLE OR IF  
23 THE RECOVERY IS NOT IN THE BEST ECONOMIC INTEREST OF THE STATE.

24 (4) THE DEPARTMENT SHALL NOT IMPLEMENT A MEDICAID ESTATE  
25 RECOVERY PROGRAM UNTIL APPROVAL BY THE FEDERAL GOVERNMENT IS  
26 OBTAINED.

27 SEC. 112H. FOR THE PURPOSES OF SECTIONS 112G TO 112J, "ESTATE"

1 AND "PROPERTY" MEAN THOSE TERMS AS DEFINED IN SECTIONS 1104 AND  
2 1106 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE OF 1998, 1998 PA  
3 386, MCL 700.1104 AND 700.1106.

4 SEC. 112I. REVENUE COLLECTED THROUGH MEDICAID ESTATE RECOVERY  
5 ACTIVITIES SHALL BE USED TO FUND THE ACTIVITIES OF THE MEDICAID  
6 ESTATE RECOVERY PROGRAM. ANY REMAINING BALANCES SHALL BE TREATED AS  
7 AN EXPENDITURE CREDIT IN THE MEDICAL SERVICES APPROPRIATION UNIT OF  
8 THE ANNUAL DEPARTMENT OF COMMUNITY HEALTH APPROPRIATION.

9 SEC. 112J. THE DEPARTMENT MAY PROMULGATE RULES FOR THE  
10 MEDICAID ESTATE RECOVERY PROGRAM ACCORDING TO THE ADMINISTRATIVE  
11 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

12 Enacting section 1. This amendatory act does not take effect  
13 unless all of the following bills of the 93rd Legislature are  
14 enacted into law:

15 (a) Senate Bill No.\_\_\_\_ or House Bill No. 5828(request no.  
16 02540'05).

17 (b) Senate Bill No.\_\_\_\_ or House Bill No. 5829(request no.  
18 02541'05).