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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 04, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-8-15 of the General Laws in Chapter 40-8 entitled "Medical  
2 Assistance" is hereby amended to read as follows:

3 **40-8-15. Lien on deceased recipient's estate for assistance.** -- (a) (1) Upon the death of  
4 a recipient of medical assistance under Title XIX of the federal Social Security Act, 42 U.S.C.  
5 section 1396 et seq., the total sum of medical assistance so paid on behalf of a recipient who was  
6 fifty-five (55) years of age or older at the time of receipt of the assistance shall be and constitute a  
7 lien upon the estate, as defined in subdivision (a)(2) below, of the recipient in favor of the  
8 executive office of health and human services. The lien shall not be effective and shall not attach  
9 as against the estate of a recipient who is survived by a spouse, or a child who is under the age of  
10 twenty-one (21), or a child who is blind or permanently and totally disabled as defined in Title  
11 XVI of the federal Social Security Act, 42 U.S.C. section 1381 et seq. The lien shall attach  
12 against property of a recipient, which is included or includible in the decedent's probate estate,  
13 regardless of whether or not a probate proceeding has been commenced in the probate court by  
14 the executive office of health and human services or by any other party. Provided, however, that  
15 such lien shall only attach and shall only be effective against the recipient's real property included  
16 or includible in the recipient's probate estate if such lien is recorded in the land evidence records  
17 and is in accordance with subsection 40-8-15(f). Decedents who have received medical assistance  
18 are subject to the assignment and subrogation provisions of sections 40-6-9 and 40-6-10.

19 (2) For purposes of this section, the term "estate" with respect to a deceased individual

1 shall include all real and personal property and other assets included or includable within the  
2 individual's probate estate.

3 (b) The executive office of health and human services is authorized to promulgate  
4 regulations to implement the terms, intent, and purpose of this section and to require the legal  
5 representative(s) and/or the heirs-at-law of the decedent to provide reasonable written notice to  
6 the executive office of health and human services of the death of a recipient of medical assistance  
7 who was fifty-five (55) years of age or older at the date of death, and to provide a statement  
8 identifying the decedent's property and the names and addresses of all persons entitled to take any  
9 share or interest of the estate as legatees or distributees thereof.

10 (c) The amount of medical assistance reimbursement imposed under this section shall  
11 also become a debt to the state from the person or entity liable for the payment thereof.

12 (d) Upon payment of the amount of reimbursement for medical assistance imposed by  
13 this section, the secretary of the executive office of health and human services, or his or her  
14 designee, shall issue a written discharge of lien.

15 (e) Provided, however, that no lien created under this section shall attach nor become  
16 effective upon any real property unless and until a statement of claim is recorded naming the  
17 debtor/owner of record of the property as of the date and time of recording of the statement of  
18 claim, and describing the real property by a description containing all of the following: (1) tax  
19 assessor's plat and lot; and (2) street address. The statement of claim shall be recorded in the  
20 records of land evidence in the town or city where the real property is situated. Notice of said lien  
21 shall be sent to the duly appointed executor or administrator, the decedent's legal representative,  
22 if known, or to the decedent's next of kin or heirs at law as stated in the decedent's last application  
23 for medical assistance.

24 (f) The executive office of health and human services shall establish procedures, in  
25 accordance with the standards specified by the secretary, U.S. Department of Health and Human  
26 Services, under which the executive office of health and human services shall waive, in whole or  
27 in part, the lien and reimbursement established by this section if such lien and reimbursement  
28 would work an undue hardship, as determined by the executive office of health and human  
29 services, on the basis of the criteria established by the secretary in accordance with 42 U.S.C.  
30 section 1396p(b)(3).

31 (~~g) Upon the filing of a petition for admission to probate of a decedent's will or for~~  
32 ~~administration of a decedent's estate,~~ Within a reasonable period of time after the qualification of  
33 an executor or administrator, when the decedent was fifty-five (55) years or older at the time of  
34 death, a copy of ~~said petition~~ the petition for probate or administration and a copy of the death

1 certificate shall be sent to the executive office of health and human services. Within thirty (30)  
2 days of a request by the executive office of health and human services, an executor or  
3 administrator shall complete and send to the executive office of health and human services a form  
4 prescribed by that office and shall provide such additional information as the office may require.  
5 In the event a petitioner fails to send a copy of the petition and a copy of the death certificate to  
6 the executive office of health and human services and a decedent has received medical assistance  
7 for which the executive office of health and human services is authorized to recover, no  
8 distribution and/or payments, including administration fees, shall be disbursed. Any person and/or  
9 entity that receives a distribution of assets from the decedent's estate shall be liable to the  
10 executive office of health and human services to the extent of such distribution.

11 (h) Compliance with the provisions of this section shall be consistent with the  
12 requirements set forth in section 33-11-5, [the duty to notify known or reasonably ascertainable](#)  
13 [creditors set forth in § 33-11-5.1](#), and the requirements of the affidavit of notice set forth in  
14 section 33-11-5.2. Nothing in these sections shall limit the executive office of health and human  
15 services from recovery, to the extent of the distribution, in accordance with all state and federal  
16 laws.

17 SECTION 2. This act shall take effect upon passage and shall apply to all pending and  
18 future estates.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HUMAN SERVICES - MEDICAL ASSISTANCE

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1           This act would coordinate the provisions of R.I.G.L. § 40-8-15 with the notice  
2 requirements of R.I.G.L. § 33-11-5.1 and would provide that notice of the pendency of probate of  
3 a person who was fifty-five (55) years of age or older, presently due upon the filing of a probate  
4 petition, would be due to the executive office of health and human services within a reasonable  
5 time after the appointment of an executor or administrator.

6           This act would take effect upon passage, and would apply to all pending and future  
7 estates.

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