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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. LaRe and Brennan

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SUMMARY

- Narrows the categories of expenses that can be recouped from Medicaid recipients ages 55 and older under Ohio's Medicaid estate recovery program to include only long-term care related expenses, instead of all expenses for Medicaid services.
- Imposes notification requirements regarding the Medicaid estate recovery program.
- Requires the Department of Medicaid (ODM) to provide notice of the Medicaid estate recovery program, including specified information, both when an individual applies for and is approved for Medicaid.
- Also requires ODM to develop (1) a consumer-focused notification explaining how the Medicaid estate recovery program works and (2) a notification for Medicaid recipients who may be at risk of being subject to the Medicaid estate recovery program, listing available resources.
- Requires ODM to adopt rules to implement the bill's notification requirements.

DETAILED ANALYSIS

Medicaid estate recovery program

The bill narrows the categories of expenses that can be recouped from Medicaid recipients age 55 and older under Ohio's Medicaid estate recovery program. Federal law requires states to implement an estate recovery program under which the state must seek to recoup funds spent on Medicaid services from the estates of certain deceased Medicaid recipients.¹ In Ohio, when such a recipient dies, the Ohio Department of Medicaid (ODM) certifies the amount due,

¹ 42 United States Code (U.S.C.) 1396p(b), not in the bill.

and the Ohio Attorney General is tasked with collecting the debt from the recipient's estate, including homes, bank and investment accounts, and other assets.²

Under state Medicaid recovery programs, the federal law requires recovery of the following amounts:

1. Expenses for nursing facility services, home and community-based services, and related hospital and prescription services paid on behalf of a Medicaid recipient age 55 or older; and
2. All medical assistance paid on behalf of a Medicaid recipient receiving long-term services and supports in a facility permanently (referred to as "permanently institutionalized" individuals).

States may elect to apply estate recovery under additional circumstances, for example, by recovering *all* medical assistance paid on behalf of a Medicaid recipient age 55 or older, not just for nursing facility and associated expenses as under (1) above.³ Ohio has exercised that option.

The bill eliminates that option by narrowing the category of expenses that can be recouped under Medicaid estate recovery for Medicaid recipients age 55 and older to include only long-term care related expenses. Current law permits ODM to recover from the individual's estate all costs for Medicaid services correctly paid on behalf of a Medicaid recipient age 55 years and older who is not a permanently institutionalized individual. Instead, the bill only permits recovery of all costs for Medicaid services, including long-term care related prescription drug products, for Medicaid recipients age 55 or older who received long-term care in one of the following settings:

- A residential facility licensed by the Department of Developmental Disabilities;
- A residential facility licensed by the Department of Mental Health and Addiction Services;
- In-home care, such as home health services;
- A nursing facility;
- An intermediate care facility for individuals with intellectual disabilities (ICF/IID);
- A hospital; or
- Another similar long-term care facility setting.⁴

Under law unchanged by the bill, ODM is required to seek adjustment or recovery from the estate of other individuals as permitted by federal law.

² R.C. 5162.21; R.C. 5162.212, not in the bill.

³ 42 U.S.C. 1396p(b).

⁴ R.C. 5162.21(B)(2).

Notification of the Medicaid estate recovery program

Notice upon application

Additionally, the bill imposes notification requirements regarding the Medicaid estate recovery program. Under the bill, ODM must notify each Medicaid applicant for a Medicaid component subject to the Medicaid estate recovery program of the existence of the program, including:

- A statement that if the recipient meets the criteria for Medicaid estate recovery, the recipient's estate may be subject to recovery after the recipient's death;
- A list of health care and other services to which Medicaid estate recovery applies; and
- The per member per month capitation payment or managed care premium amount paid by ODM to each Medicaid managed care organization in the previous year.⁵

Notice upon approval

ODM must again notify each applicant about the Medicaid estate recovery program when the applicant is approved for Medicaid, with the following information:

- How to file a complaint with ODM regarding the enrollee's Medicaid benefits;
- How to inquire about the status of Medicaid benefits; and
- How to disenroll from Medicaid.⁶

Additional notice

The bill also requires ODM to create two additional notices regarding the Medicaid estate recovery program:

1. A consumer-focused notice that explains in plain language how the Medicaid estate recovery program works, including examples. ODM must engage Medicaid consumers to participate in the development and review of the notification and any additional accompanying materials; and
2. A notice for Medicaid recipients who may be at risk of being subject to the Medicaid estate recovery program, listing available resources for consumer support (such as legal aid and estate planning resources).⁷

Rulemaking

To ensure compliance with the bill's notification requirements, ODM must adopt rules, in accordance with the Administrative Procedure Act (R.C. Chapter 119) to do all of the following:

⁵ R.C. 5162.213(A)(1) and (B)(1).

⁶ R.C. 5162.213(A)(2) and (B)(2).

⁷ R.C. 5162.213(A)(3).

- Require the first page of the Medicaid application to be a document that includes the information enumerated in “**Notice upon application**” above;
- Require that an eligibility determination notice sent to an applicant after approval for Medicaid include the information enumerated in “**Notice upon approval**” above; and
- Specify the form and dissemination of the Medicaid estate recovery notices required by the bill, including a process for identifying Medicaid recipients who may be at risk of being subject to estate recovery.⁸

HISTORY

Action	Date
Introduced	10-21-24

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⁸ R.C. 5162.213(B).