

HOUSE BILL No. 5147

October 9, 1989, Introduced by Rep. DeLange and referred to the Committee on Social Services and Youth.

A bill to amend Act No. 280 of the Public Acts of 1939, entitled as amended

"The social welfare act,"

as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, by adding sections 107a, 107c, and 107d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 280 of the Public Acts of 1939, as
2 amended, being sections 400.1 to 400.121 of the Michigan Compiled
3 Laws, is amended by adding sections 107a, 107c, and 107d to read
4 as follows:

5 SEC. 107A. AS USED IN THIS SECTION AND SECTIONS 107C AND
6 107D:

7 (A) "DISABLED" MEANS THAT TERM AS USED IN TITLE XVI OF THE
8 SOCIAL SECURITY ACT, 42 U.S.C. 1381 TO 1385.

1 (B) "INSTITUTION" MEANS A STATE LICENSED OR APPROVED
2 HOSPITAL LONG-TERM CARE UNIT, NURSING HOME, MEDICAL CARE
3 FACILITY, OR OTHER FACILITY OR IDENTIFIABLE UNIT OF A FACILITY
4 CERTIFIED AS MEETING ESTABLISHED STANDARDS FOR A NURSING HOME OR
5 HOSPITAL LONG-TERM CARE UNIT IN ACCORDANCE WITH THE LAWS OF THIS
6 STATE.

7 (C) "LONG-TERM CARE" MEANS CARE THAT EXCEEDS OR IS PROJECTED
8 TO EXCEED 30 DAYS.

9 (D) "RECIPIENT" MEANS A PERSON WHO RECEIVES MEDICAL ASSIST-
10 ANCE UNDER THIS ACT.

11 SEC. 107C. (1) THE STATE DEPARTMENT SHALL ESTABLISH AN
12 ESTATE RECOVERY PROGRAM TO RECOVER PAYMENTS PROPERLY MADE AFTER
13 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION
14 FOR MEDICAL ASSISTANCE ON BEHALF OF A RECIPIENT WHO IS 1 OR BOTH
15 OF THE FOLLOWING:

16 (A) AN INSTITUTIONALIZED INDIVIDUAL DESCRIBED IN SECTION
17 1917(a)(1)(B) OF THE SOCIAL SECURITY ACT, 42
18 U.S.C. 1396p(a)(1)(B).

19 (B) AN INDIVIDUAL WHO WAS 65 YEARS OF AGE OR OLDER WHEN HE
20 OR SHE RECEIVED ASSISTANCE.

21 (2) SUBJECT TO SUBSECTIONS (5) AND (6), THE STATE DEPARTMENT
22 SHALL RECOVER FROM THE ESTATE OF A RECIPIENT DESCRIBED IN
23 SUBSECTION (1), OR FROM THE SPOUSE OF THE RECIPIENT, THE AMOUNT
24 OF MEDICAL ASSISTANCE PROPERLY PAID ON BEHALF OF THE RECIPIENT.

25 (3) THE AMOUNT OF MEDICAL ASSISTANCE PROPERLY PAID ON BEHALF
26 OF A RECIPIENT DESCRIBED IN SUBSECTION (1) IS A CLAIM AGAINST THE
27 ESTATE OF A RECIPIENT WHO IS DECEASED OR AGAINST THE ESTATE OF A

1 DECEASED SPOUSE WHO SURVIVED THE RECIPIENT. THE CLAIM IS A
2 PRIORITY CLAIM UNDER SECTION 715(1)(E) OR, TO THE EXTENT THE PAY-
3 MENTS WERE MADE FOR THE LAST ILLNESS OF THE RECIPIENT, UNDER SEC-
4 TION 715(1)(D) OF THE REVISED PROBATE CODE, ACT NO. 642 OF THE
5 PUBLIC ACTS OF 1978, BEING SECTION 700.715 OF THE MICHIGAN
6 COMPILED LAWS.

7 (4) THE AMOUNT OF MEDICAL ASSISTANCE PROPERLY PAID ON BEHALF
8 OF A RECIPIENT DESCRIBED IN SUBSECTION (1) IS A CLAIM AGAINST THE
9 RECIPIENT'S ESTATE IN A CONSERVATORSHIP PROCEEDING. SUCH CLAIM
10 IS A PRIORITY CLAIM UNDER SECTION 488(4)(B) OF THE REVISED PRO-
11 BATE CODE, ACT NO. 642 OF THE PUBLIC ACTS OF 1978, BEING SECTION
12 700.488 OF THE MICHIGAN COMPILED LAWS.

13 (5) AN ADJUSTMENT OR RECOVERY UNDER THIS SECTION OF MEDICAL
14 ASSISTANCE PROPERLY PAID ON BEHALF OF A RECIPIENT DESCRIBED IN
15 SUBSECTION (1) SHALL BE MADE ONLY AT THE TIME THE RECIPIENT HAS
16 NO SURVIVING SPOUSE AND NO SURVIVING CHILD WHO IS UNDER THE AGE
17 OF 21 YEARS, BLIND, OR DISABLED.

18 (6) THE STATE DEPARTMENT MAY POSTPONE OR WAIVE RECOVERY
19 UNDER THIS SECTION IF IT DETERMINES THAT RECOVERY WOULD CREATE AN
20 UNDUE HARDSHIP FOR THE FAMILY OF THE RECIPIENT.

21 SEC. 107D. (1) THE STATE DEPARTMENT SHALL IMPOSE A LIEN ON
22 THE REAL PROPERTY OF A RECIPIENT PRIOR TO HIS OR HER DEATH TO
23 SECURE AMOUNTS PROPERLY PAID OR TO BE PAID FOR MEDICAL ASSISTANCE
24 ON BEHALF OF THE RECIPIENT IF ALL OF THE FOLLOWING ARE TRUE:

25 (A) THE RECIPIENT IS IN AN INSTITUTION, AND THE STATE
26 DEPARTMENT DETERMINES, AFTER NOTICE AND THE OPPORTUNITY FOR A

1 HEARING, THAT THE RECIPIENT CANNOT REASONABLY BE EXPECTED TO BE
2 DISCHARGED FROM THE INSTITUTION AND TO RETURN HOME.

3 (B) NONE OF THE FOLLOWING PERSONS ARE LAWFULLY RESIDING IN
4 THE HOME:

5 (i) THE SPOUSE OF THE RECIPIENT.

6 (ii) A CHILD OF THE RECIPIENT WHO IS UNDER THE AGE OF 21
7 YEARS, BLIND, OR DISABLED.

8 (iii) A SIBLING OF THE RECIPIENT WHO HAS AN EQUITY INTEREST
9 IN THE HOME AND WAS RESIDING IN THE HOME FOR AT LEAST THE 1 YEAR
10 IMMEDIATELY PRECEDING THE DATE THE RECIPIENT WAS ADMITTED TO THE
11 INSTITUTION.

12 (2) A LIEN IMPOSED UNDER THIS SECTION SHALL DISSOLVE IF THE
13 RECIPIENT IS DISCHARGED FROM THE INSTITUTION AND RETURNS HOME.

14 (3) THE STATE DEPARTMENT SHALL INSTITUTE PROCEEDINGS TO
15 FORECLOSE A LIEN IMPOSED PURSUANT TO THIS SECTION ONLY AT A TIME
16 WHEN BOTH OF THE FOLLOWING ARE TRUE:

17 (A) THE RECIPIENT IS NOT SURVIVED BY A SPOUSE OR BY A CHILD
18 WHO IS UNDER THE AGE OF 21 YEARS, BLIND, OR DISABLED.

19 (B) NONE OF THE FOLLOWING PERSONS ARE LAWFULLY RESIDING IN
20 THE RECIPIENT'S HOME:

21 (i) A SIBLING WHO WAS RESIDING CONTINUOUSLY IN THE HOME FOR
22 A PERIOD OF AT LEAST THE 1 YEAR IMMEDIATELY PRECEDING THE DATE
23 THE RECIPIENT WAS ADMITTED TO THE INSTITUTION.

24 (ii) A SON OR DAUGHTER OF THE RECIPIENT WHO WAS RESIDING
25 CONTINUOUSLY IN THE HOME FOR A PERIOD OF AT LEAST THE 2 YEARS
26 IMMEDIATELY PRECEDING THE DATE THE RECIPIENT WAS ADMITTED TO THE
27 INSTITUTION AND WHO ESTABLISHES TO THE STATE DEPARTMENT'S

1 SATISFACTION THAT HE OR SHE PROVIDED CARE TO THE RECIPIENT THAT
2 PERMITTED THE RECIPIENT TO RESIDE AT HOME RATHER THAN IN AN
3 INSTITUTION.

4 (4) THE STATE DEPARTMENT MAY POSTPONE OR WAIVE RECOVERY
5 UNDER THIS SECTION IF IT DETERMINES THAT RECOVERY WOULD CREATE AN
6 UNDUE HARDSHIP FOR THE FAMILY OF THE RECIPIENT.