**Governor Baker’s Budget Proposal to Expand MassHealth Estate Recovery**

**FY 2017 House 2; Outside Section 11**

*Summary:*
This section would expand MassHealth's ability to recover benefits paid on behalf of a deceased MassHealth beneficiary, by allowing for the recovery of non-probate assets and the costs of Medicare Part D pharmacy payments made to the federal government, consistent with federal law.

SECTION 11.   [Chapter 118E](http://www.mass.gov/legis/laws/mgl/gl-118e-toc.htm) of the General Laws is hereby amended by striking out sections 31 and 32 , as so appearing, and inserting in place thereof the following 2 sections:-

**Section 31.** (a) This subsection shall apply to estates of individuals dying prior to April 1, 1995. There shall be no adjustment or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when he or she received such assistance. Recovery of such assistance shall be limited to assistance provided on or after March 22, 1991.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was 65 years of age or older when such individual received such assistance. Any recovery may be made only after the death of the surviving spouse, if any, and only at a time when such individual has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery where it would result in undue hardship, as defined by the division in its regulations.

(b) This subsection shall apply to estates of individuals dying on or after April 1, 1995. There shall be no adjustments or recovery of medical assistance correctly paid except as follows:

(1) Recovery from the Permanently Institutionalized: From the estate of an individual, regardless of age, who was an inpatient in a nursing facility or other medical institution when he or she received such assistance. Recovery of such assistance shall be limited to assistance provided on or after March 22, 1991.

(2) Recovery from Persons Age 65 and Over: From the estate of an individual who was 65 years of age or older when he or she received such assistance.

(3) Recovery from Persons Age 55 and Over for Post-October 1, 1993 Medicaid: From the estate of an individual who was 55 years of age or older when he or she received such assistance, where such assistance was for services provided on or after October 1, 1993.

Any recovery may be made only after the death of the surviving spouse, if any, and only at a time when he or she has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery if such recovery would work an undue hardship, as defined by the division in its regulations.

(b 1/2) This subsection shall apply to estates of individuals dying on or after July 1, 2016. An estate of an individual who was a "full benefit dual eligible", as defined under 42 U.S.C. section1396u-5, shall be responsible for repaying the state Medicaid program contributions the state made on or after July 1, 2016, to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for such dual eligible under 42 U.S.C. section1396u-5(c).

Any recovery under this subsection or subsections (a), (b) or (d) may be made only after the death of the surviving spouse of the individual who received assistance, if any, and only at a time when the individual who received assistance has no surviving child who is under age 21 or is blind or permanently and totally disabled. The division shall waive recovery if such recovery would work an undue hardship, as defined by the division in its regulations. In the event insufficient estate assets are available to repay the full amount due, any amounts recovered shall first be applied to the amount due under this subsection.

(c) For purposes of this section, if an individual became eligible for medical assistance prior to July 1, 2016, the term "estate" shall mean all real and personal property and other assets includable in the decedent's probate estate under the General Laws.

If an individual became eligible for medical assistance on or after July 1, 2016, the term "estate" shall mean any interest in real and personal property and other assets in which the individual immediately prior to death had any legal title or interest, to the extent of such interest. This shall include interests in real and personal property and other assets that would pass to a survivor, heir or assignee of the decedent through joint tenancy, tenancy by the entirety, life estate, living trust, right of survivorship, beneficiary designation or other arrangement. This shall not include annuities and life insurance held on the life of a decedent, with the exception of payments otherwise includable in the decedent's probate estate.

Notwithstanding any general or special law to the contrary, nothing in this section shall limit the division's right to receive payment where it is named or should have been named as a beneficiary under an annuity in accordance with 42 U.S.C. section 1396p(b)(1)(B).

(d) This subsection shall apply to the estates of individuals who became eligible for medical assistance on or after July 1, 2016. The division may also recover medical assistance correctly paid from the estate of that individual's surviving spouse. Recovery shall be limited to any legal title or interest in assets held by the predeceased individual's estate immediately prior to death that is includable in the estate of the surviving spouse.

(e) The division is also authorized during an individual's lifetime to recover all assistance correctly provided on or after April 1, 1995, if property against which the division has a lien or encumbrance under section 34 is sold. No lien or encumbrance shall be valid against any bona fide purchaser for value or take priority against any subsequent mortgagee for value unless and until it is recorded in the registry of deeds where the property lies. If the individual at any time or after July 1, 2016, was a "full benefit dual eligible", as defined under 42 U.S.C. section1396u-5, the amount due shall also include contributions the state Medicaid program made on or after July 1, 2016, to the secretary of the federal Department of Health and Human Services for the federal assumption of prescription costs for such dual eligible under 42 U.S.C. section1396u-5(c). In the event insufficient assets exist from the proceeds from the sale to repay both the amount of assistance provided and payments for the federal assumption of prescription costs, any amounts recovered shall first be applied to payments for the federal assumption of prescription costs.

Repayment shall not be required under this subsection while any of the following relatives lawfully resides in the property: (1) a sibling who had been residing in the property for at least 1 year immediately prior to the individual being admitted to a nursing facility or other medical institution; or (2) a child who (i) had been residing in the property for at least 2 years immediately prior to the parent being admitted to a nursing facility or other medical institution; and (ii) establishes to the satisfaction of the division that he provided care which permitted the parent to reside at home during that 2 year period rather than in an institution; and (iii) has lawfully resided in the property on a continuous basis while the parent has been in the medical institution.

If repayment is not yet required because a relative specified above is still lawfully residing in the property and the individual wishes to sell the property, the purchaser shall take possession subject to the lien or the division shall release the lien if the individual agrees to (1) either set aside sufficient assets to satisfy the lien or give bond to the division with sufficient sureties and (2) repay the division as soon as the specified relative is no longer lawfully residing in the property. Notwithstanding the foregoing or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien.

This subsection shall not limit the division's ability to recover from the individual's estate under subsection (a), (b) or (b 1/2), or the individual's surviving spouse's estate under subsection (d), or as otherwise provided under any general or special law.

**Section 32.** (a) Notwithstanding any general or special law to the contrary, a petition for admission to probate of a decedent's will or for administration of a decedent's estate shall include a sworn statement that copies of said petition and death certificate have been sent to the division by certified mail in accordance with sections 3-306(f) and 3-403(f) of [chapter 190B](http://www.mass.gov/legis/laws/mgl/gl-190b-toc.htm). Within 30 days of a request by the division, a personal representative shall complete and send to the division by certified mail on a form prescribed by the division information about all real and personal property and other assets in which the decedent immediately prior to death held any legal title or interest, including the identity and addresses of all persons and entities to whom legal title or interest passed, and shall provide such further information as the division may require.
In the event a petitioner fails to send copies of the petition and death certificate to the division, or the personal representative or the family, guardian, conservator, or heirs of a decedent fail to complete and send the form prescribed by the division, and division is authorized to recover under section 31, any person receiving a distribution of assets from the decedent's estate or any person or entity to whom the decedent's legal title or interest passed, shall be liable to the division to the extent of such distribution. Further, in the case of real and personal property and other assets not includable in the decedent's probate estate under the General Laws, if the form received by the division fails to disclose the existence of any assets or property in which the decedent immediately prior to death held any legal interest or title, and the identity and address of the person or entity to whom legal title or interest passed, said form shall not be considered a completed form and the time period for the division to present its claim against said assets and property shall not begin to run under clause (2) of subsection (b) until such information is received by the division.
(b) The division may present claims after the death of an individual who received medical assistance as follows:
(1) With respect to claims against all real and personal property and other assets includable in the decedent's probate estate under the General Laws, the division may:
(i) within 4 months after approval of the official bond of the personal representative, file a written statement of the amount claimed with the registry of probate where the petition was filed and deliver or mail a copy thereof to the personal representative. The claim shall be deemed presented upon the filing of the claim in the registry of probate; or
(ii) within 1 year after date of death of the decedent, commence an action under the provisions of [section 3-803 of chapter 190B](http://www.mass.gov/legis/laws/mgl/190b-3-803.htm).
(2) Claims against the estate of a surviving spouse shall also be presented within the time frames under subsection (b)(1)(i) and (ii).
(3) With respect to claims filed against any real and personal property and other assets not includable in the decedent's probate estate under the General Laws, but in which the decedent immediately prior to death had any legal title or interest, the division may within 1 year of date of death, or within 4 months of receipt of the completed form prescribed under (a), whichever is later, deliver or mail a written statement of the amount claimed to the last known address of the person or entity to whom the decedent's legal title or interest passed, and in the case of real property, file written notice of the claim with the registry of deeds where the property lies. The claim shall be deemed presented upon the delivery or mailing of the written statement to the last known address of the person or entity to whom the decedent's legal title or interest passed, or in the case of real property, the date notice is filed with the registry of deeds. Notice filed with the registry of deeds shall include the name of the decedent, the amount of the claim, the name of the then current record owner or owners, and the book and page number or certificate number of the instrument of title. No claim or lien under this section shall be valid against any bona fide purchaser for value taking title prior to the date said notice referring to the affected real property has been recorded in the registry of deed in the county or registry district where the real property is located, or against any successor to such purchaser, nor shall it affect the interest of any person for whom a mortgage or other lien has been recorded prior thereto, or of any successor to said person; and there shall be no right of recovery against such purchaser or the holder of such interest, or their successors. If the individual or entity to whom the decedent's legal title or interest passed transfers or sells said property or asset prior to the division presenting its claim, that individual or entity shall be held personally liable to the division to the extent of the value of the decedent's legal title or interest, and in the case of real property, no written notice of the claim need be filed with the registry of deeds.
(c) When presenting its claim by written statement under subsection (b) against the estate of an individual who received medical assistance, the division shall also notify the personal representative, or the person or entity to whom legal title or interest passed, if the property or asset is not includable in the probate estate, of (1) the circumstances and conditions which must exist for the division to be required to defer recovery under section 31 and (2) the circumstances and conditions which must exist for the division to waive recovery under its regulations for undue hardship.
(d) The personal representative of the estate of an individual who received medical assistance, or if the property or asset is not includable in the probate estate, the person or entity to whom the notice was sent, shall have 60 days from the date of presentment to mail notice to the division by certified mail of one or more of the following findings: (1) the claim is disallowed in whole or in part, or (2) circumstances and conditions where the division is required to defer recovery under section 31 exist, or (3) circumstances and conditions where the division will waive recovery for undue hardship under its regulations exist. A notice under clause (2) or (3) shall state the specific circumstances and conditions which exist and provide supporting documentation satisfactory to the division. Failure to mail notice under clause (1) shall be deemed an allowance of the claim. Failure to mail notice under clause (2) shall be deemed an admission that the circumstances or conditions where the division is required to defer recovery under section 31 do not exist. Failure to mail notice under clause (3) shall be deemed an admission that the circumstances and conditions for the division to waive recovery for undue hardship under its regulations do not exist. Where the claim is against the estate of the surviving spouse, the personal representative shall have 60 days from the date of presentment to mail notice to the division by certified mail that the claim is disallowed in whole or in part and failure to mail notice shall be deemed an allowance of the claim.
(e) If the division at any time within the period for presenting claims under subsection (b) amends the amount due, the personal representative, or if the property or asset is not includable in the probate estate, the person or entity to whom notice was sent, shall have an additional 60 days to mail notice to the division that the claim is disallowed in whole or in part.
(f) If the division receives a disallowance of the claim in whole or in part under subsection (d), the division may commence an action to enforce its claim in a court of competent jurisdiction within 60 days after receipt of said notice of disallowance. If the division receives a notice under clause (2) or (3) of said subsection (d), with which it disagrees, the division may commence an action in a court of competent jurisdiction within 60 days after receipt of said notice. If the division fails to commence an action after receiving a notice under clause (2) of said subsection (d), the division shall defer recovery while the circumstances or conditions specified in said notice continue to exist. If the division fails to commence an action after receiving a notice under clause (3) of said subsection (d), the division shall waive recovery while the circumstances and conditions for undue hardship continue to exist or as provided for under its regulations.
(g) Unless otherwise provided in any judgment entered, claims allowed pursuant to this section shall bear interest at the rate provided under [section 6B of chapter 231](http://www.mass.gov/legis/laws/mgl/231-6b.htm)commencing as follows:
(1) In the case of a claim against the probate estate, 4 months plus 60 days after approval of the official bond of the personal representative.
(2) In the case of a claim against property or assets not includable in the probate estate, 60 days after (i) the written statement was mailed to the person or entity to whom the decedent's legal title or interest passed, or (ii) in the case of real property, the date notice is filed with the registry of deeds, whichever is later.
Notwithstanding the foregoing, if the division fails to commence an action after receipt of a notice under clause (2) or (3) of subsection (d), interest at the rate provided under [section 6B of chapter 231](http://www.mass.gov/legis/laws/mgl/231-6b.htm) shall not commence until the circumstances or conditions specified in the notice received by the division cease to exist. The personal representative, or if the property or asset is not includable in the probate estate, the person or entity to whom legal title or interest passed, shall notify the division within 30 calendar days of any change in the circumstances or conditions asserted in said clause (2) or (3) notice, and upon request by the division, shall provide updated documentation verifying that the circumstances or conditions continue to exist.
If the division's claim has been allowed as provided herein, and, in the case of the claim against the estate of an individual who received medical assistance, no circumstances and conditions requiring that the division defer recovery under section 31 exist, it may petition the probate court for an order directing the personal representative to pay the claim to the extent that funds are available or for such further relief as may be required. Where the claim is against property or assets not includable in the probate estate, the division may commence such action against the person or entity to whom legal title or interest passed.
(h) Notice of a petition by a personal representative for a license to sell real estate shall be given to the division in any estate where:
(1) the division has filed a written statement of claim with the registry of probate as provided in subsection (b); or
(2) the division has filed with the registry of probate a notice, as prescribed under subsection (a) of [section 3-803 of chapter 190B](http://www.mass.gov/legis/laws/mgl/190b-3-803.htm), that an action has been commenced.
(i) In all cases where:
(1) the division determines it may have a claim against the estate of an individual who received medical assistance or the estate of a surviving spouse;
(2) a petition for administration of the decedent's estate or for admission to probate of the decedent's will has not been filed; and
(3) more than 1 year has passed from the decedent's date of death, the division may designate a public administrator to be appointed and to serve pursuant to [chapter 194](http://www.mass.gov/legis/laws/mgl/gl-194-toc.htm). Said designation by the division shall include a statement of the amount claimed. This provision shall apply to all estates in which no petition for administration of the decedent's estate or for admission to probate of the decedent's will has been filed, regardless of the decedent's date of death.
(j) If the personal representative, or the person or entity to whom legal title or interest passed, wishes to sell or transfer any real property against which the division has filed a lien or claim not yet enforceable because circumstances or conditions specified in section 31 continue to exist, the division shall release the lien or claim if the personal representative, or the person or entity to whom legal title or interest passed, agrees to (1) either set aside sufficient assets to satisfy the lien or claim, or to give bond to the division with sufficient surety or sureties and (2) repay the division as soon as the circumstances or conditions which resulted in the lien or claim not yet being enforceable no longer exist. Notwithstanding the foregoing provision or any general or special law to the contrary, the division and the parties to the sale may by agreement enter into an alternative resolution of the division's lien or claim.
(k) If there are probate assets includable in the decedent's probate estate, as well as other real and personal property and assets, not includable in the decedent's probate estate, the division's claim to the extent possible shall be satisfied from the probate estate. Notwithstanding the foregoing, the division's right to recover against the decedent's interest in property or assets not includable in the probate estate shall not be delayed. To the extent recovery is later received from the probate estate, any excess amount recovered shall be distributed on a pro rata basis to any individuals or entities to whom the decedent's legal title or interest title passed outside the probate estate and from whom the division has already recovered.