

***Pennsylvania Association of Elder Law Attorneys (PAELA)***  
***2000 Linglestown Road, Suite 202, Harrisburg, PA 17110***  
***www.paela.info***

**Statement in support of HB 2252**  
**Proposed Change to Title 62 P.S. (Public Welfare Code)**  
**Subsection 1412 (Repayment from probate estates)**

**Background**

Medicaid estate recovery is based on a federal law that requires Pennsylvania to try to recoup the costs of long term care services paid by Medicaid. Estate recovery was first implemented in Pennsylvania in 1994. For the past 15 years, Pennsylvania has wisely limited its scope to the minimum required by federal law – collection from the probate estate of the recipient of Medicaid. Because the claim has been limited in this way, houses owned jointly by a husband and wife have not been subject to the estate recovery claim if the spouse in the nursing home died first.

In a misguided attempt to collect additional revenues, last spring the Governor proposed expanding estate recovery to reach property held as joint tenants or tenants by the entireties, life insurance, life estates, trusts, annuities and any “other assets in which the deceased individual had any legal title or interest at the time of death.” If passed, this proposal would have resulted in significant financial harm for the surviving spouses of nursing home residents. In addition, it would have created major titling and conveyancing problems for real and personal property, and would have negatively impacted the traditional use of life insurance by survivors.

The Pennsylvania Association of Elder Law Attorneys (PAELA), along with a large coalition of groups including the AARP PA Chapter, PA Bar Association, Philadelphia Bar Association, PA Bankers’ Association, PA Land Title Association, Insurance Federation of Pennsylvania and the PA Coalition of the Alzheimer’s Association strongly opposed the Governor’s proposal and worked hard to educate legislators about the unreasonable burden and devastating financial effects the proposal would have had on some of Pennsylvania’s most vulnerable citizens. Legislators heard the concerns raised by these groups and responded by eliminating this proposal from the final budget bill.

**Proposed Legislative Change**

The legislative process was essential in preventing the Governor’s ill-conceived proposal from passing. Under current law, the Governor unilaterally and without legislative oversight could implement a proposal like this to expand estate recovery. A change this significant, with such potentially devastating effects, should not be permitted without the public debate and discussion that are part of the legislative process. If enacted, HB 2252 would repeal the Governor’s power to expand estate recovery without legislative oversight by deleting the third sentence of Subsection 1412(a) as indicated below.

§1412. Repayment from probate estates. (a) Notwithstanding any other provision of this act or any other law, the department shall establish and implement an estate recovery program to recover medical assistance paid with respect to individuals who were fifty-five years of age or older at the time that assistance was received. Under this program, the department shall recover from the probate estate of an individual the amount of medical assistance paid for all nursing facility services, home- and community-based services and related hospital and prescription drug services. [DELETE *With the approval of the Governor, the department may expand the estate recovery program by regulation to include medical assistance for services other than those listed in this section and to recover against other real and personal property in which an individual had any legal title or interest at the time of death.*] The department’s claim shall have the priority of a debt due the Commonwealth.