



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
One Capitol Hill
Providence, R.I. 02908-5886 **Memorandum**

To: The Honorable Helio Melo
 Chairman, House Finance Committee

 The Honorable Daniel DaPonte
 Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
 Executive Director/State Budget Officer

Date: May 7, 2012

Subject: Amendments to Articles 31 and 32 of the FY 2013 Appropriations
 Act (12-H-7323)

The Governor requests that several amendments be made to Articles 31 and 32 of the FY 2013 Appropriations Act, which was submitted to the General Assembly on January 31, 2012. For Article 31, Relating to Medicaid Reform Act of 2008, the amendments add two subsections to the resolution. The first subsection reduces payments for durable medical equipment provided to beneficiaries to 85 percent of the Medicare payment rate, while the second subsection provides that the Medicaid Agency shall pursue any requirements and/or opportunities established under the Affordable Care Act of 2010. The requested amendments to Article 31 are attached below.

The Governor requests that the original Article 32, Relating to Medical Assistance Recoveries, be replaced with the revised version. The revisions to the article are indicated by grey shading. An explanation of the amendments to the article by section is provided in the attached document.

If you have any questions regarding Article 31 or Article 32, please feel free to call Daniel Orgel at 222-2194 or Erin Casey at 462-1050.

TAM:12-32
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Peter Marino, Senate Fiscal Advisor
Kelly Mahoney, Director of Policy
Richard Licht, Director of Administration
Gregory Stack

ARTICLE 31, Relating to Medicaid Reform Act of 2008

On page 335, lines 14 and 15, please eliminate the words “FY 2012 and ”

On page 335, line 26, after the word “agreement”, please eliminate the words “; now, therefore, be it” and insert a “.”

On page 335, after line 26, please insert the following new language:

(d) *Medicaid Rate Change – Durable Medical Equipment.* The Medicaid single state agency proposes to reduce the payment for durable medical equipment provided to beneficiaries to 85 percent of the Medicare payment rate. Implementation of this change requires a Category II change under the terms and condition of the Global Consumer Choice Waiver; and

(e) *Medicaid Requirements and Opportunities under U.S. Patient Protection and Affordable Care Act (ACA) of 2010.* The Medicaid agency proposes to pursue any requirements and/or opportunities established under the ACA that may warrant a Category II or III change under the terms and conditions of the Global Consumer Choice Waiver. Any such actions the Medicaid agency takes shall not have an adverse impact on beneficiaries or cause there to be an increase in expenditures beyond the amount appropriated for state fiscal year 2013; now, therefore, be it

On page 335, lines 27, change “(c)” to “(e)”

Explanation Of Revised Article 32

As originally submitted, Article 32 entitled Medical Insurance Intercept Act provides for a means to intercept payments from liability and workers' compensation insurance companies to reimburse the State of Rhode Island for medical assistance paid on behalf of the claimant and has provisions relating to estate recoveries. This article also requires ten (10) days notice to EOHHS upon the sale or transfer of any assets by a Medicaid recipient and would mandate that the executor or administrator of a newly opened estate must submit within their petition to the probate court an affidavit certifying that they have notified the EOHHS of the death of the persons aged fifty (55) or older. The amendments to the original article are as follows:

SECTION 1.

Section 1 of the Article has been amended to reduce the threshold amount of an insurance settlement that can be intercepted from \$3000.00 to \$500.00. This will allow Medicaid to intercept smaller claims and payments and therefore increase reimbursements. This threshold amount was also reduced by adding section 27-57-1 to the article in section 2. The child support intercept was enacted several years ago and provides for Child Support Interceptions from the same insurers. This amendment will provide consistency between the statutes and also allows for a possible increase in child support collections. That amendment also assures that child support interceptions always supersede any medical assistance intercept.

Section 27-57.1-1 is amended to distinguish liability insurance companies from workers' compensation insurance companies. Due to the different nature of workers' compensation and how payments are made to a claimant, these amendments assure that any intercept of workers' compensation claims or payments under the new Chapter 27-57.1, will be consistent with current law relating to lien, assignments and subrogation rights of the Executive Office of Health and Human Services, as is currently provided for in sections 28-33-27 and 40-6-10.

This amendment further clarifies Chapter 27-57.1 providing that the intercept of an insurance claim can only be from funds allocated for medical expenses incurred as a result of a specific accident or loss dating back to the date of injury. This is consistent with federal law. An appeal is allowable under current law. Language was added that would allow the insurance companies to wait until the appeal period runs out or, if an appeal is filed, to wait until the appeal is heard and decided before the payment the proceeds to the state. Also inserted are confidentiality assurances, an explanation of the centralized data matching process, and a notice from EOHHS to the Medicaid recipient that their insurance proceeds are to be intercepted.

Section 27-57.1-4 is amended to clarify the exchange of the data matches from the centralized database and the confidentiality of that information.

SECTION 2.

Section 27-27-1 was added to the Article and reduces the threshold amount of an insurance settlement that can be intercepted for child support from \$3000.00 to \$500.00. This will allow Medicaid to intercept smaller claims and payments and therefore increase reimbursements and is consistent with the proposed Medicaid intercept. It also makes technical changes replacing the Department of Administration with the Department of Human Services which was done by law in 2005.

SECTION 3.

Makes technical changes replacing the Department of Human Services with the Executive Office of Health and Human Services.

SECTION 4 (previously Section 2)

In the original article this was section 2. Section 40-6-9 is unchanged. There is the addition of section 40-6-10 which changes the references to the department to the executive office of health and human services and provides a new subsection (d) cross referencing chapter 40-8 (medical assistance) and 28-33-27 (worker's compensation benefits) and reinforces that any recoupment of funds for medical assistance shall come second to child support.

SECTION 5 (previously Section 3)

This section makes a technical reference amendment in 40-8-15 referring to subsection (a)(2). It further clarifies that the attachment of property is that which is included or includable in a probate estate. Meaning that property can be liened even if no probate is filed. Furthermore, the lien is only effective if recorded in the land evidence records. Section 40-8-15 is further amended to delete subsection (2)(e) so that a written discharge is not required should a decedent not be a Medicaid recipient, since there will be no lien.

Section 40-8-15(g) was amended to provide that a copy of the petition and death certificate shall be mailed to EOHHS upon the filing of a probate petition. The original version of the article required an affidavit that this was to be completed upon filing a petition. Instead, section 7 provides that the affidavit already required to attest to notice to all known creditors, include EOHHS/Medicaid. Therefore, the affidavit is required at the close of the estate as opposed to the filing of the petition; language was added to provide that no distribution or payments, including administration fees, shall be disbursed absent compliance with the law and a remedy.

SECTION 6 (previously Section 4)

This section requires ten (10) days notice of a transfer of property of a Medicaid recipient. The amendment provides Medicaid a remedy should the transfer occur without notice whereby Medicaid can recover to the extent of the transfer from those who know or should have known and profited from the transfer and provides that, should that occur, it will not affect the marketability of the title.

SECTION 7 (previously Section 5)

The amendment to this section creates a new section 33-11-5.2 setting forth the form of the affidavit required to be filed with the probate court before closing an estate.

SECTION 8

This amends section 33-22-3 to require notice to EOHHS of the filing of the probate petition for an individual fifty (55) years of age or older in accordance with section 40-8-15.

REVISED ARTICLE 32 (5/07/12)

RELATING TO MEDICAL ASSISTANCE RECOVERIES

SECTION 1. Title 27 of the General Laws entitled "Insurance" is hereby amended by adding thereto the following chapter:

CHAPTER 57.1

MEDICAL ASSISTANCE INTERCEPT ACT

27-57.1 -1. Interception of insurance payments (a) Every domestic insurer or insurance company authorized to issue policies of liability insurance pursuant to this title shall, within thirty (30) days prior to the making of any payment equal to or in excess of five hundred dollars (\$500) to any claimant for a third party personal injury under a contract of insurance, review information provided by the executive office of health and human services pursuant to § 27-57.1-4, indicating whether a claimant has received medical assistance in accordance with chapter 40-8.

(b) If the insurer determines from the information provided by the executive office of health and human services pursuant to § 27-57.1-4 that the claimant or payee has not received medical assistance, the insurer may make the payment to the claimant in accordance with the contract of the insurance.

(c) If the insurer determines from the information provided by the executive office of health and human services pursuant to § 27-57.1-4 that the claimant or payee has received medical assistance, the insurer shall, except to the extent payments are subject to liens, written notices, or interests described in § 27-57.1-3, withhold from payment the amount distributed for medical assistance as a result of the accident or loss, dating back to the date of the incident, pay that amount to the executive office of health and human services and pay the balance to the claimant or any other person(s) entitled to it. The executive office of health and human services shall provide written notice to the claimant and his or her attorney, if any. The notice shall include the date, name, social security number, case number, amount of the payment being withheld to reimburse the state, reason for payment and opportunity to request a hearing as

provided for in §27-57.1-1(e). Any insurer or insurance company, its directors, agents, employees, central reporting organizations and their respective employees authorized by an insurer to act on its behalf that releases information in accordance with the provisions of this chapter, or withholds an amount from payment based upon the latest information supplied by the executive office of health and human services pursuant to § 27-57.1-4 and disburses in accordance with § 27-57.1-3, shall be immune from any liability to the claimant, payee lien holder, payee who provided written notice, or security interest holder. Any withholding from payments in accordance with this chapter and payment made to the executive office of health and human services is further subject to the provisions of section 40-6-9, regarding rights of assignment and subrogation by medical assistance recipients. Said payments to the executive office of health and human services shall be for reimbursement of distributed medical assistance incurred as a result of the accident or loss, dating back to the date of the incident.

(d) Workers' compensation claims or payments to a recipient of medical assistance provided by the executive office of health and human services in accordance with chapter 40-8 shall be withheld and paid to the executive office of health and human services as provided for in this chapter and to the extent set forth in section 28-33-27 and section 40-6-10.

(e) Any claimant aggrieved by any action taken under this section may within thirty (30) days of the mailing of the notice to the claimant in subsection (c) of this section, request a hearing from the executive office of health and human services. Any payments made by an insurer pursuant to this chapter shall be made to the executive office of health and human services, should there be no request for hearing within thirty (30) days of receipt of notice, or within ten (10) business days of a decision after hearing and in accordance with the decision of any hearing that takes place as provided for in this subsection.

27-57.1-2. Notice provided to obligor of interception of insurance settlements.- In any case where the executive office of health and human services has intercepted an insurance payment, that office shall notify the recipient.

27-57.1-3. Certain liens not affected.- Nothing in this chapter affects the validity or priority of liens or written notices of health care providers, attorney fees, holders of security interests, or the assignment of rights under section 40-6-9 or 40-6-10. Funds subject to liens, written notices, or security interests shall be paid to the lien or interest holder. Funds available to be paid pursuant to chapter 27-57 for the payment of child support shall supersede any payment made pursuant to this chapter.

27-57.1-4. Information to be provided by the executive office of health and human services.- (a) The executive office of health and human services shall periodically within each year furnish the insurance companies and insurers subject to this section with a list or compilation of claimants, who have received medical assistance, as a result of the accident or loss which is the basis of the claim and who have been identified and matched through the centralized database provided for in this chapter. The information provided to the insurance companies and insurers shall be the names of individuals, with last known addresses, who as of the date of the list or compilation have received medical assistance in excess of five hundred dollars (\$500).

(b) In order to facilitate the efficient and prompt reporting of those medical assistance recipients in one centralized location, it is the duty and responsibility of the insurance companies doing business in the state to utilize one centralized database, to which the executive office of health and human services shall report and administer. Any insurer receiving information identifying an individual as a medical assistance recipient shall maintain the confidentiality of that information. Minimal data elements shall be shared with an agency contracted by the executive office of health and human services which maintains a centralized database of insurance claims. The contracted centralized database is required to keep confidential any personal and personnel information: records sufficient to identify an applicant for or recipient of medical assistance; preliminary drafts, notes, impressions, memoranda, working papers, and work products; as well as any other records, reports, opinions, information, and statements deemed confidential pursuant state or federal law or regulation, or rule of court. That data shall not be disclosed to the insurer. Matched

results are returned to the executive office of health and human services through its contracted agency. Proper quality assurance shall be performed by the contracted agency to insure the claim is open and collect additional information from the insurer including but not limited to contact information.

SECTION 2. Sections 27-57-1, 27-57-2, and 27-57-4 of the General Laws in Chapter 27-57 entitled "Child Support Intercept Act" are hereby amended to read as follows:

27-57-1 Interception of insurance payments. – (a) Every domestic insurer or insurance company authorized to issue policies of liability insurance pursuant to this title, and also any workers' compensation insurer, shall, within thirty (30) days prior to the making of any payment equal to or in excess of ~~three thousand five hundred dollars (\$3,000)~~ (\$500) to any claimant who is a resident of the state of Rhode Island or to any claimant who has an accident or loss that occurred in the state of Rhode Island, for third party for personal injury or workers' compensation benefits under a contract of insurance, review information provided by the department of administration, division of taxation human services, office of child support services, child support enforcement pursuant to §27-57-4 indicating whether the claimant owes past-due child support.

(b) If the insurer determines from the information provided by the department pursuant to § 27-57-4 that the claimant or payee does not owe past-due support, the insurer may make the payment to the claimant in accordance with the contract of the insurance.

(c) If the insurer determines from the information provided by the department pursuant to § 27-57-4 that the claimant or payee owes past-due child support, the insurer shall, except to the extent payments are subject to liens, written notices, or interests described in § 27-57-3, withhold from payment the amount of past-due support and pay that amount to the family court, which shall credit the person's child support obligation account for the amount so paid, and the insurer shall pay the balance to the claimant or other person entitled to it, ~~provided, that the~~ . The insurer or insurance company shall provide written notice to the claimant and his or her attorney, if any,

and notice by e-mail or other electronic means, to the department of the payment to the family court. The payment shall be deposited in the registry of the family court for a period of forty-five (45) days or, if an application for review has been filed pursuant to subsection (d), until further order of the court. The notice shall reflect the date, name, social security number, case number, and amount of the payment. Any insurer or insurance company, its directors, agents, and employees and central reporting organizations and their respective employees, authorized by an insurer to act on its behalf, who release information in accordance with the provisions of this chapter, or who withhold amounts from payment based upon the latest information supplied by the department pursuant to § 27-57-4 and makes disbursements in accordance with § 27-57-3, shall be in compliance and shall be immune from any liability to the claimant, payee lienholder, payee who provided written notice, or security interest holder for taking that action.

(d) Any claimant aggrieved by any action taken under this section may, within thirty (30) days of the making of the notice to the claimant in subsection (c) of this section, seek judicial review in the family court, which may, in its discretion, issue a temporary order prohibiting the disbursement of funds under this section, pending final adjudication.

27-57-2 Notice provided to obligors of interception of insurance settlements. In any case where the department of ~~administration, division of taxation~~ human services, office of child support services, child support enforcement unit has intercepted an insurance payment, the department shall notify the obligor parent of this action upon crediting the obligor's account.

27-57-4 Information to be provided by the department of administration, division of taxation, child support enforcement Information to be provided by the department of human services, office of child support services, child support enforcement. (a) The department shall periodically within each year furnish the insurance companies and insurers subject to this section with a list or compilation of names of individuals, with last known addresses, who as of the date of the list or compilation owe past due support in excess of five

hundred dollars (\$500) as shown on the Rhode Island family court/department of administration, division of taxation, child support enforcement, human services, office of child support services, child support enforcement computer system ("CSE system"). For the purposes of this section, the terms used in this section have the meaning and definitions specified in § 15-16-2.

(b) In order to facilitate the efficient and prompt reporting of those arrearages in one centralized location, it is the duty and responsibility of the insurance companies doing business in the state to utilize one centralized database to which the department shall report and administer.

SECTION 3. Section 28-33-27 of the General Laws in Chapter 28-33 entitled

"Workers' Compensation- Benefits" is hereby amended to read as follows:

28-33-27 Immunity of claims from assignment or liability for debt. – (a) No claims or payments due for compensation under chapters 29 – 38 of this title or under any alternative scheme permitted by §§ 28-29-22 – 28-29-24 shall be assignable, or subject to attachment, or liable in any way for any debts, except as set forth in subsection (b) of this section.

(b) A lien in favor of the department of labor and training and/or the department of human services executive office of health and human services shall attach by operation of law to any benefits due and payable under chapters 29 – 38 of this title, or under any alternative scheme by §§ 28-29-22 – 28-29-24, to the extent that those payments have been made by the department of labor and training and/or the department of human services executive office of health and human services to or on behalf of an injured employee or his or her dependents, but only to the extent that the employee would be entitled to receive benefits under the provision of these chapters. Any such lien is subject to the provisions of section 40-6-10.

SECTION 4. Sections 40-6-9 and 40-6-10 of the General Laws in Chapter 40-6 entitled "Public Assistance Act" are hereby amended to read as follows:

40-6-9 Assignment of child, spousal and medical support rights Assignment and subrogation for recovery of child, spousal and medical support rights. – (a) An applicant for

or recipient of public assistance under this chapter or under title XIX of the federal Social Security Act, 42 U.S.C. § 1396 et seq., for and on behalf of himself or herself and for and on behalf of a child or children, shall be deemed, without the necessity of signing any document for purposes of recovery, to have made an assignment and given a right of subrogation to the executive office of health and human services and/or the department of human services, as applicable, of any and all rights and interests in any cause of action, past, present, or future, that the applicant or recipient may have against any person failing to or obligated to provide for the support, maintenance, and medical care of the applicant, recipient, and/or minor child or children, for the period of time that assistance is being paid by the executive office of health and human services and/or the department; The executive office of health and human services and/or the department shall be subrogated to any and all rights, title, and interest the applicant or recipient may have against any and all property belonging to the obligated or non-supporting person in the enforcement of any claim for child, spousal, and medical support, whether liquidated through court order or not. The applicant or recipient shall also be deemed, without the necessity of signing any document, to have appointed the executive office of health and human services and/or the department of human services as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of instituting suit to establish paternity or secure support and medical care, collecting any and all amounts due and owing for child, spousal, and medical support, endorsing any and all drafts, checks, money orders, or other negotiable instruments representing support payments which are received by the executive office of health and human services and/or the department, and retaining any portion thereof permitted under federal and state statutes as reimbursement for financial and medical assistance previously paid to or for the recipient, child, or children.

(b) An applicant for or a recipient of medical assistance provided by the executive office of health and human services and/or the department pursuant to this chapter, ~~chapter 5-1~~, or chapter 8 of this title or title XIX of the federal Social Security Act, 42 U.S.C. § 1396 et seq., for

and on behalf of himself or herself, and for and on behalf of any other person for whom he or she may legally assign rights to any medical support or any other medical care, shall be deemed, without the necessity of signing any document for purposes of reimbursement, to have made an assignment and given a right of subrogation to the executive office of health and human services and/or the department of human services of any and all rights and interests that he, she, or such other person may have: (1) to payment for any medical support; and (2) to payment for any medical care from any third party.

(c) In addition to the assignments and subrogation rights provided in subsections (a) and (b) of this section, an applicant for or a recipient of financial assistance provided by the executive office of health and human services and/or department pursuant to this chapter, whenever the assistance is necessary by reason of accident, injury, or illness for which a third party may be liable, for and on behalf of himself or herself, and for and on behalf of any other person for whom he or she may legally act, shall be deemed, without the necessity of signing any document, to have assigned and subrogated to the executive office of health and human services and/or the department of human services, from amounts recovered or recoverable from any third party, an amount of money equal to the amount of financial assistance provided as a result of the accident, illness, or injury.

(d) With respect to an assignment and subrogation rights established pursuant to this section, an applicant or recipient shall provide to the executive office of health and human services and/or the department of human services ~~and/or the division of taxation within the department of administration~~ all relevant information regarding the rights assigned and subrogated rights, and shall execute any documents relating thereto, in accordance with rules and regulations to be adopted by the executive office of health and human services and/or the department.

(e) With respect to any assignment of rights and subrogation right for medical or financial support or recoveries under this section, the executive office of health and human services and/or

the department of human services shall be considered to have acquired the rights of such individual to payment by any third party for such medical care and support, and financial support.

(f) An applicant for or a recipient of medical assistance provided by the executive office of health and human services in accordance with chapter 40-8 shall also be subject to the provisions of chapter 27-57.1. Funds available to be paid for the payment of child support shall supersede any payment made pursuant to this chapter and chapter 27-57.1.

40-6-10 Effects of assistance on receipt of workers' compensation benefits. - (a) No individual shall be entitled to receive assistance provided under this chapter or chapter 5.1 of this title and/or medical assistance under chapter 8 of this title for any period beginning on or after July 1, 1982, with respect to which benefits are paid or payable to individuals under any workers' compensation law of this state, any other state, or the federal government, on account of any disability caused by accident or illness. In the event that workers' compensation benefits are subsequently awarded to an individual with respect to which the individual has received assistance payments under this chapter or chapter 5.1 of this title and/or medical assistance under chapter 8 of this title, then the department executive office of health and human services shall be subrogated to the individual's rights in the award to the extent of the amount of the payments and/or medical assistance paid to or on behalf of the individuals.

(b) Whenever an employer or insurance carrier has been notified by the department executive office of health and human services that an individual is an applicant for or a recipient of assistance payments under this chapter or chapter 5.1 of this title, and/or medical assistance under chapter 8 of this title, for a period during which the individual is or may be eligible for benefits under the Workers' Compensation Act, chapters 29-38 of title 28, the notice shall constitute a lien in favor of the department executive office of health and human services, upon any pending award, order, or settlement to the individual under the Workers' Compensation Act. The employer or his or her insurance carrier shall be required to reimburse the department of

~~human services executive office of health and human services~~ the amount of the assistance payments and/or medical assistance paid to or on behalf of the individual for any period for which an award, order, or settlement is made.

(c) Whenever an individual becomes entitled to or is awarded workers' compensation for the same period with respect to which the individual has received assistance payments under this chapter or chapter 5.1 of this title and/or medical assistance under chapter 8 of this title, and whenever notice of the receipt of assistance payments has been given to the division of workers' compensation of the department of labor and training of this state and/or the workers' compensation commission, the division or commission is hereby required to and shall incorporate in any award, order, or approval of settlement, an order requiring the employer or his or her insurance carrier to reimburse the ~~department~~ executive office of health and human services the amount of the assistance payments and/or medical assistance paid to or on behalf of the individual for the period for which an award, order, or settlement is made.

(d) Any claims or payments to a recipient of medical assistance provided by the executive office of health and human services in accordance with chapter 40-8 shall also be subject to the provisions of chapter 28-33-27. Funds available to be paid for the payment of child support shall supersede any payment made pursuant to this chapter and chapter 27-57.1.

SECTION 5. Section 40-8-15 of the General Laws in Chapter 40-8 entitled "Medical Assistance" is hereby amended to read as follows:

40-8-15 Lien on deceased recipient's estate for assistance. – (a) (1) Upon the death of a recipient of medical assistance under Title XIX of the federal Social Security Act, 42 U.S.C. § 1396 et seq., the total sum of medical assistance so paid on behalf of a recipient who was fifty-five (55) years of age or older at the time of receipt of the assistance shall be and constitute a lien upon the estate, as defined herein in subsection (a)(2) below, of the recipient in favor of the ~~department of human services~~ executive office of health and human services. The lien shall not be

effective and shall not attach as against the estate of a recipient who is survived by a spouse, or a child who is under the age of twenty-one (21), or a child who is blind or permanently and totally disabled as defined in Title XVI of the federal Social Security Act, 42 U.S.C. § 1381 et seq. ~~The lien shall not be effective and shall not attach as against a recipient's estate, which has been admitted for probate administration unless the department has filed a claim for reimbursement in the probate court in accordance with § 33-11-5 or other applicable law. The lien shall attach against property of a recipient, which is included or includible in the decedent's probate estate, regardless of whether or not a probate proceeding has been commenced in the probate court by the executive office of health and human services or by any other party. Provided, however, that such lien shall only attach and shall only be effective against the recipient's real property included or includible in the recipient's probate estate if such lien is recorded in the land evidence records and is in accordance with section 40-8-15(f). Decedents who have received medical assistance are subject to the assignment and subrogation provisions of sections 40-6-9 and 40-6-~~

10.

(2) For purposes of this section, the term "estate" with respect to a deceased individual shall include all real and personal property and other assets included or includable within the individual's probate estate

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

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

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

~~(e) Upon application to the director and a determination by the director that the lien is either inapplicable or that no reimbursement for medical assistance is due with respect to the estate, the director shall issue a written discharge of lien.~~

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

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

~~(g) Upon the filing of a petition for admission to probate of a decedent's will or for administration of a decedent's estate, when the decedent was fifty-five (55) years or older at the time of death, a copy of said petition and a copy of the death certificate shall be sent to the~~ executive office of health and human services. Within thirty (30) days of a request by the

executive office of health and human services, an executor or administrator shall complete and send to the executive office of health and human services a form prescribed by that office and shall provide such additional information as the office may require. In the event a petitioner fails to send a copy of the petition and a copy of the death certificate to the executive office of health and human services and a decedent has received medical assistance for which the executive office of health and human services is authorized to recover, no distribution and/or payments, including administration fees, shall be disbursed. Any person and /or entity that receives a distribution of assets from the decedent's estate shall be liable to the executive office of health and human services to the extent of such distribution.

(h) Compliance with the provisions of this section shall be consistent with the requirements set forth in section 33-11-5 and the requirements of the affidavit of notice set forth in section 33-11-5.2. Nothing in these sections shall limit the executive office of health and human services from recovery, to the extent of the distribution, in accordance with all state and federal laws.

SECTION 6. Chapter 40-8 of the General laws entitled "Medical Assistance" is hereby amended by adding thereto the following section:

40-8-9.1 Notice. – Whenever an individual who is receiving medical assistance under this chapter transfers an interest in real or personal property, such individual shall notify the executive office of health and human services within ten (10) days of the transfer. Such notice shall be sent to the individual's local office and the legal office of the executive office of health and human services and include, at a minimum, the individual's name, social security number or, if different, the executive office of health and human services identification number, the date of transfer and the dollar value, if any, paid or received by the individual who received benefits under this chapter. In the event an individual fails to provide notice required by this section to the executive office of health and human services and in the event an individual has received medical assistance, any individual and/or or entity, who knew or should have known that such individual

failed to provide such notice and who receives any distribution of value as a result of the transfer, shall be liable to the executive office of health and human services to the extent of the value of the transfer. Moreover, any such individual shall be subject to the provisions of section 40-6-15 and any remedy provided by applicable state and federal laws and rules and regulations. Failure to comply with the notice requirements set forth in the section shall not affect the marketability of title to real estate transferred, while the transferor is receiving medical assistance.

SECTION 7. Chapter 33-11 of the General Laws entitled "Claims Against Decedents' Estates" is hereby amended by adding thereto the following section:

33-11-5.2 Fiduciary's Affidavit Regarding Notice to Creditors and OHHS.- In order to close an estate, whether by accounting or affidavit of completed administration, the fiduciary shall submit to the probate court an affidavit in substantially the following form:

STATE OF RHODE ISLAND PROBATE COURT OF THE
COUNTY TOWN OF

ESTATE OF NO.

FIDUCIARY'S AFFIDAVIT REGARDING NOTICE TO CREDITORS AND TO THE RHODE ISLAND OFFICE OF HEALTH AND HUMAN SERVICES

The undersigned fiduciary of the above-captioned estate upon oath deposes and says that (a) notice of the commencement of the estate was mailed to all known or reasonably ascertainable creditors of the estate, as well as to the executive office of health and human services when the decedent was fifty-five (55) years or older, or that (b) no such notice was required to be mailed because that the Estate had no known or reasonably ascertainable creditors and the decedent was under the age of fifty-five (55).

Name Date

Subscribed and sworn before me this day of , 20 .

Notary public

SECTION 8. Section 33-22-3 of the General Laws in Chapter 33-22 entitled "Practice in Probate Courts" is hereby amended to read as follows:

33-22-3 Notice given by petitioner on filing of petition and hearing. – In addition to the notice prescribed by § 33-7-9, and to notice by publication in the manner as prescribed by § 33-22-11, the petitioner or his or her attorney shall, at least ten (10) days before the date set for hearing on the petition, send or cause to be sent by mail, postage prepaid, addressed to each person whose name and post office address is by § 33-22-2(3) required to be set forth in the petition, as the names and addresses are set forth therein or as then known to the petitioner, and when the decedent was fifty-five (55) years or older to the Rhode Island Office of Health and Human Services and in accordance with section 40-8-15, notice of the filing, the nature of the petition, and of the time and place set for hearing on the petition, or in lieu thereof a copy of the newspaper notice published pursuant to the provisions of § 33-22-11; provided, however, that in the case of any person entitled to notice hereunder whose post office address is outside the continental limits of the United States this notice shall be sent at least three (3) weeks before the date set for the hearing; and provided further that the petitioner or his or her attorney shall not be required to send this notice to any person sui juris who shall at, or prior to, the hearing waive notice of its pendency in writing either on the petition or by instrument separately filed. The petitioner or his or her attorney shall at or prior to the hearing file or cause to be filed an affidavit that the notice was given, setting forth the names and post office addresses of the persons to whom the notice was sent and the date of mailing of the notice, together with a copy of the notice.

SECTION 9. This article shall take effect as of July 1, 2012.