



Helping Older Persons With Legal & Long-Term Care Problems



Representative Sean P. Brennan  
77 S. High St.  
10th Floor  
Columbus, OH 43215

Representative Jason Stephens  
77 S. High St.  
13th Floor  
Columbus, OH 43215

March 16, 2026

***Re: Additional Suggestions to Improve Medicaid Estate Recovery in Ohio***

Dear Representatives Brennan and Stephens:

We are pleased with your interest in revising Ohio's Medicaid Estate Recovery Statutes. Ohio law currently maximizes the extraction of repayment from the families of older Ohioans who needed Medicaid, forcing them to make a heartbreaking choice between accepting health insurance and preserving the family home. Those on Medicaid often have few resources, so the family home is the primary target of Medicaid Estate Recovery.

Medicaid Estate Recovery collection efforts are undertaken by private attorneys hired by the Ohio Attorney General on a contingency fee basis ("Special Counsel"). The family often must sell the home to resolve the State's claim. While the price paid by Ohio families is devastating, the Ohio Department of Medicaid only receives back 24.8¢ per dollar collected.

Communities are affected as well. When a home is burdened with a Medicaid Estate

Recovery lien, families see little incentive to pay for a lawyer to probate the home just to pay off the lien. Communities are left to manage the blight caused by unmarketable homes burdened with expensive Medicaid Estate Recovery liens.

The harm to communities and families is exacerbated by use of Affidavits of Fact by Special Counsel to attempt recovery by clouding title when the State is statutorily prohibited from filing a lien because there is a surviving spouse, surviving disabled child or other protected survivor still living in the home. Special Counsel also send letters to protected survivors who owe nothing during their lifetime and falsely claim that money is due.

We fully support proposed House Bill 318. To further reduce the impact of Medicaid Estate Recovery on families and communities, we suggest the following additional amendments to RC 5162.21 and 5162.211, which comply with the existing federal requirements of 42 U.S.C. 1396p. These proposed additional revisions would lessen the devastating impact of Medicaid Estate Recovery on Ohio Families and Communities:

1. make Medicaid Estate Recovery more family friendly by focusing on probate estates;
2. limit Medicaid Estate Recovery to Medicaid recipients; and
3. prohibit Special Counsel from making unfounded threats on surviving family members and clouding their titles.

**(1) Make Medicaid Estate Recovery more family friendly by focusing on probate estates.**

While the federal government requires that the State of Ohio conduct Medicaid Estate Recovery, it gives the State discretion regarding the scope of Estate Recovery beyond minimum federal requirements. Ohio could focus collection efforts on what the federal government requires: probate estates. However, Ohio has chosen to optionally expand Medicaid Estate Recovery and target non-probate home transfers. This is an example of how Ohio is one of the most aggressive Medicaid Estate Recovery states in the country.

Targeting non-probate transfers means penalizing methods of transfer that are meant to protect the interests of older adults. Often a home is transferred outside of probate by a survivorship deed, life estate, or transfer on death affidavit. These non-probate transfers encourage other family members to share housing expenses while protecting the older adult from eviction. By eliminating R.C. 5162.21(A)(1)(b) from the definition of “estate” in Ohio, homes could be transferred using these family-friendly property transfers without subjecting them to a Medicaid Estate Recovery claim.

**Life Estates:** We have seen Ohioans in multigenerational households benefit from life estates. Because older adults have fixed incomes, in multigenerational homes the younger

family members may contribute more to household expenses like mortgages, utilities, and property taxes. To recognize their disproportionate contribution to the household expenses, an older adult may wish to deed their home to younger family members. Older adults can do so and protect themselves from eviction by retaining a life estate interest in their homes. However, even though a life estate terminates at the death of the Medicaid recipient, life estates are currently subject to Medicaid Estate Recovery.

When the life estate terminates, the family member with title may sell the house. Often the family member did not know their deceased loved one was on Medicaid until a claim is brought against them for the proceeds from the sale of the home even though no lien was ever filed.

As a result of the state of the law, family members are incentivized to have the older adult outright transfer the property before death, leaving older adults vulnerable. Older adults should have the option to retain life estate interests to protect their right to remain in their homes without fear of the consequences of Medicaid Estate Recovery.

**Survivorship Deeds:** As multigenerational households become more common, parents and their children buy homes together using survivorship deeds to pass their interest to the survivor outside of probate court. This protects the interests of the older adult, protecting them from eviction from their own home. But when there is a survivorship deed, Medicaid Estate Recovery applies when the older adult needs a nursing home or home and community-based waiver services prior to their death. Medicaid Estate Recovery inappropriately incentivizes multigenerational families who purchase homes together to place the homes solely in the name of younger family members. This leaves the older adult exposed to eviction if the family relationship breaks down or if the younger family member get divorced, files for bankruptcy, or has a judgment levied against them.

**Transfers on Death:** If this revision is made, rather than chose between accepting medical care and preserving the family home, an Ohioan can avoid Medicaid Estate recovery by recording a transfer on death affidavit to pass ownership to their home outside of probate at their death. This change would prevent family homes from incurring massive Medicaid Estate Recovery liens, making them unmarketable when a Medicaid recipient dies.

Another problem more common now is that older adults have mortgages and/or a Home Equity Line of Credit (HELOC) on their homes. When a homeowner experiences a temporary loss of income due to a job loss or illness, they can apply for forbearance on a mortgage or HELOC. But when a homeowner dies and family members remaining in the home continue to pay the bills, they may not be able to transfer title to the home due to a Medicaid Estate Recovery lien. A major problem occurs when surviving family members

who lack title to a home because of Medicaid Estate Recovery experience temporary financial insecurity due to job loss. The surviving family member may not be eligible for mortgage forbearance because they do not have title to the home. If they try to acquire title by probating the home, it may simply have to be sold to pay the State's Medicaid Estate Recovery claim. This means that a temporary job loss can result in foreclosure and sale of a home at a fraction of its value at sheriff sale. Allowing homes to be transferred outside of probate via a transfer on death affidavit without implicating Medicaid Estate Recovery would avoid this nightmare result.

**Federal law permits this revision:** Limiting the definition of "estate" in RC 5162.21(A)(1) to the probate estate is permitted by federal law. Federal law requires that Medicaid Estate Recovery efforts target the individual's "estate, as defined for purposes of State probate law." 42 U.S.C. 1396p(b)(4)(A). However, the term "estate" does **not** need to include:

any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

42 U.S.C. 1396p(b)(4)(B).

We recommend that the Ohio Legislature revise R.C. 5162.21 to delete R.C. 5162.21(A)(1)(b), removing from its definition of "estate" for purposes of Medicaid Estate Recovery the real and personal property transferred outside of probate. This simple revision will substantially benefit Ohioans and their communities because they can use non-probate transfers without fear of Estate Recovery, keeping properties as residential family homes in active tax-paying status.

This change will protect the integrity of real property titles in Ohio. Under the current statute, family members who inherit property from a Medicaid recipient outside of probate court, such as via a Transfer on Death Affidavit, could discover years later that there is a large Medicaid claim against the property. This often happens when the heir attempts to sell the property, sometimes after years of paying the mortgage, taxes, utilities, repairs and improvements. By eliminating R.C. 5162.21(A)(1)(b), the legislature could ensure that family members avoid this devastating consequence.

## **(2) Limit Medicaid Estate Recovery to the Medicaid recipient**

When an Ohioan in a nursing home qualifies for long term care Medicaid coverage, the

institutionalized spouse's income goes to pay their share of the nursing home cost-of-care. A spouse who remains in the community is left paying all the couple's fixed expenses (e.g. property taxes, insurance, utilities), out of their income, with perhaps a portion of their spouse's income that remains to them.

A community spouse thus may be paying patient liability to a nursing home while struggling to pay their remaining bills with what is left of the couple's income. The community spouse may need to draw equity from their home to pay their bills. But under current law, the Department of Medicaid can impose a lien on the community spouse's home and property in certain circumstances while their spouse is on Medicaid for long-term care coverage. These liens limit the ability of the community spouse to sell or mortgage their house to pay the bills.

Consider a community spouse who has moved to an independent living facility and then attempts to sell or mortgage a family home that they own to pay the bills, but cannot due to a \$100,000 Medicaid lien on the home.

As currently written, H.B. 318 deletes R.C. 5162.21(B)(3), which eliminates Medicaid Estate Recovery from being pursued against the "estate of other individuals as permitted by federal law." This is an excellent proposed amendment, but two other amendments are necessary to clarify its intent. At R.C. 5162.21(B)(1) and R.C. 5162.211(B), H.B. No. 318 allows imposition of liens "against the real property of the recipient's spouse" although these liens are not authorized by federal law. 42 U.S.C. 1396p and 42 C.F.R. 433.36. This attachment of a lien on the spouse's property contradicts the federal prohibition against **any** adjustment or recovery from the surviving spouse. 42 U.S.C. 1396p(b)(2).

The reason for the federal prohibition is clear. Since 1988, Congress recognized the need to prevent the spouse from impoverishment by providing eligibility while protecting certain assets for the spouse. Allowing Medicaid Estate Recovery liens to prevent a community spouse's ability to remove equity from a home would defeat these protections.

Federal law prohibits estate recovery during the spouse's lifetime so that the surviving spouse will have access to all resources for their needs. 42 U.S.C. 1396p(b)(2). H.B. 318 recognizes this goal and with its proposed removal of R.C. 5162.21(B)(3) to limit Ohio's collection to Medicaid recipient's property. To avoid all confusion and to prevent impoverishment of community spouses, we urge the committee to also eliminate the references to the spouse's property in R.C. 5162.211(B) and R.C. 5162.21(B)(1).

### **(3) Prohibit Special Counsel from Using Threats Against Surviving Family Members**

Special Counsel collect on Medicaid Estate Recovery for the State on a contingency fee

basis. There are several abusive tactics regularly used in these collection efforts, which can be addressed through additional statutory amendments.

**Stop Special Counsel from Using Threats:** When a Medicaid beneficiary dies, even when they have a surviving spouse or surviving disabled or minor child, the Special Counsel often sends a threatening letter and a detailed financial questionnaire. The collection letters, which feature the Attorney General's name and seal, claim that money is "due," even when obviously no money is due at that time because they are written to the surviving spouse, who is not required to pay anything until they too are deceased. The letters may mention a temporary exception for surviving spouses, but then they nevertheless threaten to report the family to the Attorney General if they do not respond. The letters threaten to "take whatever action may be appropriate to satisfy the outstanding account balance." Special Counsel issue these threats even when they know they are sending a letter to surviving spouse who owes nothing during their lifetimes.

Because of these threats, when surviving family members receive these letters, they may reasonably conclude they must immediately sell their homes to pay off the large amount of money that is claimed to be "due."

Instead of starting with threats, Special Counsel should be required to initiate communications with surviving family by asking questions to determine if Medicaid Estate Recovery is authorized. Special Counsel should ask about marital, disability, and other exempt status before demanding payment of money and threatening consequences for lack of payment. And, as required by OAC 5160:1-2-07(E)(2)(b), they should inform surviving families about the hardship waiver of OAC 5160:1-2-07(H) and the 30-day time deadline to apply.

**Stop Special Counsel From Filing Affidavits of Fact Clouding the Titles of Protected Surviving Family Members:** When there is a surviving spouse, surviving disabled child, or another statutorily protected family member, the State cannot pursue recovery or file a lien on property until the death of this protected family member. 42 U.S.C. 1396p(a)(2), (b)(2); R.C. 5162.21(C)(1); R.C. 5162.211(C). To circumvent this legal protection, Special Counsel in Ohio regularly file Affidavits of Fact on the homes of deceased Medicaid beneficiaries without any notice to the owner of the property. A surviving spouse typically only learns about the Affidavit of Fact when they try to obtain a HELOC or sell their home because the title agency will not clear the home for a loan or sale while the Affidavit of Fact remains recorded on the home.

Thus, even though the State has no interest in the home and cannot collect anything during the surviving spouse's lifetime, Special Counsel assert that the State has a "claim,"

March 16, 2026

Page 7 of 8

blocking the surviving spouse from drawing on the equity in their home. Although Special Counsel may release the Affidavit of Fact when asked to do so, the damage has been done, there is a cloud on their title until removed. And the “release” will usually still assert the “claim.” Further, Ohioans may not realize that they can request that the Affidavit of Fact be released and simply give up trying to refinance, access their equity, or sell their home.

The case is even worse for adult disabled children as Special Counsel will file actual liens against their homes, without notice and without authority. Federal law also prohibits any adjustment or recovery during the lifetime of adult disabled children. Again, if reported, Special Counsel may remove the lien, but their property has been wrongly damaged for years simply because Special Counsel did not determine that the owner was a disabled child prior to illegally encumbering their home.

\* \* \*

Thank you for your thoughtful consideration of our suggestions. Please do not hesitate to reach out if you have any questions or would like to discuss the suggestions provided here.

Sincerely,

Erin M. Campbell, Esq.  
Staff Attorney  
513-458-5508  
[ecampbell@proseniors.org](mailto:ecampbell@proseniors.org)  
Pro Seniors, Inc.

Katherine B. Hollingsworth, Esq.  
Executive Director  
216-343-1411  
[khollingsworth@neolegalaid.org](mailto:khollingsworth@neolegalaid.org)  
Northeast Ohio Legal Aid

Rebecca Steinhauser, Esq.  
Managing Attorney  
(419) 930-2494  
[rsteinhauser@ablelaw.org](mailto:rsteinhauser@ablelaw.org)

Stacy Purcell, Esq.  
Senior Supervising Attorney  
513-362-2877  
[StacyPurcell@lascinti.org](mailto:StacyPurcell@lascinti.org)  
Legal Aid Society of Southwest Ohio, LLC

Brandy Keessee, J.D., M.P.A.  
Staff Attorney  
313-686-4900  
[bkeessee@ablelaw.org](mailto:bkeessee@ablelaw.org)

Kara Jennings, Senior Attorney  
Housing and Community Economic  
Development  
419-930-2573  
[kjennings@ablelaw.org](mailto:kjennings@ablelaw.org)  
Advocates for Basic Legal Equality, Inc.

March 16, 2026

Page 8 of 8



**Danielle DeLeon Spires**

**Policy Advocate**

614-827-0549 (ext. 8114) | [dspires@ohiopovertylaw.org](mailto:dspires@ohiopovertylaw.org)

Direct: 614-824-2621

1108 City Park Ave. Suite 200

Columbus, OH 43206