

## **Governor Baker's Budget Proposal to Expand Estate Recovery Threatens the Family Home and Harms Spouses and Families of Nursing Home Residents**

*FY2017 House 2; Outside Section 11*

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The proposed provisions would allow MassHealth to make claims against all property in which the deceased MassHealth member had an ownership interest immediately prior to death. This includes property passing by survivorship or beneficiary designation to a spouse or child that was held in joint names, life estate, tenants by the entirety or living trusts. Current law limits estate recovery to the probate estate of a deceased MassHealth member.

- This precise proposal was enacted by the Massachusetts legislature in July 2003, only to be repealed by the legislature on July 23, 2004, after a year of delays, confusion, and ultimately the refund of all monies collected.
- The Massachusetts experience was not unique; the State of New York also passed such expanded estate recovery provisions on April 1, 2011, only to repeal them on March 27, 2012, after almost a year of confusion and turmoil.
- Most married couples own their home in joint names; under the proposed provisions, MassHealth will be able to file a claim against the home of a surviving spouse, making it difficult for the spouse to sell or mortgage the property without addressing the claim.
- Spouses of nursing home residents are usually women of modest means whose ability to pay for their own care and support may be profoundly affected by the proposal.
- Claims will fall disproportionately on the poor, the uneducated and the ill-advised who will be taken by surprise when they learn their property interests are jeopardized.
- These provisions are fundamentally unfair to elders who signed deeds long ago to implement ownership arrangements based on one set of estate recovery laws to which a new set of estate recovery laws will now apply.
- These provisions attack the sanctity of the family homestead, which Massachusetts has traditionally protected.
- The proposed language to expand estate recovery is so broad and ambiguous that it could threaten the special needs trust planning that families have implemented to protect disabled individuals.