

Memo

To: Members of the Senate Judiciary I Committee

From: AARP North Carolina, N.C. Bar Association, N.C. Bankers Association, N.C. Justice Center, N.C. Black Leadership Caucus

Date: August 19, 2005

Re: House Bill 327 – “Technical Corrections/Medicaid Estate Recovery”

The purpose of this memo is to apprise you of the serious concerns of the above-named organizations over the substance of **Section 80 of House Bill 327** – this year’s “technical corrections” bill.

The Problem: Under the language contained in this section and Section 10.21C of the final budget bill, North Carolina will adopt significant changes to state law governing the state’s ability to place liens upon and recover real and personal property of deceased Medicaid recipients. The most familiar scenario covered by these sections takes place when the state attempts to go after the family home or land of a deceased Medicaid recipient (often an elderly person) in order to recoup the cost of nursing home care or personal care services.

Both the budget bill and HB 327 attempt to spell out when and where it is appropriate for the state to go after such assets. The challenges involved in crafting such a law are formidable. First, one must strike a balance between two laudable goals: a) assuring that people of means pay their fair share; and b) assuring that low-income households are not rendered penniless because of their deceased family member’s Medicaid bill. Second, one must carefully account for the detailed legal ramifications of amending such an enormously complex area of law. **In our judgment, the language contained in the budget bill and HB 327 fails on both accounts.**

For instance, under the proposed changes, the state will now have enhanced power to go after land and homes valued at as little as \$30,000. In other words the state of North Carolina will be seeking to place liens on homes valued at as little as \$30,000 – an amount that will clearly impact only people of very modest means.

While North Carolina should clearly have the ability to assure that households with significant assets do not escape paying their fair share for health care, it is punitive and pointless to pursue assets of such modest size – **punitive** because the practical effect will be to put other low-income family members out of the family home and leave them without any assets and **pointless** because the recoveries will be so tiny as to make no measurable impact on the state’s Medicaid burden – indeed, more than 60% of the assets seized must be forwarded to Washington.

As noted, we also have serious concerns that the proposed changes and their many ramifications have not been carefully vetted by all stakeholders. This shortcoming is evidenced by the opposition of three separate Bar Association sections (Real Property, Elder Law and Estate Planning) whose members feel that the provisions have been drawn in a hasty and problematic fashion. Indeed, the very inclusion of a lengthy set of additional substantive provisions in the technical corrections bill demonstrates the flawed nature of the process.

In sum, while all of the parties to this Memo may not share the same ideological beliefs or the same objections to the purpose, mechanics and intended effect of the proposed changes, we all agree that the current proposed language fails to address concerns of significant importance to each of the parties.

Proposed Solution: For all of the above reasons (and many others) we urge the members of the Committee to make use of the technical corrections bill to simply remove Section 10.21C as adopted in the budget bill (Senate Bill 622) and direct the Department of Health and Human Services to convene a meaningful and inclusive stakeholder process that would develop a comprehensive reform package for the 2006 session of the General Assembly. If complete deletion of the flawed sections is deemed not to be feasible, we urge the Committee to delay the effective date of the changes from January 1, 2006 to January 1, 2007, so that all interested and effected parties will have a full and meaningful opportunity to comment on and contribute to the process.

Please do not hesitate to contact any of the individuals listed below if we can provide any additional information.

Bill Wilson
AARP North Carolina
(919) 508-0299

Doug Heron
NC Bar Association
(919) 677-0561

Paul Stock
North Carolina Bankers Association
781-7979

Al Ripley
NC Justice Center
(919) 856-2573

N. Carnell Robinson
NC Black Leadership Caucus
910-574-3503