

CBA LPRC POSITION REQUEST FORM

The CBA Elder Law Section **position request** is as follows:

1) Proposed legislative or regulatory concept:

The Elder Law Section ***opposes*** the expansion of the state's right of recovery for medical assistance benefits paid to include claims against life uses.

2) Explanation and rationale for advancing this position:

Life use interests expire at death by definition. If a decedent dies owning a life use interest in an asset, the value of the asset in which the decedent had the life use interest is fully includible for estate tax purposes ***only*** in the decedent's estate but there is nothing against which for the state to recover since the life use expired. It is unclear whether the state would seek recovery anyway against the full asset if such recovery were permitted.

3) Is draft regulation, legislation or proposed bill included? DSS had proposed a bill in the past. However, based on the approach the DSS has taken to some issues, the Section is concerned that the DSS may not have given up on pursuing such legislation.

4) What is the date of any legislative hearing, if known? None at this time.

5) Was this position previously approved by the CBA? If so, when does/did it expire? Yes, the position expired at the end of the 2019 Legislative session

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position? No.

7) Potential or actual CBA opposition from another CBA section or committee? No.

8) Strength of section position (including process and results of section vote taken on issue):

Re-authorization of section position unanimously approved by the Executive Committee of the Elder law section at its dinner meeting on September 17, 2019.

9) Fiscal impact (on the state): None.

10) Are you seeking "fast-track" approval: No¹

¹ A "fast track" recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.