

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
3RD CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2602

By: Seikel of the House

and

Cain of the Senate

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to poor persons; requiring payment of certain medical assistance to create a debt to the Department of Human Services; providing for eligibility; providing for filing and enforcement of certain liens; providing for notice and hearing; establishing certain procedures; providing for contents of notice; providing for amounts; providing for filing of the lien; prohibiting certain filings; providing for effect of liens; setting certain conditions; requiring certain information; providing for enforcement; limiting enforcement of lien to certain conditions; defining terms; providing for control of federal statutes and rules; repealing 56 O.S. 1991, Section 200b, which relates to liens for payment of medical assistance; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 200b.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The payment of medical assistance by the Department of Human Services on behalf of a recipient who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the Department subject to recovery by legal action in accordance with the provisions of this section.

B. Pursuant to the provisions of this section, the Department of Human Services is authorized to file and enforce a lien

pursuant to the provisions of this section against the real property of a recipient for payments of medical assistance made by the Department on behalf of the recipient who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution if the Department, after notice and opportunity for a hearing, determines such recipient cannot reasonably be expected to be discharged and returned home. A one-year period of inpatient care at a nursing facility, intermediate care facility for the mentally retarded or other medical institution shall constitute a determination by the Department that the recipient cannot reasonably be expected to be discharged and returned home.

C. Upon certification of eligibility for medical assistance payments for nursing facility care, care in an intermediate care facility for the mentally retarded or care in another medical institution, the Department shall provide written notice to the recipient, the recipient's spouse and legal guardian, as applicable, that:

1. A one-year period of inpatient care at a nursing facility, an intermediate care facility for the mentally retarded or other medical institution shall constitute a determination by the Department that the recipient cannot reasonably be expected to be discharged and returned home;

2. A lien will be filed against the recipient's real property pursuant to the provisions of this section and that the amount of the lien shall be for the amount of medical assistance paid by the Department from the date the recipient received compensated inpatient care at a nursing facility, intermediate care facility for the mentally retarded or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient; and

3. The recipient is entitled to notice and opportunity for a hearing with the Department of Human Services prior to the filing of the lien pursuant to this section.

The notice shall also contain an explanation of the lien and the effect the lien will have on the real property of the recipient.

D. The lien filed pursuant to subsection F of this section shall be for the amount of medical assistance paid beginning the date the recipient received compensated inpatient care from a nursing facility, intermediate care facility for the mentally retarded or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient.

E. The Department shall not file a lien on the homestead of the recipient pursuant to subsection F of this section while the homestead is the lawful residence of:

1. The spouse of the recipient;
2. A child of the recipient, natural or adopted, who is twenty (20) years of age or less;
3. An adult child of the recipient, natural or adopted, who is blind or disabled as defined by the Department; or
4. A brother or sister of the recipient who has an equity interest in the home and who was residing in the home for at least one (1) year immediately preceding the date the recipient was admitted to the nursing facility, intermediate care facility for the mentally retarded or other medical institution and has resided there on a continuous basis since that time.

F. No lien for payment of medical assistance pursuant to this section shall be effective unless:

1. The Department has provided notice to the recipient, the recipient's spouse and legal guardian, as applicable, of the intent to file a lien against the real property of the recipient and has given the recipient and his legal guardian, if applicable, the opportunity for a hearing on the matter. Any such hearing shall be held pursuant to the Code of Federal Regulations governing the Medicaid Program; and

2. After the notice and opportunity for hearing specified in paragraph 1 of this subsection has been provided and after conditions in subsection E of this section have been met, a lien

is filed for record against the legal description of the real property in the office of the county clerk of the county in which the real property of the recipient is located. The lien shall contain the following information:

- a. the name and mailing address of the recipient, recipient's spouse, legal guardian, authorized representative, or individual acting on behalf of the recipient,
- b. the amount of the assistance paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for medical assistance to the recipient,
- c. the date the recipient began receiving compensated inpatient care at a nursing facility, intermediate care facility for the mentally retarded or other medical institution,
- d. the legal description of the real property against which the lien will be recorded,
- e. the name and address of the Department of Human Services, and
- f. such other information as the Department requires.

G. 1. After the lien has been filed pursuant to subsection F of this section, the Department of Human Services may enforce a lien only:

- a. after the death of the surviving spouse of the recipient,
- b. when there is no child of the recipient, natural or adopted, who is twenty (20) years of age or less residing in the homestead,
- c. when there is no adult child of the recipient, natural or adopted, who is blind or disabled as defined by the Department residing in the homestead,
- d. when no brother or sister of the recipient is lawfully residing in the homestead, who has resided there for at least one (1) year immediately before the date of the recipient's admission to the nursing

facility, intermediate care facility for the mentally retarded or other medical institution and has resided there on a continuous basis since that time, and

- e. when no son or daughter of the recipient is lawfully residing in the homestead who has resided there for at least two (2) years immediately before the date of the recipient's admission to the nursing facility, intermediate care facility for the mentally retarded or other medical institution and establishes to the satisfaction of the Department that he or she provided care to the recipient which permitted the recipient to reside at home rather than in an institution and has resided there on a continuous basis since that time.

2. A lien filed pursuant to subsection F of this section shall remain on said real property:

- a. until the lien is satisfied,
- b. until the value of the real property is consumed by the lien at which time the Department may force the sale of the said real property to satisfy the lien, or
- c. after transfer of title of the real property by conveyance, sale, succession, inheritance, or will until the lien has been satisfied.

3. The lien filed pursuant to subsection F of this section may be enforceable by the Department before or after the death of the recipient.

4. The lien created by this section shall have priority over subsequent liens against the property. Such lien shall be subject to the enforcement procedures and shall comply with any applicable requirements set forth in Title 46 of the Oklahoma Statutes.

H. The recipient, the heirs of the recipient, the personal representative, or assigns may discharge said lien at any time by paying the amount of the lien to the Department.

I. After a lien is filed against the real property of the recipient, the Department shall exclude from consideration as a resource the value of such real property of the recipient.

J. The payment of medical assistance by the recipient from the Department shall constitute a waiver of the homestead rights of the recipient for the purposes of this section and Article XII of the Oklahoma Constitution.

K. The debt to the Department may also be recovered from the estate of the recipient.

If a recipient was fifty-five (55) years of age or older when payments of medical assistance were made by the Department on behalf of the recipient, the Department shall seek recovery from the recipient's estate for nursing facility services, home and community-based services and related hospital and prescription drug services.

L. As used in this section:

1. "Nursing facility" means any home, establishment, or institution which offers or provides on a regular basis twenty-four-hour medical services, skilled nursing care, necessary special dietary service, and personal care and supervision to three or more of its residents who are not related to the owner or administrator of the facility;

2. "Intermediate care facility for the mentally retarded" means a residential facility that is primarily for the diagnosis, treatment, or rehabilitation of the mentally retarded or persons with related conditions that provides twenty-four-hour supervision, coordination and integration of health or rehabilitative services for persons whose mental retardation or related condition occurred prior to the person's twenty-second birthday;

3. "Other medical institution" means an institution that is organized to provide medical care, including nursing and convalescent care, on a continuing basis by professional personnel who are responsible to the institution for professional medical and nursing services; and

4. "Estate" means all real and personal property and other assets included in the recipient's estate as defined in Title 58 of the Oklahoma Statutes.

M. If any provisions of this section shall be in conflict with any applicable federal statutes or rules, the federal statutes or rules shall prevail and be controlling.

SECTION 2. REPEALER 56 O.S. 1991, Section 200b, is hereby repealed.

SECTION 3. This act shall become effective July 1, 1994.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-L9929 KSM