

ENGROSSED HOUSE  
BILL NO. 2501

By: Anthony of the House  
and  
Cain of the Senate

( public health and safety and poor persons - amending 56  
O.S., Sections 200, 200a and 200b - Department of Human  
Services - effective date )

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 200, is  
amended to read as follows:

Section 200. A. 1. The payment of medical expenses by the  
Department of Human Services for or on behalf of or the receipt of  
medical assistance by a person who has been injured, or who has  
suffered a disease, as a result of the negligence or act of another  
person creates a debt to the Department subject to recovery by legal  
action pursuant to this section.

2. The payment of medical expenses by the Department ~~of Human  
Services~~ for or on behalf of a person who has been injured or who  
has suffered a disease, and either has a claim or may have a claim  
against an insurer, to the extent recoverable, creates a debt to the  
Department whether or not such person asserts or maintains a claim  
against an insurer.

B. The Department ~~of Human Services~~ shall provide notice to all  
recipients of medical assistance at the time of application for such

assistance of their obligation to report any claim or action and of any judgment, settlement or compromise arising from ~~such~~ the claim or action for injury or illness for which the Department makes payments for medical assistance.

C. The recipient of medical assistance from the Department ~~of Human Services~~ for an injury or disease who asserts a claim or maintains an action against another on account of ~~such~~ the injury or disease or ~~such~~ the recipient's legal representative shall notify the Department ~~of Human Services~~ of ~~such~~ the claim or action and of any judgment, settlement or compromise arising from ~~such~~ the claim or action prior to ~~said~~ the final judgment, settlement or compromise.

D. If ~~such~~ the injured or diseased person asserts or maintains a claim against such other person or tortfeasor on account of ~~such~~ the injury or disease, the Department:

1. Shall have a lien upon payment of ~~such~~ the medical assistance to the extent of the amount so paid upon that part going or belonging to ~~such~~ the injured or diseased person or any recovery or sum had or collected or to be collected by ~~such~~ the injured or diseased person, or by ~~his~~ the heirs, personal representative or next of kin in case of ~~his~~ the death of the person, whether by judgment or by settlement or compromise; provided, however, that this lien shall be inferior to any lien or claim of any attorney or attorneys for handling the claim on behalf of ~~such~~ the injured or diseased person, ~~his~~ the heirs or personal representatives. The lien authorized by this section shall not be applied or considered valid against any temporary or permanent disability award of the claimant due under the Workers' Compensation Act in this state. Provided, the lien of the Department authorized pursuant to this

subsection shall be applied and considered valid as against any insurer adjudged responsible for medical expenses under the Workers' Compensation Act;

2. May take ~~such~~ the other legal action necessary to recover the amount so paid or to be paid to ~~such~~ the injured or diseased person or to ~~his~~ the heirs, personal representative or next of kin in case of ~~his~~ the death of the person.

E. 1. To effectuate the lien authorized pursuant to this section, the Department ~~of Human Services~~ shall file a written notice containing a statement of the amount claimed, the name and address of the injured person, and the name of the person, firm or corporation alleged to be liable to the injured or the diseased person for damages in the office of the clerk of the district court for the County of Oklahoma, State of Oklahoma, prior to the full payment of any monies to ~~such~~ the injured or diseased person or ~~his~~ the heirs or personal representatives as damages or compensation for ~~such~~ the injury or disease.

2. The Department shall also send by certified mail, return receipt requested, postage prepaid, a copy of ~~such~~ the notice with a statement of the date of filing thereof to:

- a. the recipient of the medical assistance;
- b. any person, firm or corporation alleged to be liable to the injured or diseased person for damages so sustained;
- c. any insurer which may be ultimately liable, if the name and address shall be known; and
- d. any attorney for the injured or diseased person, provided the Department has notice of the name of ~~such~~ the attorney.

3. The Department shall have the right to file a written notice of its lien in any action commenced by ~~such~~ the injured or diseased person.

F. The Department, to secure and enforce ~~such~~ the right of recovery or reimbursement on behalf of the injured or diseased person, may initiate and prosecute any action or proceeding against ~~such~~ the other person or tortfeasor who may be liable to the injured or diseased person if the injured or diseased person has not initiated any legal proceedings against ~~such~~ the other person or tortfeasor.

G. Any person or insurer that has been notified by the Department of claim of lien authorized by this section and who, directly or indirectly, pays to the recipient any money as a settlement or compromise of the recipient's claim arising out of the injury shall be liable to the Department ~~of Human Services~~ for the money value of the medical assistance rendered by the Department in an amount not in excess of the amount to which the recipient was entitled to recover from the tortfeasor or insurer because of the injury.

H. As used in this section:

1. "Medical expenses" includes the cost of hospital, medical, surgical and dental services, care and treatment, rehabilitation, and prostheses and medical appliances, and nursing and funeral services;

2. "Person" includes, in addition to an individual, the guardian of an individual, and the administrator or executor of the estate of an individual, and a corporation; and

3. "Insurer" means any insurance company that administers accident and health policies or plans or that administers any other type insurance policy containing medical provisions, and any nonprofit hospital service and indemnity and medical service and indemnity corporation, actually engaged in business in the state, regardless of where the insurance contract is written, or plan is administered or where such corporation is incorporated.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 200a, is amended to read as follows:

Section 200a. Whenever the ~~Department of Human Services~~ Oklahoma Health Care Authority pays for medical services or renders medical services, for or on behalf of a person who has been injured or suffered an illness or disease, the right of the provider of such services to reimbursement will be automatically assigned to the ~~Department of Human Services~~ Oklahoma Health Care Authority, upon notice to the insurer or other party obligated as a matter of law or agreement to reimburse ~~such~~ the provider on behalf of the patient; furthermore, upon assignment, the ~~Department of Human Services~~ Authority, for purposes of the claim for reimbursement, becomes a provider of medical services. Provided further and notwithstanding the provisions of Section 200 of this title, the assignment of the right to reimbursement shall be applied and considered valid against any employer or insurer under the Workers' Compensation Act in this state.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 200b, is amended to read as follows:

Section 200b. A. Pursuant to the provisions of this section, the ~~Department of Human Services~~ Oklahoma Health Care Authority is authorized to file and enforce a lien against the homestead of a recipient for payments of medical assistance made by the ~~Department~~ Authority to the recipient who is an inpatient of a nursing home if the ~~Department~~ Authority, upon competent medical testimony, determines ~~such~~ the recipient cannot reasonably be expected to be discharged and returned home. A one-year period of compensated inpatient care at a nursing home or nursing homes shall constitute a determination by the ~~Department~~ Authority that the recipient cannot reasonably be expected to be discharged and returned home.

B. Upon certification for Title XIX of the federal Social Security Act payments for nursing home care, the ~~Department~~ Authority shall provide written notice to the recipient that:

1. A one-year period of compensated inpatient care at a nursing home ~~or homes~~ shall constitute a determination by the ~~Department~~ Authority that the recipient cannot reasonably be expected to be discharged and returned home;

2. A lien will be filed against ~~his~~ the homestead of the recipient pursuant to the provisions of this section and that the amount of the lien shall be for the amount of assistance paid by the ~~Department~~ Authority after the expiration of one (1) year from the date the recipient became eligible for compensated inpatient care at a nursing home or homes 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 a hearing with the ~~Department of Human Services~~ Authority 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 ownership of the homestead of the recipient and any other person residing in the homestead. The notice shall be signed by the recipient or ~~his~~ the legal guardian of the recipient acknowledging that the recipient or ~~his~~ the legal guardian of the recipient understands the notice and the effect the payment of medical assistance on ~~his~~ the recipient's behalf will have upon the homestead of the recipient.

C. The lien filed pursuant to subsection E of this section shall be for the amount of assistance paid beginning one (1) year after the recipient has received inpatient care from a nursing home or nursing homes and has received payment of medical assistance by the ~~Department~~ Authority until the time of the filing of the lien

and for any amount paid thereafter for ~~such~~ the medical assistance to the recipient.

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

1. The surviving spouse of the recipient;
2. A child related to the recipient by blood or marriage who is twenty (20) years of age or less;
3. An adult child related to the recipient by blood or marriage who is incapacitated as defined by the ~~Department~~ Authority; 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 home and has resided there on a continuous basis since that time.

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

1. The ~~Department~~ Authority has provided notice to the recipient of the intent to file a lien against the homestead of the recipient and of the opportunity for a hearing on the matter; and
2. After the notice specified in paragraph 1 of this subsection has been given, a lien is filed for record against the legal description of the homestead in the office of the county clerk of the county in which the homestead of the recipient is located. The lien shall contain the following information:
  - a. the name and address of the place of residence of the recipient, and
  - b. the amount of the assistance paid at the time of the filing of the lien and the amount which is expected to accumulate on a monthly basis, and
  - c. the date the recipient began receiving compensated inpatient care at a nursing home or nursing homes, and

- d. the legal description of the real property against which the lien will be recorded, and
- e. such other information as the ~~Department~~ Authority requires.

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

- a. after the death of the surviving spouse of the recipient;
- b. when there is no child related to the recipient by blood or marriage who is twenty (20) years of age or less residing in the homestead;
- c. when there is no adult child related to the recipient by blood or marriage who is incapacitated as defined by the ~~Department~~ Authority residing in the homestead; and
- d. when no brother or sister of the recipient is 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 facility or institution, and has resided there on a continuous basis since that time.

2. A lien filed pursuant to subsection E of this section shall remain on ~~said~~ the homestead:

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

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

4. The lien created by this section shall be treated as a mortgage and shall be released in accordance with the provisions as set forth in Section 15 of Title 46 of the Oklahoma Statutes.

5. The lien shall not sever a joint tenancy nor affect the right of survivorship. The lien shall be enforceable only to the extent of the ownership of the person receiving assistance as it existed at the time the recipient began receiving assistance.

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

H. At the end of the one (1) year limitation, the ~~Department~~ Authority shall exclude from consideration as a resource the value of the homestead of the recipient.

I. The payment of medical assistance on behalf of the recipient by the ~~Department~~ Authority and the signing of the notice pursuant to subsection B of this section shall constitute a waiver of the homestead rights of the recipient for the purposes of this section and Section 3 of Article XII of the Oklahoma Constitution.

J. 1. Pursuant to the provisions of this subsection, if the homestead is sold to enforce the lien authorized pursuant to the provisions of this section, an amount up to Six Thousand Dollars (\$6,000.00) from the proceeds of the sale of the homestead, less the value of any prepaid burial or insurance policies or designated accounts for funeral expenses already owned by the recipient, shall be set aside in an irrevocable trust fund to be used for the funeral expenses of the recipient.

2. Payment of ~~such~~ the funeral expenses from the proceeds of the sale of the homestead shall be made as follows:

- a. If the proceeds exceed the amount of the lien, the payment of funeral expenses shall be first satisfied from any amount in excess of the lien amount. After the excess is exhausted, the remainder of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.
- b. If the proceeds from the sale of the homestead do not exceed the amount of the lien, the payment of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.

K. As used in this section:

"Nursing home" 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.

L. If any provisions of this section shall be in conflict with any applicable federal statutes, and rules ~~and regulations~~, the federal statutes, and rules ~~and regulations~~ shall prevail and be controlling until such time as the federal statute, and rules ~~and regulations~~ shall be revised to conform to this ~~act~~ section.

SECTION 4. This act shall become effective November 1, 1996.

Passed the House of Representatives the 4th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1996.

President

of the Senate