

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1995

By: Hefner

AS INTRODUCED

An Act relating to poor persons; creating the Spousal Impoverishment Prevention Act; defining terms; providing certain criteria; providing for certain calculations; authorizing certain transfer; providing for determination; providing for codification; and providing an effective date.

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 1050.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the Spousal Impoverishment Prevention Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

As used in the Spousal Impoverishment Prevention Act:

1. "Community spouse" means an individual who is married to an institutionalized spouse;

2. "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. Department of Labor;

3. "Family member" means a minor or dependent child, dependent parent or dependent sibling of an institutionalized or community spouse who resides with the community spouse;

4. "Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a federal waiver under 42 USC 1396n(c) or (d) and is married to an individual who is not in a medical institution or nursing facility and does not receive services under a federal waiver under 42 USC 1396n(c) or (d);

5. "Resources" does not include items excluded under 42 USC 1382b(a) or (d) or items that would be excluded under 42 USC 1382b(a)(2)(A) but for the limitation on total value established under that provision; and

6. "Department" means the Department of Human Services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department shall use the provisions of the Spousal Impoverishment Prevention Act in determining the eligibility for medical assistance and the required contribution toward care of an institutionalized spouse.

B. Except as provided in subsection C of this section, no income of a spouse is considered to be available to the other spouse during any month in which that other spouse is an institutionalized spouse.

C. The following criteria shall apply in determining the income of an institutionalized spouse or a community spouse:

1. Except as otherwise provided by this subsection, unless the instrument providing the income specifically provides otherwise:

a. income paid solely in the name of one spouse is considered to be available only to that spouse,

- b. income paid in the names of both spouses is considered to be available one-half (1/2) to each spouse, and
- c. income paid in the name of either or both spouses and to one or more other persons is considered to be available to each spouse in proportion to the spouse's interest or, if payment is made to both spouses and each spouse's individual interest is not specified, one-half (1/2) of the joint interest is considered to be available to each spouse.

2. Except as provided in paragraph 3 of this subsection, if there is no trust or other instrument establishing ownership, income received by a couple is considered to be available one-half (1/2) to each spouse.

3. Paragraphs 1 and 2 of this subsection do not apply to income other than income from a trust if the institutionalized spouse establishes, by a preponderance of the evidence, that the ownership interests in the income are other than as provided in paragraphs 1 and 2 of this subsection.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of that institutionalized spouse's income that must be applied monthly to payment for the costs of care in the institution, the Department shall deduct the following amounts in the following order from the institutionalized spouse's income:

- 1. Personal needs allowance established by law or by rule of the Department;
- 2. The community spouse monthly income allowance calculated under subsection B of this section or the amount of income of the

institutionalized spouse that is actually made available to, or for the benefit of, the community spouse, whichever is less;

3. A family allowance for each family member equal to one-third (1/3) of the amount by which the family member's monthly income is exceeded by the following:

- a. beginning on July 30, 1995, and ending on June 30, 1999, one hundred twenty-two percent of one-twelfth (122% of 1/12) of the poverty line for a family of two (2) persons,
- b. beginning on July 1, 1999, and ending on June 30, 2000, one hundred thirty-three percent of one-twelfth (133% of 1/12) of the poverty line for a family of two (2) persons, and
- c. beginning on July 1, 2000, one hundred fifty percent of one-twelfth (150% of 1/12) of the poverty line for a family of two (2) persons; and

4. The amount incurred as expenses for medical or remedial care for the institutionalized spouse.

B. The community spouse monthly income allowance equals the greater of the following:

1. The minimum monthly maintenance needs allowance determined pursuant to Department rule or the amount determined at a fair hearing pursuant to Section 8 of this act if such an amount has been determined, minus the amount of monthly income otherwise available to the community spouse; or

2. The amount of monthly support which a court orders the institutionalized spouse to pay for the support of the community spouse.

C. The minimum monthly maintenance needs allowance is One Thousand Five Hundred Dollars (\$1,500.00) in 1995. For a calendar year after 1995, the minimum monthly maintenance needs allowance is One Thousand Five Hundred Dollars (\$1,500.00) increased by the same

percentage as the percentage increase in the consumer price index between September 1994 and September of the year before the calendar year involved.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.5 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department shall determine the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse in resources as of the beginning of the first continuous period of institutionalization beginning after July 1, 1995. The spousal share of resources equals one-half (1/2) of that total value.

2. At the beginning of the first continuous period of institutionalization beginning after July 1, 1995, upon the request of an institutionalized spouse or a community spouse and the receipt of necessary documentation, the Department shall assess and document the total value of resources under paragraph 1 of this subsection and shall provide a copy of the assessment and documentation to each spouse and retain a copy for Departmental use. If the request is not part of an application for medical assistance, the Departmental may charge a fee not exceeding the reasonable expenses of providing and documenting the assessment. When the Department provides a copy of an assessment, it shall provide notice that a spouse has the right to a fair hearing pursuant to Department rule after an application for medical assistance is filed.

B. In determining the resources of an institutional spouse at the time of application for medical assistance, the amount of resources considered to be available to the institutionalized spouse equals the value of all of the resources held by either or both spouses minus the greatest of the amounts determined under Section 8 of this act.

C. The amount of resources determined under subsection B of this section to be available for the cost of care does not cause an institutionalized spouse to be ineligible for medical assistance, if any of the following applies:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse.

2. The institutionalized spouse lacks the ability to execute an assignment under paragraph 1 of this subsection due to a physical or mental impairment but the state has the right to bring a support proceeding against the community spouse without an assignment.

3. The Department determines that denial of eligibility would work an undue hardship.

D. During a continuous period of institutionalization, after an institutionalized spouse is determined to be eligible for medical assistance, no resources of the community spouse are considered to be available to the institutionalized spouse.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.6 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. An institutionalized spouse may transfer an amount of resources equal to the community spouse resource allowance determined under subsection B of this section to, or for the sole benefit of, the community spouse without becoming ineligible for medical assistance for the period of ineligibility pursuant to rules of the Department as a result of the transfer. The institutionalized spouse shall make the transfer as soon as practicable after the initial determination of eligibility for medical assistance, taking into account the amount of time that is necessary to obtain a court order.

B. The community spouse resource allowance equals the amount by which the amount of resources otherwise available to the community spouse is exceeded by the greatest of the following:

1. In 1995, Sixty Thousand Dollars (\$60,000.00); in a calendar year after 1995, Sixty Thousand Dollars (\$60,000.00) increased by the same percentage as the percentage increase in the consumer price index between July 1, 1994, and July of the year before the calendar year involved.

2. The amount established in a fair hearing under Section 8 of this act.

3. The amount transferred under a court order.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.7 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department shall notify both spouses upon a determination of medical assistance eligibility of an institutionalized spouse, or shall notify the spouse making the request upon a request by either an institutionalized spouse or a community spouse, of all of the following:

1. The amount of the community spouse monthly income allowance calculated under subsection B of Section 4 of this act;

2. The amount of any family allowances pursuant to Section 3 of this act;

3. The method for computing the amount of the community spouse resource allowance pursuant to Section 6 of this act; and

4. The spouse's right to a fair hearing under Section 8 of this act concerning ownership or availability of income or resources and the determination of the community spouse monthly income or resource allowance.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1050.8 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. An institutionalized spouse or a community spouse is entitled to a Departmental fair hearing concerning any of the following:

1. The determination of the community spouse monthly income allowance pursuant to Section 4 of this act;

2. The determination of the amount of monthly income otherwise available to the community spouse used in the calculation pursuant to Section 4 of this act;

3. After an application for medical assistance benefits is filed, the computation of the spousal share of resources pursuant to Section 5 of this act;

4. The attribution of resources pursuant to Section 5 of this act; and

5. The determination of the community spouse resource allowance pursuant to Section 6 of this act.

B. If the institutionalized spouse has made an application for medical assistance, and a fair hearing is requested concerning the determination of community spouse resource allowance, the Department shall hold the hearing within thirty (30) days after the request.

C. If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined pursuant to Section 4 of this act, the Department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance determining the community spouse monthly income allowance pursuant to Section 3 of this act.

D. If either spouse establishes at a fair hearing that the community spouse resource allowance determined under Section 6 of this act without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under Section 4 of this act, the Department shall establish an amount to be used under Section 6 of this act that results in a community spouse resource allowance that

generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under Section 4 of this act. Except in exceptional cases which would result in financial duress for the community spouse, the Department may not establish an amount to be used under Section 6 of this act, unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under Section 4 of this act or, if the institutionalized spouse does not have sufficient income to make available to the community spouse the maximum monthly income allowance permitted under Section 4 of this act, unless the institutionalized spouse makes all of his or her income, except for an amount equal to the sum of the personal needs allowance under Section 4 of this act and any family allowances under Section 4 of this act paid by the institutionalized spouse and the amount incurred as expenses for medical or remedial care for the institutionalized spouse under Section 4 of this act, available to the community spouse as a community spouse monthly income allowance under Section 4 of this act.

SECTION 9. This act shall become effective November 1, 1995.

45-1-5459

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