

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1453

By: Robinson of the Senate

and

Braddock of the House

AS INTRODUCED

An Act relating to liens; amending 56 O.S. 1991, Section 200b, as amended by Section 3, Chapter 221, O.S.L. 1996, and as renumbered by Section 6, Chapter 221, O.S.L. 1996 (63 O.S. Supp. 1999, Section 5051.3), which relates to recovery of medical expenses by the Oklahoma Health Care Authority; defining and modifying terms; modifying authority and procedure for filing and enforcing lien against real property of recipient of certain medical services; modifying prerequisites for filing lien; providing for waiver of certain claim based upon undue hardship; providing for appeal upon denial of waiver; requiring review of waiver; modifying prerequisites for enforcement of lien against real property; prohibiting execution of lien against real property when specified persons are residing upon the real property; requiring dissolution of lien under certain circumstances; providing for transfer of real property to the Oklahoma Health Care Authority; authorizing promulgation of rules for disposition of real property; requiring deposit of certain monies in specified fund; requiring notice to Authority upon death of recipient; authorizing Authority to act as personal administrator of estate of recipient under certain circumstances; prohibiting application of statute of limitation to certain claims by Authority; providing for claim upon death of surviving spouse; and providing an effective date.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 200b, as amended by Section 3, Chapter 221, O.S.L. 1996, and as renumbered by Section 6, Chapter 221, O.S.L. 1996 (63 O.S. Supp. 1999, Section 5051.3), is amended to read as follows:

Section 5051.3 A. ~~Pursuant to the provisions of this section, the 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 Authority to the recipient who is an inpatient of a nursing home if the Authority, upon competent medical testimony, determines 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 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 Authority shall provide written notice to the recipient that:~~

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

~~2. A lien will be filed against 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 Authority after the expiration of one (1) year from the date the recipient became eligible for compensated inpatient care at a nursing home or nursing 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 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 the legal guardian of the recipient acknowledging that the recipient or the legal guardian of the recipient understands the notice and the effect that the payment of medical assistance on 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 Authority until the time of the filing of the lien and for any amount paid thereafter for the medical assistance to the recipient.~~

~~D. The 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 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.~~

In this act:

1. "Discharged from the medical institution to return home" means the recipient has left the medical institution and has resided in the home on which the lien has been placed for a period of at least six (6) months without being re-admitted as an inpatient to a facility providing nursing care. Hospitalization of the recipient for less than a two-week period, which does not include convalescent care, shall not be included in the six-month period;

2. "Estate" means any real or personal property including any assets in which a deceased person had any legal title or interest at the time of death. "Estate" shall include assets conveyed to a survivor, heir, or assign of the deceased through joint tenancy, tenancy in common, survivorship, life estate, living trust, the

balance of pre-paid burial trust funds after burial expenses have been paid, and monies remaining in personal accounts and personal needs accounts established and held by nursing homes;

3. "Home and community-based waiver services" means Medicaid services provided in the community to a Medicaid recipient under the provisions of subsections (b) and (c) of 42 U.S.C. Section 1396n;

4. "Nursing home" means any home contracted with the Medicaid Program that meets the requirements of subsection (a) of 42 U.S.C. Section 1396r. A "nursing home" shall include an Intermediate Care Facility for the Mentally Retarded as defined by subsection (d) of 42 U.S.C. Section 1396d;

5. "Recovery" means repayment to the Medicaid program for services provided to a recipient. This repayment may come from the execution of liens, estates, third-party contributions, or any other source on funds allowed by law;

6. "Sibling" means a whole, half, or adopted brother or sister of the recipient who was residing in the recipient's home for a period of at least one year immediately before the date of the recipient's admission to the medical institution; and

7. "Undue hardship" means hardship by the recipient that justifies a decision by the Oklahoma Health Care Authority to forego its right to enforce a lien created due to Medicaid expenditures. If enforcement of a lien would result in the Oklahoma Health Care Authority expending more money in entitlement programs than it realized through execution on the lien, then those residing or supported by the real property may request a hearing to determine hardship status. Undue hardship does not include action taken by the decedent that divests or diverts assets in order to avoid estate recovery. Any waiver of a claim must benefit the person claiming undue hardship.

B. 1. For a person who receives Medicaid assistance in a nursing home and has no intention of returning home, the Authority

may file a lien against any real property in which the person holds an interest. The amount of the lien or claim shall be for all sums expended on behalf of the recipient starting from the date the person qualified for Title XIX assistance in a nursing home or Intermediate Care Facility for the Mentally Retarded.

2. For a person who has received Medicaid assistance and is fifty-five (55) years of age or older, the Authority may file a lien or claim for any Medicaid services rendered.

3. For a person who receives home and community-based waiver services, the Authority may file a lien or a claim on the person's estate for all sums expended on behalf of the person beginning on the date the person qualified for Title XIX assistance for home and community based waiver services.

C. 1. A lien against any real property of a recipient shall be filed pursuant to subsection E of this section if:

- a. the recipient is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, home and community-based waiver services for the Advantage program, or other medical institution, and
- b. the Authority determines, after notice and opportunity for a hearing, that the recipient cannot be expected to be discharged from the medical institution and to return home or to be discharged from any home and community-based waiver services.

2. If no real property is owned by the recipient, the Authority may file a creditor's claim after the death of the recipient.

D. Any person entitled to notice pursuant to subsection E of this section may apply for a waiver of the claim based upon undue hardship. Any claim pursuant to this section may be fully or partially waived by the Authority because of undue hardship. An appeal may be filed and heard when an application for a waiver of a claim based upon undue hardship is denied in whole or in part. If

granted, the waiver shall be evaluated at each medical eligibility review.

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

1. The Authority has provided notice to the recipient of the intent to file a lien against the ~~homestead~~ real property 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~~ of record against the legal description of the ~~homestead~~ real property in the office of the county clerk of the county in which the ~~homestead~~ real property 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,
- 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,~~
- c. the date the recipient began receiving compensated inpatient care at a nursing home ~~or nursing homes,~~
- d. the legal description of the real property against which the lien will be recorded, and
- e. ~~such~~ other information as the Authority requires.

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

- a. upon the transfer of the recipient's real property,
- b. in the case of a judgment for fraud,
- c. at any time after the recipient enters the nursing home or intermediate care facility with no intent to return home,
- a. ~~d.~~ d. 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 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 the homestead:~~

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

2. No lien may be foreclosed on the real property of any person receiving medical assistance in a nursing home if any of the following are residing in the recipient's home on the real property:

- a. the spouse of the recipient,
- b. a minor child of the recipient who is under twenty-one (21) years of age,
- c. a child of the recipient who is blind or permanently and totally disabled, as defined by the Authority,
- d. a child of the recipient for a period of at least two (2) years immediately preceding the date of the recipient's admission to the medical institution, and

who establishes to the satisfaction of the Authority that he or she provided care to the recipient which permitted the recipient to reside at home on the real estate rather than in an institution, or
e. a sibling of the recipient who is lawfully residing in the recipient's home on the real estate.

3. ~~The lien filed pursuant to subsection E of this section may be enforceable by the 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~~ of 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, the heirs, personal representative, or assigns of the recipient may discharge ~~said~~ the lien at any time by paying the amount of the lien to the Authority.

H. ~~At the end of the one (1) year limitation, the Authority shall exclude from consideration as a resource the value of the homestead of the recipient~~ A lien placed upon real property pursuant to the provisions of subsection B of this section shall be released after the recipient has been discharged from the medical institution and has returned home for a period of at least six (6) months.

I. The payment of medical assistance on behalf of the recipient by the Authority and the signing of the notice ~~pursuant to subsection B of this section~~ of an intent not to return home 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~~ real property is sold to ~~enforce~~ satisfy 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~~ real property, 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 the funeral expenses from the proceeds of the sale of the ~~homestead~~ real property 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 Authority.
- b. If the proceeds from the sale of the ~~homestead~~ real property 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 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~~ If the Authority is not given notice of a recipient's real property by mistake, fraud, deceit, or otherwise, the Authority's failure to file a lien does not affect the validity of a later claim by the Authority against the estate.

L. At any time, a recipient in a nursing home or other medical facility may transfer, by quitclaim deed, the title of any real property to the Authority.

M. The Authority may promulgate rules for the disposition of real property. All funds from the disposal of the real property shall be deposited in the revolving fund created by Section 5016 of this title and disbursed according to state and federal law.

N. Within ninety (90) days of the death of a person who received or may have received benefits or of the surviving or predeceased spouse of a person who received or may have received benefits, the attorney for the estate, if any, a beneficiary, a personal representative, public administrator, or a person in possession of real property of the decedent shall give notice to the Authority of the death of the recipient. The notice shall include a copy of the death certificate.

O. Within ninety (90) days of the death of a recipient, the Authority may act as the personal administrator of the estate of a deceased recipient who dies with no living relatives or relatives who are unwilling to serve as personal representative or administrator of the estate. The Authority shall represent this state in all court cases relating to estate claims. The Authority may file petitions with the court for consideration of the Authority's claim when the personal representative or administrator of an estate has disallowed a claim.

P. After the death of a recipient, a claim of the Authority shall be considered an expense of the last illness of the decedent for the purposes of Section 591 of Title 58 of the Oklahoma Statutes. No statute of limitation shall limit the Authority's ability to recover the reimbursement cost of any medical assistance provided to the recipient. Notice of a claim of the Authority shall be given to all heirs and devisees of the recipient whose identity may be ascertained with reasonable diligence.

Q. Upon the death of a surviving spouse, the Authority shall make a claim against the estate of the surviving spouse, or against any recipient of property from the surviving spouse obtained by distribution or survival, for either the amount paid for medical assistance given to the recipient or the value of any of the recipient's property received by the surviving spouse through distribution or survival, whichever is less. No statute of limitation shall limit the Authority's ability to recover the reimbursement cost of any medical assistance provided to the recipient.

R. If any provision of this section shall be in conflict with any applicable federal statutes and regulations, the federal statutes and regulations shall prevail and be controlling until such time as the federal statutes and regulations shall be revised to conform to this section.

SECTION 2. This act shall become effective November 1, 2000.

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