

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 802

By: Robinson

AS INTRODUCED

An Act relating to public health and safety; 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. 2000, Section 5051.3), which relates to medical assistance and homestead liens; deleting language related to filing a lien against the homestead of a Medicaid recipient who is an inpatient of a nursing home; defining terms; requiring that waiver of a claim must benefit specified persons; requiring reevaluation of undue hardship waivers; allowing filing of lien against real property; stating amount of lien or claim; specifying against whom a lien or claim may be filed; stating conditions under which lien may be filed against real property; allowing filing of creditor's claim; allowing application for waiver of claim based on undue hardship; allowing full or partial waiving of claim; providing for appeal; requiring periodic evaluation of undue hardship waivers; clarifying language; modifying information to be contained in lien; modifying conditions under which a lien may be enforced; prohibiting execution of lien under specified conditions; deleting language relating to enforceability of lien; deleting language relating to exclusion of value of homestead as a resource; stating that signing of notice of intent not to return home shall constitute specified waiver; deleting definition; stating conditions under which failure to file a lien shall not affect validity of a later claim; allowing transfer of title of real property; requiring promulgation of specified rules; requiring deposit of certain funds into specified account; requiring specified persons to give notice of death of beneficiaries; requiring certain document be included in the notice; allow Health Care Authority to act as personal administrator of estate of specified persons and providing exception; requiring Authority to represent state in specified court cases; allowing filing of petitions for consideration of Authority's claim under specified conditions; stating when specified claim shall be considered as expense of last illness of decedent; negating effect of statute of limitations in limiting specified ability; requiring notice of claim; requiring claim be made against estate of surviving spouse or against specified other persons for medical assistance payments or value of other property; negating effect of statute of limitations in limiting ability to recover reimbursement cost of medical assistance; 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. 2000, 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.~~

As used in this act:

1. "Discharged from the medical institution to return home" means a recipient has left the medical institution and resides in a home on which a lien has been placed for a period of at least six (6) months without being readmitted as an inpatient to a facility

providing nursing care. Hospitalizations of a recipient for less than a two-week period, which shall not include convalescent care, shall not be included in the six-month period;

2. "Estate" means any real or personal property including, but not limited to:

- a. any assets in which a deceased person had any legal title or interest at the time of death,
- b. any assets conveyed to a survivor, heir or assign of the deceased through joint tenancy, tenancy in common, survivorship, life estate or living trust,
- c. the balance of any prepaid burial trust funds after burial expenses have been paid, and
- d. any monies remaining in personal accounts and personal needs accounts established and held by a nursing home;

3. "Home- and community-based waiver services" means Medicaid services provided in the community to a state Medicaid program beneficiary pursuant to the provisions of subsections B and C of 42 U.S.C., Section 1396n;

4. "Nursing home" means any home that contracts with the state Medicaid program and that meets the definition of subsection A of 42 U.S.C., Section 1396r. A "nursing home" shall include an intermediate care facility for the mentally retarded as such term is defined in subsection D of 42 U.S.C., Section 1396d;

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

6. "Sibling" means a whole, half or adopted brother or sister of a beneficiary who was residing in the beneficiary's home for a period of at least one (1) year immediately before the date of the beneficiary's admission to a nursing facility or participation in home- and community-based waiver services; and

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

B. 1. With respect to a beneficiary who receives Medicaid assistance in a nursing home with no intention of returning home, the Authority may file a lien against any real property in which the beneficiary holds an interest. The amount of the lien or claim shall be for all sums expended on behalf of the beneficiary starting from the date the beneficiary qualified for assistance under the provisions of Title XIX in a nursing home or an intermediate care facility for the mentally retarded.

2. With respect to an individual who receives 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. With respect to a beneficiary 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 beneficiary shall be filed pursuant to the provisions of subsection E of this section if:

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

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

D. Any person entitled to notice pursuant to the provisions of subsection E of this section may apply for a waiver of the claim based upon undue hardship. Any claim pursuant to the provisions of 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 reevaluated at each medical eligibility review.

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

1. The Authority has provided notice to the ~~recipient~~ beneficiary or any other person entitled to notice pursuant to the provisions of subsection E of this section of the intent to file a lien against the ~~homestead~~ real property of the ~~recipient~~ beneficiary 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~~ beneficiary is located. The lien shall contain the following information:

- a. the name and address of the place of residence of the ~~recipient~~ beneficiary,
- 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~~ beneficiary began receiving compensated inpatient care at a nursing home ~~or nursing homes~~ or an intermediate care facility for the mentally retarded,
- 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. at any time there is a transfer of the beneficiary's real property,
- b. in the case of a judgment for fraud,
- c. at any time after the beneficiary enters a nursing home or intermediate care facility for the mentally retarded with no intent to return home,
- d. at the time of the death of the surviving spouse of the ~~recipient~~, beneficiary,
- ~~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 beneficiary'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. until~~ f. when the value of the homestead real property is consumed by the lien, at which time the Authority may force the sale of the ~~homestead~~ real property to satisfy the lien, or
- ~~e. after~~ g. until transfer of title of the real property by conveyance, sale, succession, inheritance, or will.

2. No lien may be executed on the real property of any Medicaid beneficiary in a nursing home if any of the following are residing in the beneficiary's home on the real property:

- a. the spouse of the beneficiary,
- b. the minor child of the beneficiary 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 beneficiary who has resided in the home 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 beneficiary that permitted the beneficiary to reside at home on the real property rather than in an institution, or
- e. a sibling of the beneficiary who is lawfully residing in the beneficiary's home on the real property.

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 beneficiary.~~

4. The lien created by subsections B and C of 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 beneficiary began receiving assistance.~~

G. The ~~recipient~~ beneficiary, or the heirs, personal representative, ~~or assigns of the recipient~~ beneficiary, 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 imposed upon real property pursuant to the provisions of subsection B of this section shall be dissolved after the beneficiary 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~~ beneficiary 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~~ beneficiary 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~~ beneficiary, 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 beneficiary's real property by mistake, fraud, deceit or otherwise, the Authority's failure to file a lien shall not affect the validity of a later claim by the Authority against the estate.

L. At any time, a Medicaid beneficiary who is in a nursing home or an intermediate care facility for the mentally retarded, or who is a recipient of home- and community-based waiver services may

transfer, by quitclaim deed, the title of any real property to the Authority.

M. In instances where the Authority receives title to real property, the Oklahoma Health Care Authority Board shall 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 date of death of a beneficiary, or of the surviving or predeceased spouse of a beneficiary, the attorney for the estate, if any, an heir, 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 beneficiary. The notice shall include a copy of the death certificate.

O. 1. Within ninety (90) days of the date of death of a beneficiary, the Authority may act as the personal representative or administrator of the estate of a deceased beneficiary who dies with no living relative or with a relative who refuses or who is unwilling to serve as the personal representative or administrator of the estate. Provided, however, if at any time during the estate proceedings the court finds that there is a conflict in the interest of the state as a personal representative or administrator and as a creditor simultaneously, the court shall remove the state as personal representative or administrator of the estate.

2. The Authority shall represent the state in all court cases pertaining 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 beneficiary, 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 limitations shall limit the Authority's ability to recover the reimbursement cost of any medical assistance provided to the beneficiary. Notice of a claim of the Authority shall be given to all heirs and devisees of the beneficiary 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 beneficiary or the value of any of the beneficiary's property received by the surviving spouse through distribution or survival, whichever is less. No statute of limitations shall limit the Authority's ability to recover the reimbursement cost of any medical assistance provided to the beneficiary.

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, 2001.

48-1-748

CJ

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