

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 HOUSE BILL 2402

 By: Hulbert

7 AS INTRODUCED

8 An Act relating to public health and safety; amending
9 63 O.S. 2011, Section 5051.3, which relates to the
10 authority of the Oklahoma Health Care Authority to
11 file and enforce lien against homestead for payments
12 of certain medical assistance; providing Authority
13 may file lien if recipient has declared intent not to
14 return home; deleting requirement that lien amount
15 begins after one year from certain date; modifying
16 information required to be contained in lien;
17 providing ability of certain individuals to discharge
18 lien by paying fair market value of homestead;
19 permitting certain funds to be placed in an
20 irrevocable trust and Authority to be included as the
21 remainder; and providing an effective date.

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

23 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.3, is
24 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

1 testimony, determines the recipient has declared the intent not to
2 return home or cannot reasonably be expected to be discharged and
3 returned home. A one-year period of ~~compensated~~ inpatient care at a
4 nursing home or nursing homes shall constitute a determination by
5 the Authority that the recipient cannot reasonably be expected to be
6 discharged and returned home.

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

10 1. A one-year period of ~~compensated~~ inpatient care at a nursing
11 home or nursing homes shall constitute a determination by the
12 Authority that the recipient cannot reasonably be expected to be
13 discharged and returned home, or the recipient has declared the
14 intent not to return home;

15 2. A lien will be filed against the homestead of the recipient
16 pursuant to the provisions of this section and that the amount of
17 the lien shall be for the amount of assistance paid by the Authority
18 ~~after the expiration of one (1) year from the date the recipient~~
19 ~~became eligible for compensated~~ for inpatient and all other related
20 medical care at a nursing home or nursing homes until the time of
21 the filing of the lien and for any ~~amount~~ other amounts paid
22 thereafter for such medical assistance to the recipient; and

23 3. The recipient is entitled to a hearing with the Authority
24 prior to the filing of the lien pursuant to this section.

1 The notice shall also contain an explanation of the lien and the
2 effect the lien will have on the ownership of the homestead of the
3 recipient and any other person residing in the homestead. The
4 notice shall be signed by the recipient or the legal guardian of the
5 recipient acknowledging that the recipient or the legal guardian of
6 the recipient understands the notice and the effect that the payment
7 of medical assistance on the recipient's behalf will have upon the
8 homestead of the recipient.

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

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

- 18 1. The surviving spouse of the recipient;
- 19 2. A child related to the recipient by blood or marriage who is
20 twenty (20) years of age or less;
- 21 3. An adult child related to the recipient by blood or marriage
22 who is incapacitated as defined by the Authority; or
- 23 4. A brother or sister of the recipient who has an equity
24 interest in the home and who was residing in the home for at least

1 one (1) year immediately preceding the date the recipient was
2 admitted to the nursing home and has resided there on a continuous
3 basis since that time.

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

6 1. The Authority has provided notice to the recipient of the
7 intent to file a lien against the homestead of the recipient and of
8 the opportunity for a hearing on the matter; and

9 2. After the notice specified in paragraph 1 of this subsection
10 has been given, a lien is filed ~~for~~ of record against the legal
11 description of the homestead in the office of the county clerk of
12 the county in which the homestead of the recipient is located. The
13 lien shall contain the following information:

14 a. the name and address of the place of residence of the
15 recipient,

16 b. the amount of the assistance paid at the time of the
17 filing ~~of the lien and the amount which is expected to~~
18 ~~accumulate on a monthly basis~~ and a statement that it
19 will continue to accrue until the death of the
20 recipient,

21 c. the date the recipient began receiving ~~compensated~~
22 inpatient care at a nursing home or nursing homes,

23 d. the legal description of the real property against
24 which the lien will be recorded, and

1 e. such other information as the Authority requires.

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

4 a. after the death of the surviving spouse of the
5 recipient~~+~~L

6 b. when there is no child related to the recipient by
7 blood or marriage who is twenty (20) years of age or
8 less residing in the homestead~~+~~L

9 c. when there is no adult child related to the recipient
10 by blood or marriage who is incapacitated as defined
11 by the Authority residing in the homestead~~+~~L and

12 d. when no brother or sister of the recipient is residing
13 in the homestead, who has resided there for at least
14 one (1) year immediately before the date of the
15 recipient's admission to the facility or institution,
16 and has resided there on a continuous basis since that
17 time.

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

20 a. until the lien is satisfied,

21 b. until the value of the homestead is consumed by the
22 lien, at which time the Authority may force the sale
23 of the homestead to satisfy the lien, or
24

1 c. after transfer of title of the real property by
2 conveyance, sale, succession, inheritance, or will.

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

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

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

13 G. The recipient, the heirs, personal representative, or
14 assigns of the recipient may discharge said lien at any time by
15 paying the amount of the lien or fair market value of the homestead
16 to the Authority.

17 H. ~~At the end of the one (1) year limitation~~ Upon the filing of
18 the lien, the Authority shall exclude from consideration as a
19 resource the value of the homestead of the recipient.

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

1 J. 1. Pursuant to the provisions of this subsection, if the
2 homestead is sold to enforce the lien authorized pursuant to the
3 provisions of this section, an amount up to Six Thousand Dollars
4 (\$6,000.00) from the proceeds of the sale of the homestead, less the
5 value of any prepaid burial or insurance policies or designated
6 accounts for funeral expenses already owned by the recipient, shall
7 may be set aside in an irrevocable trust fund on behalf of the
8 recipient, in which the Authority is to be included as the
9 remainder, and the funds are to be used for the funeral expenses of
10 the recipient.

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

- 13 a. if the proceeds exceed the amount of the lien, the
14 payment of funeral expenses shall be first satisfied
15 from any amount in excess of the lien amount. After
16 the excess is exhausted, the remainder of funeral
17 expenses shall be satisfied from the lien amount prior
18 to payment of any reimbursement to the Authority, and
- 19 b. if the proceeds from the sale of the homestead do not
20 exceed the amount of the lien, the payment of funeral
21 expenses shall be satisfied from the lien amount prior
22 to payment of any reimbursement to the Authority.

23 K. As used in this section:
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1 "Nursing home" means any home, establishment, or institution
2 which offers or provides on a regular basis twenty-four-hour medical
3 services, skilled nursing care, necessary special dietary service,
4 and personal care and supervision to three or more of its residents
5 who are not related to the owner or administrator of the facility.

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

11 SECTION 2. This act shall become effective November 1, 2014.

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13 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/13/2014 -
14 DO PASS.

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