STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 704 By: Griffin

AS INTRODUCED

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

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

SECTION 1. AMENDATORY 63 O.S. 2011, 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 has declared the intent not to return home or 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, or the recipient has declared the intent not to return 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~~ for inpatient and all other related medical care at a nursing home or nursing homes until the time of the filing of the lien and for any ~~amount~~ other amounts 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.

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 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 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,

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 a statement that it will continue to accrue until the death of the recipient,

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 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 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. until the lien is satisfied,

b. until the value of the homestead is consumed by the lien, at which time the Authority may force the sale of the 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 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, the heirs, personal representative, or assigns of the recipient may discharge said lien at any time by paying the amount of the lien <u>or fair market value of the homestead</u> to the Authority.

H. ~~At the end of the one (1) year limitation~~ <u>Upon the filing of the lien</u>, the 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 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~~ may be set aside in an irrevocable trust ~~fund~~ on behalf of the recipient, in which the Authority is to be included as the remainder, and the funds are 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 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~~.~~, and

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 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 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, 2015.

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