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February 15, 2017

AS AMENDED

SENATE BILL NO. 819

By: Simpson of the Senate

and

Ownbey of the House

[Oklahoma Health Care Authority - homestead liens -
effective date]

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.3, as amended by Section 1, Chapter 278, O.S.L. 2015 (63 O.S. Supp. 2016, 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~~ facility or an intermediate care facility for individuals with intellectual disabilities (ICF/IID) 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~~ facility or an ICF/IID shall

1 constitute a determination by the Authority that the recipient
2 cannot reasonably be expected to be discharged and returned home.

3 B. Upon certification for Title XIX of the federal Social
4 Security Act payments for a nursing home facility or ICF/IID care,
5 the Authority shall provide written notice to the recipient that:

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

10 2. A lien will be filed against the homestead of the recipient
11 pursuant to the provisions of this section and that the amount of
12 the lien shall be for the amount of assistance paid by the Authority
13 ~~after the expiration of one (1) year~~ from the date the recipient
14 became eligible for compensated inpatient care at a nursing ~~home or~~
15 ~~nursing homes~~ facility or ICF/IID until the time of the filing of
16 the lien and for any amount paid thereafter for such medical
17 assistance to the recipient; and

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

20 The notice shall also contain an explanation of the lien and the
21 effect the lien will have on the ownership of the homestead of the
22 recipient and any other person residing in the homestead. The
23 notice shall be signed by the recipient or the legal guardian of the
24 recipient acknowledging that the recipient or the legal guardian of

1 the recipient understands the notice and the effect that the payment
2 of medical assistance on the recipient's behalf will have upon the
3 homestead of the recipient.

4 C. The lien filed pursuant to subsection E of this section
5 shall be for the amount of assistance paid beginning ~~one (1) year~~
6 ~~after~~ from the date the recipient ~~has received~~ began receiving
7 inpatient care from a nursing ~~home or nursing homes~~ and ~~has received~~
8 ~~payment of medical assistance by the Authority until the time of the~~
9 ~~filing of the lien~~ facility or ICF/IID and for any amount paid
10 thereafter for the medical assistance to the recipient.

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

14 1. The surviving spouse of the recipient;

15 2. A child related to the recipient by blood or marriage who is
16 twenty (20) years of age or less;

17 3. An adult child related to the recipient by blood or marriage
18 who is incapacitated as defined by the Authority; or

19 4. A brother or sister of the recipient who has an equity
20 interest in the home and who was residing in the home for at least
21 one (1) year immediately preceding the date the recipient was
22 admitted to the nursing home and has resided there on a continuous
23 basis since that time.

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

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

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

11 a. the name and address of the place of residence of the
12 recipient,

13 b. the amount of the assistance paid at the time of the
14 filing of the lien ~~and the amount which is expected to~~
15 ~~accumulate on a monthly basis,~~

16 c. the date the recipient began receiving compensated
17 inpatient care at a nursing ~~home or nursing homes~~
18 facility or ICF/IID,

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

21 e. such other information as the Authority requires.

22 F. 1. After the lien has been filed pursuant to subsection E
23 of this section, the Authority may enforce a lien only:
24

- 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.

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

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

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

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

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

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, may be
7 set aside in an irrevocable trust on behalf of the recipient, in
8 which the Authority is to be included as the remainder, and the
9 funds are to be used for the funeral expenses of the recipient.

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

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

22 K. As used in this section:

23 1. "Nursing ~~home~~ facility" means any home, establishment, or
24 institution which offers or provides on a regular basis twenty-four-

1 hour medical services, skilled nursing care, necessary special
2 dietary service, and personal care and supervision to three or more
3 of its residents who are not related to the owner or administrator
4 of the facility; and

5 2. "ICF/IID" means intermediate care facilities for individuals
6 with intellectual disabilities, which provide comprehensive and
7 individualized health care and rehabilitation services to
8 individuals to promote their functional status and independence.

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

14 SECTION 2. This act shall become effective November 1, 2017.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
16 February 15, 2017 - DO PASS AS AMENDED
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