

LEGISLATIVE BILL 419

Approved by the Governor April 8, 1988

Introduced by Withem, 14; Lynch, 13; Chizek, 31;
Smith, 33; Campbell, 22; Wesely, 26

AN ACT relating to medical assistance; to amend sections 28-705, 28-706, 68-150, 68-214, 68-716, 68-1026, and 68-1509, Reissue Revised Statutes of Nebraska, 1943; to define terms; to authorize entitlements to assets and income for a spouse as prescribed; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 1 to 9 of this act, unless the context otherwise requires:

(1) Assets shall mean property which is not exempt, under rules and regulations of the director, from consideration in determining eligibility for medical assistance;

(2) Department shall mean the Department of Social Services;

(3) Director shall mean the Director of Social Services;

(4) Exempt amount shall mean four hundred seventy-five dollars per month in income for the spouse and four hundred seventy-five dollars per month in income each for any dependents of the spouse whether such income is owned jointly or singly;

(5) Home and community-based services shall mean services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, 42 U.S.C. 1396;

(6) Medical assistance shall mean assistance provided pursuant to the program established by section 68-1018;

(7) Qualified applicant shall mean a person (a) who applies for medical assistance on or after the effective date of this act, (b) who is under care in a licensed intermediate care facility, domiciliary facility, residential care facility, or center for the developmentally disabled, as such terms are defined in section 71-2017.01, or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not

applying for or receiving medical assistance;

(8) Qualified recipient shall mean a person (a) who has applied for medical assistance before the effective date of this act and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds under sections 68-1018 to 68-1036 or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(9) Spouse shall mean the spouse of a qualified applicant or recipient.

Sec. 2. For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections 68-716, 68-1020, and 68-1026, a spouse (1) shall be entitled to one-half of the aggregate assets of such spouse and the qualified applicant or recipient, whether owned jointly or singly, up to a maximum of twenty-five thousand dollars and (2) shall be entitled to an amount of income up to the exempt amount.

Sec. 3. Subject to section 8 of this act, if a portion of the aggregate assets is designated in accordance with section 5 of this act:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the director shall not take into account the assets designated for the spouse and shall not require proof of adequate consideration for any assignment or transfer made as a result of the entitlement to assets;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Neither the director nor the state may recover from the assets designated for the spouse any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the director nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

Sec. 4. If the spouse exercises his or her right to such entitlement in the manner specified by the department:

(1) In determining the eligibility of an

applicant, the director shall not take into account the income to which the spouse is entitled and shall not require proof of adequate consideration for any assignment made as a result of the entitlement to income;

(2) Of the monthly income of the spouse, only that portion exceeding the amount to which the spouse is entitled shall be considered to be available to an applicant or recipient for future medical support and the spouse shall have a duty of future medical support of the applicant only to the extent that such spouse's monthly income exceeds such amount;

(3) Neither the director nor the state may recover from the income of the spouse for future medical assistance provided to the applicant or recipient (a) any amount in any calendar month when the income of such spouse is less than the amount to which the spouse is entitled or (b) an amount in any calendar month which would reduce the spouse's income to less than the amount to which the spouse is entitled for such calendar month; and

(4) The director's subrogation rights on behalf of the state shall be subject to the limitation provided in subdivision (3) of this section.

Sec. 5. A designation of assets pursuant to the entitlement provided for in section 2 of this act shall be evidenced by a written statement listing such assets and signed by the spouse. In the case of a qualified applicant, a copy of such statement shall be provided to the director at the time of application and shall designate assets owned as of the date of application. In the case of a qualified recipient, such statement shall be provided to the director on or before January 1, 1989, and shall designate assets owned as of the effective date of this act. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations of the director may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

Sec. 6. The Department of Social Services shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement:

(1) That the applicant's or recipient's spouse is entitled to a portion of the aggregate assets of such spouse and the applicant or recipient as provided in

section 2 of this act and that, upon designation of the assets for the spouse, such assets will not be considered in determining eligibility and the spouse will not be required to use such assets to provide future medical support to the applicant or recipient; and

(2) That the applicant's or recipient's spouse is entitled to an amount of income up to the exempt amount and that, because of such entitlement, only that portion of the spouse's monthly income which exceeds the amount to which the spouse is entitled will be considered in determining eligibility and the spouse will be required to use only such excess portion to provide future medical support to the applicant or recipient.

Sec. 7. Once assets have been designated for a spouse pursuant to section 5 of this act, no other designation of assets may thereafter be made with respect to the applicant or recipient for such spouse or any subsequent spouse of the applicant or recipient.

Sec. 8. If assets have been designated for the spouse of a recipient of medical assistance, upon the death of the recipient or the spouse, the total amount paid for medical assistance provided to the recipient, without interest, shall be filed as a claim against the estate of the recipient or spouse. The claim shall be considered as the type of claim specified in subdivision (a)(4) of section 30-2487.

Sec. 9. The director shall adopt and promulgate rules and regulations as necessary to implement and enforce sections 1 to 8 of this act.

Sec. 10. That section 28-705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-705. (1) Any person who abandons and neglects or refuses to maintain or provide for his or her spouse, or his or her child, or dependent stepchild, whether such child be ~~is~~ born in or out of wedlock, commits abandonment of spouse, child, or dependent stepchild.

(2) For the purposes of this section, child shall mean an individual under the age of sixteen years.

(3) When any person abandons and neglects to provide for his or her spouse, or his or her child, or dependent stepchild for three consecutive months or more, it shall be prima facie evidence of intent to violate the provisions of subsection (1) of this section.

(4) A designation of assets for or an exercise

of the right to income by an individual in accordance with the entitlements provided for in section 2 of this act shall be considered just cause for failure to use such assets or for using only that portion of such individual's monthly income which exceeds the amount to which the individual is entitled to provide medical support of such individual's spouse.

(5) Abandonment of spouse, child, or dependent stepchild is a Class I misdemeanor.

Sec. 11. That section 28-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-706. (1) Any person who intentionally fails, refuses, or neglects to provide proper support which he or she knows or reasonably should know he or she is legally obliged to provide to a spouse, minor child, minor stepchild, or other dependent; commits criminal nonsupport.

(2) A parent or guardian who refuses to pay hospital costs, medical costs, or any other costs arising out of or in connection with an abortion procedure performed on a minor child or minor stepchild does not commit criminal nonsupport if:

(a) Such parent or guardian was not consulted prior to the abortion procedure; or

(b) After consultation, such parent or guardian refused to grant consent for such procedure, and the abortion procedure was not necessary to preserve the minor child or stepchild from an imminent peril that substantially endangered her life or health.

(3) Support includes but is not limited to food, clothing, medical care, and shelter.

(4) A designation of assets for or an exercise of the right to income by an individual in accordance with the entitlements provided for in section 2 of this act shall be considered just cause for failure to use such assets or for using only that portion of such individual's monthly income which exceeds the amount to which the individual is entitled to provide medical support of such individual's spouse.

(5) This section does not exclude any applicable civil remedy.

~~(5)~~ (6) Criminal nonsupport is a Class II misdemeanor.

~~(6)~~ (7) Criminal nonsupport is a Class IV felony if it is in violation of any order of any court.

Sec. 12. That section 68-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-150. An application for county general assistance or for county health services shall give a right of subrogation to the county furnishing such aid. Subject to sections 1 to 9 of this act, subrogation ~~Subrogation~~ shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the county as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Sec. 13. That section 68-214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-214. Subject to sections 1 to 9 of this act, the The Department of Social Services shall be reimbursed any assistance to the aged, blind, or disabled by the spouse, father, mother, or child of any recipient if they or ~~either~~ any of them are of sufficient ability. A proceeding may be instituted in any court of competent jurisdiction in this state against any such relative for reimbursement of assistance payments made to or on behalf of a recipient at any time prior to the expiration of one year after the date of the last assistance payment. Suit shall be instituted in the name of the Director of Social Services.

Sec. 14. That section 68-716, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-716. An application for medical assistance benefits shall give a right of subrogation to the Department of Social Services. Subject to sections 1 to 9 of this act, subrogation ~~Subrogation~~ shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the Department of Social Services as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Sec. 15. That section 68-1026, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1026. The application for medical assistance benefits under sections 68-1018 to 68-1025 constitutes an automatic assignment of the rights specified in this section to the Department of Social Services effective from the date of eligibility for such benefits. This assignment includes the rights of the applicant or recipient and also the rights of any other

member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections 1 to 9 of this act, the applicant or recipient assigns to the department any rights to medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance benefits. Medicare benefits shall not be assigned pursuant to this section. Benefits assigned to the department by operation of this section may be directly reimbursable to the department by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

Sec. 16. That section 68-1509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1509. The department, in considering the needs and eligibility criteria of families and disabled persons, shall consider various factors, including, but not limited to:

(1) Total family income, except that if a disabled person's spouse has exercised his or her right to income in accordance with the entitlement provided for in section 2 of this act, the amount to which the spouse is entitled shall be excluded in determining total family income per month;

(2) The cost of providing supplemental services to the family or the disabled person;

(3) The need for each program or service received by the family or the disabled person;

(4) The eligibility of the family or the disabled person for other support programs;

(5) The costs of providing for the family or the disabled person in an independent living situation, notwithstanding the special circumstances of providing for a disabled person;

(6) The number of persons in the family; and

(7) The availability of insurance to cover the cost of needed programs and services.

If assets have been designated for an individual in accordance with the entitlement provided for in section 2 of this act, such assets shall not be

considered in determining the eligibility for support of the individual's disabled spouse.

Sec. 17. That original sections 28-705, 28-706, 68-150, 68-214, 68-716, 68-1026, and 68-1509, Reissue Revised Statutes of Nebraska, 1943, are repealed.