

LEGISLATIVE BILL 362

Approved by the Governor May 26, 1989

Introduced by Wesely, 26; Withem, 14; Ashford, 6

AN ACT relating to social services; to amend sections 43-512, 68-128, 68-717, and 68-1016, Reissue Revised Statutes of Nebraska, 1943, and sections 28-705, 28-706, 68-150, 68-214, 68-716, 68-1026, 68-1038, 68-1039, 68-1040, 68-1042, 68-1043, and 68-1509, Revised Statutes Supplement, 1988; to change provisions relating to benefits available to former recipients of aid to dependent children; to change provisions relating to spousal entitlements to assets and income; to eliminate a restriction on designation of assets; to eliminate authorization for a claim against the estate of a recipient of medical assistance or his or her spouse; to require the Department of Social Services to provide emergency assistance; to harmonize provisions; to provide operative dates; and to repeal the original sections, and also sections 68-1041 and 68-1044 to 68-1046, Revised Statutes Supplement, 1988.

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

Section 1. That section 28-705, Revised Statutes Supplement, 1988, 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 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 use of~~ income by an individual in accordance with the entitlements provided for in section

68-1039 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 income to provide medical support of such individual's spouse.

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

Sec. 2. That section 28-706, Revised Statutes Supplement, 1988, 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 use of income by an individual in accordance with the entitlements provided for in section 68-1039 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 income to provide medical support of such individual's spouse.

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

(6) ~~Criminal~~ Except as provided in subsection (7) of this section, criminal nonsupport is a Class II misdemeanor.

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

Sec. 3. That section 43-512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-512. (1) Any dependent child, as defined in section 43-504, or any relative of such a dependent

child may file with the Department of Social Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall thereupon make such investigation as it deems necessary or as may be required by the county attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section shall be allowed or denied. If it is found that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker relative in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month, except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the Director of Social Services. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the Director of Social Services is authorized to adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The director is further authorized to adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable

to families or children included in such programs.

(b) If a recipient of aid to dependent children is employed in a full-time, unsubsidized job becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection and such job results in the loss of aid to dependent children, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the Social Security Act, as amended, P.L.100-485, in order to help the family during the transition from public assistance to independence:

(i) Child care for three up to twelve months following the month in which the recipient begins employment if such child care services are needed to assist in employment retention, subject to a sliding fee schedule if one is adopted by the department; and

(ii) Medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children. Full medical assistance shall be allowed for the first four months of such twelve-month period. For the remaining eight months, full medical assistance shall be allowed for any recipient whose income is less than one hundred fifty percent of the federal income poverty guidelines after disregards allowed by the Department of Social Services. Medical assistance shall be allowed for any participant whose income is one hundred fifty percent or more and less than one hundred eighty-five percent of the federal income poverty guidelines after disregards allowed by the Department of Social Services, except that a recipient shall be required to pay an amount equal to ten percent of that portion of the recipient's gross income which is greater than one hundred fifty percent of the federal income poverty guidelines. The Director of Social Services shall seek a waiver from federal regulations in order to allow federal matching funds for extended medical assistance beyond that allowed by law on January 1, 1989.

(6) For purposes of sections 43-512 to 43-512.10, unless the context otherwise requires:

(a) Authorized attorney shall mean an attorney employed by the county subject to the approval of the county board, employed by the Department of Social Services, or appointed by the court, who is authorized to investigate and prosecute child and spousal support

cases; and

(b) Spousal support shall be defined as provided in section 42-347.

Sec. 4. That section 68-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-128. From such funds as may be appropriated for such purpose, the Department of Social Services shall ~~match expenditures of county funds for provide~~ emergency assistance benefits on behalf of families who have children, ~~under sections 68-103 to 68-115.~~ In addition, the Department of Social Services shall ~~allocate to counties for such emergency assistance purposes all funds which may be made available for such purpose by the government of the United States.~~

Sec. 5. That section 68-150, Revised Statutes Supplement, 1988, 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 68-1038 to ~~68-1046~~ 68-1043, 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. 6. That section 68-214, Revised Statutes Supplement, 1988, be amended to read as follows:

68-214. Subject to sections 68-1038 to ~~68-1046~~ 68-1043, 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 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. 7. That section 68-716, Revised Statutes Supplement, 1988, 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 68-1038 to ~~68-1046~~ 68-1043, 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. 8. That section 68-717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-717. The Department of Social Services shall assume the sole responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, and food stamps. On and after July 1, 1986, the department shall also assume the sole responsibility for medical assistance.

Sec. 9. That section 68-1016, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1016. The Director of Social Services shall provide for granting an opportunity for a fair hearing before the Department of Social Services to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or food stamps, is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the director a written notice of appeal setting forth the facts on which the appeal is based. The director shall thereupon, in writing, notify the appellant of the time and place for hearing, which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the director or his or her duly authorized agent. On the basis of evidence adduced, the director shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Sec. 10. That section 68-1026, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1026. The application for medical assistance benefits under sections 68-1018 to 68-1025 ~~constitutes~~ shall constitute 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 assignment shall include 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 68-1038 to ~~68-1046~~ 68-1043, the applicant or recipient ~~assigns shall assign~~ 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. 11. That section 68-1038, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1038. As used in For purposes of sections 68-1038 to 68-1046, unless the context otherwise requires 68-1043:

(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) Community spouse monthly income allowance shall mean the amount of income determined by the department in accordance with section 1924 of the Social Security Act, as amended, P.L.100-360, 42 U.S.C. 1396r-5.

(3) Community spouse resource allowance shall mean the amount of assets determined in accordance with section 1924 of the Social Security Act, as amended, P.L.100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars.

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

~~(3)~~ (5) 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)~~ (6) 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, as amended, 42 U.S.C. 1396; ~~(6)~~ (7) Medical assistance shall mean assistance provided pursuant to the program established by section 68-1018;

~~(7)~~ (8) Qualified applicant shall mean a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a licensed intermediate care facility, state-licensed hospital, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, domiciliary facility, residential care facility, or center for the developmentally disabled, as such terms are defined in section 71-2017.01, or an adult family home certified by the department 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)~~ (9) Qualified recipient shall mean a person (a) who has applied for medical assistance before July 9, 1988, 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)~~ (10) Spouse shall mean the spouse of a qualified applicant or recipient.

Sec. 12. That section 68-1039, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1039. 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 retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer the entitlements provided in this section in accordance with section 1924 of the Social Security Act, as amended, P.L.100-360, 42 U.S.C. 1396r-5, and shall adopt and

promulgate rules and regulations as necessary to implement and enforce sections 68-1038 to 68-1043.

Sec. 13. That section 68-1040, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1040. ~~Subject to section 68-1045, if~~ If a portion of the aggregate assets is designated in accordance with section 68-1042:

(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. 14. That section 68-1042, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1042. A designation of assets pursuant to the entitlement provided for in section 68-1039 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 17, 1989, and shall designate assets owned as of July 9, 1988.~~ 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. 15. That section 68-1043, Revised Statutes Supplement, 1988, be amended to read as follows:

68-1043. 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 68-1039 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 explaining the entitlements provided in section 68-1039.

Sec. 16. That section 68-1509, Revised Statutes Supplement, 1988, 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 68-1039, the amount to which the spouse is entitled as provided in section 68-1039 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 68-1039, such assets shall not be considered in determining the eligibility for support of the individual's disabled spouse.

Sec. 17. Sections 3 and 18 of this act shall become operative on April 1, 1990. Sections 4, 8, 9, 17, and 20 of this act shall become operative on their effective date. The other sections of this act shall become operative on October 1, 1989.

Sec. 18. That original section 43-512, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 19. That original sections 28-705, 28-706, 68-150, 68-214, 68-716, 68-1026, 68-1038, 68-1039, 68-1040, 68-1042, 68-1043, and 68-1509, Revised Statutes Supplement, 1988, and also sections 68-1041 and 68-1044 to 68-1046, Revised Statutes Supplement, 1988, are repealed.

Sec. 20. That original sections 68-128, 68-717, and 68-1016, Reissue Revised Statutes of Nebraska, 1943, are repealed.