

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 884

Introduced by Bostar, 29.

Read first time January 03, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the medical assistance program; to amend
- 2 section 68-919, Revised Statutes Cumulative Supplement, 2022; to
- 3 change provisions relating to medicaid estate recovery by the
- 4 Department of Health and Human Services; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-919, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 68-919 (1) The recipient of medical assistance under the medical
4 assistance program shall be indebted to the department for the total
5 amount paid for medical assistance on behalf of the recipient if:

6 (a) The recipient was fifty-five years of age or older at the time
7 the medical assistance was provided; or

8 (b) The recipient resided in a medical institution and, at the time
9 of institutionalization or application for medical assistance, whichever
10 is later, the department determines that the recipient could not have
11 reasonably been expected to be discharged and resume living at home. For
12 purposes of this section, medical institution means a nursing facility,
13 an intermediate care facility for persons with developmental
14 disabilities, or an inpatient hospital.

15 (2)(a) (2) The debt accruing under subsection (1) of this section
16 arises during the life of the recipient but shall be held in abeyance
17 until the death of the recipient. Any such debt to the department that
18 exists when the recipient dies shall be recovered only after the death of
19 the recipient's spouse, if any, and only after the recipient is not
20 survived by a child who either is under twenty-one years of age or is
21 blind or totally and permanently disabled as defined by the Supplemental
22 Security Income criteria. In recovering such debt, the department shall
23 not foreclose on a lien on the home of the recipient (i) (a) if a sibling
24 of the recipient with an equity interest in the home has lawfully resided
25 in the home for at least one year before the recipient's admission and
26 has lived there continuously since the date of the recipient's admission
27 or (ii) (b) while the home is the residence of a relative ~~an adult child~~
28 who has made the home their residence ~~lived in the recipient's home~~ for
29 at least one year ~~two years~~ immediately before the recipient incurred a
30 medical assistance debt, as described in subsection (1) of this section
31 ~~was institutionalized, has lived there continuously since that time, and~~

1 can establish to the satisfaction of the department that the relative he
2 or she provided care that delayed the recipient's admission. Such care
3 may be reimbursed or unreimbursed. For purposes of this section, relative
4 means a child, grandchild, niece, nephew, or other individual who can
5 establish a close relationship tie.

6 (b) A written attestation by a physician stating that a relative or
7 sibling of a recipient provided care that delayed the recipient's
8 admission to a medical institution shall be sufficient documentation for
9 the department to avoid foreclosure on the lien described in this
10 subsection.

11 (3) The debt shall include the total amount of medical assistance
12 provided when the recipient was fifty-five years of age or older or
13 during a period of institutionalization as described in subsection (1) of
14 this section and shall not include interest.

15 (4)(a) It is the intent of the Legislature that the debt specified
16 in subsection (1) of this section be collected by the department before
17 any portion of the estate of a recipient of medical assistance is enjoyed
18 by or transferred to a person not specified in subsection (2) of this
19 section as a result of the death of such recipient. The debt may be
20 recovered from the estate of a recipient of medical assistance. The
21 department shall undertake all reasonable and cost-effective measures to
22 enforce recovery under the Medical Assistance Act. All persons specified
23 in subsections (2) and (4) of this section shall cooperate with the
24 department in the enforcement of recovery under the act.

25 (b) For purposes of this section:

26 (i) Estate of a recipient of medical assistance means any real
27 estate, personal property, or other asset in which the recipient had any
28 legal title or interest at or immediately preceding the time of the
29 recipient's death, to the extent of such interests. In furtherance and
30 not in limitation of the foregoing, the estate of a recipient of medical
31 assistance also includes:

1 (A) Assets to be transferred to a beneficiary described in section
2 77-2004 or 77-2005 in relation to the recipient through a revocable trust
3 or other similar arrangement which has become irrevocable by reason of
4 the recipient's death; and

5 (B) Notwithstanding anything to the contrary in subdivision (3) or
6 (4) of section 68-923, assets conveyed or otherwise transferred to a
7 survivor, an heir, an assignee, a beneficiary, or a devisee of the
8 recipient of medical assistance through joint tenancy, tenancy in common,
9 transfer on death deed, survivorship, conveyance of a remainder interest,
10 retention of a life estate or of an estate for a period of time, living
11 trust, or other arrangement by which value or possession is transferred
12 to or realized by the beneficiary of the conveyance or transfer at or as
13 a result of the recipient's death. Such other arrangements include
14 insurance policies or annuities in which the recipient of medical
15 assistance had at the time of death any incidents of ownership of the
16 policy or annuity or the power to designate beneficiaries and any pension
17 rights or completed retirement plans or accounts of the recipient. A
18 completed retirement plan or account is one which because of the death of
19 the recipient of medical assistance ceases to have elements of retirement
20 relating to such recipient and under which one or more beneficiaries
21 exist after such recipient's death; and

22 (ii) Notwithstanding anything to the contrary in subdivision (4)(b)
23 of this section, estate of a recipient of medical assistance does not
24 include:

25 (A) Insurance proceeds, any trust account subject to the Burial Pre-
26 Need Sale Act, or any limited lines funeral insurance policy to the
27 extent used to pay for funeral, burial, or cremation expenses of the
28 recipient of medical assistance;

29 (B) Conveyances of real estate made prior to August 24, 2017, that
30 are subject to the grantor's retention of a life estate or an estate for
31 a period of time;

1 (C) Life estate interests in real estate after sixty months from the
2 date of recording a deed with retention of a life estate by the recipient
3 of medical assistance;~~and~~

4 (D) Any pension rights or completed retirement plans to the extent
5 that such rights or plans are exempt from claims for reimbursement of
6 medical assistance under federal law; and -

7 (E) Life estate interests in real estate after twelve months from
8 the recording of a deed with retention of a life estate by the recipient
9 of medical assistance if a relative or sibling resides solely and
10 continuously with the recipient and establishes to the satisfaction of
11 the department that the relative or sibling provided care that delayed
12 the recipient's admission to a medical institution. A written attestation
13 by a physician stating that the relative or sibling of the recipient
14 provided care that delayed the recipient's admission to a medical
15 institution shall be sufficient documentation to exclude the life estate
16 interest from the recipient's estate under this subdivision.

17 (c) The department, upon application of the personal representative
18 of an estate, any person or entity otherwise authorized under the
19 Nebraska Probate Code to act on behalf of a decedent, any person or
20 entity having an interest in assets of the decedent which are subject to
21 this subsection, a successor trustee of a revocable trust or other
22 similar arrangement which has become irrevocable by reason of the
23 decedent's death, or any other person or entity holding assets of the
24 decedent described in this subsection, shall timely certify to the
25 applicant, that as of a designated date, whether medical assistance
26 reimbursement is due or an application for medical assistance was pending
27 that may result in medical assistance reimbursement due. An application
28 for a certificate under this subdivision shall be provided to the
29 department in a delivery manner and at an address designated by the
30 department, which manner may include email. The department shall post the
31 acceptable manner of delivery on its website. Any application that fails

1 to conform with such manner is void. Notwithstanding the lack of an order
2 by a court designating the applicant as a person or entity who may
3 receive information protected by applicable privacy laws, the applicant
4 shall have the authority of a personal representative for the limited
5 purpose of seeking and obtaining from the department this certification.
6 If, in response to a certification request, the department certifies that
7 reimbursement for medical assistance is due, the department may release
8 some or all of the property of a decedent from the provisions of this
9 subsection.

10 (d) An action for recovery of the debt created under subsection (1)
11 of this section may be brought by the department against the estate of a
12 recipient of medical assistance as defined in subdivision (4)(b) of this
13 section at any time before five years after the last of the following
14 events:

15 (i) The death of the recipient of medical assistance;

16 (ii) The death of the recipient's spouse, if applicable;

17 (iii) The attainment of the age of twenty-one years by the youngest
18 of the recipient's minor children, if applicable; or

19 (iv) A determination that any adult child of the recipient is no
20 longer blind or totally and permanently disabled as defined by the
21 Supplemental Security Income criteria, if applicable.

22 (5) In any probate proceedings in which the department has filed a
23 claim under this section, no additional evidence of foundation shall be
24 required for the admission of the department's payment record supporting
25 its claim if the payment record bears the seal of the department, is
26 certified as a true copy, and bears the signature of an authorized
27 representative of the department.

28 (6) The department may waive or compromise its claim, in whole or in
29 part, if the department determines that enforcement of the claim would
30 not be in the best interests of the state or would result in undue
31 hardship as provided in rules and regulations of the department.

1 (7)(a) Whenever the department has provided medical assistance
2 because of sickness or injury to any person resulting from a third
3 party's wrongful act or negligence and the person has recovered damages
4 from such third party, the department shall have the right to recover the
5 medical assistance it paid from any amounts that the person has received
6 as follows:

7 (i) In those cases in which the person is fully compensated by the
8 recovery, the department shall be fully reimbursed subject to its
9 contribution to attorney's fees and costs as provided in subdivision (b)
10 of this subsection; or

11 (ii) In those cases in which the person is not fully compensated by
12 the recovery, the department shall be reimbursed that portion of the
13 recovery that represents the same proportionate reduction of medical
14 expenses paid that the recovery amount bears to full compensation of the
15 person subject to its contributions to attorney's fees and costs as
16 provided in subdivision (b) of this subsection.

17 (b) When an action or claim is brought by the person and the person
18 incurs or will incur a personal liability to pay attorney's fees and
19 costs of litigation or costs incurred in pursuit of a claim, the
20 department's claim for reimbursement of the medical assistance provided
21 to the person shall be reduced by an amount that represents the
22 department's reasonable pro rata share of attorney's fees and costs of
23 litigation or the costs incurred in pursuit of a claim.

24 (8) The department may adopt and promulgate rules and regulations to
25 carry out this section.

26 (9) The changes made to this section by Laws 2019, LB593, shall
27 apply retroactively to August 30, 2015.

28 Sec. 2. Original section 68-919, Revised Statutes Cumulative
29 Supplement, 2022, is repealed.