

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1103

Introduced by Schumacher, 22.

Read first time January 20, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to medicaid; to amend section 30-2483, Reissue
2 Revised Statutes of Nebraska, section 33-109, Revised Statutes
3 Cumulative Supplement, 2014, and sections 68-901, 68-919, and
4 77-2018.02, Revised Statutes Supplement, 2015; to change notice
5 provisions relating to decedents' estates and the inheritance tax;
6 to change and provide an exemption from recording fees for registers
7 of deeds and county clerks; to change the Medical Assistance Act; to
8 change provisions relating to death certificates; to harmonize
9 provisions; to provide severability; and to repeal the original
10 sections.

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

1 Section 1. Section 30-2483, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2483 Unless notice has already been given under this article and
4 except when an appointment of a personal representative is made pursuant
5 to subdivision (4) of section 30-2408, the clerk of the court upon the
6 appointment of a personal representative shall publish a notice once a
7 week for three successive weeks in a newspaper of general circulation in
8 the county announcing the appointment and the address of the personal
9 representative, and notifying creditors of the estate to present their
10 claims within two months after the date of the first publication of the
11 notice or be forever barred. The first publication shall be made within
12 thirty days after the appointment. The party instituting or maintaining
13 the proceeding or his or her attorney is required to mail the published
14 notice and give proof thereof in accordance with section 25-520.01. If
15 the decedent was fifty-five years of age or older or resided in a medical
16 institution as defined in subsection (1) of section 68-919, the notice
17 shall also be provided ~~mailed~~ to the Department of Health and Human
18 Services with the decedent's social security number and, if available
19 upon reasonable investigation, the name and social security number of the
20 decedent's spouse if such spouse is deceased. The notice shall be
21 provided to the department in a manner and at an address designated by
22 the department, which manner may include email. Any notice that fails to
23 meet this requirement is void and constitutes neither notice to the
24 department nor a waiver application for purposes of any statute or
25 regulation that requires that a notice or waiver application be provided
26 to the department.

27 Sec. 2. Section 33-109, Revised Statutes Cumulative Supplement,
28 2014, is amended to read:

29 33-109 (1)(a) ~~This subdivision applies until January 1, 2018.~~ The
30 register of deeds and the county clerk shall receive for recording a
31 deed, mortgage, or release, recording and indexing of a will, recording

1 and indexing of a decree in a testate estate, recording proof of
2 publication, or recording any other instrument, a fee of ten dollars for
3 the first page and six dollars for each additional page. Two dollars and
4 fifty cents of the ten-dollar fee for recording the first page and fifty
5 cents of the six-dollar fee for recording each additional page shall be
6 used exclusively for the purposes of preserving and maintaining public
7 records of the office of the register of deeds and for modernization and
8 technology needs relating to such records. The funds allocated under this
9 subsection subdivision shall not be substituted for other allocations of
10 county general funds to the register of deeds for the purposes enumerated
11 in this subsection subdivision.

12 ~~(b) This subdivision applies on and after January 1, 2018. The~~
13 ~~register of deeds and the county clerk shall receive for recording a~~
14 ~~deed, mortgage, or release, recording and indexing of a will, recording~~
15 ~~and indexing of a decree in a testate estate, recording proof of~~
16 ~~publication, or recording any other instrument, a fee of five dollars per~~
17 ~~page. For entering each instrument presented for record in the numerical~~
18 ~~index, the clerk or register of deeds shall receive the sum of fifty~~
19 ~~cents for each lot and each single block without lots in platted areas~~
20 ~~and fifty cents for each section in unplatted areas to be paid in advance~~
21 ~~by the person offering the instrument for record.~~

22 (2) The cost for a certified copy of any instrument filed or
23 recorded in the office of county clerk or register of deeds shall be one
24 dollar and fifty cents per page.

25 (3) No fees shall be received for recording instruments for the
26 Department of Health and Human Services pursuant to section 5 of this
27 act.

28 Sec. 3. Section 68-901, Revised Statutes Supplement, 2015, is
29 amended to read:

30 68-901 Sections 68-901 to 68-975 and sections 4 and 5 of this act
31 shall be known and may be cited as the Medical Assistance Act.

1 Sec. 4. (1) This section shall apply to the fullest extent
2 permitted by federal law and understandings entered into between the
3 state and the federal government. An applicant for medical assistance
4 shall disclose at the time of application all interests in any real
5 estate, trusts, corporations, limited liability companies, or any other
6 entity in which the applicant has any interest, whether direct or
7 indirect, vested or contingent, or otherwise. The applicant shall
8 disclose:

9 (a) Any income derived from such interests and the source of the
10 income;

11 (b) Whether the income is generated directly or indirectly by (i) an
12 individual listed in section 77-2004 or 77-2005 in relation to the
13 applicant or (ii) an entity controlled by one or more individuals
14 described in subdivision (1)(b)(i) of this section. For purposes of this
15 subdivision, control has the same definition as in subdivision (10)(a)
16 (ii) of section 5 of this act.

17 (2) If the applicant fails to make disclosure, any medical
18 assistance obtained as a result of such failure is deemed unlawfully
19 obtained and the department shall seek reimbursement.

20 (3) If income is derived from a related party as described in
21 subdivision (1)(b) of this section, the department shall determine
22 whether the income is, or in the case of a written lease the terms of the
23 lease at the time it was entered into were, commercially reasonable and
24 consistent with income derived in the relevant market area and negotiated
25 at arms length between parties who are not related. If the department
26 determines that the income or lease fails to meet these requirements, the
27 department shall impute the shortfall to the applicant's income when
28 determining eligibility for medical assistance, any share of cost, or as
29 otherwise required by law. The burden of proof of commercial
30 reasonableness rests with the applicant.

31 (4) Action for recovery of benefits obtained in violation of this

1 section may be brought by the department against the applicant or against
2 the estate of the recipient of medical assistance as defined in
3 subdivision (4)(a) of section 68-919 at any time before five years after
4 the death of the applicant and the applicant's spouse, if any.

5 (5) The department may adopt and promulgate rules and regulations to
6 carry out this section.

7 Sec. 5. (1) This section shall apply to the fullest extent
8 permitted by federal law and understandings entered into between the
9 state and the federal government. This section provides security for the
10 recovery of the indebtedness to the department for medical assistance as
11 set forth in section 68-919. When, during the transferor's lifetime, an
12 interest in real estate is irrevocably transferred to a transferee for
13 less than full consideration or the real estate transferred to a
14 transferee is subject to rights, possession, or powers retained by the
15 transferor in a deed or other instrument, the interest in the real estate
16 when acquired by the transferee is subject to a lien in favor of the
17 State of Nebraska for medicaid reimbursement pursuant to section 68-919
18 to the extent necessary to secure payment in full of any claim remaining
19 unpaid after application of the assets of the transferor's probate
20 estate. The lien does not attach to any interest retained by the
21 transferor. Except as provided in this section, the lien applies to
22 medical assistance provided before, at the same time as, or after the
23 transfer. This section applies to transfers made on or after the
24 effective date of this act.

25 (2) Within fifteen days after a transfer subject to subsection (1)
26 of this section, the transferor (a) shall mail by certified mail, return
27 receipt requested, to the department a file stamped copy of the deed or
28 other instrument transferring the interest together with notice of the
29 name and addresses of the transferor and transferee and the relationship
30 between the parties and (b) shall file a copy of such notice with the
31 register of deeds of the county or counties in which the real estate is

1 situated to be recorded and indexed on the transferred real estate
2 together with a certificate of such service on the department. Any
3 failure to file or provide notice does not affect the validity of the
4 lien and the transferor is liable for any costs the department incurs to
5 discover the transfer.

6 (3) The lien imposed by subsection (1) of this section becomes
7 effective upon the filing of a notice of lien in accordance with
8 subsection (4) of this section.

9 (4) Any mortgage or trust deed recorded prior to the filing of a
10 notice of lien in accordance with this subsection shall have priority
11 over such lien. Except as provided in subsection (5) of this section, any
12 optional future advance or advance necessary to protect the security
13 secured by the mortgage or trust deed shall have the same priority as the
14 mortgage or trust deed. A lien is valid against any subsequent creditor
15 only if notice of such lien has been filed by the department in the
16 office of the register of deeds of the county or counties in which the
17 real estate subject to the lien is situated as designated in the notice
18 of lien. The notice must provide the legal description of the real estate
19 subject to the lien, specify the amount then secured by the lien, and
20 indicate that the lien also covers any subsequent advances. The
21 department shall provide the register of deeds with a self-addressed
22 return envelope bearing sufficient postage for purposes of returning to
23 the department a file stamped copy of the notice of lien, which the
24 register of deeds shall mail to the department.

25 (5) Any optional future advance made pursuant to a mortgage or trust
26 deed on real property prior to the filing of notice of lien under
27 subsection (4) of this section shall be junior to such lien only if the
28 optional future advance is made after (a) a notice of lien has been filed
29 by the department in accordance with subsection (4) of this section, (b)
30 written notice of the filing for record of such notice of lien has been
31 received by the mortgagee or beneficiary at the address of the mortgagee

1 or beneficiary set forth in the mortgage or trust deed, or if the
2 mortgage or trust deed has been assigned, by the assignee at the address
3 of the most recent assignee reflected in a recorded assignment of the
4 mortgage or trust deed. The notice under this subdivision shall be sent
5 by certified mail to the mortgagee or beneficiary at the address of the
6 mortgagee or beneficiary set forth in the mortgage or trust deed, or if
7 the mortgage or trust deed has been assigned, to the address of the most
8 recent assignee as reflected in a recorded assignment of the mortgage or
9 trust deed. Any notice sent by the department under this subdivision
10 prior to providing medical assistance to the transferor shall not affect
11 the priority of the lien for optional future advances secured by the
12 prior mortgage or trust deed.

13 (6) Any lien is limited to the lesser of (a) the amount necessary to
14 fully satisfy any reimbursement obligations remaining unpaid after
15 application of any assets from the transferor's probate estate or (b) in
16 the case the transferee paid consideration in money for the property to
17 the transferor, the transferee's basis of the property for income tax
18 purposes upon the death of the transferor minus an adjustment factor
19 defined as an amount equal to the consideration paid in money to the
20 transferor by the transferee multiplied by the taxable value for purposes
21 of real estate taxation upon the transferor's death divided by its
22 taxable value at the time the consideration was paid, if any. The burden
23 of proof of basis, consideration paid, and taxable value rests with the
24 transferee or any successor in interest.

25 (7) Real estate for which the deed or instrument creating such
26 interest contains a recital made under the oath by the grantor that the
27 grantee is not a transferee or for which an affidavit by the grantor
28 containing a recital is recorded contemporaneously with the deed or
29 instrument shall not become subject to the lien. A transferee who takes
30 possession or otherwise enjoys the benefits of the transfer knowing the
31 recital is false becomes personally liable for medicaid reimbursement to

1 the extent necessary to discharge any claim remaining unpaid after
2 application of the assets of the transferor's probate estate, not to
3 exceed the transferee's basis of the property for income tax purposes
4 upon the death of the transferor minus the adjustment factor defined in
5 subsection (6) of this section.

6 (8) The department may release the lien upon application by the
7 transferee in which the transferee agrees to indemnify the department for
8 medicaid reimbursement pursuant to section 68-919 to the extent necessary
9 to discharge any such claim remaining unpaid after application of the
10 assets of the transferor's probate estate, but not to exceed the lesser
11 of (a) the amount of the lien or (b) transferee's basis of the property
12 for income tax purposes upon the death of the transferor minus the
13 adjustment factor defined in subsection (6) of this section. The
14 department may require the application to be accompanied by good and
15 sufficient sureties or other evidence determined by the department to be
16 sufficient to secure the liability. The department may also discharge the
17 lien upon a satisfactory showing that the interest subject to the lien is
18 not one from which medicaid recovery may be had.

19 (9) Any indemnity shall be released and any lien shall be discharged
20 upon (a) notice delivered to the department, by certified mail, return
21 receipt requested, of (i) the death and identification of the transferor,
22 (ii) the legal description of the real estate subject to the indemnity or
23 lien, and (iii) the names and addresses of the owners of record of the
24 real estate, and (b) the department either (i) filing a release in the
25 real estate records of the county or counties in which the real estate is
26 located or (ii) not filing an action to foreclose the lien or collect on
27 the indemnity within one year after delivery of the notice. Proof of
28 delivery of notice shall be made by filing a copy and a copy of the
29 certified mail return receipt with the register of deeds of the county or
30 counties in which the real estate is situated.

31 (10)(a) For purposes of this section, transferee means:

1 (i) An individual listed in section 77-2004 or 77-2005 in relation
2 to the transferor;

3 (ii) An entity controlled by one or more individuals listed in
4 subdivision (10)(a)(i) of this section. Control means individuals listed
5 in subdivision (10)(a)(i) of this section together own or have the option
6 to acquire more than fifty percent of the entity; or

7 (iii) A nonrevocable trust in which an individual listed in
8 subdivision (10)(a)(i) of this section is a beneficiary.

9 (b) Transferee does not include the recipient's spouse, if any, or a
10 child who either is under twenty-one years of age or is blind or totally
11 and permanently disabled as defined by Supplemental Security Income
12 criteria.

13 (11) The department may adopt and promulgate rules and regulations
14 to carry out this section.

15 Sec. 6. Section 68-919, Revised Statutes Supplement, 2015, is
16 amended to read:

17 68-919 (1) The recipient of medical assistance under the medical
18 assistance program shall be indebted to the department for the total
19 amount paid for medical assistance on behalf of the recipient if:

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

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

29 (2) The debt accruing under subsection (1) of this section arises
30 during the life of the recipient but shall be held in abeyance until the
31 death of the recipient. Any such debt to the department that exists when

1 the recipient dies shall be recovered only after the death of the
2 recipient's spouse, if any, and only when the recipient is not survived
3 by a child who either is under twenty-one years of age or is blind or
4 totally and permanently disabled as defined by the Supplemental Security
5 Income criteria.

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

10 (4)(a) This subsection applies to the fullest extent permitted by 42
11 U.S.C. 1396p as such section existed on January 1, 2016. It is the intent
12 of the Legislature that the debt specified in subsection (1) of this
13 section be collected by the department before any portion of the estate
14 of a recipient of medical assistance, as defined in this subdivision, is
15 enjoyed by or transferred to a person not specified in subsection (2) of
16 this section as a result of the death of such recipient. The debt may be
17 recovered from the estate of a recipient of medical assistance, including
18 any real property, personal property, or other asset in which the
19 recipient had any legal title or interest at the time of the recipient's
20 death, to the extent of such interests. In furtherance and not in
21 limitation of the foregoing, for purposes of this section, the estate of
22 the recipient of medical assistance also includes (i) assets to be
23 transferred to a beneficiary described in section 77-2004 or 77-2005 in
24 relation to the recipient through a revocable trust or other similar
25 arrangement which has become irrevocable by reason of the recipient's
26 death and (ii) notwithstanding anything to the contrary in subsection (3)
27 or (4) of section 68-923, such assets conveyed or otherwise transferred
28 to a survivor, heir, or assign of the recipient of medical assistance
29 through joint tenancy, tenancy in common, survivorship, conveyance of a
30 remainder interest, retention of a life estate or of an estate for a
31 period of time, living trust, or other arrangement by which value or

1 possession is transferred to or realized by the beneficiary of the
2 conveyance or transfer. Such other arrangements include insurance
3 policies or annuities in which the recipient of medical assistance
4 retained at the time of death any incidents of ownership or power to
5 designate beneficiaries and any pension rights or completed retirement
6 plans or accounts of the recipient. A completed retirement plan or
7 account is one which because of the death of the retiree ceases to have
8 elements of retirement relating to such recipient of medical assistance
9 and under which one or more beneficiaries exist after such recipient's
10 death.

11 (b) As to any interest in property created after the effective date
12 of this act and for as long as any portion of the debt arising under
13 subsection (1) of this section remains unpaid, the death of the creator
14 of the interest shall not trigger change in the rights to possession,
15 enjoyment, access, income, or otherwise that the creator had at the time
16 of death and the personal representative of the estate is empowered to
17 and shall exercise or enjoy such rights for the purpose of paying such
18 debt, including, but not limited to, renting such property held as a life
19 estate, severing joint tenancies, bringing partition actions, claiming
20 equitable rights of contribution, or taking other actions otherwise
21 appropriate to effect the intent of this section. Such rights shall
22 survive the death of such decedent and shall be administered, marshaled,
23 and disposed of for the purposes of this section. In the event that a
24 claim for reimbursement is made as to some, but not all, nonprobate
25 transferees or assets, the party or owner against whom the claim is
26 asserted may seek equitable contribution toward the claim from the other
27 nonprobate transferees or assets in a court of applicable jurisdiction.
28 Except as otherwise provided in this section and for the right of the
29 department to recover the debt from such interests in property, this
30 subsection in and of itself does not create any rights in any other
31 person or entity.

1 (c) As to a real estate interest transferred to a transferee as
2 described in section 5 of this act and vested in the transferee prior to
3 the effective date of this act wherein the transferor retained a life
4 estate or other interest, the value of the interest for purposes of this
5 section shall be the lesser of:

6 (i) The transferee's basis of the property for income tax purposes
7 upon the death of the transferor minus the adjustment factor defined in
8 subsection (6) of section 5 of this act; or

9 (ii) The maximum amount permitted under the Constitution of
10 Nebraska, the Constitution of the United States, or the laws of the
11 United States.

12 The burden of proof of basis, consideration paid, and taxable value
13 rests with the transferee or the transferee's successor in interest.

14 (d) The department, upon application of any person authorized under
15 Chapter 30 to petition to open the estate of a decedent, any person
16 having an interest in assets of the decedent, or any person holding
17 assets of the decedent described in this subsection, may release some or
18 all of the property of a decedent from the provisions of this subsection
19 in cases in which the department determines that either there is no
20 medicaid reimbursement due or there will be sufficient probate property
21 of the decedent to satisfy all such claims for medicaid reimbursement. If
22 there is no medicaid reimbursement due, the department shall certify to
23 the applicant that no such reimbursement is due as expeditiously as
24 reasonably possible but in no event more than sixty days after receipt of
25 the application and the decedent's name and social security number and,
26 if available upon reasonable investigation, the name and social security
27 number of the decedent's spouse if such spouse is deceased. An
28 application under this subdivision shall be provided to the department in
29 a manner and at an address designated by the department which manner may
30 include email. An application which fails to meet this requirement is
31 void. Unless a notation as provided for in section 8 of this act appears

1 on the death certificate of the decedent, if the department determines
2 that there is medicaid reimbursement due then it shall mail notice
3 thereof to the applicant that medicaid reimbursement is due within such
4 sixty-day period. Failure to do so discharges the debt created under this
5 section.

6 (e) In the event that the department does not seek to recover
7 medicaid reimbursement for a period of eighteen months after it is
8 entitled to do so, the county attorney of the county of the recipient's
9 last residence, or in the case of real estate, the county where the real
10 estate is located, may, with the consent of the Attorney General, enforce
11 the rights of the department, and in such case the county shall be
12 entitled to such reasonable attorney's fees as may be agreed to by the
13 Attorney General. The department shall give its full cooperation to such
14 county attorney.

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

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

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

27 Sec. 7. Section 77-2018.02, Revised Statutes Supplement, 2015, is
28 amended to read:

29 77-2018.02 (1) In the absence of any proceeding brought under
30 Chapter 30, article 24 or 25, in this state, proceedings for the
31 determination of the tax may be instituted in the county court of the

1 county where the property or any part thereof which might be subject to
2 tax is situated.

3 (2) Upon the filing of the petition referred to in subsection (1) of
4 this section, the county court shall order the petition set for hearing,
5 not less than two nor more than four weeks after the date of filing the
6 petition, and shall cause notice thereof to be given to all persons
7 interested in the estate of the deceased and the property described in
8 the petition, except as provided in subsections (4) and (5) of this
9 section, in the manner provided for in subsection (3) of this section.

10 (3) The notice, provided for by subsection (2) of this section,
11 shall be given by one publication in a legal newspaper of the county or,
12 in the absence of such legal newspaper, then in a legal newspaper of some
13 adjoining county of general circulation in the county. In addition to
14 such publication of notice, personal service of notice of the hearing
15 shall be had upon the county attorney of each county in which the
16 property described in the petition is located, at least one week prior to
17 the hearing.

18 (4) If it appears to the county court, upon the filing of the
19 petition, by any person other than the county attorney, that no
20 assessment of inheritance tax could result, it shall forthwith enter
21 thereon an order directing the county attorney to show cause, within one
22 week from the service thereof, why determination should not be made that
23 no inheritance tax is due on account of the property described in the
24 petition and the potential lien thereof on such property extinguished.
25 Upon service of such order to show cause and failure of such showing by
26 the county attorney, notice of such hearing by publication shall be
27 dispensed with, and the petitioner shall be entitled without delay to a
28 determination of no tax due on account of the property described in the
29 petition, and any potential lien shall be extinguished.

30 (5) If it appears to the county court that (a) the county attorney
31 of each county in which the property described in the petition is located

1 has executed a waiver of notice upon him or her to show cause, or of the
2 time and place of hearing, and has entered a voluntary appearance in such
3 proceeding in behalf of the county and the State of Nebraska, and (b)
4 either (i) all persons against whom an inheritance tax may be assessed
5 are either a petitioner or have executed a waiver of notice upon them to
6 show cause, or of the time and place of hearing, and have entered a
7 voluntary appearance, or (ii) a party to the proceeding has agreed to pay
8 to the proper counties the full inheritance tax so determined, the court
9 may dispense with the notice provided for in subsections (2) and (3) of
10 this section and proceed without delay to make a determination of
11 inheritance tax, if any, due on account of the property described in the
12 petition.

13 (6) If the decedent was fifty-five years of age or older or resided
14 in a medical institution as defined in subsection (1) of section 68-919,
15 a notice of the filing of the petition referred to in subsection (1) of
16 this section shall be provided ~~mailed~~ to the Department of Health and
17 Human Services with the decedent's social security number and, if
18 available upon reasonable investigation, the name and social security
19 number of the decedent's spouse if such spouse is deceased. A certificate
20 of the provision ~~mailing~~ of the notice to the department shall be filed
21 in the inheritance tax proceedings by an attorney for the petitioner or,
22 if there is no attorney, by the petitioner, prior to the entry of an
23 order pursuant to this section. The notice shall be provided to the
24 department in a manner and at an address designated by the department,
25 which manner may include email. Any notice that fails to meet this
26 requirement is void and constitutes neither notice to the department nor
27 a waiver application for purposes of any statute or regulation which
28 requires that a notice or waiver application be provided to the
29 department.

30 Sec. 8. Prior to issuing a death certificate, the office of vital
31 records shall inquire whether the Department of Health and Human

1 Service's records show unresolved claims or other unsettled issues
2 regarding the decedent's estate. If so, the death certificate shall bear
3 a notation that the Department of Health and Human Services should be
4 contacted for further information.

5 Sec. 9. If any section in this act or any part of any section is
6 declared invalid or unconstitutional, the declaration shall not affect
7 the validity or constitutionality of the remaining portions.

8 Sec. 10. Original section 30-2483, Reissue Revised Statutes of
9 Nebraska, section 33-109, Revised Statutes Cumulative Supplement, 2014,
10 and sections 68-901, 68-919, and 77-2018.02, Revised Statutes Supplement,
11 2015, are repealed.