

AMENDMENTS TO LB641

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 **Section 1.** Section 68-919, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

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

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

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

17 ~~(2)(a)~~ (2) The debt accruing under subsection (1) of this section
18 arises during the life of the recipient but shall be held in abeyance
19 until the death of the recipient. Any such debt to the department that
20 exists when the recipient dies shall be recovered only after the death of
21 the recipient's spouse, if any, and only after the recipient is not
22 survived by a child who either is under twenty-one years of age or is
23 blind or totally and permanently disabled as defined by the Supplemental
24 Security Income criteria. In recovering such debt, the department shall
25 not foreclose on a lien on the home of the recipient (i) ~~(a)~~ if a sibling
26 of the recipient with an equity interest in the home has lawfully resided
27 in the home for at least one year before the recipient's admission and

1 has lived there continuously since the date of the recipient's admission
2 or (ii) ~~(b)~~ while the home is the residence of an adult child who has
3 lived in the recipient's home for at least two years immediately before
4 the recipient was institutionalized, has lived there continuously since
5 that time, and can establish to the satisfaction of the department that
6 he or she provided care that delayed the recipient's admission.

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

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

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

26 (b) For purposes of this section:

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

1 assistance also includes:

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

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

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

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

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

1 a period of time;

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

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

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

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

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

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

16 (i) The death of the recipient of medical assistance;
17 (ii) The death of the recipient's spouse, if applicable;
18 (iii) The attainment of the age of twenty-one years by the youngest
19 of the recipient's minor children, if applicable; or
20 (iv) A determination that any adult child of the recipient is no
21 longer blind or totally and permanently disabled as defined by the
22 Supplemental Security Income criteria, if applicable.

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

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

1 hardship as provided in rules and regulations of the department.

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

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

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

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

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

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

29 **Sec. 2.** Original section 68-919, Revised Statutes Cumulative
30 Supplement, 2024, is repealed.