

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 641

FINAL READING

Introduced by Bostar, 29.

Read first time January 22, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to the medical assistance program; to amend
2 section 68-919, Revised Statutes Cumulative Supplement, 2024; 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 2024, 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, an assisted living facility, 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 an adult child who has
28 lived in the recipient's home for at least two years immediately before
29 the recipient was institutionalized, has lived there continuously since
30 that time, and can establish to the satisfaction of the department that
31 he or she provided care that delayed the recipient's admission. Such care

1 may be reimbursed or unreimbursed.

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

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

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

21 (b) For purposes of this section:

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

28 (A) Assets to be transferred to a beneficiary described in section
29 77-2004 or 77-2005 in relation to the recipient through a revocable trust
30 or other similar arrangement which has become irrevocable by reason of
31 the recipient's death; and

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

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

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

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

28 (C) Life estate interests in real estate after sixty months from the
29 date of recording a deed with retention of a life estate by the recipient
30 of medical assistance; and

31 (D) Any pension rights or completed retirement plans to the extent

1 that such rights or plans are exempt from claims for reimbursement of
2 medical assistance under federal law; and -

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

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

1 purpose of seeking and obtaining from the department this certification.
2 If, in response to a certification request, the department certifies that
3 reimbursement for medical assistance is due, the department may release
4 some or all of the property of a decedent from the provisions of this
5 subsection.

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

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

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

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

28 (7)(a) Whenever the department has provided medical assistance
29 because of sickness or injury to any person resulting from a third
30 party's wrongful act or negligence and the person has recovered damages
31 from such third party, the department shall have the right to recover the

1 medical assistance it paid from any amounts that the person has received
2 as follows:

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

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

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

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

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

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