

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 403

Introduced by Slama, 1.

Read first time January 14, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to decedents' estates; to amend section
- 2 68-919, Revised Statutes Cumulative Supplement, 2020; to change a
- 3 provision relating to recovery of medical assistance debt involving
- 4 property transferred by deed with retention of a life estate; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-919, Revised Statutes Cumulative Supplement,
2 2020, 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) The debt accruing under subsection (1) of this section arises
16 during the life of the recipient but shall be held in abeyance until the
17 death of the recipient. Any such debt to the department that exists when
18 the recipient dies shall be recovered only after the death of the
19 recipient's spouse, if any, and only after the recipient is not survived
20 by a child who either is under twenty-one years of age or is blind or
21 totally and permanently disabled as defined by the Supplemental Security
22 Income criteria. In recovering such debt, the department shall not
23 foreclose on a lien on the home of the recipient (a) if a sibling of the
24 recipient with an equity interest in the home has lawfully resided in the
25 home for at least one year before the recipient's admission and has lived
26 there continuously since the date of the recipient's admission or (b)
27 while the home is the residence of an adult child who has lived in the
28 recipient's home for at least two years immediately before the recipient
29 was institutionalized, has lived there continuously since that time, and
30 can establish to the satisfaction of the department that he or she
31 provided care that delayed the recipient's admission.

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

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

15 (b) For purposes of this section:

16 (i) Estate of a recipient of medical assistance means any real
17 estate, personal property, or other asset in which the recipient had any
18 legal title or interest at or immediately preceding the time of the
19 recipient's death, to the extent of such interests. In furtherance and
20 not in limitation of the foregoing, the estate of a recipient of medical
21 assistance also includes:

22 (A) Assets to be transferred to a beneficiary described in section
23 77-2004 or 77-2005 in relation to the recipient through a revocable trust
24 or other similar arrangement which has become irrevocable by reason of
25 the recipient's death; and

26 (B) Notwithstanding anything to the contrary in subdivision (3) or
27 (4) of section 68-923, assets conveyed or otherwise transferred to a
28 survivor, an heir, an assignee, a beneficiary, or a devisee of the
29 recipient of medical assistance through joint tenancy, tenancy in common,
30 transfer on death deed, survivorship, conveyance of a remainder interest,
31 retention of a life estate or of an estate for a period of time, living

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

12 (ii) Estate of a recipient of medical assistance does not include:

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

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

20 (C) Any pension rights or completed retirement plans to the extent
21 that such rights or plans are exempt from claims for reimbursement of
22 medical assistance under federal law.

23 (c) As to any interest in property created after August 24, 2017,
24 and for as long as any portion of the debt arising under subsection (1)
25 of this section remains unpaid, the death of the recipient of medical
26 assistance shall not trigger a change in the rights to possession,
27 enjoyment, access, income, or otherwise that the recipient had at the
28 time of death and the personal representative of the recipient's estate
29 is empowered to and shall exercise or enjoy such rights for the purpose
30 of paying such debt, including, but not limited to, renting such property
31 held as a life estate, severing joint tenancies, bringing partition

1 actions, claiming equitable rights of contribution, or taking other
2 actions otherwise appropriate to effect the intent of this section. Such
3 rights shall survive the death of the recipient of medical assistance and
4 shall be administered, marshaled, and disposed of for the purposes of
5 this section. In the event that a claim for reimbursement is made as to
6 some, but not all, nonprobate transferees or assets, the party or owner
7 against whom the claim is asserted may seek equitable contribution toward
8 the claim from the other nonprobate transferees or assets in a court of
9 applicable jurisdiction. Except as otherwise provided in this section and
10 except for the right of the department to recover the debt from such
11 interests in property, this subsection in and of itself does not create
12 any rights in any other person or entity.

13 (d) 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 web site. 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 (e) 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; or -

18 (v) The recording of a deed with the retention of a life estate by
19 the recipient of medical assistance.

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

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

30 (7)(a) Whenever the department has provided medical assistance
31 because of sickness or injury to any person resulting from a third

1 party's wrongful act or negligence and the person has recovered damages
2 from such third party, the department shall have the right to recover the
3 medical assistance it paid from any amounts that the person has received
4 as follows:

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

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

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

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

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

26 Sec. 2. Original section 68-919, Revised Statutes Cumulative
27 Supplement, 2020, is repealed.