

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 1701

 By: Calvey

7 AS INTRODUCED

8 An Act relating to public health and safety; amending
9 63 O.S. 2011, Section 5051.3, as amended by Section
10 1, Chapter 278, O.S.L. 2015 (63 O.S. Supp. 2016,
11 Section 5051.3), which relates to homestead liens
12 filed by the Oklahoma Health Care Authority against
13 recipients for payments of certain medical
14 assistance; updating certain references; providing
15 that certain lien be for amount of assistance from
16 date recipient received compensated care at nursing
17 facility; allowing lien to be filed on nonhomestead
18 real property of recipient; permitting lien to be
19 assignable providing that appraisement is waived in
20 case of judicial sale; permitting heirs of recipient
21 to discharge lien by paying certain amount; and
22 providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.3, as
20 amended by Section 1, Chapter 278, O.S.L. 2015 (63 O.S. Supp. 2016,
21 Section 5051.3), is amended to read as follows:

22 Section 5051.3 A. Pursuant to the provisions of this section,
23 the Oklahoma Health Care Authority is authorized to file and enforce
24 a lien against the homestead of a recipient for payments of medical

1 assistance made by the Authority to the recipient who is an
2 inpatient of a nursing ~~home~~ facility if the Authority, upon
3 competent medical testimony, determines the recipient cannot
4 reasonably be expected to be discharged and returned home. A one-
5 year period of compensated inpatient care at a nursing ~~home~~ or
6 ~~nursing homes~~ facility shall constitute a determination by the
7 Authority that the recipient cannot reasonably be expected to be
8 discharged and returned home.

9 B. Upon certification for Title XIX of the federal Social
10 Security Act payments for nursing ~~home~~ facility care, the Authority
11 shall provide written notice to the recipient that:

12 1. A one-year period of compensated inpatient care at a nursing
13 ~~home~~ or nursing homes facility shall constitute a determination by
14 the Authority that the recipient cannot reasonably be expected to be
15 discharged and returned home;

16 2. A lien will be filed against the homestead of the recipient
17 pursuant to the provisions of this section and that the amount of
18 the lien shall be for the amount of assistance paid by the Authority
19 ~~after the expiration of one (1) year~~ from the date the recipient
20 became eligible for compensated inpatient care at a nursing ~~home~~ or
21 ~~nursing homes~~ facility until the time of the filing of the lien and
22 for any amount paid thereafter for such medical assistance to the
23 recipient; and

24

1 3. The recipient is entitled to a hearing with the Authority
2 prior to the filing of the lien pursuant to this section.

3 The notice shall also contain an explanation of the lien and the
4 effect the lien will have on the ownership of the homestead of the
5 recipient and any other person residing in the homestead. The
6 notice shall be signed by the recipient or the legal guardian of the
7 recipient acknowledging that the recipient or the legal guardian of
8 the recipient understands the notice and the effect that the payment
9 of medical assistance on the recipient's behalf will have upon the
10 homestead of the recipient.

11 C. The lien filed pursuant to subsection E of this section
12 shall be for the amount of assistance paid beginning ~~one (1) year~~
13 ~~after~~ from the date the recipient ~~has received~~ began receiving
14 inpatient care from a nursing ~~home or nursing homes~~ and ~~has received~~
15 ~~payment of medical assistance by the Authority until the time of the~~
16 ~~filing of the lien~~ facility and for any amount paid thereafter for
17 the medical assistance to the recipient.

18 D. The Authority shall not file a lien on the homestead of the
19 recipient pursuant to subsection E of this section while the
20 homestead is the lawful residence of:

- 21 1. The surviving spouse of the recipient;
- 22 2. A child related to the recipient by blood or marriage who is
23 twenty (20) years of age or less;

1 3. An adult child related to the recipient by blood or marriage
2 who is incapacitated as defined by the Authority; or

3 4. A brother or sister of the recipient who has an equity
4 interest in the home and who was residing in the home for at least
5 one (1) year immediately preceding the date the recipient was
6 admitted to the nursing ~~home~~ facility and has resided there on a
7 continuous basis since that time.

8 Nothing in this subsection shall preclude the Authority from
9 filing a lien on the nonhomestead real property of the recipient.

10 E. No lien for payment of medical assistance pursuant to this
11 section shall be effective unless:

12 1. The Authority has provided notice to the recipient of the
13 intent to file a lien against the homestead of the recipient and of
14 the opportunity for a hearing on the matter; and

15 2. After the notice specified in paragraph 1 of this subsection
16 has been given, a lien is filed for record against the legal
17 description of the homestead in the office of the county clerk of
18 the county in which the homestead of the recipient is located. The
19 lien shall contain the following information:

20 a. the name and address of the place of residence of the
21 recipient,

22 b. the amount of the assistance paid at the time of the
23 filing of the lien ~~and the amount which is expected to~~
24 ~~accumulate on a monthly basis,~~

- c. the date the recipient began receiving compensated inpatient care at a nursing ~~home or nursing homes~~ facility,
- d. the legal description of the real property against which the lien will be recorded, and
- e. such other information as the Authority requires.

F. 1. After the lien has been filed pursuant to subsection E of this section, the Authority may enforce a lien only:

- a. after the death of the surviving spouse of the recipient,
- b. when there is no child related to the recipient by blood or marriage who is twenty (20) years of age or less residing in the homestead,
- c. when there is no adult child related to the recipient by blood or marriage who is incapacitated as defined by the Authority residing in the homestead, and
- d. when no brother or sister of the recipient is residing in the homestead, who has resided there for at least one (1) year immediately before the date of the recipient's admission to the nursing facility ~~or institution~~, and has resided there on a continuous basis since that time.

2. A lien filed pursuant to subsection E of this section shall remain on the homestead:

- 1 a. until the lien is satisfied in the opinion of the
2 Authority or, if a lien has been assigned, in the
3 opinion of the assignee to a maximum of the face value
4 of the lien, and
- 5 ~~b. until the value of the homestead is consumed by the~~
6 ~~lien, at which time the Authority may force the sale~~
7 ~~of the homestead to satisfy the lien, or~~
- 8 ~~c.~~ after transfer of title of the real property by
9 conveyance, sale, succession, inheritance, or will.

10 3. The lien filed pursuant to subsection E of this section may
11 be enforceable by the Authority or may be enforceable by the
12 assignee, if the lien has been assigned, before or after the death
13 of the recipient.

14 4. The lien created by this section and any other lien placed
15 by the Authority shall be treated as a mortgage and shall be
16 assignable by the Authority to another at the discretion of the
17 Authority and shall be released in accordance with the provisions as
18 set forth in Section 15 of Title 46 of the Oklahoma Statutes. In
19 case of a judicial sale of the property, appraisement is waived. If
20 a lien is assigned, said assignment shall:

- 21 a. constitute a presumption that the lien was placed on
22 the property according to law,
- 23 b. constitute a valid assignment for purposes of
24 determining marketable title, and

1 c. transfer to the assignee as a holder in due course all
2 the rights of the Authority, both procedural and
3 substantive, in enforcing said lien.

4 5. ~~The lien shall not sever a joint tenancy nor affect the~~
5 ~~right of survivorship.~~ The lien shall be enforceable only to the
6 extent of the ownership of the person receiving assistance as it
7 existed at the time the recipient began receiving assistance.

8 G. The recipient, the heirs, personal representative, or
9 assigns of the recipient may discharge said lien at any time by
10 paying the amount of the lien to the Authority or by paying a lesser
11 amount, if necessitated by the value of the property at the time of
12 that sale or transfer. If the lien has been assigned, the heirs,
13 personal representative, or assigns of the recipient may discharge
14 said lien at any time by paying the amount of the lien to the
15 assignee of record or by paying a lesser amount, if necessitated by
16 the value of the property at the time of that sale or transfer.

17 H. At the end of the ~~one (1) year~~ one-year limitation, the
18 Authority shall exclude from consideration as a resource the value
19 of the homestead of the recipient.

20 I. The payment of medical assistance on behalf of the recipient
21 by the Authority and the signing of the notice pursuant to
22 subsection B of this section shall constitute a waiver of the
23 homestead rights of the recipient for the purposes of this section
24 and Section 3 of Article XII of the Oklahoma Constitution.

1 J. 1. Pursuant to the provisions of this subsection, if the
2 homestead is sold to enforce the lien authorized pursuant to the
3 provisions of this section, an amount up to Six Thousand Dollars
4 (\$6,000.00) from the proceeds of the sale of the homestead, less the
5 value of any prepaid burial or insurance policies or designated
6 accounts for funeral expenses already owned by the recipient, may be
7 set aside in an irrevocable trust on behalf of the recipient, in
8 which the Authority is to be included as the remainder, and the
9 funds are to be used for the funeral expenses of the recipient. If
10 the lien is assigned, the assignee shall take the place of the
11 Authority as the remainder.

12 2. Payment of the funeral expenses from the proceeds of the
13 sale of the homestead shall be made as follows:

- 14 a. if the proceeds exceed the amount of the lien, the
15 payment of funeral expenses shall be first satisfied
16 from any amount in excess of the lien amount. After
17 the excess is exhausted, the remainder of funeral
18 expenses shall be satisfied from the lien amount prior
19 to payment of any reimbursement to the Authority, and
20 b. if the proceeds from the sale of the homestead do not
21 exceed the amount of the lien, the payment of funeral
22 expenses shall be satisfied from the lien amount prior
23 to payment of any reimbursement to the Authority.

24 K. As used in this section:

1 ~~"Nursing home~~ Nursing facility" means any home, establishment,
2 or institution which offers or provides on a regular basis twenty-
3 four-hour medical services, skilled nursing care, necessary special
4 dietary service, and personal care and supervision to three or more
5 of its residents who are not related to the owner or administrator
6 of the facility.

7 L. If any provision of this section ~~shall be~~ is in conflict
8 with any applicable federal statutes and regulations, the federal
9 statutes and regulations shall prevail and be controlling until such
10 time as the federal statutes and regulations ~~shall be~~ are revised to
11 conform to this section.

12 SECTION 2. This act shall become effective November 1, 2017.

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14 COMMITTEE REPORT BY: COMMITTEE ON HEALTH SERVICES AND LONG-TERM
15 CARE, dated 02/15/2017 - DO PASS.

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