

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 HOUSE BILL 3020

By: Calvey and Shelton

7 AS INTRODUCED

8 **[public health and safety - modifying types of**
9 **services for which recipient may receive medical**
10 **assistance and Oklahoma Health Care Authority may**
11 **file lien against recipient - effective date]**

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

15 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.3, as
16 amended by Section 1, Chapter 278, O.S.L. 2015 (63 O.S. Supp. 2015,
17 Section 5051.3), is amended to read as follows:

18 Section 5051.3 A. Pursuant to the provisions of this section,
19 the Oklahoma Health Care Authority is authorized to file and enforce
20 a lien against the homestead of a recipient for payments of medical
21 assistance made by the Authority to the recipient who is an
22 inpatient of a nursing ~~home~~ facility or an ICF/IID or who receives
23 care through a home- and community-based services waiver under the
24 Medicaid-ADvantage Waiver Program if the Authority, upon competent

1 medical testimony, determines the recipient cannot reasonably be
2 expected to be discharged and returned home. A one-year period of
3 compensated inpatient care at a nursing ~~home or nursing homes~~
4 facility or ICF/IID or a one-year period of compensated home- and
5 community-based services through the Medicaid-ADvantage Waiver
6 Program shall constitute a determination by the Authority that the
7 recipient cannot reasonably be expected to be discharged and
8 returned home or no longer requires nursing facility level of care.

9 B. Upon certification for Title XIX of the federal Social
10 Security Act payments for nursing home care, ICF/IID or home- and
11 community-based services through the Medicaid-ADvantage Waiver
12 Program, the Authority shall provide written notice to the recipient
13 that:

14 1. A one-year period of compensated inpatient care at a nursing
15 ~~home or nursing homes~~ facility or ICF/IID or a one-year period of
16 compensated home- and community-based services through the Medicaid-
17 ADvantage Waiver Program shall constitute a determination by the
18 Authority that the recipient cannot reasonably be expected to be
19 discharged and returned home or no longer requires nursing facility
20 level of care;

21 2. A lien will be filed against the homestead of the recipient
22 pursuant to the provisions of this section and that the amount of
23 the lien shall be for the amount of assistance paid by the Authority
24 ~~after the expiration of one (1) year~~ from the date the recipient

1 became eligible for compensated inpatient care at a nursing ~~home or~~
2 ~~nursing homes~~ facility or ICF/IID or for home- and community-based
3 services through the Medicaid-ADvantage Waiver Program until the
4 time of the filing of the lien and for any amount paid thereafter
5 for such medical assistance to the recipient; and

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

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

16 C. The lien filed pursuant to subsection E of this section
17 shall be for the amount of assistance paid beginning ~~one (1) year~~
18 ~~after~~ from the date the recipient ~~has received~~ began receiving
19 inpatient care from a nursing ~~home or nursing homes~~ and ~~has received~~
20 ~~payment of medical assistance by the Authority until the time of the~~
21 ~~filing of the lien~~ facility or ICF/IID or began receiving home- and
22 community-based services through the Medicaid-ADvantage Waiver
23 Program and for any amount paid thereafter for the medical
24 assistance to the recipient.

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

4 1. The surviving spouse of the recipient;

5 2. A child related to the recipient by blood or marriage who is
6 twenty (20) years of age or less;

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

9 4. A brother or sister of the recipient who has an equity
10 interest in the home and who was residing in the home for at least
11 one (1) year immediately preceding the date the recipient was
12 admitted to the nursing ~~home~~ facility or ICF/IID or began receiving
13 compensated home- and community-based services through the Medicaid-
14 ADvantage Waiver Program and has resided there on a continuous basis
15 since that time.

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

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

21 2. After the notice specified in paragraph 1 of this subsection
22 has been given, a lien is filed for record against the legal
23 description of the homestead in the office of the county clerk of
24

1 the county in which the homestead of the recipient is located. The
2 lien shall contain the following information:

- 3 a. the name and address of the place of residence of the
4 recipient,
- 5 b. the amount of the assistance paid at the time of the
6 filing of the lien ~~and the amount which is expected to~~
7 ~~accumulate on a monthly basis,~~
- 8 c. the date the recipient began receiving compensated
9 inpatient care at a nursing ~~home or nursing homes~~
10 facility or ICF/IID or began receiving compensated
11 home- and community-based services through the
12 Medicaid-ADvantage Waiver Program,
- 13 d. the legal description of the real property against
14 which the lien will be recorded, and
- 15 e. such other information as the Authority requires.

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

- 18 a. after the death of the surviving spouse of the
19 recipient,
- 20 b. when there is no child related to the recipient by
21 blood or marriage who is twenty (20) years of age or
22 less residing in the homestead,

- 1 c. when there is no adult child related to the recipient
2 by blood or marriage who is incapacitated as defined
3 by the Authority residing in the homestead, and
4 d. when no brother or sister of the recipient is residing
5 in the homestead, who has resided there for at least
6 one (1) year immediately before the date of the
7 recipient's admission to the nursing facility ~~or~~
8 institution, ICF/IID or began receiving compensated
9 home- and community-based services through the
10 Medicaid-ADvantage Waiver Program and has resided
11 there on a continuous basis since that time.

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

- 14 a. until the lien is satisfied,
15 b. until the value of the homestead is consumed by the
16 lien, at which time the Authority may force the sale
17 of the homestead to satisfy the lien, or
18 c. after transfer of title of the real property by
19 conveyance, sale, succession, inheritance, or will.

20 3. The lien filed pursuant to subsection E of this section may
21 be enforceable by the Authority before or after the death of the
22 recipient.

23 4. The lien created by this section shall be treated as a
24 mortgage and shall be assignable by the Authority to another and

1 shall be released in accordance with the provisions as set forth in
2 Section 15 of Title 46 of the Oklahoma Statutes.

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

7 G. The recipient, the heirs, personal representative, or
8 assigns of the recipient may discharge said lien at any time by
9 paying the amount of the lien to the Authority.

10 H. At the end of the one (1) year limitation, the Authority
11 shall exclude from consideration as a resource the value of the
12 homestead of the recipient.

13 I. The payment of medical assistance on behalf of the recipient
14 by the Authority and the signing of the notice pursuant to
15 subsection B of this section shall constitute a waiver of the
16 homestead rights of the recipient for the purposes of this section
17 and Section 3 of Article XII of the Oklahoma Constitution.

18 J. 1. Pursuant to the provisions of this subsection, if the
19 homestead is sold to enforce the lien authorized pursuant to the
20 provisions of this section, an amount up to Six Thousand Dollars
21 (\$6,000.00) from the proceeds of the sale of the homestead, less the
22 value of any prepaid burial or insurance policies or designated
23 accounts for funeral expenses already owned by the recipient, may be
24 set aside in an irrevocable trust on behalf of the recipient, in

1 which the Authority is to be included as the remainder, and the
2 funds are to be used for the funeral expenses of the recipient.

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

5 a. if the proceeds exceed the amount of the lien, the
6 payment of funeral expenses shall be first satisfied
7 from any amount in excess of the lien amount. After
8 the excess is exhausted, the remainder of funeral
9 expenses shall be satisfied from the lien amount prior
10 to payment of any reimbursement to the Authority, and

11 b. if the proceeds from the sale of the homestead do not
12 exceed the amount of the lien, the payment of funeral
13 expenses shall be satisfied from the lien amount prior
14 to payment of any reimbursement to the Authority.

15 K. As used in this section:

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

22 2. "ICF/IID" means an intermediate care facility for
23 individuals with intellectual disabilities which offers to provide
24 comprehensive and individualized health care and rehabilitation

1 services to individuals to promote their functional status and
2 independence; and

3 3. "Home- and community-based services" means any long-term
4 medical care provided under the Medicaid-ADvantage Waiver Program
5 for frail elderly and a targeted group of adults with physical
6 disabilities who are age twenty-one (21) years and over who do not
7 have intellectual disabilities or a cognitive impairment.

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

13 SECTION 2. This act shall become effective November 1, 2016.

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15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
16 02/24/2016 - DO PASS, As Amended and Coauthored.

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