

ASSEMBLY BILL NO. 249—COMMITTEE ON HEALTH AND HUMAN SERVICES

(ON BEHALF OF WELFARE DIVISION—CHILD SUPPORT ENFORCEMENT)

FEBRUARY 16, 1999

Referred to Committee on Health and Human Services

SUMMARY—Amends provisions governing recovery of assets pursuant to Medicaid estate recovery program. (BDR 38-449)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to Medicaid; amending the provisions governing the recovery of assets pursuant to the Medicaid estate recovery program; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 422 of NRS is hereby amended by adding thereto
2 a new section to read as follows:

3 ***1. The welfare division shall, to the extent that it is not prohibited by***
4 ***federal law, recover from a recipient of public assistance, the estate of***
5 ***the recipient or a person who signed the application for public assistance***
6 ***on behalf of the recipient an amount not to exceed the amount of public***
7 ***assistance incorrectly paid to the recipient, if the person who signed the***
8 ***application:***

9 ***(a) Failed to report any required information to the welfare division***
10 ***that the person knew at the time he signed the application; or***

11 ***(b) Failed to report to the welfare division within the period allowed***
12 ***by the welfare division any required information that the person obtained***
13 ***after he filed the application.***

14 ***2. A recipient of incorrectly paid public assistance or a person who***
15 ***signed the application for public benefits on behalf of the recipient shall***
16 ***reimburse the division or appropriate state agency for the value of the***
17 ***incorrectly paid public assistance.***

1 **Sec. 2.** NRS 422.054 is hereby amended to read as follows:

2 422.054 “Undivided estate” means all assets included in the estate of a
3 deceased recipient of Medicaid and any other assets in or to which he had
4 an interest or legal title ~~{at the time of}~~ **immediately before** his death, to the
5 extent of that interest or title. The term includes **, without limitation,** assets
6 passing by reason of joint tenancy, reserved life estate, survivorship or
7 trust, and any of the decedent’s separate property and his interest in
8 community property that was transferred to a community spouse pursuant
9 to NRS 123.259 or pursuant to an order of a district court under any other
10 provision of law.

11 **Sec. 3.** NRS 422.2935 is hereby amended to read as follows:

12 422.2935 1. Except as otherwise provided in this section ~~{, the~~
13 ~~welfare division shall,}~~ **and** to the extent it is not prohibited by federal law
14 and when circumstances allow ~~{:~~
15 ~~—(a) Recover}~~, **the welfare division shall recover** benefits correctly paid
16 for Medicaid from:

17 ~~{(1)}~~ **(a)** The undivided estate of the person who received those
18 benefits; and

19 ~~{(2)}~~ **(b)** Any recipient of money or property from the undivided
20 estate of the person who received those benefits.

21 ~~{(b) Recover from the recipient of Medicaid or the person who signed~~
22 ~~the application for Medicaid on behalf of the recipient an amount not to~~
23 ~~exceed the benefits incorrectly paid to the recipient if the person who~~
24 ~~signed the application:~~

25 ~~—(1) Failed to report any required information to the welfare division~~
26 ~~which he knew at the time he signed the application; or~~

27 ~~—(2) Failed within the period allowed by the welfare division to report~~
28 ~~any required information to the welfare division which he obtained after he~~
29 ~~filed the application.}~~

30 2. The welfare division shall not recover benefits pursuant to
31 ~~{paragraph (a) of}~~ subsection 1, except from a person who is neither a
32 surviving spouse nor a child, until after the death of the surviving spouse,
33 if any, and only at a time when the person who received the benefits has no
34 surviving child who is under 21 years of age or is blind or permanently and
35 totally disabled.

36 3. Except as otherwise provided by federal law, if a transfer of real or
37 personal property by a recipient of Medicaid is made for less than fair
38 market value, the welfare division may pursue any remedy available
39 pursuant to chapter 112 of NRS with respect to the transfer.

40 4. The amount of Medicaid paid to or on behalf of a person is a claim
41 against the estate in any probate proceeding only at a time when there is no
42 surviving spouse or surviving child who is under 21 years of age or is blind
43 or permanently and totally disabled.

1 5. The administrator may elect not to file a claim against the estate of a
2 recipient of Medicaid or his spouse if he determines that the filing of the
3 claim will cause an undue hardship for the spouse or other survivors of the
4 recipient. The administrator shall adopt regulations defining the
5 circumstances that constitute an undue hardship.

6 6. Any recovery of money obtained pursuant to this section must be
7 applied first to the cost of recovering the money. Any remaining money
8 must be divided among the Federal Government, the department and the
9 county in the proportion that the amount of assistance each contributed to
10 the recipient bears to the total amount of the assistance contributed.

11 7. ~~[An action to recover money owed to the department of human~~
12 ~~resources as a result of the payment of benefits for Medicaid must be~~
13 ~~commenced within 6 months after the cause of action accrues. A cause of~~
14 ~~action accrues after all of the following events have occurred:~~

15 ~~—(a) The death of the recipient of Medicaid;~~

16 ~~—(b) The death of the surviving spouse of the recipient of Medicaid;~~

17 ~~—(c) The death of all children of the recipient of Medicaid who are blind~~
18 ~~or permanently and totally disabled as determined in accordance with 42~~
19 ~~U.S.C. § 1382c; and~~

20 ~~—(d) The arrival of all other children of the recipient of Medicaid at the~~
21 ~~age of 21 years.] Any money recovered by the welfare division from the~~
22 ~~estate of a recipient pursuant to this section must be paid in cash to the~~
23 ~~extent of:~~

24 ~~(a) The amount of Medicaid paid to or on behalf of the recipient; or~~

25 ~~(b) The value of the remaining assets in the estate,~~

26 ~~whichever is less.~~

27 **Sec. 4.** NRS 422.29355 is hereby amended to read as follows:

28 422.29355 1. The welfare division may, to the extent not prohibited
29 by federal law, petition for the imposition of a lien pursuant to the
30 provisions of NRS 108.850 against real or personal property of a recipient
31 of Medicaid as follows:

32 (a) The welfare division may obtain a lien against a recipient's property,
33 both real or personal, before or after his death in the amount of assistance
34 paid or to be paid on his behalf if the court determines that assistance was
35 incorrectly paid for the recipient.

36 (b) The welfare division may seek a lien against the real property of a
37 recipient at any age before his death in the amount of assistance paid or to
38 be paid for him if he is an inpatient in a nursing facility, intermediate care
39 facility for the mentally retarded or other medical institution and the
40 welfare division determines, after notice and opportunity for a hearing in
41 accordance with its regulations, that he cannot reasonably be expected to
42 be discharged and return home.

1 2. No lien may be placed on a recipient's home *pursuant to*
2 *paragraph (b) of subsection 1* for assistance correctly paid if:

3 (a) His spouse;

4 (b) His child who is under 21 years of age or blind or permanently and
5 totally disabled as determined in accordance with 42 U.S.C. § 1382c; or

6 (c) His brother or sister who is an owner or part owner of the home and
7 who was residing in the home for at least 1 year immediately before the
8 date the recipient was admitted to the medical institution,
9 is lawfully residing in the home.

10 3. Upon the death of a recipient the welfare division may seek a lien
11 upon his undivided estate as defined in NRS 422.054.

12 4. The state welfare administrator shall release a lien pursuant to this
13 section:

14 (a) Upon notice by the recipient or his representative to the
15 administrator that the recipient has been discharged from the medical
16 institution and has returned home;

17 (b) If the lien was incorrectly determined; or

18 (c) Upon satisfaction of the welfare division's claim.

19 **Sec. 5.** NRS 147.070 is hereby amended to read as follows:

20 147.070 1. Every claim for an amount of \$250 or more filed with the
21 clerk must be supported by the affidavit of the claimant that:

22 (a) The amount is justly due (or if the claim is not yet due, that the
23 amount is a just demand and will be due on the day of).

24 (b) No payments have been made thereon which are not credited.

25 (c) There are no offsets to the amount demanded to the knowledge of
26 the claimant or other affiant.

27 2. Every claim filed with the clerk must contain the mailing address of
28 the claimant. Any written notice mailed by an executor or administrator to
29 the claimant at the address furnished is proper notice.

30 3. When the affidavit is made by any other person than the claimant,
31 the reasons why it is not made by the claimant must be set forth in the
32 affidavit.

33 4. The oath may be taken before any person authorized to administer
34 oaths.

35 5. The amount of interest must be computed and included in the
36 statement of the claim and the rate of interest determined.

37 6. ~~{The}~~ *Except as otherwise provided in subsection 7, the* court may,
38 in its discretion, for good cause shown, allow a defective claim or affidavit
39 to be corrected or amended on application made at any time before the
40 filing of the final account.

1 **7. The court shall allow the welfare division of the department of**
2 **human resources to amend at any time before the filing of the final**
3 **account a claim for the payment of benefits for Medicaid that the**
4 **division identifies after the original claim has been filed.**

5 **Sec. 6.** NRS 147.110 is hereby amended to read as follows:

6 147.110 1. Within 15 days after the time for filing claims has
7 expired, as provided in this chapter, the executor or administrator shall
8 examine all claims filed and shall either endorse on each claim his
9 allowance or rejection, with the day and the year thereof, or shall file a
10 notice of allowance or rejection with the date and the year thereof, and
11 such notice of allowance or rejection shall be attached to the claim allowed
12 or rejected.

13 2. Within 5 days after the 15 days specified in subsection 1, the
14 executor or administrator shall present all claims allowed by him to the
15 district judge for his approval or rejection.

16 3. If an executor or administrator ~~{shall refuse or neglect}~~ **refuses or**
17 **neglects** to endorse on a claim his allowance or rejection within 15 days, as
18 specified in this section, or ~~{shall}~~ **does** not file a notice of allowance or
19 rejection, the claim shall be deemed rejected, but the executor or
20 administrator may, nevertheless, allow the claim at any time before the
21 filing of the final account.

22 **4. If a claim is deemed rejected pursuant to subsection 3, the**
23 **executor or administrator must, not more than 10 days after the**
24 **rejection, provide written notice of the rejection by registered mail to all**
25 **affected creditors.**