

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:

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

1. Except as otherwise provided in this section, the welfare division shall, to the extent that it is not prohibited by federal law, recover from a recipient of public assistance, the estate of the recipient, the undivided estate of a recipient of Medicaid or a person who signed the application for public assistance on behalf of the recipient an amount not to exceed the amount of public assistance incorrectly paid to the recipient, if the person who signed the application:

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

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

2. Except as otherwise provided in this section, a recipient of incorrectly paid public assistance, the undivided estate of a recipient of Medicaid or a person who signed the application for public benefits on

1 *behalf of the recipient shall reimburse the division or appropriate state*
2 *agency for the value of the incorrectly paid public assistance.*

3 *3. The administrator or his designee may, to the extent that it is not*
4 *prohibited by federal law, determine the amount of, and settle, adjust,*
5 *compromise or deny a claim against a recipient of public assistance, the*
6 *estate of the recipient, the undivided estate of a recipient of Medicaid or a*
7 *person who signed the application for public assistance on behalf of the*
8 *recipient.*

9 *4. The administrator may, to the extent that it is not prohibited by*
10 *federal law, waive the repayment of public assistance incorrectly paid to*
11 *a recipient if the incorrect payment was not the result of an intentional*
12 *misrepresentation or omission by the recipient and if repayment would*
13 *cause an undue hardship to the recipient. The administrator shall, by*
14 *regulation, establish the terms and conditions of such a waiver,*
15 *including, without limitation, the circumstances that constitute undue*
16 *hardship.*

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

18 422.054 "Undivided estate" means all *real and personal property and*
19 *other* assets included in the estate of a deceased recipient of Medicaid and
20 any other *real and personal property and other* assets in or to which he
21 had an interest or legal title *immediately before or* at the time of his death,
22 to the extent of that interest or title. The term includes , *without limitation,*
23 ~~assets [passing by reason of joint tenancy, reserved life estate, survivorship~~
24 ~~or trust, and]~~ *conveyed to a survivor, heir or assign of the deceased*
25 *recipient through joint tenancy, tenancy in common, survivorship, life*
26 *estate, living trust or other arrangement, including, without limitation,*
27 any of the decedent's separate property and his interest in community
28 property that was transferred to a community spouse pursuant to NRS
29 123.259 or pursuant to an order of a district court under any other provision
30 of law.

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

32 422.2935 1. Except as otherwise provided in this section ~~[, the~~
33 ~~welfare division shall,]~~ *and* to the extent it is not prohibited by federal law
34 and when circumstances allow ~~[:~~

35 ~~—(a) Recover]~~ , *the welfare division shall recover* benefits correctly paid
36 for Medicaid from:

37 ~~[(1)]~~ *(a)* The undivided estate of the person who received those
38 benefits; and

39 ~~[(2)]~~ *(b)* Any recipient of money or property from the undivided
40 estate of the person who received those benefits.

41 ~~[(b) Recover from the recipient of Medicaid or the person who signed~~
42 ~~the application for Medicaid on behalf of the recipient an amount not to~~

1 exceed the benefits incorrectly paid to the recipient if the person who
2 signed the application:

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

5 —(2) Failed within the period allowed by the welfare division to report
6 any required information to the welfare division which he obtained after he
7 filed the application.]

8 2. The welfare division shall not recover benefits pursuant to
9 ~~[paragraph (a) of]~~ subsection 1, except from a person who is neither a
10 surviving spouse nor a child, until after the death of the surviving spouse, if
11 any, and only at a time when the person who received the benefits has no
12 surviving child who is under 21 years of age or is blind or permanently and
13 totally disabled.

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

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

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

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

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

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

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

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

41 ~~—(d) The arrival of all other children of the recipient of Medicaid at the~~

42 ~~age of 21 years.] Any recovery by the welfare division from the undivided~~

1 *estate of a recipient pursuant to this section must be paid in cash to the*
2 *extent of:*

3 *(a) The amount of Medicaid paid to or on behalf of the recipient after*
4 *October 1, 1993; or*

5 *(b) The value of the remaining assets in the undivided estate,*
6 *whichever is less.*

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

8 422.29355 1. The welfare division may, to the extent not prohibited
9 by federal law, petition for the imposition of a lien pursuant to the
10 provisions of NRS 108.850 against real or personal property of a recipient
11 of Medicaid as follows:

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

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

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

25 (a) His spouse;

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

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

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

34 4. The state welfare administrator shall release a lien pursuant to this
35 section:

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

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

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

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

42 147.070 1. Every claim for an amount of \$250 or more filed with the
43 clerk must be supported by the affidavit of the claimant that:

- 1 (a) The amount is justly due (or if the claim is not yet due, that the
- 2 amount is a just demand and will be due on the day of).
- 3 (b) No payments have been made thereon which are not credited.
- 4 (c) There are no offsets to the amount demanded to the knowledge of the
- 5 claimant or other affiant.
- 6 2. Every claim filed with the clerk must contain the mailing address of
- 7 the claimant. Any written notice mailed by an executor or administrator to
- 8 the claimant at the address furnished is proper notice.
- 9 3. When the affidavit is made by any other person than the claimant,
- 10 the reasons why it is not made by the claimant must be set forth in the
- 11 affidavit.
- 12 4. The oath may be taken before any person authorized to administer
- 13 oaths.
- 14 5. The amount of interest must be computed and included in the
- 15 statement of the claim and the rate of interest determined.
- 16 6. ~~{The}~~ *Except as otherwise provided in subsection 7, the* court may,
- 17 in its discretion, for good cause shown, allow a defective claim or affidavit
- 18 to be corrected or amended on application made at any time before the
- 19 filing of the final account.
- 20 *7. The court shall allow the welfare division of the department of*
- 21 *human resources to amend at any time before the filing of the final*
- 22 *account a claim for the payment of benefits for Medicaid that the*
- 23 *division identifies after the original claim has been filed.*
- 24 **Sec. 6.** NRS 147.110 is hereby amended to read as follows:
- 25 147.110 1. Within 15 days after the time for filing claims has
- 26 expired, as provided in this chapter, the executor or administrator shall
- 27 examine all claims filed and shall either endorse on each claim his
- 28 allowance or rejection, with the day and the year thereof, or shall file a
- 29 notice of allowance or rejection with the date and the year thereof, and such
- 30 notice of allowance or rejection shall be attached to the claim allowed or
- 31 rejected.
- 32 2. Within 5 days after the 15 days specified in subsection 1, the
- 33 executor or administrator shall present all claims allowed by him to the
- 34 district judge for his approval or rejection.
- 35 3. If an executor or administrator ~~{shall refuse or neglect}~~ *refuses or*
- 36 *neglects* to endorse on a claim his allowance or rejection within 15 days, as
- 37 specified in this section, or ~~{shall}~~ *does* not file a notice of allowance or
- 38 rejection, the claim shall be deemed rejected, but the executor or
- 39 administrator may, nevertheless, allow the claim at any time before the
- 40 filing of the final account.

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

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