

Assembly Bill No. 445—Committee on
Health and Human Services

CHAPTER.....

AN ACT relating to welfare; transferring certain duties relating to Medicaid from the Welfare Division of the Department of Human Resources to the Department of Human Resources and from the State Welfare Administrator to the Director of the Department of Human Resources; revising the definition of the “undivided estate” of a deceased recipient of Medicaid; requiring the Director of the Department of Human Resources to adopt certain regulations; providing that certain provisions of law do not apply to the recovery of money owed to the Department of Human Resources as a result of the payment of benefits for Medicaid; repealing the requirement that the State Plan for Medicaid include a requirement that certain senior citizens are eligible for Medicaid for long-term care; 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:

The Director:

- 1. Shall administer the provisions of NRS 422.2935 to 422.2936, inclusive;*
- 2. May adopt such regulations as are necessary for the administration of those provisions; and*
- 3. May invoke any legal, equitable or special procedures for the enforcement of those provisions.*

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

422.054 “Undivided estate” means all real and personal property and other assets included in the estate of a deceased recipient of Medicaid and any other real and personal property and other assets in or to which he had an interest or legal title immediately before or at the time of his death, to the extent of that interest or title. The term includes, without limitation, assets conveyed to a survivor, heir or assign of the deceased recipient through *or as the result of any* joint tenancy, tenancy in common, survivorship, life estate, living trust, *, annuity, declaration of homestead* or other arrangement. ~~[-including, without limitation, any of the decedent’s separate property and his interest in community property that was transferred to a community spouse pursuant to NRS 123.259 or pursuant to an order of a district court under any other provision of law.]~~

Sec. 3. NRS 422.222 is hereby amended to read as follows:

422.222 The State Welfare Administrator may adopt such regulations as are necessary for the administration of NRS 422.160 to 422.2345, inclusive, 422.2931 to ~~422.2936,~~ **422.29324**, inclusive, and 422.310 to 422.3754, inclusive, and any program of the Welfare Division.

Sec. 4. NRS 422.230 is hereby amended to read as follows:

422.230 The State Welfare Administrator shall:

1. Supply the Director with material on which to base proposed legislation.
2. Cooperate with the Federal Government and state governments for the more effective attainment of the purposes of this chapter.
3. Coordinate the activities of the Welfare Division with other agencies, both public and private, with related or similar activities.
4. Keep a complete and accurate record of all proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office.
5. Inform the public in regard to the activities and operation of the Welfare Division, and provide other information which will acquaint the public with problems relating to welfare.
6. Conduct studies into the causes of the social problems with which the Welfare Division is concerned.
7. Provide leadership in the community in order that all welfare activities are pointed toward the single goal of improving the public welfare.
8. Invoke any legal, equitable or special procedures for the enforcement of his orders or the enforcement of the provisions of NRS 422.160 to 422.2345, inclusive, 422.2931 to ~~422.2936,~~ **422.29324**, inclusive, and 422.310 to 422.3754, inclusive.
9. Exercise any other powers that are necessary and proper for the standardization of state work, to expedite business, to ensure fair consideration of applications for aid, and to promote the efficiency of the service provided by the Welfare Division.

Sec. 5. NRS 422.240 is hereby amended to read as follows:

422.240 1. Money to carry out the provisions of NRS 422.001 to 422.410, inclusive, **and section 1 of this act** and 422.580, including, without limitation, any federal money allotted to the State of Nevada pursuant to the program to provide Temporary Assistance for Needy Families and the Program for Child Care and Development, must be provided by appropriation by the Legislature from the State General Fund.

2. Disbursements for the purposes of NRS 422.001 to 422.410, inclusive, **and section 1 of this act** and 422.580 must be made upon

claims duly filed, audited and allowed in the same manner as other money in the State Treasury is disbursed.

Sec. 6. NRS 422.272 is hereby amended to read as follows:

422.272 1. ~~[Except as otherwise provided in NRS 422.2725, the]~~ **The** Director shall include in the State Plan for Medicaid a requirement that the State shall pay the nonfederal share of expenditures for the medical, administrative and transactional costs, to the extent not covered by private insurance, of a person:

- (a) Who is admitted to a hospital, facility for intermediate care or facility for skilled nursing for not less than 30 consecutive days;
- (b) Who is covered by the State Plan for Medicaid; and
- (c) Whose net countable income per month is not more than \$775 or 156 percent of the supplemental security income benefit rate established pursuant to 42 U.S.C. § 1382(b)(1), whichever is greater.

2. As used in this section:

(a) "Facility for intermediate care" has the meaning ascribed to it in NRS 449.0038.

(b) "Facility for skilled nursing" has the meaning ascribed to it in NRS 449.0039.

(c) "Hospital" has the meaning ascribed to it in NRS 449.012.

Sec. 7. NRS 422.2931 is hereby amended to read as follows:

422.2931 The State Welfare Administrator and the Welfare Division shall administer the provisions of NRS 422.160 to 422.2345, inclusive, 422.2931 to ~~[422.2936,]~~ **422.29324**, inclusive, and 422.310 to 422.3754, inclusive, subject to administrative supervision by the Director.

Sec. 8. NRS 422.2935 is hereby amended to read as follows:

422.2935 1. Except as otherwise provided in this section and to the extent it is not prohibited by federal law and when circumstances allow, the ~~[Welfare Division]~~ **Department** shall recover benefits correctly paid for Medicaid from:

(a) The undivided estate of the person who received those benefits; and

(b) Any recipient of money or property from the undivided estate of the person who received those benefits.

2. The ~~[Welfare Division]~~ **Department** shall not recover benefits pursuant to subsection 1, except from a person who is neither a surviving spouse nor a child, until after the death of the surviving spouse, if any, and only at a time when the person who received the benefits has no surviving child who is under 21 years of age, ~~[or is]~~ blind or ~~[permanently and totally]~~ disabled.

3. Except as otherwise provided by federal law, if a transfer of real or personal property by a recipient of Medicaid is made for less than fair market value, the ~~[Welfare Division]~~ **Department** may

pursue any remedy available pursuant to chapter 112 of NRS with respect to the transfer.

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

5. The ~~[State Welfare Administrator]~~ **Director** may elect not to file a claim against the estate of a recipient of Medicaid or his spouse if ~~he~~ **the Director** determines that the filing of the claim will cause an undue hardship for the spouse or other survivors of the recipient. The ~~[State Welfare Administrator]~~ **Director** shall adopt regulations defining the circumstances that constitute an undue hardship.

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

7. Any recovery by the ~~[Welfare Division]~~ **Department** from the undivided estate of a recipient pursuant to this section must be paid in cash to the extent of:

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

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

Sec. 9. NRS 422.29353 is hereby amended to read as follows:

422.29353 1. Except as otherwise provided in this section, the ~~[Welfare Division]~~ **Department** 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]~~ **Department** that the person knew at the time he signed the application; or

(b) Failed to report to the ~~[Welfare Division]~~ **Department** within the period allowed by the ~~[Welfare Division]~~ **Department** 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 behalf of the recipient shall reimburse the ~~[Division]~~ **Department** or appropriate state agency for the value of the incorrectly paid public assistance.

3. The ~~[State-Welfare-Administrator]~~ **Director** or his designee may, to the extent that it is not prohibited by federal law, determine the amount of, and settle, adjust, compromise or deny a claim against 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.

4. The ~~[State-Welfare-Administrator]~~ **Director** may, to the extent that it is not prohibited by federal law, waive the repayment of public assistance incorrectly paid to a recipient if the incorrect payment was not the result of an intentional misrepresentation or omission by the recipient and if repayment would cause an undue hardship to the recipient. The ~~[State-Welfare-Administrator]~~ **Director** shall, by regulation, establish the terms and conditions of such a waiver, including, without limitation, the circumstances that constitute undue hardship.

Sec. 10. NRS 422.29355 is hereby amended to read as follows:

422.29355 1. The ~~[Welfare-Division]~~ **Department** may, to the extent not prohibited by federal law, petition for the imposition of a lien pursuant to the provisions of NRS 108.850 against real or personal property of a recipient of Medicaid as follows:

(a) The ~~[Welfare-Division]~~ **Department** may obtain a lien against a recipient's property, both real or personal, before or after his death in the amount of assistance paid or to be paid on his behalf if the court determines that assistance was incorrectly paid for the recipient.

(b) The ~~[Welfare-Division]~~ **Department** may seek a lien against the real property of a recipient at any age before his death in the amount of assistance paid or to be paid for him if he is an inpatient in a nursing facility, intermediate care facility for the mentally retarded or other medical institution and the ~~[Welfare-Division]~~ **Department** determines, after notice and opportunity for a hearing in accordance with ~~[its]~~ **applicable** regulations, that ~~[he]~~ **the recipient** cannot reasonably be expected to be discharged and return home.

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

(a) His spouse;

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

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

3. Upon the death of a recipient, the ~~{Welfare Division}~~ **Department** may seek a lien upon ~~{his}~~ **the recipient's** undivided estate as defined in NRS 422.054.

4. The ~~{State Welfare Administrator}~~ **Director** shall release a lien pursuant to this section:

(a) Upon notice by the recipient or his representative to the ~~{Administrator}~~ **Director** that the recipient has been discharged from the medical institution and has returned home;

(b) If the lien was incorrectly determined; or

(c) Upon satisfaction of the claim of the ~~{Welfare Division}~~ **Department**.

Sec. 11. NRS 422.2936 is hereby amended to read as follows:
422.2936 Each application for Medicaid must include:

1. A statement that any assistance paid to a recipient may be recovered in an action filed against the estate of the recipient or his spouse; and

2. A statement that any person who signs an application for Medicaid and fails to report:

(a) Any required information to the ~~{Welfare Division}~~ **Department** which he knew at the time he signed the application; or

(b) Within the period allowed by the ~~{Welfare Division}~~ **Department**, any required information to the ~~{Welfare Division}~~ **Department** which he obtained after he filed the application, may be personally liable for any money incorrectly paid to the recipient.

Sec. 12. NRS 40.525 is hereby amended to read as follows:

40.525 1. If title or an interest in real or personal property is affected by the death of any person, any other person who claims any interest in the real or personal property, if his interest is affected by the death of that person, or the State of Nevada, may file in the district court of any county in which any part of the real or personal property is situated a verified petition setting forth those facts and particularly describing the real or personal property, the interest of the petitioner and the interest of the deceased therein.

2. The clerk shall set the petition for hearing by the court. Notice of hearing of the petition must be mailed, by certified mail, return receipt requested, postage prepaid, to the heirs at law of the deceased person at their places of business or residences, if known, and if not, by publication for at least 3 successive weeks in such newspaper as the court orders. The clerk shall send a copy of the notice of hearing or of the affidavit to the ~~{Welfare Division of the}~~

Department of Human Resources by certified mail, return receipt requested, postage prepaid, if the State is not the petitioner, at the time notice is mailed to the heirs at law or the notice is published. Failure on the part of any such heir at law to contest the petition precludes any such heir at law from thereafter contesting the validity of the joint interest or its creation or termination.

3. The court shall take evidence for or against the petition, and may render judgment thereon establishing the fact of the death and the termination of the interest of the deceased in the real or personal property described in the petition.

4. A certified copy of the decree may be recorded in the office of the recorder of each county in which any part of the real or personal property is situated.

5. As an alternative method of terminating the interest of the deceased person, if title or an interest in real or personal property held in joint tenancy or as community property with right of survivorship is affected by the death of a joint tenant or spouse, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of NRS 111.365, accompanied by a certified copy of the death certificate of the deceased person.

Sec. 13. NRS 108.860 is hereby amended to read as follows:

108.860 1. A petition for the imposition of a lien must be signed by or on behalf of the ~~{State Welfare Administrator}~~ *Director of the Department of Human Resources* or the Attorney General and filed with the clerk of the court, who shall set the petition for hearing.

2. Notice of a petition for the imposition of a lien must be given by registered or certified mail, postage prepaid, at least 10 days before the date set for hearing or other action by the court. Each such notice must be addressed to the intended recipient at his last address known to the ~~{Administrator,}~~ *Director*, receipt for delivery requested. The ~~{Administrator}~~ *Director* shall cause the notice to be published, at least once a week for 3 successive weeks, in one newspaper published in the county, and if there is no newspaper published in the county, then in such mode as the court may determine, notifying all persons claiming any interest in the property of the filing of the petition, the object and the location, date and time of the hearing.

3. Notice of a petition for the imposition of a lien must be given to:

- (a) Each person who has requested notice;
- (b) The person who is receiving or has received benefits for Medicaid;
- (c) The legal guardian or representative of a person who is receiving or has received benefits for Medicaid, if any;

(d) Each executor, administrator or trustee of the estate of a decedent who received benefits for Medicaid, if any;

(e) The heirs of such a decedent known to the ~~Administrator;~~ *Director*; and

(f) Each person who is claiming any interest in the property or who is listed as having any interest in the subject property, and must state the filing of the petition, the object, and the time set for hearing.

4. At the time appointed, or at any other time to which the hearing may be continued, upon proof being made by affidavit or otherwise to the satisfaction of the court that notice has been given as required by this chapter, the court shall proceed to hear the testimony in support of the petition. Each witness who appears and is sworn shall testify orally.

5. The court shall make findings as to the appropriateness of the lien and the amount of the lien.

6. At the time of the filing of the petition for imposition of a lien, the ~~Administrator~~ *Director* shall file a notice of pendency of the action in the manner provided in NRS 14.010.

7. Upon imposition of the lien by the court, the ~~Administrator~~ *Director* shall serve the notice of lien upon the owner by certified or registered mail and file it with the office of the county recorder of each county where real property subject to the lien is located.

8. The notice of lien must contain:

(a) The amount due;

(b) The name of the owner of record of the property; and

(c) A description of the property sufficient for identification.

9. If the amount due as stated in the notice of lien is reduced by a payment, the ~~Administrator~~ *Director* shall amend the notice of lien, stating the amount then due, within 20 days after receiving the payment.

Sec. 14. NRS 108.870 is hereby amended to read as follows:

108.870 The ~~State-Welfare Administrator~~ *Director of the Department of Human Resources* may, to the extent not prohibited by 42 U.S.C. § 1396p(b), foreclose upon a lien for money owed to the Department of Human Resources as a result of the payment of benefits for Medicaid by action in the district court in the same manner as for foreclosure of any other lien.

Sec. 15. NRS 111.365 is hereby amended to read as follows:

111.365 1. In the case of real property owned by two or more persons as joint tenants or as community property with right of survivorship, it is presumed that all title or interest in and to that real property of each of one or more deceased joint tenants or the deceased spouse has terminated, and vested solely in the surviving joint tenant or spouse or vested jointly in the surviving joint tenants, if there has been recorded in the office of the recorder of the county

or counties in which the real property is situate an affidavit, subscribed and sworn to by a person who has knowledge of the facts required in this subsection, which sets forth the following:

- (a) The family relationship, if any, of the affiant to each deceased joint tenant or the deceased spouse;
- (b) A description of the instrument or conveyance by which the joint tenancy or right of survivorship was created;
- (c) A description of the property subject to the joint tenancy or right of survivorship; and
- (d) The date and place of death of each deceased joint tenant or the deceased spouse.

2. Each month, a county recorder shall send all the information contained in each affidavit received by him pursuant to subsection 1 during the immediately preceding month to the ~~[Welfare Division of the]~~ Department of Human Resources in any format and by any medium approved by the ~~[Welfare Division.]~~ *Department.*

Sec. 16. Chapter 115 of NRS is hereby amended by adding thereto a new section to read as follows:

Nothing in this chapter exempts any real or personal property from any statute of this state that authorizes the recovery of money owed to the Department of Human Resources as a result of the payment of benefits from Medicaid through the imposition or foreclosure of a lien against the property of a recipient of Medicaid in the manner set forth in NRS 422.2935 to 422.2936, inclusive.

Sec. 17. NRS 115.005 is hereby amended to read as follows:

115.005 As used in this chapter, unless the context otherwise requires:

1. "Equity" means the amount that is determined by subtracting from the fair market value of the property ~~the~~ the value of any liens excepted from the homestead exemption pursuant to subsection 3 of NRS 115.010 ~~the~~ *or section 16 of this act.*

2. "Homestead" means the property consisting of:

- (a) A quantity of land, together with the dwelling house thereon and its appurtenances;
- (b) A mobile home whether or not the underlying land is owned by the claimant; or
- (c) A unit, whether real or personal property, existing pursuant to chapter 116 or 117 of NRS, with any appurtenant limited common elements and its interest in the common elements of the common-interest community, to be selected by the husband and wife, or either of them, or a single person claiming the homestead.

Sec. 18. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead is not subject to forced sale on execution or any final process from any court, except as otherwise provided by subsections 2, 3 and 5 ~~4~~, *and section 16 of this act.*

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed \$125,000 in value, unless allodial title has been established and not relinquished, in which case the exemption provided in subsection 1 extends to all equity in the dwelling, its appurtenances and the land on which it is located.

3. Except as otherwise provided in subsection 4, the exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the property, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

(a) Any mortgage or deed of trust thereon executed and given; or

(b) Any lien to which prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070, by both husband and wife, when that relation exists.

4. If allodial title has been established and not relinquished, the exemption provided in subsection 1 extends to process to enforce the payment of obligations contracted for the purchase of the property, and for improvements made thereon, including any mechanic's lien lawfully obtained, and for legal taxes levied by a state or local government, and for:

(a) Any mortgage or deed of trust thereon; and

(b) Any lien even if prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070,

unless a waiver for the specific obligation to which the judgment relates has been executed by all allodial titleholders of the property.

5. Establishment of allodial title does not exempt the property from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or 207.350 to 207.520, inclusive.

6. Any declaration of homestead which has been filed before October 1, 1995, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the amount of equity held by the claimant in the property selected and claimed for the exemption up to the amount permitted by law on that date, but the increase does not impair the right of any

creditor to execute upon the property when that right existed before October 1, 1995.

Sec. 19. NRS 136.100 is hereby amended to read as follows:

136.100 1. A petition for the probate of a will and for the issuance of letters must be signed by the party petitioning, or the attorney for the petitioner, and filed with the clerk of the court, who shall set the petition for hearing.

2. The petitioner shall give notice of the hearing for the period and in the manner provided in NRS 155.020 to the heirs of the testator and the devisees named in the will, to all persons named as personal representatives who are not petitioning and to the ~~[Administrator of the Welfare Division]~~ **Director** of the Department of Human Resources. The notice must be substantially in the form provided in that section.

Sec. 20. NRS 139.100 is hereby amended to read as follows:

139.100 The clerk shall set the petition for hearing, and notice must be given to the heirs of the decedent and to the ~~[Administrator of the Welfare Division]~~ **Director** of the Department of Human Resources as provided in NRS 155.020. The notice must state the filing of the petition, the object and the time for hearing.

Sec. 21. NRS 143.035 is hereby amended to read as follows:

143.035 1. A personal representative shall use reasonable diligence in performing the duties of the personal representative and in pursuing the administration of the estate.

2. A personal representative in charge of an estate that has not been closed shall:

(a) Within 6 months after the personal representative's appointment, where no federal estate tax return is required to be filed for the estate; or

(b) Within 15 months after the personal representative's appointment, where a federal estate tax return is required to be filed for the estate, file with the court a report explaining why the estate has not been closed.

3. Upon receiving the report, the clerk shall set a time and place for a hearing of the report. The personal representative shall send a copy of the report and shall give notice of the hearing, for the period and in the manner provided in NRS 155.010, to:

(a) Each person whose interest is affected as an heir or devisee; and

(b) The ~~[Welfare Division of the]~~ Department of Human Resources, if the ~~[Welfare Division]~~ **Department** has filed a claim against the estate.

4. At the hearing, the court shall determine whether or not the personal representative has used reasonable diligence in the

administration of the estate, and if the personal representative has not, the court may:

(a) Subject to the provisions of NRS 143.037:

(1) Prescribe the time within which the estate must be closed;

or

(2) Allow the personal representative additional time for closing and order a subsequent report; or

(b) Revoke the letters of the personal representative, appoint a successor and prescribe a reasonable time within which the successor shall close the estate.

Sec. 22. NRS 145.060 is hereby amended to read as follows:

145.060 1. A personal representative shall publish and mail notice to creditors in the manner provided in NRS 155.020.

2. Creditors of the estate must file their claims, due or to become due, with the clerk, within 60 days after the mailing to the creditors for those required to be mailed, or 60 days after the first publication of the notice to creditors pursuant to NRS 155.020, and within 10 days thereafter the personal representative shall allow or reject the claims filed.

3. Any claim which is not filed within the 60 days is barred forever, except that if it is made to appear, by the affidavit of the claimant or by other proof to the satisfaction of the court, that the claimant did not have notice as provided in NRS 155.020, the claim may be filed at any time before the filing of the final account.

4. Every claim which is filed as provided in this section and allowed by the personal representative ~~§~~ must then, and not until then, be ranked as an acknowledged debt of the estate and be paid in the course of administration, except that payment of small debts in advance may be made pursuant to subsection 3 of NRS 150.230.

5. If a claim filed by the ~~[Welfare Division of the]~~ Department of Human Resources is rejected by the personal representative, the ~~[State Welfare Administrator]~~ *Director of the Department* may, within 20 days after receipt of the written notice of rejection, petition the court for summary determination of the claim. A petition for summary determination must be filed with the clerk, who shall set the petition for hearing, and the petitioner shall give notice for the period and in the manner required by NRS 155.010. Allowance of the claim by the court is sufficient evidence of its correctness, and it must be paid as if previously allowed by the personal representative.

Sec. 23. NRS 146.070 is hereby amended to read as follows:

146.070 1. If a person dies leaving an estate the gross value of which, after deducting any encumbrances, does not exceed \$50,000, and there is a surviving spouse or minor child or minor children of the decedent, the estate must not be administered upon, but the whole estate, after directing such payments as may be

deemed just, must be, by an order for that purpose, assigned and set apart for the support of the surviving spouse or minor child or minor children, or for the support of the minor child or minor children, if there is no surviving spouse. Even if there is a surviving spouse, the court may, after directing such payments, set aside the whole of the estate to the minor child or minor children, if it is in their best interests.

2. If there is no surviving spouse or minor child of the decedent and the gross value of a decedent's estate, after deducting any encumbrances, does not exceed \$50,000, upon good cause shown, the court shall order that the estate not be administered upon, but the whole estate be assigned and set apart in the following order:

(a) To the payment of funeral expenses, expenses of last illness, money owed to the Department of Human Resources as a result of payment of benefits for Medicaid and creditors, if there are any; and

(b) Any balance remaining to the claimant or claimants entitled thereto pursuant to a valid will of the decedent, and if there is no valid will, pursuant to intestate succession.

3. Proceedings taken under this section, whether or not the decedent left a valid will, must not begin until at least 30 days after the death of the decedent and must be originated by a petition containing:

(a) A specific description of all the decedent's property.

(b) A list of all the liens and mortgages of record at the date of the decedent's death.

(c) An estimate of the value of the property.

(d) A statement of the debts of the decedent so far as known to the petitioner.

(e) The names and residences of the heirs and devisees of the decedent and the age of any who is a minor and the relationship of the heirs and devisees to the decedent, so far as known to the petitioner.

4. The clerk shall set the petition for hearing and the petitioner shall give notice of the petition and hearing in the manner provided in NRS 155.010 to the decedent's heirs and devisees and to the ~~{State Welfare Administrator.}~~ *Director of the Department of Human Resources*. If a complete copy of the petition is not enclosed with the notice, the notice must include a statement setting forth to whom the estate is being set aside.

5. No court or clerk's fees may be charged for the filing of any petition in, or order of court thereon, or for any certified copy of the petition or order in an estate not exceeding \$2,500 in value.

6. If the court finds that the gross value of the estate, less encumbrances, does not exceed the sum of \$50,000, the court may direct that the estate be distributed to the father or mother of a minor heir or devisee, with or without the filing of any bond, or to a

custodian under chapter 167 of NRS, or may require that a general guardian be appointed and that the estate be distributed to the guardian, with or without bond, as in the discretion of the court is deemed to be in the best interests of the minor. The court may direct the manner in which the money may be used for the benefit of the minor.

Sec. 24. NRS 146.080 is hereby amended to read as follows:

146.080 1. If a decedent leaves no real property, nor interest therein, nor mortgage or lien thereon, in this state, and the gross value of the decedent's property in this state, over and above any amounts due to the decedent for services in the Armed Forces of the United States, does not exceed \$20,000, a person who has a right to succeed to the property of the decedent pursuant to the laws of succession for a decedent who died intestate or pursuant to the valid will of a decedent who died testate, on behalf of all persons entitled to succeed to the property claimed, or the ~~{State—Welfare Administrator}~~ *Director of the Department of Human Resources* or public administrator on behalf of the State or others entitled to the property, may, 40 days after the death of the decedent, without procuring letters of administration or awaiting the probate of the will, collect any money due the decedent, receive the property of the decedent, and have any evidences of interest, indebtedness or right transferred to the claimant upon furnishing the person, representative, corporation, officer or body owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, indebtedness or right, with an affidavit showing the right of the affiant or affiants to receive the money or property or to have the evidence transferred.

2. An affidavit made pursuant to this section must state:

(a) The affiant's name and address, and that the affiant is entitled by law to succeed to the property claimed;

(b) The date and place of death of the decedent;

(c) That the gross value of the decedent's property in this state, except amounts due to the decedent for services in the Armed Forces of the United States, does not exceed \$20,000, and that the property does not include any real property nor interest therein, nor mortgage or lien thereon;

(d) That at least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the certificate of death of the decedent attached to the affidavit;

(e) That no petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent, including funeral and burial expenses, and money owed to the Department of Human Resources as a result of the payment of benefits for Medicaid, have been paid or provided for;

(g) A description of the personal property and the portion claimed;

(h) That the affiant has given written notice, by personal service or by certified mail, identifying the affiant's claim and describing the property claimed, to every person whose right to succeed to the decedent's property is equal or superior to that of the affiant, and that at least 14 days have elapsed since the notice was served or mailed;

(i) That the affiant is personally entitled, or the Department of Human Resources is entitled, to full payment or delivery of the property claimed or is entitled to payment or delivery on behalf of and with the written authority of all other successors who have an interest in the property; and

(j) That the affiant acknowledges an understanding that filing a false affidavit constitutes a felony in this state.

3. If the affiant:

(a) Submits an affidavit which does not meet the requirements of subsection 2 or which contains statements which are not entirely true, any money or property the affiant receives is subject to all debts of the decedent.

(b) Fails to give notice to other successors as required by subsection 2, any money or property the affiant receives is held by the affiant in trust for all other successors who have an interest in the property.

4. A person who receives an affidavit containing the information required by subsection 2 is entitled to rely upon that information, and if the person relies in good faith, the person is immune from civil liability for actions based on that reliance.

5. Upon receiving proof of the death of the decedent and an affidavit containing the information required by this section:

(a) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to succeed to ownership of that security.

(b) A governmental agency required to issue certificates of ownership or registration to personal property shall issue a new certificate of ownership or registration to the person claiming to succeed to ownership of the property.

6. If any property of the estate not exceeding \$20,000 is located in a state which requires an order of a court for the transfer of the property, or if the estate consists of stocks or bonds which must be transferred by an agent outside this state, any person qualified pursuant to the provisions of subsection 1 to have the stocks or bonds or other property transferred may do so by obtaining a court order directing the transfer. The person desiring the transfer must file a petition, which may be ex parte, containing:

(a) A specific description of all the property of the decedent.

(b) A list of all the liens and mortgages of record at the date of the decedent's death.

(c) An estimate of the value of the property of the decedent.

(d) The names, ages of any minors, and residences of the decedent's heirs and devisees.

(e) A request for the court to issue an order directing the transfer of the stocks or bonds or other property if the court finds the gross value of the estate does not exceed \$20,000.

(f) An attached copy of the executed affidavit made pursuant to subsection 2.

If the court finds that the gross value of the estate does not exceed \$20,000 and the person requesting the transfer is entitled to it, the court may enter an order directing the transfer.

Sec. 25. NRS 147.070 is hereby amended to read as follows:

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

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

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

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

2. Every claim filed with the clerk must contain the mailing address of the claimant. Any written notice mailed by a personal representative to the claimant at the address furnished is proper notice.

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

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

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

6. Except as otherwise provided in subsection 7, the court may, for good cause shown, allow a defective claim or affidavit to be corrected or amended on application made at any time before the filing of the final account, but an amendment may not be made to increase the amount of a claim after the time for filing a claim has expired.

7. The court shall allow the ~~{Welfare Division of the}~~ Department of Human Resources to amend at any time before the filing of the final account a claim for the payment of benefits for Medicaid that the ~~{Division}~~ *Department* identifies after the original claim has been filed.

Sec. 26. NRS 147.130 is hereby amended to read as follows:

147.130 1. If a claim is rejected by the personal representative or the court, in whole or in part, the claimant must be immediately notified by the personal representative, and the claimant must bring suit in the proper court against the personal representative within 60 days after the notice or file a timely petition for summary determination pursuant to subsection 2, whether the claim is due or not, or the claim is forever barred. A claimant must be informed of the rejection of the claim by written notice forwarded to the claimant's mailing address by registered or certified mail.

2. If a claim filed by the ~~[Welfare Division of the]~~ Department of Human Resources is rejected by the personal representative, the ~~[State Welfare Administrator]~~ *Director of the Department* may, within 20 days after receipt of the written notice of rejection, petition the court for summary determination of the claim. A petition for summary determination must be filed with the clerk, who shall set the petition for hearing, and notice must be given for the period and in the manner required by NRS 155.010. Allowance of the claim by the court is sufficient evidence of its correctness, and it must be paid as if previously allowed by the personal representative.

3. In any action brought upon a claim rejected in whole or in part by the personal representative, if he resides out of the State or has departed from the State, or cannot, after due diligence, be found within the State, or conceals himself to avoid the service of summons, the summons, together with a copy of the complaint, must be mailed directly to the last address given by him, with a copy to the attorney for the estate, and proof of the mailing must be filed with the clerk where the administration of the estate is pending. This service is the equivalent of personal service upon the personal representative, but he has 30 days from the date of service within which to answer.

4. If the personal representative defaults after such service, the default is sufficient grounds for his removal as personal representative by the court without notice. Upon petition and notice, in the manner provided for an application for letters of administration, an administrator or an administrator with the will annexed must be appointed by the court and, upon his qualification as such, letters of administration or letters of administration with the will annexed must be issued.

Sec. 27. NRS 155.020 is hereby amended to read as follows:

155.020 1. Notice of a petition for the probate of a will and the issuance of letters and the notice to creditors must be given to:

(a) The persons respectively entitled thereto, including the ~~[State Welfare Administrator,]~~ *Director of the Department of Human Resources*, as provided in NRS 155.010; and

(b) The public, including creditors whose names and addresses are not readily ascertainable, by publication on three dates of publication before the hearing, and if the newspaper is published more than once each week, there must be at least 10 days from the first to last dates of publication, including both the first and last days.

2. Every publication required by this section must be made in a newspaper published in the county where the proceedings are pending, but if there is not such a newspaper, then in one having general circulation in that county.

3. The notice of the hearing upon the petition to administer the estate must be in substantially the following form:

NOTICE OF THE HEARING UPON THE PETITION TO ADMINISTER THE ESTATE

Notice is hereby given that has filed in this court a petition for the probate of a will and for letters testamentary, or for letters of administration, of the estate of, deceased, and a hearing has been set for the day of the month of, of the year, at (a.m. or p.m.) at the courthouse of the above-entitled court. All persons interested in the estate are notified to appear and show cause why the petition should not be granted.

Dated

4. As soon as practicable after appointment, a personal representative shall, in addition to publishing the notice to creditors, mail a copy of the notice to those creditors whose names and addresses are readily ascertainable as of the date of first publication of the notice and who have not already filed a claim. The notice must be in substantially the following form:

NOTICE TO CREDITORS

Notice is hereby given that the undersigned has been appointed and qualified by the (giving the title of the court and the date of appointment) as personal representative of the estate of, deceased. All creditors having claims against the estate are required to file the claims with the clerk of the court within (60 or 90) days after the mailing or the first publication (as the case may be) of this notice.

Dated

5. If before the last day for the filing of a creditor's claim under NRS 147.040, the personal representative discovers the existence of a creditor who was not readily ascertainable at the time of first publication of the notice to creditors, the personal representative shall immediately mail a copy of the notice to the creditor.

Sec. 28. NRS 164.025 is hereby amended to read as follows:

164.025 1. The trustee of a nontestamentary trust may after the death of the settlor of the trust cause to be published a notice in the manner specified in paragraph (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to known or readily ascertainable creditors.

2. The notice must be in substantially the following form:

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is the duly appointed and qualified trustee of the trust., the settlor of that trust died on A creditor having a claim against the trust estate must file his claim with the undersigned at the address given below within 90 days after the first publication of this notice.

Dated

.....
Trustee
.....
Address

3. A person having a claim, due or to become due, against a settlor or the trust must file the claim with the trustee within 90 days after the mailing, for those required to be mailed, or 90 days after publication of the first notice to creditors. Any claim against the trust estate not filed within that time is forever barred. After the expiration of the time, the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor who has failed to file a claim with the trustee.

4. If the trustee knows or has reason to believe that the settlor received public assistance during his lifetime, the trustee shall, whether or not he gives notice to other creditors, give notice within 30 days after the death to the ~~[Welfare Division of the]~~ Department of Human Resources in the manner provided in NRS 155.010. If notice to the ~~[Welfare Division]~~ **Department** is required by this subsection but is not given, the trust estate and any assets transferred to a beneficiary remain subject to the right of the ~~[Welfare Division]~~ **Department** to recover public assistance received.

5. If a claim is rejected by the trustee, in whole or in part, the trustee must, within 10 days ~~to~~ *after* the rejection, notify the claimant of the rejection by written notice forwarded by registered or certified mail to the mailing address of the claimant. The claimant must bring suit in the proper court against the trustee within 60 days after the notice is given, whether the claim is due or not, or the claim is barred forever and the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor whose claim is barred forever.

Sec. 29. NRS 422.2725 is hereby repealed.

Sec. 30. Notwithstanding the provisions of sections 1, 3, 8 and 9 of this act that transfer the authority to adopt certain regulations from the State Welfare Administrator to the Director of the Department of Human Resources, any regulations adopted by the State Welfare Administrator pursuant to sections 3, 8 or 9 of this act before July 1, 2003, remain in effect and may be enforced by the Director of the Department of Human Resources until the Director adopts regulations to replace those regulations of the State Welfare Administrator.

Sec. 31. 1. This section and section 29 of this act become effective upon passage and approval.

2. Sections 1 to 28, inclusive, and 30 of this act become effective on July 1, 2003.