

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1268

By: McEntire

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5  
6 AS INTRODUCED

7 An Act relating to liens of the Oklahoma Health Care  
8 Authority; amending 63 O.S. 2011, Section 5051.3, as  
9 last amended by Section 1, Chapter 255, O.S.L. 2017  
10 (63 O.S. Supp. 2018, Section 5051.3), which relates  
11 to liens for certain expenses incurred by the  
12 Oklahoma Health Care Authority; providing for  
13 attachment of lien to certain proceeds resulting from  
14 sale of homestead property for unpaid ad valorem  
15 taxes; providing for disposition of excess proceeds  
16 with respect to prior liens; prescribing procedures  
17 for payment; providing order or judgment of district  
18 court not required for payment of excess proceeds;  
19 and providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5051.3, as  
22 last amended by Section 1, Chapter 255, O.S.L. 2017 (63 O.S. Supp.  
23 2018, Section 5051.3), is amended to read as follows:

24 Section 5051.3 A. Pursuant to the provisions of this section,  
the Oklahoma Health Care Authority is authorized to file and enforce  
a lien against the homestead of a recipient for payments of medical  
assistance made by the Authority to the recipient who is an  
inpatient of a nursing facility or an intermediate care facility for

1 individuals with intellectual disabilities (ICF/IID) if the  
2 Authority, upon competent medical testimony, determines the  
3 recipient cannot reasonably be expected to be discharged and  
4 returned home. A one-year period of compensated inpatient care at a  
5 nursing facility or an ICF/IID shall constitute a determination by  
6 the Authority that the recipient cannot reasonably be expected to be  
7 discharged and returned home.

8 B. Upon certification for Title XIX of the federal Social  
9 Security Act payments for a nursing facility or ICF/IID care, the  
10 Authority shall provide written notice to the recipient that:

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

15 2. A lien will be filed against the homestead of the recipient  
16 pursuant to the provisions of this section and that the amount of  
17 the lien shall be for the amount of assistance paid by the Authority  
18 from the date the recipient became eligible for compensated  
19 inpatient care at a nursing facility or ICF/IID until the time of  
20 the filing of the lien and for any amount paid thereafter for such  
21 medical assistance to the recipient; and

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

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

9       C. The lien filed pursuant to subsection E of this section  
10 shall be for the amount of assistance paid beginning from the date  
11 the recipient began receiving inpatient care from a nursing facility  
12 or ICF/IID and for any amount paid thereafter for the medical  
13 assistance to the recipient.

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

- 17       1. The surviving spouse of the recipient;
- 18       2. A child related to the recipient by blood or marriage who is  
19 twenty (20) years of age or less;
- 20       3. An adult child related to the recipient by blood or marriage  
21 who is incapacitated as defined by the Authority; or
- 22       4. A brother or sister of the recipient who has an equity  
23 interest in the home and who was residing in the home for at least  
24 one (1) year immediately preceding the date the recipient was

1 admitted to the nursing facility or ICF/IID and has resided there on  
2 a continuous basis since that time.

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

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

8 2. After the notice specified in paragraph 1 of this subsection  
9 has been given, a lien is filed for record against the legal  
10 description of the homestead in the office of the county clerk of  
11 the county in which the homestead of the recipient is located. The  
12 lien shall contain the following information:

- 13 a. the name and address of the place of residence of the  
14 recipient,
- 15 b. the amount of the assistance paid at the time of the  
16 filing of the lien,
- 17 c. the date the recipient began receiving compensated  
18 inpatient care at a nursing facility or ICF/IID,
- 19 d. the legal description of the real property against  
20 which the lien will be recorded, and
- 21 e. such other information as the Authority requires.

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

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

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

- 17 a. until the lien is satisfied,
- 18 b. until the value of the homestead is consumed by the
- 19 lien, at which time the Authority may force the sale
- 20 of the homestead to satisfy the lien, or
- 21 c. after transfer of title of the real property by
- 22 conveyance, sale, succession, inheritance, or will.
- 23
- 24

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

4           4. The lien created by this section shall be treated as a  
5 mortgage and shall be assignable by the Authority to another entity  
6 and shall be released in accordance with the provisions as set forth  
7 in Section 15 of Title 46 of the Oklahoma Statutes.

8           5. The lien created by this section shall attach to the  
9 proceeds from the sale of the homestead property sold or resold by a  
10 county in order to satisfy a lien for unpaid ad valorem taxes and if  
11 the proceeds from the original sale or resale of the homestead are  
12 in excess of the amount required to satisfy the lien for unpaid ad  
13 valorem taxes in addition to any other lien which is prior to the  
14 lien of the Oklahoma Health Care Authority, the county treasurer  
15 shall pay the amount of such excess proceeds in such amount as may  
16 be required to satisfy the lien of the Authority within thirty (30)  
17 days of the sale date for the homestead property. The provisions  
18 of this paragraph shall be applicable to excess proceeds whether or  
19 not the amount of such excess proceeds is sufficient to satisfy the  
20 lien of the Authority. The Oklahoma Health Care Authority shall not  
21 be required to obtain an order or judgment from the district court  
22 in order to enforce its lien with respect to the excess sale  
23 proceeds as provided in this paragraph.

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1       6. The lien shall sever a joint tenancy; however, the lien  
2 shall be enforceable only to the extent of the ownership of the  
3 person receiving assistance as it existed at the time the recipient  
4 began receiving assistance.

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

8       H. At the end of the one-year limitation, the Authority shall  
9 exclude from consideration as a resource the value of the homestead  
10 of the recipient.

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

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

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

- 3           a. if the proceeds exceed the amount of the lien, the  
4 payment of funeral expenses shall be first satisfied  
5 from any amount in excess of the lien amount. After  
6 the excess is exhausted, the remainder of funeral  
7 expenses shall be satisfied from the lien amount prior  
8 to payment of any reimbursement to the Authority, and  
9           b. if the proceeds from the sale of the homestead do not  
10 exceed the amount of the lien, the payment of funeral  
11 expenses shall be satisfied from the lien amount prior  
12 to payment of any reimbursement to the Authority.

13           K. As used in this section:

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

20           2. "ICF/IID" means intermediate care facilities for individuals  
21 with intellectual disabilities, which provide comprehensive and  
22 individualized health care and rehabilitation services to  
23 individuals to promote their functional status and independence.  
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1 L. If any provision of this section shall be in conflict with  
2 any applicable federal statutes and regulations, the federal  
3 statutes and regulations shall prevail and be controlling until such  
4 time as the federal statutes and regulations shall be revised to  
5 conform to this section.

6 SECTION 2. This act shall become effective November 1, 2019.

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