

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 742

By: Silk

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Health Care
8 Authority; amending 63 O.S. 2011, Section 5051.3, as
9 amended by Section 1, Chapter 278, O.S.L. 2015 (63
10 O.S. Supp. 2016, Section 5051.3), which relates to
11 medical assistance liens; increasing time period for
12 certain determination; and providing an effective
13 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. 2016,
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 if the Authority, upon competent medical
23 testimony, determines the recipient cannot reasonably be expected to
24 be discharged and returned home. A ~~one-year~~ two-year period of
compensated inpatient care at a nursing home or nursing homes shall

1 constitute a determination by the Authority that the recipient
2 cannot reasonably be expected to be discharged and returned home.

3 B. Upon certification for Title XIX of the federal Social
4 Security Act payments for nursing home care, the Authority shall
5 provide written notice to the recipient that:

6 1. A one-year period of compensated inpatient care at a nursing
7 home or nursing homes shall constitute a determination by the
8 Authority that the recipient cannot reasonably be expected to be
9 discharged and returned home;

10 2. A lien will be filed against the homestead of the recipient
11 pursuant to the provisions of this section and that the amount of
12 the lien shall be for the amount of assistance paid by the Authority
13 after the expiration of one (1) year from the date the recipient
14 became eligible for compensated inpatient care at a nursing home or
15 nursing homes until the time of the filing of the lien and for any
16 amount paid thereafter for such medical assistance to the recipient;
17 and

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

20 The notice shall also contain an explanation of the lien and the
21 effect the lien will have on the ownership of the homestead of the
22 recipient and any other person residing in the homestead. The
23 notice shall be signed by the recipient or the legal guardian of the
24 recipient acknowledging that the recipient or the legal guardian of

1 the recipient understands the notice and the effect that the payment
2 of medical assistance on the recipient's behalf will have upon the
3 homestead of the recipient.

4 C. The lien filed pursuant to subsection E of this section
5 shall be for the amount of assistance paid beginning one (1) year
6 after the recipient has received inpatient care from a nursing home
7 or nursing homes and has received payment of medical assistance by
8 the Authority until the time of the filing of the lien and for any
9 amount paid thereafter for the medical assistance to the recipient.

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

13 1. The surviving spouse of the recipient;

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

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

18 4. A brother or sister of the recipient who has an equity
19 interest in the home and who was residing in the home for at least
20 one (1) year immediately preceding the date the recipient was
21 admitted to the nursing home and has resided there on a continuous
22 basis since that time.

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

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

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

- 9 a. the name and address of the place of residence of the
10 recipient,
- 11 b. the amount of the assistance paid at the time of the
12 filing of the lien and the amount which is expected to
13 accumulate on a monthly basis,
- 14 c. the date the recipient began receiving compensated
15 inpatient care at a nursing home or nursing homes,
- 16 d. the legal description of the real property against
17 which the lien will be recorded, and
- 18 e. such other information as the Authority requires.

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

- 21 a. after the death of the surviving spouse of the
22 recipient,

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

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

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

21 3. The lien filed pursuant to subsection E of this section may
22 be enforceable by the Authority before or after the death of the
23 recipient.
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1 4. The lien created by this section shall be treated as a
2 mortgage and shall be released in accordance with the provisions as
3 set forth in Section 15 of Title 46 of the Oklahoma Statutes.

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

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

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

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

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

1 set aside in an irrevocable trust on behalf of the recipient, in
2 which the Authority is to be included as the remainder, and the
3 funds are to be used for the funeral expenses of the recipient.

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

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

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

16 K. As used in this section:

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

22 L. If any provision of this section shall be in conflict with
23 any applicable federal statutes and regulations, the federal
24 statutes and regulations shall prevail and be controlling until such

1 time as the federal statutes and regulations shall be revised to
2 conform to this section.

3 SECTION 2. This act shall become effective November 1, 2017.

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