

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 629

01/30/2017 Authored by Rarick, Swedzinski, Backer, Lueck, Erickson and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
02/23/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance
03/06/2017 Adoption of Report: Placed on the General Register
Read for the Second Time
05/04/2017 Referred to the Chief Clerk for Comparison with S. F. No. 216
05/08/2017 Postponed Indefinitely

1.1 A bill for an act
1.2 relating to human services; modifying certain claims against estates provisions
1.3 under medical assistance; amending Minnesota Statutes 2016, section 256B.15,
1.4 subdivisions 1, 1a, 2.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 256B.15, subdivision 1, is amended to read:

1.7 Subdivision 1. **Policy and applicability.** (a) It is the policy of this state that individuals
1.8 or couples, either or both of whom participate in the medical assistance program, use their
1.9 own assets to pay their share of the cost of their care during or after their enrollment in the
1.10 program according to applicable federal law and the laws of this state. The following
1.11 provisions apply:

1.12 (1) subdivisions 1c to 1k shall not apply to claims arising under this section which are
1.13 presented under section 525.313;

1.14 (2) the provisions of subdivisions 1c to 1k expanding the interests included in an estate
1.15 for purposes of recovery under this section give effect to the provisions of United States
1.16 Code, title 42, section 1396p, governing recoveries, but do not give rise to any express or
1.17 implied liens in favor of any other parties not named in these provisions;

1.18 (3) the continuation of a recipient's life estate or joint tenancy interest in real property
1.19 after the recipient's death for the purpose of recovering medical assistance under this section
1.20 modifies common law principles holding that these interests terminate on the death of the
1.21 holder;

1.22 (4) all laws, rules, and regulations governing or involved with a recovery of medical
1.23 assistance shall be liberally construed to accomplish their intended purposes;

(5) a deceased recipient's life estate and joint tenancy interests continued under this section shall be owned by the remainderpersons or surviving joint tenants as their interests may appear on the date of the recipient's death. They shall not be merged into the remainder interest or the interests of the surviving joint tenants by reason of ownership. They shall be subject to the provisions of this section. Any conveyance, transfer, sale, assignment, or encumbrance by a remainderperson, a surviving joint tenant, or their heirs, successors, and assigns shall be deemed to include all of their interest in the deceased recipient's life estate or joint tenancy interest continued under this section; and

(6) the provisions of subdivisions 1c to 1k continuing a recipient's joint tenancy interests in real property after the recipient's death do not apply to a homestead owned of record, on the date the recipient dies, by the recipient and the recipient's spouse as joint tenants with a right of survivorship. Homestead means the real property occupied by the surviving joint tenant spouse as their sole residence on the date the recipient dies and classified and taxed to the recipient and surviving joint tenant spouse as homestead property for property tax purposes in the calendar year in which the recipient dies. For purposes of this exemption, real property the recipient and their surviving joint tenant spouse purchase solely with the proceeds from the sale of their prior homestead, own of record as joint tenants, and qualify as homestead property under section 273.124 in the calendar year in which the recipient dies and prior to the recipient's death shall be deemed to be real property classified and taxed to the recipient and their surviving joint tenant spouse as homestead property in the calendar year in which the recipient dies. The surviving spouse, or any person with personal knowledge of the facts, may provide an affidavit describing the homestead property affected by this clause and stating facts showing compliance with this clause. The affidavit shall be prima facie evidence of the facts it states.

(b) For purposes of this section, "medical assistance" includes the medical assistance program under this chapter, the general assistance medical care program formerly codified under chapter 256D, and alternative care for nonmedical assistance recipients under section 256B.0913.

(c) For purposes of this section, ~~beginning January 1, 2010,~~ "medical assistance" does not include Medicare cost-sharing benefits in accordance with United States Code, title 42, section 1396p.

(d) All provisions in this subdivision, and subdivisions 1d, 1f, 1g, 1h, 1i, and 1j, related to the continuation of a recipient's life estate or joint tenancy interests in real property after the recipient's death for the purpose of recovering medical assistance, are effective only for

life estates and joint tenancy interests established on or after August 1, 2003. For purposes of this paragraph, medical assistance does not include alternative care.

EFFECTIVE DATE. This section is effective the day following final enactment and applies retroactively to estate claims pending on or after July 1, 2016, and to the estates of people who died on or after July 1, 2016.

Sec. 2. Minnesota Statutes 2016, section 256B.15, subdivision 1a, is amended to read:

Subd. 1a. **Estates subject to claims.** (a) If a person receives medical assistance hereunder, on the person's death, if single, or on the death of the survivor of a married couple, either or both of whom received medical assistance, or as otherwise provided for in this section, the amount paid for medical assistance as limited under subdivision 2 for the person and spouse shall be filed as a claim against the estate of the person or the estate of the surviving spouse in the court having jurisdiction to probate the estate or to issue a decree of descent according to sections 525.31 to 525.313.

(b) For the purposes of this section, the person's estate must consist of:

(1) the person's probate estate;

(2) all of the person's interests or proceeds of those interests in real property the person owned as a life tenant or as a joint tenant with a right of survivorship at the time of the person's death;

(3) all of the person's interests or proceeds of those interests in securities the person owned in beneficiary form as provided under sections 524.6-301 to 524.6-311 at the time of the person's death, to the extent the interests or proceeds of those interests become part of the probate estate under section 524.6-307;

(4) all of the person's interests in joint accounts, multiple-party accounts, and pay-on-death accounts, brokerage accounts, investment accounts, or the proceeds of those accounts, as provided under sections 524.6-201 to 524.6-214 at the time of the person's death to the extent the interests become part of the probate estate under section 524.6-207; and

(5) assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, or other arrangements.

(c) For the purpose of this section and recovery in a surviving spouse's estate for medical assistance paid for a predeceased spouse, the estate must consist of all of the legal title and interests the deceased individual's predeceased spouse had in jointly owned or marital property at the time of the spouse's death, as defined in subdivision 2b, and the proceeds of

those interests, that passed to the deceased individual or another individual, a survivor, an heir, or an assign of the predeceased spouse through a joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. A deceased recipient who, at death, owned the property jointly with the surviving spouse shall have an interest in the entire property.

(d) For the purpose of recovery in a single person's estate or the estate of a survivor of a married couple, "other arrangement" includes any other means by which title to all or any part of the jointly owned or marital property or interest passed from the predeceased spouse to another including, but not limited to, transfers between spouses which are permitted, prohibited, or penalized for purposes of medical assistance.

(e) A claim shall be filed if medical assistance was rendered for either or both persons under one of the following circumstances:

~~(1) the person was over 55 years of age, and received services under this chapter prior to January 1, 2014;~~

~~(2)~~ (1) the person resided in a medical institution for six months or longer, received services under this chapter, and, at the time of institutionalization or application for medical assistance, whichever is later, the person could not have reasonably been expected to be discharged and returned home, as certified in writing by the person's treating physician. For purposes of this section only, a "medical institution" means a skilled nursing facility, intermediate care facility, intermediate care facility for persons with developmental disabilities, nursing facility, or inpatient hospital;

~~(3)~~ (2) the person received general assistance medical care services under the program formerly codified under chapter 256D; or

~~(4)~~ (3) the person was 55 years of age or older and received medical assistance services ~~on or after January 1, 2014,~~ that consisted of nursing facility services, home and community-based services, or related hospital and prescription drug benefits.

(f) The claim shall be considered an expense of the last illness of the decedent for the purpose of section 524.3-805. Notwithstanding any law or rule to the contrary, a state or county agency with a claim under this section must be a creditor under section 524.6-307. Any statute of limitations that purports to limit any county agency or the state agency, or both, to recover for medical assistance granted hereunder shall not apply to any claim made hereunder for reimbursement for any medical assistance granted hereunder. Notice of the claim shall be given to all heirs and devisees of the decedent, and to other persons with an ownership interest in the real property owned by the decedent at the time of the decedent's

death, whose identity can be ascertained with reasonable diligence. The notice must include procedures and instructions for making an application for a hardship waiver under subdivision 5; time frames for submitting an application and determination; and information regarding appeal rights and procedures. Counties are entitled to one-half of the nonfederal share of medical assistance collections from estates that are directly attributable to county effort. Counties are entitled to ten percent of the collections for alternative care directly attributable to county effort.

EFFECTIVE DATE. This section is effective the day following final enactment and applies retroactively to estate claims pending on or after July 1, 2016, and to the estates of people who died on or after July 1, 2016.

Sec. 3. Minnesota Statutes 2016, section 256B.15, subdivision 2, is amended to read:

Subd. 2. **Limitations on claims.** ~~(a) For services rendered prior to January 1, 2014, the claim shall include only the total amount of medical assistance rendered after age 55 or during a period of institutionalization described in subdivision 1a, paragraph (e), and the total amount of general assistance medical care rendered under the program formerly codified under chapter 256D, and shall not include interest.~~

~~(b) For services rendered on or after January 1, 2014,~~ (a) The claim shall include only:

(1) the amount of medical assistance rendered to recipients 55 years of age or older ~~and~~ that consisted of nursing facility services, home and community-based services, and related hospital and prescription drug services; ~~and~~

(2) the total amount of medical assistance rendered during a period of institutionalization described in subdivision 1a, paragraph (e), clause ~~(2)~~; (1); and

(3) the total amount of general assistance medical care rendered under the program formerly codified under chapter 256D.

The claim shall not include interest. For the purposes of this section, "home and community-based services" has the same meaning it has when used in United States Code, title 42, section 1396p(b)(1)(B)(i), and includes the alternative care program under section 256B.0913, even for periods when alternative care services receive only state funding.

~~(e)~~ (b) Claims that have been allowed but not paid shall bear interest according to section 524.3-806, paragraph (d). A claim against the estate of a surviving spouse who did not receive medical assistance, for medical assistance rendered for the predeceased spouse, shall be payable from the full value of all of the predeceased spouse's assets and interests which are part of the surviving spouse's estate under subdivisions 1a and 2b. Recovery of

6.1 medical assistance expenses in the nonrecipient surviving spouse's estate is limited to the
6.2 value of the assets of the estate that were marital property or jointly owned property at any
6.3 time during the marriage. The claim is not payable from the value of assets or proceeds of
6.4 assets in the estate attributable to a predeceased spouse whom the individual married after
6.5 the death of the predeceased recipient spouse for whom the claim is filed or from assets and
6.6 the proceeds of assets in the estate which the nonrecipient decedent spouse acquired with
6.7 assets which were not marital property or jointly owned property after the death of the
6.8 predeceased recipient spouse. Claims for alternative care shall be net of all premiums paid
6.9 under section 256B.0913, subdivision 12, on or after July 1, 2003, and shall be limited to
6.10 services provided on or after July 1, 2003. Claims against marital property shall be limited
6.11 to claims against recipients who died on or after July 1, 2009.

6.12 **EFFECTIVE DATE.** This section is effective the day following final enactment and
6.13 applies retroactively to estate claims pending on or after July 1, 2016, and to the estates of
6.14 people who died on or after July 1, 2016.