

AMENDMENTS TO LB593

Introduced by Lathrop, 12.

1 1. Insert the following new section:

2 Sec. 7. Section 68-989, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 68-989 (1) This section shall apply to the fullest extent permitted
5 by federal law and understandings entered into between the state and the
6 federal government. An applicant for medical assistance, or a person
7 acting on behalf of the applicant, shall disclose at the time of
8 application and, to the extent not owned at the time of application, at
9 the time of any subsequent review of the applicant's eligibility for
10 medical assistance all of his or her interests in any assets, including,
11 but not limited to, any security, bank account, intellectual property
12 right, contractual or lease right, real estate, trust, corporation,
13 limited liability company, or other entity, whether such interest is
14 direct or indirect or ~~7~~ vested or contingent, ~~or otherwise~~. The applicant
15 or a person acting on behalf of the applicant shall also disclose any ~~÷~~
16 ~~(a) Any~~ income derived from such interests and the source of the
17 income. ~~÷ and~~

18 ~~(b) Whether the income is generated directly or indirectly from (i)~~
19 ~~the applicant's spouse or an individual who is related to the applicant~~
20 ~~as described in section 77-2004 or 77-2005 or (ii) an entity controlled~~
21 ~~by one or more individuals described in subdivision (1)(b)(i) of this~~
22 ~~section. For purposes of this subdivision, control means individuals~~
23 ~~listed in subdivision (1)(b)(i) of this section together own or have the~~
24 ~~option to acquire more than fifty percent of the entity.~~

25 (2) If the applicant or a person acting on behalf of the applicant
26 willfully fails to make the disclosures required in this section, any
27 medical assistance obtained as a result of such failure is deemed

1 unlawfully obtained and the department shall seek recovery of such
2 medical assistance from the applicant or the estate of the recipient of
3 medical assistance as defined in subdivision (4)(b) of section 68-919.

4 (3)(a) ~~(3)~~ If income is derived from a related party as described in
5 subdivision (3)(c) ~~(1)(b)~~ of this section, the department shall determine
6 whether the income is or, in the case of a written lease, whether the
7 terms of the lease at the time it was entered into were commercially
8 reasonable and consistent with income or lease terms derived in the
9 relevant market area and negotiated at arms length between parties who
10 are not related.

11 (b) If the department determines that the income or lease fails to
12 meet these requirements, such income or lease shall be considered a
13 transfer of the applicant's assets for less than full consideration and
14 the department shall consider the resulting shortfall, to the fullest
15 extent permitted by federal law, when determining eligibility for medical
16 assistance or any share of cost or as otherwise required by law. The
17 burden of proof of commercial reasonableness rests with the applicant.
18 The department's determination on commercial reasonableness may be
19 appealed, and the appeal shall be in accordance with the Administrative
20 Procedure Act.

21 (c) A related party is (i) the applicant's spouse or an individual
22 who is related to the applicant as described in section 77-2004 or
23 77-2005 or (ii) an entity controlled by one or more individuals described
24 in subdivision (1)(c)(i) of this section. For purposes of this
25 subdivision, control means individuals listed in subdivision (1)(c)(i) of
26 this section who together own or have the option to acquire more than
27 fifty percent of the entity.

28 (4) An action for recovery of medical assistance obtained in
29 violation of this section may be brought by the department against the
30 applicant or against the estate of the recipient of medical assistance as
31 defined in subdivision (4)(b) of section 68-919 at any time before five

1 years after the death of both the applicant and the applicant's spouse,
2 if any.

3 (5) The department may adopt and promulgate rules and regulations to
4 carry out this section. The rules and regulations may include guidance on
5 the commercial reasonableness of lease terms.

6 2. On page 33, line 27, after "68-919," insert "68-989,".

7 3. Renumber the remaining sections accordingly.