

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB593

Hearing Date: Thursday February 21, 2019
Committee On: Judiciary
Introducer: Briese
One Liner: Change and eliminate provisions relating to medical assistance reimbursement claims and liens and provide for retroactivity

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama, Wayne
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Tom Briese
Frank Heinisch
Ramzi Hynek
Scott Peterson
Christin Lovegrove

Representing:

Introducer
self
Nebraska Bar Association
Nebraska Farm Bureau
self

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 593 essentially repeals many of the changes made by LB 268 (Schumacher) in 2017 and LB 72 (Schumacher) in 2015. These two bills provided for reimbursement for medical assistance in certain situations where property was transferred prior to application for assistance (LB 72) and provides a process for notice and reimbursement (LB 268).

Section 1 Amends section 30-2483 regarding notice of a personal representative to a decedent by striking language addressing notice to the Department of Health and Human Services. Under current statute any notice to HHS that does not conform to the section is void. Stricken language added that a non conforming notice was not a valid notice but also not a waiver application.

Section 2 Amends section 30-3880 to remove the current subsection (c) which prohibits transfer of trust property after the death of the trustor unless medical assistance reimbursement has been made or waived by the Department of Health and Human Services. The bill adds a new subsection (c) that provides that changes made by the bill is retroactive to August 30, 2015.

Section 3 Amends section 30-3881 to remove the current subsection (b) which prohibits transfer of trust property after

the death of the trustor unless medical assistance reimbursement has been made or waived by the Department of Health and Human Services. The bill adds a new subsection (c) that provides that changes made by the bill is retroactive to August 30, 2015.

Section 4 Amends section 30-3882 to remove the current subsection (d) which prohibits transfer of trust property after the death of the trustor unless medical assistance reimbursement has been made or waived by the Department of Health and Human Services. The bill adds a new subsection (c) that provides that changes made by the bill is retroactive to August 30, 2015.

Section 5 Amends section 33-109 which addresses register of deeds and clerk fees, to strike language that no recording fees for HHS.

Section 6 Amends section 68-919 which provides for medical assistance repayment after death. LB 593 removes recipient estate exceptions for insurance paid by a third party or secured party that is not related. This section also establishes a process for HHS to certify that medical assistance reimbursement is due and strikes the current process. In addition the section also removes language that certain real estate transfers are not part of the recipient's estate . Also strikes language that allows county attorneys to seek reimbursement if HHS fails to do so for 18 months. Changes made to the section are retroactive to August 30, 2015.

Section 7 Amends section 68-989 which addresses sources of income when applying for medical assistance. The proposal strikes language regarding income generated by an entity or related party and strikes language for determining that the income, including income from a lease is commercially reasonable. The stricken language provides that if the income or lease is not commercially reasonable, it is considered a transfer. The change is retroactive to August 24, 2017.

Section 8 Amends section 68-990, which defines related transferees including trusts and providing for liens by HHS against transferred assets to obtain reimbursement. LB 593 makes this section null and void on August 24, 2017.

Section 9 Amends section 71-605 concerning death certificates by striking language requiring HHS to determine whether the deceased had applied for or received medical assistance, file a demand for notice if so, and report to the Legislature on the number of demands for notice. Changes to the section are retroactive to August 24, 2017.

Section 10 Amends section 77-2018.02 regarding inheritance tax to strike language that notice provided to HHS, if not in a manner provided, is neither proper notice nor a waiver of that notice.

Section 11 Repeals original sections.

Section 12 Emergency clause.

Explanation of amendments:

AM 996 makes two changes to LB 593. The first strikes section 7 of the bill which sought to repeal portions of section 68-989. Section 68-989 addresses requirements that leases of property be commercially reasonable and if not are considered transfers and are subject to Medicaid reimbursement. These provisions are retained in AM 996.

The second change is a change to section 6 of the bill by amending section 68-919 (7). This subsection addresses subrogation issues when a judgement against a third party for a wrongful act or negligence involves a Medicaid recipient. The change reflects changes in federal provisions as included in the 2018 Bipartisan Budget Act.

Section by section (sections amended by AM 996)

Section 6 AM 996 makes changes to subsection (7) of section 68-919 by providing that medical assistance recovery

claims are limited to a pro rata share of a recipient's recovery for medical damages from a judgement against a third party. If the judgement covers the recipient's full medical damages then all Medicaid assistance is recovered.

Section 7 AM 996 strikes this section.

Steve Lathrop, Chairperson