

SESSION OF 2004

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 272**

As Agreed to March 30, 2004

Brief *

House Sub. for SB 272 creates additional medical assistance eligibility requirements for applicants or recipients who apply for medical assistance (Medicaid) monies under federal and state programs. The bill also authorizes provisions for the recovery of estate monies from deceased Medicaid recipients by the Department of Social and Rehabilitation Services (SRS) to pay for Medicaid services.

Eligibility Requirements

The following factors, among others, would be considered by the Secretary of SRS to determine eligibility:

- ! the full value of property held in joint tenancy as part of the Medicaid recipient's estate;
- ! resources from discretionary trusts available to the recipient, unless the trust is funded exclusively from resources of a person who owed no duty or support to the recipient, and the trust contains language creating a supplemental needs trust that indicates the trust is intended only to supplement Medicaid payments;
- ! "life-care" contracts where a non-licensed individual provides services related to home health care, long term care, or medical assistance benefits unless the contract is in writing, and the moneys paid are fair market value for services rendered (the contract would be null and void on the death of the recipient); or

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- ! written contracts for services provided by a licensed professional receiving payment in advance of services.

Estate Recovery

The following factors would be considered by the Secretary of SRS to recover moneys from deceased Medicaid recipient's estates:

- ! the full value of property held in joint tenancy as part of the deceased Medicaid recipient's estate;
- ! all real and personal property and other assets in which the deceased Medicaid recipient had interest in, including assets that are conveyed to a survivor or heir; or
- ! liens imposed by SRS on property on Medicaid recipients of long term care (the recipient must be a nursing facility resident for 6 months before the lien can be imposed, the lien would be subject to standard mortgage law).

The lien could not be imposed if :

- ! a recipient's spouse or child under the age of 21 or recipient's child who is blind or disabled still resides in the home;
- ! or a sibling who has resided in the residence for one year prior to the recipient's admission to a medical facility resides in the home.

In addition, the lien would remain on the property unless one of the following conditions occurs:

- ! the recipient returns home and resides at such recipient's residence for at least 90 days;
- ! the lien is satisfied by foreclosure or other settlement action in lieu of foreclosure;

- ! the lien consumes the value of the property (if the lien consumes the value of the property, the Secretary of SRS may compel the sale of the property);
- ! the lien is terminated by foreclosure or settlement action take in lieu of foreclosure of a prior lien;
- ! if no action is filed to foreclose on the lien by the Secretary within 10 years of the date of the filing of the lien, SRS would be required to report to the Kansas Legislature the amount expended for medical assistance, the amount recovered through the estate recovery program, and recommendations.

Nutrition Assistants

House Substitute for SB 272 also authorizes the use of paid nutrition assistants in long-term care facilities.

The bill amends KSA 39-923(a) to include the definition of "Paid nutrition assistant" to the adult care home licensure statute. As defined in this act a "Paid nutrition assistant" is a person paid to feed residents

of an adult care home or a person used under an arrangement with another agency or organization. The individual must be trained by a person meeting nurse aide instructor qualifications as defined in federal regulations. In addition, this person performs their duties under the supervision of a registered professional or licensed practical nurse.

Amends KSA 39-936(c)(1) and (2) regarding unlicensed employees to specify the training required for such assistants.

Conference Committee Action

The Conference Committee agreed to the House amendments to the bill with the following exceptions:

- ! Adding language that would allow the lien to be satisfied by other settlement action in lieu of foreclosure.
- ! Adding language authorizing the use of paid nutrition assistants in long-term care facilities.

Background

The Chairman of the Senate President's Task Force on Medicaid Reform and a representative of SRS testified in support of the bill. They testified that SB 272 addresses recommendations made by the President's Task Force on Medicaid Reform. In addition, they stated that the bill is designed to help discourage asset sheltering with intent to qualify for Medicaid coverage of long-term care. The Heartland Community Banker's Association and the Kansas Banker's Association expressed some concerns with the bill and requested an amendment that would make the lien subject to standard mortgage practices.

The bill was amended by the Committee to include a reporting requirement to the Kansas Legislature, decrease the lien threshold from 12 to 6 months, and insure that liens imposed by SRS were subject to standard mortgage practices.

The House Appropriations Committee replaced the contents of SB 272 with portions of HB 2067, which would have established a statewide independent living council and was amended by the Senate Committee of the Whole to include estate recovery provisions. Those provisions make up the portion of HB 2067 amended into SB 272.