

CHAPTER NO. 639

SENATE BILL NO. 3067

By Kyle

Substituted for: House Bill No. 3393

By McMillan

AN ACT to amend Tennessee Code Annotated, Title 30 and Title 71, Chapter 5, relative to claims against estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-2-301(b), is amended by adding the following language as a new, appropriately designated subdivision:

(5) Within the sixty (60) day period, the personal representative shall execute and file with the clerk of the court an affidavit that the Bureau of TennCare has been notified of the decedent's death pursuant to § 71-5-116.

SECTION 2. Tennessee Code Annotated, Section 30-2-317(a)(3), is amended by deleting the current language in its entirety and by substituting instead the following:

(3) Third: Taxes and assessments imposed by the federal or any state government or subdivision thereof, including claims by the Bureau of TennCare pursuant to § 71-5-116.

SECTION 3. Tennessee Code Annotated, Section 71-5-116, is amended by deleting the current language in its entirety and by substituting instead the following new language:

§ 71-5-116.

(a) No applicant shall be required to execute an agreement for a lien on real property occupied as such applicant's residence on account of medical assistance paid or to be paid on such applicant's behalf pursuant to this part.

(b) No lien may be imposed against the real property of any recipient prior to such individual's death on account of medical assistance paid or to be paid on such recipient's behalf pursuant to this part, except pursuant to a court judgment for recovery of benefits incorrectly paid on behalf of such recipient.

(c)(1) There shall be no adjustment or recovery of any payment for medical assistance correctly paid on behalf of any recipient pursuant to this part from such recipient's estate, except in the case of a recipient who was fifty-five (55) years of age or older at the time the recipient received medical assistance or services pursuant to this part. In such a case, adjustment or recovery from the recipient's estate may be pursued only after the death of such individual's surviving spouse, if any, and only at a time when such individual has no surviving child who is under eighteen (18) years of age or no surviving child, as defined in

§ 1614 of the Social Security Act, who is blind or permanently and totally disabled or a child who became blind or permanently and totally disabled after reaching majority if the TennCare Bureau and the personal representative agree or, in the event of a disagreement, the court, after de novo review, finds that such repayment would constitute an undue hardship to such blind or disabled child.

(2) Before any probate estate may be closed pursuant to Title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the Bureau of TennCare evidencing either:

(A) Payment of all medical assistance benefits, premiums, or other such costs due from the estate under law;

(B) Waiver of the bureau's claims; or

(C) A statement from the bureau that no amount is due.

(d) To facilitate and enhance compliance with subsection (c), the following notices shall be provided:

(1) Within thirty (30) days of receipt of notice of a person's death, the Department of Health shall notify the Bureau of TennCare, in a format to be specified by the bureau, of the death of any individual fifty-five (55) years of age or older. Each such notification shall include the decedent's name, date of birth and Social Security number;

(2) Within sixty (60) days of the date of issuance of either letters of administration or letters testamentary, the personal representatives of decedents shall provide notice of the death of any individual age fifty-five (55) years of age or older to the Bureau of TennCare, in a format to be specified by the bureau, shall state whether the decedent was a TennCare recipient and shall request a release from the Bureau of TennCare pursuant to § 71-5-116(c)(2), and an affidavit confirming such notice shall be filed pursuant to § 30-2-301(b)(3);

(3) Personal representatives of decedents shall provide notice to the court concerning whether or not the decedent was a TennCare recipient pursuant to § 30-1-117; and

(4) Personal representatives of decedents shall provide the notice to creditors specified in § 30-2-306 to the Bureau of TennCare if the decedent was a TennCare recipient. If a notice to creditors is provided to the bureau, the bureau shall file a claim for recovery in accordance with the requirements of Title 30, Chapter 2, Part 3.

It is the legislative intent of this subsection (d) that, after the date of death, the Bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent during the decedent's lifetime.

(e) The Bureau of TennCare shall publish a form of notice to be used pursuant to subdivisions (d)(1) and (d)(2), with instructions for use of the form written in plain language. Such form and instructions shall be available at the office of any clerk of a court exercising probate jurisdiction as well as available on the bureau's web site. Notice shall be provided via certified mail or in such other manner as designated by the bureau.

(f) Recoveries pursuant to this section shall be prorated among the federal government, the state, and the county involved, if any, in proportion to the amounts that each contributed to the assistance and services.

SECTION 4. This act shall take effect January 1, 2007, the public welfare requiring it.

PASSED: May 1, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 12th day of May 2006


PHIL BREDESEN, GOVERNOR