Bill as Introduced

SB 311- AS INTRODUCED

2000 SESSION

00-2683
05/01

SENATE BILL ***311***

AN ACT relative to the recovery of public assistance.

SPONSORS: Sen. J. King, Dist 18

COMMITTEE: Public Institutions, Health and Human Services

ANALYSIS

This bill clarifies the procedure for the placement of liens and the recovery of certain categories of public assistance provided by the department of health and human services.

This bill is a request of the department of health and human services.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

00-2683
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to the recovery of public assistance.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Responsibility for Public Medical Assistance. Amend RSA 167:3-b to read as follows:

167:3-b Responsibility for Public Medical Assistance. The provisions of RSA 167:2, 3 and 3-a, do not apply to the administration of medical assistance[~~, except with respect to the spouse of the individual who needs medical care or services, or the parent of such individual, if said individual is under 21 or is either blind or permanently and totally disabled~~].

2 New Paragraph; Definitions. Amend RSA 167:6 by inserting after paragraph VII the following new paragraph:

VIII. For purposes hereof, the terms "spouse" and "surviving spouse" shall include anyone currently legally married to a recipient, or who was legally married to a recipient at the time of the recipient's death, and shall not include those to whom a legal separation has been granted by a court of competent jurisdiction.

3 Recovery of Assistance Furnished. RSA 167:13 is repealed and reenacted to read as follows:

167:13 Recovery of Assistance Furnished.

I. If at any time during the continuance of assistance, the recipient or the husband or wife of the recipient becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient within 10 calendar days to notify the commissioner of the department of health and human services of the receipt or possession of such property or income.

II. On the death of a recipient of medical assistance, old age assistance or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the charges in the priority set forth in RSA 554:19. No claim shall be imposed against the real estate of a recipient while it is lawfully occupied as a home by a surviving spouse.

III. The department may waive adjustment or recovery in cases in which:

(a) It is not cost-effective to recover from an individual's estate; or

(b) Recovery would result in an undue hardship as determined in accordance with rules adopted pursuant to RSA 541-A.

IV. The federal government shall be entitled, as long as required as a condition to federal financial participation, to such proportion of the net amount collected from the estate of a recipient of medical assistance, old age assistance or aid to the permanently and totally disabled as the federal participation bears to the total amount of assistance granted said recipient.

4 Claims and Liens; Restricted to Recipient's Assets. Amend RSA 167:14 to read as follows:

167:14 Claims and Liens. The estate of every recipient[~~, and the estate of a recipient's spouse, if any, owned severally or as joint tenants,~~] shall be liable for all assistance granted to the recipient[~~, provided, however, that the estate of a recipient's spouse shall be liable only for such assistance as was granted to the recipient during the time that the recipient and the recipient's spouse were neither legally separated nor divorced~~]. All such liens shall continue during the lifetime of the recipient [~~and of the spouse of the recipient, if any,~~] and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. [~~Within 30 days after the first grant of assistance to a recipient,~~] The commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient[~~, or the spouse of the recipient, if any,~~] owns real property, notice of the lien, together with the name of the recipient[~~, and the spouse of the recipient, if any~~]. The register of deeds shall keep a suitable record of such notices without charging any fee therefor and enter on the record an acknowledgment of satisfaction upon written request from the commissioner of the department of health and human services.

5 Enforcement of Assistance Liens; Restricted to Recipient Assets. Amend RSA 167:16, I-III to read as follows:

I. Assistance liens arising under this chapter or RSA 161 may be enforced by a bill in equity, or, in the case of liens against real estate which have been duly filed under RSA 167:14, by filing a timely and verified notice of lien with the probate court with jurisdiction over the estate of the recipient [~~or recipient spouse~~] and mailing a copy of said notice and a verified claim for recovery of assistance payments to the administrator of the estate.

II. The commissioner may enforce the liquidated amount of an assistance lien against real estate by filing a timely and verified notice with the probate court and submitting a timely and verified claim against the estate of the recipient[~~, or recipient spouse,~~] which sets forth the dates and amounts of assistance paid. Such claims shall be timely if filed within 6 months from the initial grant of administration for the estate in question.

III. ***Notwithstanding RSA 556:5 and any other provision of law to the contrary,*** the administrator of a recipient's estate[~~, or the estate of a recipient's spouse,~~] shall be conclusively presumed to have accepted a claim for recovery of assistance which is [~~the subject of a lien against real estate~~] subject to the jurisdiction of the probate court unless, within 12 months from the initial grant of administration, the administrator commences an equitable action in the superior court challenging the validity or amount of the commissioner's claim and lien.

6 Limitations on Recovery of Assistance. RSA 167:16-a, IV is repealed and reenacted to read as follows:

IV. Notwithstanding any provision of law to the contrary, there shall be no adjustment or recovery of medical assistance correctly paid on behalf of such an individual, except from the estate of an individual who was 55 years of age or older when the individual received such assistance, and then only after the death of the surviving spouse, if any, and only at a time when:

(a) The individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled.

(b) In the case of a lien on an individual's home under subparagraph I(b):

(1) There is no sibling of the individual who has continuously and lawfully resided in the individual's home for a period beginning at least one year immediately before the date of the individual's admission to the medical institution, nursing facility or intermediate care facility for the mentally retarded through the present; or

(2) There is no son or daughter of the individual who has continuously resided in the individual's home for a period beginning at least 2 years immediately before the date of the individual's admission to the medical institution, nursing facility, or intermediate care facility for the mentally retarded and who establishes that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution and who is lawfully residing in such home and has done so on a continuous basis since the date of the individual's admission.

7 Effective Date. This act shall take effect January 1, 2001.

Amendments

Sen. Gordon, Dist. 2
March 15, 2000
2000-3792s
05/09

Amendment to SB 311

Amend the bill by replacing sections 3 and 4 with the following:

3 Recovery for Assistance Furnished. Amend RSA 167:13 to read as follows:

167:13 Recovery for Assistance Furnished.

*I. **Except as provided in paragraph II,*** if at any time during the continuance of assistance, the recipient or the husband or wife of the recipient becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient within 10 calendar days to notify the commissioner of the department of health and human services of the receipt or possession of such property or income. On the death of a recipient of old age assistance or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the charges in the priority set forth in RSA 554:19. No claim shall be imposed against the real estate of a recipient of old age assistance or aid to the permanently and totally disabled while it is occupied as a home by a surviving spouse, or against any personal property of less than $100 in value. The federal government shall be entitled, as long as required as a condition to federal financial participation, to such proportion of the net amount collected from the estate of a recipient of old age assistance or aid to the permanently and totally disabled as the federal participation bears to the total amount of assistance granted said recipient.

II. Notwithstanding paragraph I, for medical old age assistance, no resources of the community spouse shall be deemed available to the institutionalized spouse during the continuous period in which an institutionalized spouse is in an institution, and after the month in which an institutionalized spouse is determined to be eligible for medical assistance benefits.

4 Claims and Liens. RSA 167:14 is repealed and reenacted to read as follows:

I. The estate of every recipient and the estate of a recipient's spouse, if any, owned severally or as joint tenants, shall be liable for all financial old age assistance or aid to the permanently disabled granted to the recipient; provided, however, that the estate of a recipient's spouse shall be liable only for such financial assistance as was granted to the recipient during the time that the recipient and the recipient's spouse were neither legally separated nor divorced. After providing all owners of the real property with prior notice and an opportunity for a hearing, the commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient, or the spouse of the recipient, if any, owns real property, notice of the lien. Such

notice of lien shall contain the names of the recipient and the recipient's spouse, if any. All such liens shall continue during the lifetime of the recipient and of the spouse of the recipient, if any, and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. The register of deeds shall keep a suitable record of such notices of lien without charging any fee therefore and enter on the record an acknowledgment of satisfaction or release upon written request from the commissioner of the department of health and human services.

II. Subject to RSA 167:16-a, the estate of every recipient shall be liable for all medical assistance granted to the recipient, and the commissioner of the department of health and human services shall file a claim for recovery against the recipient's estate. No notice of lien may be filed against real property with respect to medical assistance except in conformance with RSA 167:16-a.

2000-3792s

AMENDED ANALYSIS

This bill clarifies the procedure for the placement of liens and the recovery of certain categories of public assistance provided by the department of health and human services.

Public Institutions, Health and Human Services
March 17, 2000
2000-3851s
05/09

Amendment to SB 311

Amend the bill by replacing sections 3 and 4 with the following:

3 Recovery for Assistance Furnished. Amend RSA 167:13 to read as follows:

167:13 Recovery for Assistance Furnished.

I. Except as provided in paragraph II, if at any time during the continuance of assistance, the recipient or the husband or wife of the recipient becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient within 10 calendar days to notify the commissioner of the department of health and human services of the receipt or possession of such property or income. On the death of a recipient of [~~old age~~] assistance or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the charges in the priority set forth in RSA 554:19. No claim shall be imposed against the real estate of a recipient of old age assistance or aid to the permanently and totally disabled while it is occupied as a home by a surviving spouse, or against any personal property of less than $100 in value. The federal government shall be entitled, as long as required as a condition to federal financial participation, to such proportion of the net amount collected from the estate of a recipient of old age assistance or aid to the permanently and totally disabled as the federal participation bears to the total amount of assistance granted said recipient.

II. Notwithstanding paragraph I, for medical assistance, no resources of the community spouse shall be deemed available to the institutionalized spouse during the continuous period in which an institutionalized spouse is in an institution, and after the month in which an institutionalized spouse is determined to be eligible for medical assistance benefits.

III. The department may waive adjustment or recovery in cases in which:

(a) It is not cost-effective to recover from an individual's estate; or

(b) Recovery would result in an undue hardship as determined in accordance with rules adopted pursuant to RSA 541-A.

4 Claims and Liens. RSA 167:14 is repealed and reenacted to read as follows:

I. The estate of every recipient and the estate of a recipient's spouse, if any, owned severally or as joint tenants, shall be liable for all financial old age assistance or aid to the permanently disabled granted to the recipient; provided, however, that the estate of a recipient's spouse shall be liable only for such financial assistance as was granted to the recipient during the time that the

recipient and the recipient's spouse were neither legally separated nor divorced. After providing all owners of the real property with prior notice and an opportunity for a hearing, the commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient, or the spouse of the recipient, if any, owns real property, notice of the lien. Such notice of lien shall contain the names of the recipient and the recipient's spouse, if any. All such liens shall continue during the lifetime of the recipient and of the spouse of the recipient, if any, and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. The register of deeds shall keep a suitable record of such notices of lien without charging any fee therefore and enter on the record an acknowledgment of satisfaction or release upon written request from the commissioner of the department of health and human services.

II. Subject to RSA 167:16-a, the estate of every recipient shall be liable for all medical assistance granted to the recipient, and the commissioner of the department of health and human services shall file a claim for recovery against the recipient's estate. No notice of lien may be filed against real property with respect to medical assistance except in conformance with RSA 167:16-a.

2000-3851s

AMENDED ANALYSIS

This bill clarifies the procedure for the placement of liens and the recovery of certain categories of public assistance provided by the department of health and human services.

Committee Minutes

Date: February 2, 2000
Time: 10:00 AM
Room: LOB 102

The Senate Committee on Public Institutions/Health Human Services held a hearing on the following:

SB 311 relative to the recovery of public assistance.

Members of Committee present: Senator Squires
Senator Gordon

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The Chair, Senator James Squires, opened the hearing.

Senator John A. King, D. 18: Written testimony handed in and read. **See Attachment A and B.**

Senator James W. Squires, D. 12: Thank you. Frank Nachman.

Frank Nachman, Department of Health and Human Services: Thank you Senator. For the record my name is Frank Nachman. I'm the Chief Legal Council for the Department of Health and Human Services and as Senator King indicated this bill was brought at the request of the Department in response to a lawsuit, Desfosses vs. Shumway, which had to do with medical assistance dollars being recovered by the Department, the process procedures the Department was using and essentially as a result of that lawsuit and a settlement agreement the Department is no longer going to file liens against real property of the recipient when there's a surviving spouse residing in the home, not cover the medical expenses during the lifetime of the spouse of the recipient and not recover from the estate of the spouse of the Medicaid recipient. These are essentially the points of the Desfosses lawsuit.

Mr. Nachman begins going through Attachment B in detail.

Senator James W. Squires, D. 12: Mr. Nachman. Could you, in a nutshell, tell me what the issues that prompted the original lawsuit which you are referring? What was the Department doing that brought about this lawsuit and hence the bill?

Mr. Nachman: The Department was placing liens on property that was owned jointly and that's contrary to federal law. It was also, the state law was unclear but there was a provision that allowed recovery against the surviving spouse of

the recipient for medical assistance. That's prohibited by federal law and that was the basis of the lawsuit essentially. That was settled. There's a settlement agreement in Desfosses vs. Shumway which requires the state to do certain things and that's to change those procedures so they no longer place liens on any property where there's a spouse. The state no longer collects for medical assistance against the estate of the spouse of the recipient. It's limited to the estate of the recipient themselves. That's, I guess in a nutshell, what the lawsuit's about.

Senator James W. Squires, D. 12: Thank you. Jonathan from NH Legal Assistance.

Jonathan Baird, NH Legal Assistance: Senators, my name is Jonathan Baird. I am an attorney at NH Legal Assistance and also the lobbyist for Legal Assistance. Although I checked off on the form that I was speaking in support of the bill I wasn't sure exactly the category that I wanted to speak to wasn't really on the form because it's really not in support or in opposition. I haven't seen the amendment that was issued by the Department yet, it was more that we had concerns about the bill in the original form because we wanted to make sure that it was consisted with the settlement of the Desfosses lawsuit. I thought one thing that might be helpful is I brought along a copy of an article that appeared in the Concord Monitor that pretty much explained some of the issues in the case and I thought it might be helpful for the Committee to have that. **See Attachment C.**

I would really rather reserve comments. We certainly would be very interested in working with the Committee to make sure that the final language in the bill was really consistent with the settlement agreement. At this point I don't think I have too much that would be that pertinent to the bill because I haven't seen the amendment that has been issued. I think one of the things that we were concerned about in particular that I'm not sure that Attorney Nachman addressed was that the settlement made it clear the State would not file liens against houses if the owner had a spouse or a third-party owner with an interest in the real estate. I hadn't read in the original bill that that was clarified so that would not be required. I don't really want to say too much more since I haven't seen the amendment. Here is the Concord Monitor article and I'd be happy to answer any questions.

Senator Edward M. Gordon, D. 2: It would just be a comment in the form of a "would you believe" question that would you believe, Jonathan, that as you may or may not know I practice elder law, estate claims for the most part. This is before I was a legislator. This is one of my first experiences where I could see where government, well intended, believing that it had a responsibility to collect these funds, basically decided to go ahead and do it even though in my opinion

they knew or should have known they were violating a law. It was one of the most irresponsible acts I ever saw and it showed me and I've had plenty of opportunity to see any number of instances that occur today where our state decides, because it's adopted a policy it really doesn't care what the law is as unfortunate as that may be and I'm certainly going to support the bill to the extent that it's consistent with the Court opinion and believe that this is the type of abuse of power that frustrates the citizens of this state when the state goes out and actually subverts the law in order to carry out a purpose, which it may believe is proper and may in the long run be proper if it was adopted in other form and puts its resources and the resources of the Attorney General's Office to do it. It's just a frustrating exercise for me. That's my would you believe.

Attorney Baird: One thing I would say about the Concord Monitor article is it does a good job of sort of outlining the sort of human dimension of the situation and that one of the terms of the settlement is that the Department has to pay reparations to the people who had liens attached improperly.

Senator James W. Squires, D. 12: Jonathan, obviously you'll take a copy of the amendment, how much time do you need to look at it and view it and probably which you could send us a letter of your opinion? Does this, I assume you're a little familiar with the settlement, so what we need to know is, in your opinion, does this meet the requirements set forth in the settlement? Two weeks? A week?

Attorney Baird: Well, two weeks at the outside. I'd like to speak to the counsel in the case and share the amendment and sort of...

Senator James W. Squires, D. 12: What I'm trying to do is figure out when we could exec this bill. I wouldn't mind execing it when we've heard from you but we can't leave it unamended for a long time so if we could agree that we will not exec it for two weeks, is that enough time?

Attorney Baird: Yes. Absolutely.

Senator James W. Squires, D. 12: Then that will be fine. Any other person wish to testify on Senate bill 311? Seeing none I will close the hearing.

Hearing closed at 10:15 pm.

Respectfully submitted,

Merideth Chandler,
Committee Secretary

Attachment A

SB 311

Relative to the recovery of public assistance

Thank you Mr. Chairman. For the record, my name is Senator John King and I represent District 18.

- This bill was introduced at the request of the Department of Health and Human Services

- The bill is an effort to correct the methods used by DHHS in its recovery of Medicaid payments and attempts to:
  - Bring the state law into compliance with the federal law
  - Bring state law into compliance with the Settlement Agreement under the Class Action lawsuit Desfosses v. DHHS

Has an amendment

- Frank Nachman is here from DHHS to explain this bill further.

Attachment B

AN ACT relative to the recovery of public assistance

SPONSORS: Sen. John King, Dist 18

COMMITTEE: Public Institutions, Health and Human Services

ANALYSIS

This bill amends current law by clarifying the process and procedure for the placement of liens and the recovery of certain categories of public assistance provided by the department of health and human services

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Explanation: Matter added to current law appears in **bold italics.**
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE
In the Year of Our Lord Two Thousand

AN ACT relative to the recovery of public assistance

Be it Enacted by the Senate and the House of Representatives in the General Court convened:

1. Responsibility for Public Medical Assistance. Amend 167:3-b to read as follows:

167:3-b Responsibility for Public Medical Assistance. The provisions of RSA 167:2, 3 and 3-a, do not apply to the administration of medical assistance. [~~except with respect to the spouse of the individual who needs medical care or services, or the parent of such individual, if said individual is under 21 or is either blind or permanently and totally disabled~~.]

2. Definitions. New paragraph. Amend RSA 167:6 by inserting after paragraph VII the following new paragraph:

VIII. For purposes hereof, the terms "spouse" and "surviving spouse" shall include anyone currently legally married to a recipient, or who was legally married to a recipient at the time of the recipient's death, and shall not include those to whom a legal separation has been granted by a court of competent jurisdiction.

3. Claims and Liens. Repeal and reenact 167:14 to read as follows:

167:14 Claims and Liens.

I. The estate of every recipient and, the estate of a recipient's spouse, if any, owned severally or as joint tenants, shall be liable for all old age assistance or aid to the permanently disabled granted to the recipient, provided, however, that the estate of a recipient's spouse shall be liable only for such assistance as was granted to the recipient during the time that the recipient and the recipient's spouse were neither legally separated nor divorced. All such liens shall continue during the lifetime of the recipient and of the spouse of the recipient, if any, and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. The commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient, or the spouse of the recipient, if any, owns real property, notice of the lien, together with the name of the recipient and the spouse of the recipient, if any. The register of deeds shall keep a suitable record of such notices without charging any fee therefore and enter on the record an acknowledgment of satisfaction upon written request from the commissioner of the department of health and human services.

II. Subject to the RSA 167:16-a, the estate of every recipient shall be liable for all medical assistance granted to the recipient. All such liens shall continue during the lifetime of the recipient until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. The commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient owns real property, notice of the lien, together with the name of the recipient. The register of deeds shall keep a suitable record of such notices without charging any fee therefore and enter on the record an acknowledgment of satisfaction upon written request from the commissioner of the department of health and human services.

4. Recovery of Assistance. New paragraph. Amend RSA 167:14-a by adding the following new paragraph after Paragraph V.

VI. The commissioner may, in accordance with rules adopted pursuant to RSA 541-A, waive adjustment or recovery in cases in which:

(a) It is not cost effective to recover from an individual's estate; or

(b) Recovery would result in an undue hardship.

5. Enforcement of Assistance Liens. Amend RSA 167:16, I, II and III to read as follows:

I. Assistance liens arising under this chapter or RSA 161 may be enforced by a bill in equity, or, in the case of liens against real estate which have been duly filed under RSA 167:14, by filing a timely and verified notice of lien with the probate court with

jurisdiction over the estate of the recipient or, **except in the case of medical assistance, the estate of the** recipient spouse, and mailing a copy of said notice and a verified claim for recovery of assistance payments to the administrator of the estate.

II. The commissioner may enforce the liquidated amount of an assistance lien against real estate by filing a timely and verified notice with the probate court and submitting a timely and verified claim against the estate of the recipient or, **except in the case of medical assistance, the estate of the** recipient spouse, which sets forth the dates and amounts of assistance paid. Such claims shall be timely if filed within 6 months from the initial grant of administration for the estate in question.

III. **Notwithstanding RSA 556:5 and any other provision of law to the contrary,** [~~T~~] the administrator of a recipient's estate or, **except in the case of medical assistance,** the estate of a recipient's spouse shall be conclusively presumed to have accepted a claim for recovery of assistance which is [~~the subject of a lien against real estate~~] subject to the jurisdiction of the probate court unless, within 12 months from the initial grant of administration, the administrator commences an equitable action in the superior court challenging the validity or amount of the commissioner's claim and lien.

6. Limitations on Recovery of Assistance. RSA 167:16-a, IV is repealed and reenacted to read as follows:

167:16-a Limitations on Liens, Adjustments and Recoveries of **Medical** Assistance.

IV. There shall be no adjustment or recovery of medical assistance correctly paid on behalf of an individual, except:

(a) In the case of an individual described in subparagraph I (b), the commissioner shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual; or

(b) From the estate of an individual who was 55 years of age or older when the individual received such medical assistance.

(c) Any adjustment or recovery under subparagraph IV may be made only after the death of the individual's surviving spouse, if any, and only at a time:

(1) When the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled, and;

(2) In the case of a lien on an individual's home under subparagraph I (b):

(i) There is no sibling of the individual who has continuously and lawfully resided in the individual's home for a period beginning at least one year immediately before the date of the individual's admission to the medical institution, nursing facility, or intermediate care facility for the mentally retarded through the present, and

(ii) There is no son or daughter of the individual who has continuously resided in the individual's home for a period beginning at least 2 years immediately before the date of the individual's admission to the medical institution, nursing facility, or intermediate care facility for the mentally retarded, and who establishes that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution, and who is lawfully residing in such home and has done so on a continuous basis since the date of the individual's admission.

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– *James Vazeis*

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Medicaid recipients' families get reparations

State must change ways after class-action lawsuit

▶ The state is expected to return up to $1 million to more than 400 people.

By STEVE VARNUM
Monitor staff

For 10 years Allina O'Rourke could do nothing as the house she grew up in, the house her father was born in, the house she owned, crumbled around her and her six children.

Rain dripped through a kitchen light fixture into two large pots. Windows were "insulated" against the cold with plastic and duct tape. Huge chunks of horsehair plaster were missing. Some rooms had no electricity. Some had no heat. Board-and-brick shelves served as kitchen cabinets.

O'Rourke had scratched and scrimped and borrowed from family and friends just to hang on to the Salem homestead. Repairs were a distant dream. No bank would loan her money because the state held a $35,000 lien on the house as partial repayment to its Medicaid program for her grandmother's care at the Rockingham County rest home.

Now O'Rourke held a letter that said New Hampshire was releasing her from the lien.

"The day they told me the house belonged to the state I nearly sat down and cried. That was my life savings."

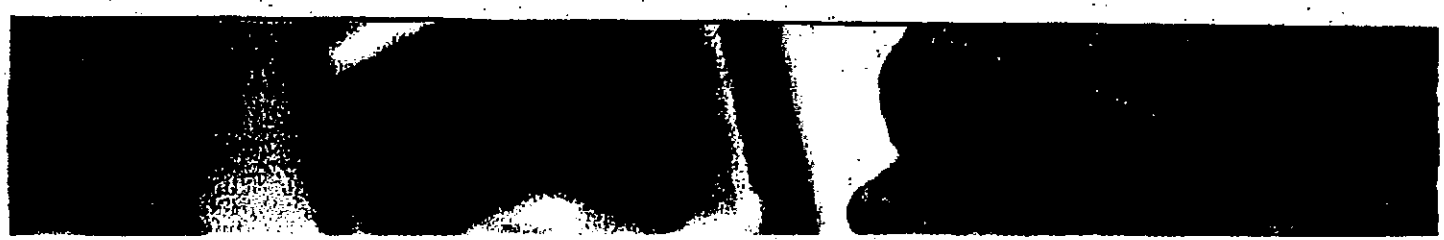
– John Hallam, 83, of Alton

"I bawled my eyes out," she said.

For years New Hampshire routinely recovered the costs of nursing home or in-home care by attaching the homes or estates of the spouses and heirs of

■ See MEDICAID – Page B-7

Could it get any colder?



MEDICAID

Continued from Page B-1

deceased Medicaid recipients.

In many cases it succeeded in collecting the money. In many cases, it also succeeded in taking everything elderly couples had earned during their lifetimes.

Now the state is releasing close to a thousand liens, canceling dozens of promissory notes and mortgage deeds, and releasing thousands of dollars it forced people to place in annuities. Those people the state improperly collected money from beginning in June 1992 can get it back, with interest.

As a result of a class-action lawsuit settlement last September, the Department of Health and Human Services last week mailed claim forms to about 435 people, informing them of their right to file claims. It is also running legal notices in newspapers statewide. Health and Human Services Assistant Commissioner John Wallace expects the state to return up to $1 million to families.

The lawsuit brought by New Hampshire Legal Assistance forced the state to abandon several of the ways it recovered Medicaid costs from patients and their families. It can no longer attach the assets of a spouse or anyone other than the Medicaid recipient for that patient's care. It must also inform families of their right to seek a waiver when attaching the patient's property or assets would create a hardship.

O'Rourke said the state's attachment of her century-old house drove her into bankruptcy and nearly drove her and her family out of the home. They beat a foreclosure only by the generosity of family, church and friends.

"It was pretty disheartening to have been swindled like that," she said.

Newfound freedom

John Hallam is getting a new set of teeth.

The 83-year-old Alton resident is going to replace his 50-year-old dentures that are worn nearly to the gums in places. Then he's considering a bed that's easier to get in and out of (he has had an ankle and hip replaced) and maybe an electric scooter or wheelchair to help him get around.

Hallam knew nothing about a lawsuit until his name appeared on a list that Legal Assistance attorney Ann Butenhof received after the settlement. Butenhof said a state worker told her Hallam was satisfied with the situation. She doubted that and wrote to him.

She explained he was owed the nearly $68,000 the state held from a house he sold in 1996, plus a small amount of interest.

Hallam remembers well the day he sold his Nashua home. The sale price was $80,000. He got a check for $1,000 for moving expenses.

He had worked all his life as a truck driver and a security guard and had paid off the house more than 10 years earlier. When his wife was disabled by diabetes, which eventually claimed her left leg, he quit work to care for her at home.

"She talked to me, she cried to me and made me promise not to put her in a nursing home," Hallam said. "I promised her that."

He went through his life's savings paying for nurses, medication and special equipment like a hydraulic lift to get her in and out of bed. Within three years the envelope of cash he hid behind a sink stand was empty, and he applied for Medicaid.

Although he was sole owner of their home, he said he was told he'd owe the state up to half its value as reimbursement for her care. Later, he said, he was told the state would attach the entire value of the home.

His wife of 60 years died in October 1994. The state attached a lien for the full value of the house two months later. He was broke. He felt he'd lost everything.

"The day they told me the house belonged to the state I nearly sat down and cried. That was my life savings," he said.

Hallam married his high school sweetheart in 1996, sold his house and moved in with her. He thought that was the end of it.

He was more fortunate than most who had homes and estates attached for Medicaid payment. The state's share of the house sale was placed in an annuity it would cash in when Hallam died. He got about $300 a month interest, not as much as he could have earned with his own investment, and nothing like having control of the money, but at least it was something.

Now, $68,000 spells security, and more peace of mind than Hallam has known for a while. He can consider replacing their trailer-sized bathtub with one he can fit into, and maybe even a trip to Nova Scotia. When he's hobbled to where he needs the kind of equipment his wife did, he'll be able to afford it.

"It gives you a funny feeling to work all your life and have your home paid for. You figure you're going to be all set," he said. "To have that thrown in your face, that hurt."

'It was devastating'

Of the six original plaintiffs in what became known as the "widow's lawsuit," two have died, another is in a nursing home and no longer competent, one lives in Florida and two are still in New Hampshire.

The main beneficiaries of the settlement will be the children and heirs of those spouses whose property and estates were improperly attached.

One is Jean Tremblay of Merrimack, whose father passed away in July at age 99.

"He felt very bad he couldn't leave any money to his family after he died, but he felt it was his obligation to pay the state back whatever he could" for his wife's nursing home care, said Tremblay.

So his father didn't contest it when the state placed a lien on his home after his wife's death. When he sold the house in 1996, the state took nearly all of it. There wasn't even enough money left in his estate to bury him.

Butenhof said that experience is typical of the families represented by the lawsuit. "I have not met . . . anyone from the upper class, or even the upper middle class. These are working class folks for the most part, and some really, really, really struggle," she said. Many who signed the Medicaid agreement felt they were letting their families down.

For those families, she said, the decision to place a spouse or parent in a nursing home was difficult. Even more difficult were the realizations that they couldn't afford the care they needed, and that they had to apply for welfare to get it.

"What would happen was as soon as the Medicaid recipient died, which is hard news, they'd be notified almost immediately that a lien was placed on their property. It was devastating to these people. . . . It was like having your property taken from you."

Only after workers in the state's estate recoveries office have finished the painstaking work of examining file after paper file to examine the agreements, then trying to notify families, will anyone know how many were affected.

Butenhof said the program held about 950 liens on property as of mid-1997, most of which have already been released. She said the state has withdrawn claims against the estates of about two dozen living spouses, and released about 20 more mortgage liens and promissory notes. Another five people had money placed in a court registry system or, like Hallam, in annuities.

She said the state collected just over a million dollars from the estates of surviving spouses between July 1994 and February 1998, a figure suggesting Wallace's $1 million payback estimate might be conservative.

Regardless of the final figure, Butenhof figures the impact on the people covered by the lawsuit to be enormous.

"This group of people was deprived of even the decision to buy new teeth," she said. "That's amazing."

(Steve Vamum can be reached at 224-5301, ext. 314, or by e-mail at svamum@amonitor.com.)

One of the nicest things about [illegible]

Speakers

SENATE PI-HHS COMMITTEE

Date 2/2/00 Time 9:25 PM Public Hearing on SB 311

Appearing in FAVOR: (Please print) **Please check box at left to speak.**

Speaking?	Name	Address	Representing
☐	[redacted]	[redacted]	[redacted]
☒ ✓	Jonathan Baird	408 Hoody Bldg. Claremont NH	NH Legal Assistance
☒ ✓	Frank Nachman	129 Pleasant Street Concord	DHHS
☒ ✓	Sen. John Kurig	Prime Sponsor	
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Appearing in OPPOSITION (Please Print) **Please check box at left to speak.**

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Committee Report

Date: February 2, 2000 Time: 10:00 AM

The Senate Committee on Public Institutions/Health Human Services held its hearing in Room 102, LOB, Concord, New Hampshire.

BILL NO.: SB 311 TITLE: relative to the recovery of public assistance.

Members of the Committee present: Senator Squires
Senator Gordon

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☒ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: MARCH 15, 2000

THE COMMITTEE ON Public Institutions/Health Human Services

to which was referred Senate Bill 311

AN ACT relative to the recovery of public assistance.

VOTE: 7-0

2000-3851s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Edward M. Gordon
For the Committee