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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE NO. **771**

February 12, 2009

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

1.1 A bill for an act  
1.2 relating to medical assistance estate recovery; regulating recovery from estates  
1.3 of cohabiting couples; amending Minnesota Statutes 2008, section 256B.15,  
1.4 subdivisions 1, 1a, 1c, 1h, 1i, 1j, 2, 3, 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 256B.15, subdivision 1, is amended to read:

1.7 Subdivision 1. **Policy and applicability.** (a) It is the policy of this state that  
1.8 individuals ~~or~~ couples, or cohabiting couples either or both of whom participate in the  
1.9 medical assistance program, use their own assets to pay their share of the total cost of their  
1.10 care during or after their enrollment in the program according to applicable federal law  
1.11 and the laws of this state. The following provisions apply:

1.12 (1) subdivisions 1c to 1k shall not apply to claims arising under this section which  
1.13 are presented under section 525.313;

1.14 (2) the provisions of subdivisions 1c to 1k expanding the interests included in an  
1.15 estate for purposes of recovery under this section give effect to the provisions of United  
1.16 States Code, title 42, section 1396p, governing recoveries, but do not give rise to any  
1.17 express or implied liens in favor of any other parties not named in these provisions;

1.18 (3) the continuation of a recipient's life estate or joint tenancy interest in real  
1.19 property after the recipient's death for the purpose of recovering medical assistance under  
1.20 this section modifies common law principles holding that these interests terminate on  
1.21 the death of the holder;

1.22 (4) all laws, rules, and regulations governing or involved with a recovery of medical  
1.23 assistance shall be liberally construed to accomplish their intended purposes;

2.1 (5) a deceased recipient's life estate and joint tenancy interests continued under this  
2.2 section shall be owned by the remaindermen or surviving joint tenants as their interests  
2.3 may appear on the date of the recipient's death. They shall not be merged into the  
2.4 remainder interest or the interests of the surviving joint tenants by reason of ownership.  
2.5 They shall be subject to the provisions of this section. Any conveyance, transfer, sale,  
2.6 assignment, or encumbrance by a remainderman, a surviving joint tenant, or their heirs,  
2.7 successors, and assigns shall be deemed to include all of their interest in the deceased  
2.8 recipient's life estate or joint tenancy interest continued under this section; and

2.9 (6) the provisions of subdivisions 1c to 1k continuing a recipient's joint tenancy  
2.10 interests in real property after the recipient's death do not apply to a homestead owned  
2.11 of record, on the date the recipient dies, by the recipient and the recipient's spouse or  
2.12 the recipient and the survivor of the cohabiting couple as joint tenants with a right of  
2.13 survivorship. Homestead means the real property occupied by the surviving joint tenant  
2.14 spouse or the survivor joint tenant of a cohabiting couple as their sole residence on  
2.15 the date the recipient dies and classified and taxed to the recipient and surviving joint  
2.16 tenant spouse or survivor joint tenant of a cohabiting couple as homestead property for  
2.17 property tax purposes in the calendar year in which the recipient dies. For purposes of  
2.18 this exemption, real property the recipient and their surviving joint tenant spouse or the  
2.19 survivor joint tenant of a cohabiting couple purchase solely with the proceeds from the sale  
2.20 of their prior homestead, own of record as joint tenants, and qualify as homestead property  
2.21 under section 273.124 in the calendar year in which the recipient dies and prior to the  
2.22 recipient's death shall be deemed to be real property classified and taxed to the recipient  
2.23 and their surviving joint tenant spouse or survivor joint tenant of a cohabiting couple as  
2.24 homestead property in the calendar year in which the recipient dies. The surviving spouse,  
2.25 the survivor of a cohabiting couple, or any person with personal knowledge of the facts,  
2.26 may provide an affidavit describing the homestead property affected by this clause and  
2.27 stating facts showing compliance with this clause. The affidavit shall be prima facie  
2.28 evidence of the facts it states.

2.29 (b) For purposes of this section, "medical assistance" includes the medical assistance  
2.30 program under this chapter and the general assistance medical care program under chapter  
2.31 256D and alternative care for nonmedical assistance recipients under section 256B.0913.

2.32 (c) All provisions in this subdivision, and subdivisions 1d, 1f, 1g, 1h, 1i, and 1j,  
2.33 related to the continuation of a recipient's life estate or joint tenancy interests in real  
2.34 property after the recipient's death for the purpose of recovering medical assistance, are  
2.35 effective only for life estates and joint tenancy interests established on or after August 1,  
2.36 2003. For purposes of this paragraph, medical assistance does not include alternative care.

3.1 (d) For purposes of this section, "cohabiting couple" means two unmarried adults  
 3.2 who have lived together in the homestead for at least five years, are not in a parent-child  
 3.3 relationship, and neither has accepted remuneration to enter into this living arrangement.

3.4 Sec. 2. Minnesota Statutes 2008, section 256B.15, subdivision 1a, is amended to read:

3.5 Subd. 1a. **Estates subject to claims.** If a person receives any medical assistance  
 3.6 hereunder, on the person's death, if single, ~~or~~ on the death of the survivor of a married  
 3.7 couple, or on the death of the survivor of a cohabiting couple, either or both of whom  
 3.8 received medical assistance, or as otherwise provided for in this section, the total amount  
 3.9 paid for medical assistance rendered for the person and spouse or for either partner of a  
 3.10 cohabiting couple shall be filed as a claim against the estate of the person or the estate of  
 3.11 the surviving spouse or the estate of the surviving partner of a cohabiting couple in the  
 3.12 court having jurisdiction to probate the estate or to issue a decree of descent according to  
 3.13 sections 525.31 to 525.313.

3.14 A claim shall be filed if medical assistance was rendered for either or both persons  
 3.15 under one of the following circumstances:

3.16 (a) the person was over 55 years of age, and received services under this chapter;

3.17 (b) the person resided in a medical institution for six months or longer, received  
 3.18 services under this chapter, and, at the time of institutionalization or application for  
 3.19 medical assistance, whichever is later, the person could not have reasonably been expected  
 3.20 to be discharged and returned home, as certified in writing by the person's treating  
 3.21 physician. For purposes of this section only, a "medical institution" means a skilled  
 3.22 nursing facility, intermediate care facility, intermediate care facility for persons with  
 3.23 developmental disabilities, nursing facility, or inpatient hospital; or

3.24 (c) the person received general assistance medical care services under chapter 256D.

3.25 The claim shall be considered an expense of the last illness of the decedent for  
 3.26 the purpose of section 524.3-805. Any statute of limitations that purports to limit any  
 3.27 county agency or the state agency, or both, to recover for medical assistance granted  
 3.28 hereunder shall not apply to any claim made hereunder for reimbursement for any medical  
 3.29 assistance granted hereunder. Notice of the claim shall be given to all heirs and devisees  
 3.30 of the decedent whose identity can be ascertained with reasonable diligence. The notice  
 3.31 must include procedures and instructions for making an application for a hardship waiver  
 3.32 under subdivision 5; time frames for submitting an application and determination; and  
 3.33 information regarding appeal rights and procedures. Counties are entitled to one-half  
 3.34 of the nonfederal share of medical assistance collections from estates that are directly

4.1 attributable to county effort. Counties are entitled to ten percent of the collections for  
4.2 alternative care directly attributable to county effort.

4.3 Sec. 3. Minnesota Statutes 2008, section 256B.15, subdivision 1c, is amended to read:

4.4 Subd. 1c. **Notice of potential claim.** (a) A state agency with a claim or potential  
4.5 claim under this section may file a notice of potential claim under this subdivision anytime  
4.6 before or within one year after a medical assistance recipient dies. The claimant shall be  
4.7 the state agency. A notice filed prior to the recipient's death shall not take effect and shall  
4.8 not be effective as notice until the recipient dies. A notice filed after a recipient dies  
4.9 shall be effective from the time of filing.

4.10 (b) The notice of claim shall be filed or recorded in the real estate records in the  
4.11 office of the county recorder or registrar of titles for each county in which any part of  
4.12 the property is located. The recorder shall accept the notice for recording or filing. The  
4.13 registrar of titles shall accept the notice for filing if the recipient has a recorded interest in  
4.14 the property. The registrar of titles shall not carry forward to a new certificate of title any  
4.15 notice filed more than one year from the date of the recipient's death.

4.16 (c) The notice must be dated, state the name of the claimant, the medical assistance  
4.17 recipient's name and Social Security number if filed before their death and their date of  
4.18 death if filed after they die, the name and date of death of any predeceased spouse or  
4.19 predeceased partner of a cohabiting couple of the medical assistance recipient for whom a  
4.20 claim may exist, a statement that the claimant may have a claim arising under this section,  
4.21 generally identify the recipient's interest in the property, contain a legal description for the  
4.22 property and whether it is abstract or registered property, a statement of when the notice  
4.23 becomes effective and the effect of the notice, be signed by an authorized representative  
4.24 of the state agency, and may include such other contents as the state agency may deem  
4.25 appropriate.

4.26 Sec. 4. Minnesota Statutes 2008, section 256B.15, subdivision 1h, is amended to read:

4.27 Subd. 1h. **Estates of specific persons receiving medical assistance.** (a) For  
4.28 purposes of this section, paragraphs (b) to (k) apply if a person received medical assistance  
4.29 for which a claim may be filed under this section and died single, or the surviving spouse  
4.30 of the couple, or the survivor of a cohabiting couple, and was not survived by any of the  
4.31 persons described in subdivisions 3 and 4.

4.32 (b) For purposes of this section, the person's estate consists of: (1) the person's  
4.33 probate estate; (2) all of the person's interests or proceeds of those interests in real property  
4.34 the person owned as a life tenant or as a joint tenant with a right of survivorship at the

5.1 time of the person's death; (3) all of the person's interests or proceeds of those interests in  
5.2 securities the person owned in beneficiary form as provided under sections 524.6-301 to  
5.3 524.6-311 at the time of the person's death, to the extent they become part of the probate  
5.4 estate under section 524.6-307; (4) all of the person's interests in joint accounts, multiple  
5.5 party accounts, and pay on death accounts, or the proceeds of those accounts, as provided  
5.6 under sections 524.6-201 to 524.6-214 at the time of the person's death to the extent  
5.7 they become part of the probate estate under section 524.6-207; and (5) the person's  
5.8 legal title or interest at the time of the person's death in real property transferred under  
5.9 a transfer on death deed under section 507.071, or in the proceeds from the subsequent  
5.10 sale of the person's interest in the real property. Notwithstanding any law or rule to the  
5.11 contrary, a state or county agency with a claim under this section shall be a creditor under  
5.12 section 524.6-307.

5.13 (c) Notwithstanding any law or rule to the contrary, the person's life estate or joint  
5.14 tenancy interest in real property not subject to a medical assistance lien under sections  
5.15 514.980 to 514.985 on the date of the person's death shall not end upon the person's death  
5.16 and shall continue as provided in this subdivision. The life estate in the person's estate  
5.17 shall be that portion of the interest in the real property subject to the life estate that is equal  
5.18 to the life estate percentage factor for the life estate as listed in the Life Estate Mortality  
5.19 Table of the health care program's manual for a person who was the age of the medical  
5.20 assistance recipient on the date of the person's death. The joint tenancy interest in real  
5.21 property in the estate shall be equal to the fractional interest the person would have owned  
5.22 in the jointly held interest in the property had they and the other owners held title to the  
5.23 property as tenants in common on the date the person died.

5.24 (d) The court upon its own motion, or upon motion by the personal representative or  
5.25 any interested party, may enter an order directing the remaindermen or surviving joint  
5.26 tenants and their spouses, if any, to sign all documents, take all actions, and otherwise  
5.27 fully cooperate with the personal representative and the court to liquidate the decedent's  
5.28 life estate or joint tenancy interests in the estate and deliver the cash or the proceeds of  
5.29 those interests to the personal representative and provide for any legal and equitable  
5.30 sanctions as the court deems appropriate to enforce and carry out the order, including an  
5.31 award of reasonable attorney fees.

5.32 (e) The personal representative may make, execute, and deliver any conveyances or  
5.33 other documents necessary to convey the decedent's life estate or joint tenancy interest  
5.34 in the estate that are necessary to liquidate and reduce to cash the decedent's interest or  
5.35 for any other purposes.

6.1 (f) Subject to administration, all costs, including reasonable attorney fees, directly  
6.2 and immediately related to liquidating the decedent's life estate or joint tenancy interest in  
6.3 the decedent's estate, shall be paid from the gross proceeds of the liquidation allocable  
6.4 to the decedent's interest and the net proceeds shall be turned over to the personal  
6.5 representative and applied to payment of the claim presented under this section.

6.6 (g) The personal representative shall bring a motion in the district court in which  
6.7 the estate is being probated to compel the remaindermen or surviving joint tenants to  
6.8 account for and deliver to the personal representative all or any part of the proceeds of any  
6.9 sale, mortgage, transfer, conveyance, or any disposition of real property allocable to the  
6.10 decedent's life estate or joint tenancy interest in the decedent's estate, and do everything  
6.11 necessary to liquidate and reduce to cash the decedent's interest and turn the proceeds of  
6.12 the sale or other disposition over to the personal representative. The court may grant any  
6.13 legal or equitable relief including, but not limited to, ordering a partition of real estate  
6.14 under chapter 558 necessary to make the value of the decedent's life estate or joint tenancy  
6.15 interest available to the estate for payment of a claim under this section.

6.16 (h) Subject to administration, the personal representative shall use all of the cash  
6.17 or proceeds of interests to pay an allowable claim under this section. The remaindermen  
6.18 or surviving joint tenants and their spouses, if any, may enter into a written agreement  
6.19 with the personal representative or the claimant to settle and satisfy obligations imposed at  
6.20 any time before or after a claim is filed.

6.21 (i) The personal representative may, at their discretion, provide any or all of the  
6.22 other owners, remaindermen, or surviving joint tenants with an affidavit terminating the  
6.23 decedent's estate's interest in real property the decedent owned as a life tenant or as a joint  
6.24 tenant with others, if the personal representative determines in good faith that neither the  
6.25 decedent nor any of the decedent's predeceased spouses received any medical assistance  
6.26 for which a claim could be filed under this section, or if the personal representative has  
6.27 filed an affidavit with the court that the estate has other assets sufficient to pay a claim,  
6.28 as presented, or if there is a written agreement under paragraph (h), or if the claim, as  
6.29 allowed, has been paid in full or to the full extent of the assets the estate has available  
6.30 to pay it. The affidavit may be recorded in the office of the county recorder or filed in  
6.31 the Office of the Registrar of Titles for the county in which the real property is located.  
6.32 Except as provided in section 514.981, subdivision 6, when recorded or filed, the affidavit  
6.33 shall terminate the decedent's interest in real estate the decedent owned as a life tenant or a  
6.34 joint tenant with others. The affidavit shall:

6.35 (1) be signed by the personal representative;

6.36 (2) identify the decedent and the interest being terminated;

7.1 (3) give recording information sufficient to identify the instrument that created the  
7.2 interest in real property being terminated;

7.3 (4) legally describe the affected real property;

7.4 (5) state that the personal representative has determined that neither the decedent ~~nor~~,  
7.5 any of the decedent's predeceased spouses, or any of the decedent's cohabiting partners  
7.6 received any medical assistance for which a claim could be filed under this section;

7.7 (6) state that the decedent's estate has other assets sufficient to pay the claim, as  
7.8 presented, or that there is a written agreement between the personal representative and  
7.9 the claimant and the other owners or remaindermen or other joint tenants to satisfy the  
7.10 obligations imposed under this subdivision; and

7.11 (7) state that the affidavit is being given to terminate the estate's interest under this  
7.12 subdivision, and any other contents as may be appropriate.

7.13 The recorder or registrar of titles shall accept the affidavit for recording or filing. The  
7.14 affidavit shall be effective as provided in this section and shall constitute notice even if it  
7.15 does not include recording information sufficient to identify the instrument creating the  
7.16 interest it terminates. The affidavit shall be conclusive evidence of the stated facts.

7.17 (j) The holder of a lien arising under subdivision 1c shall release the lien at the  
7.18 holder's expense against an interest terminated under paragraph (h) to the extent of the  
7.19 termination.

7.20 (k) If a lien arising under subdivision 1c is not released under paragraph (j), prior to  
7.21 closing the estate, the personal representative shall deed the interest subject to the lien to  
7.22 the remaindermen or surviving joint tenants as their interests may appear. Upon recording  
7.23 or filing, the deed shall work a merger of the recipient's life estate or joint tenancy interest,  
7.24 subject to the lien, into the remainder interest or interest the decedent and others owned  
7.25 jointly. The lien shall attach to and run with the property to the extent of the decedent's  
7.26 interest at the time of the decedent's death.

7.27 Sec. 5. Minnesota Statutes 2008, section 256B.15, subdivision 1i, is amended to read:

7.28 Subd. 1i. **Estates of persons receiving medical assistance and survived by**  
7.29 **others.** (a) For purposes of this subdivision, the person's estate consists of the person's  
7.30 probate estate and all of the person's interests in real property the person owned as a life  
7.31 tenant or a joint tenant at the time of the person's death and the person's legal title or  
7.32 interest at the time of the person's death in real property transferred to a beneficiary under  
7.33 a transfer on death deed under section 507.071, or in the proceeds from the subsequent  
7.34 sale of the person's interest in the transferred real property.

8.1 (b) Notwithstanding any law or rule to the contrary, this subdivision applies if a  
8.2 person received medical assistance for which a claim could be filed under this section but  
8.3 for the fact the person was survived by a spouse, by a partner in a cohabiting couple, or  
8.4 by a person listed in subdivision 3, or if subdivision 4 applies to a claim arising under  
8.5 this section.

8.6 (c) The person's life estate or joint tenancy interests in real property not subject to a  
8.7 medical assistance lien under sections 514.980 to 514.985 on the date of the person's death  
8.8 shall not end upon death and shall continue as provided in this subdivision. The life estate  
8.9 in the estate shall be the portion of the interest in the property subject to the life estate that  
8.10 is equal to the life estate percentage factor for the life estate as listed in the Life Estate  
8.11 Mortality Table of the health care program's manual for a person who was the age of the  
8.12 medical assistance recipient on the date of the person's death. The joint tenancy interest in  
8.13 the estate shall be equal to the fractional interest the medical assistance recipient would  
8.14 have owned in the jointly held interest in the property had they and the other owners held  
8.15 title to the property as tenants in common on the date the medical assistance recipient died.

8.16 (d) The county agency shall file a claim in the estate under this section on behalf  
8.17 of the claimant who shall be the commissioner of human services, notwithstanding that  
8.18 the decedent is survived by a spouse, a partner in a cohabiting couple, or a person listed  
8.19 in subdivision 3. The claim, as allowed, shall not be paid by the estate and shall be  
8.20 disposed of as provided in this paragraph. The personal representative or the court shall  
8.21 make, execute, and deliver a lien in favor of the claimant on the decedent's interest in  
8.22 real property in the estate in the amount of the allowed claim on forms provided by the  
8.23 commissioner to the county agency filing the lien. The lien shall bear interest as provided  
8.24 under section 524.3-806, shall attach to the property it describes upon filing or recording,  
8.25 and shall remain a lien on the real property it describes for a period of 20 years from  
8.26 the date it is filed or recorded. The lien shall be a disposition of the claim sufficient to  
8.27 permit the estate to close.

8.28 (e) The state or county agency shall file or record the lien in the office of the  
8.29 county recorder or registrar of titles for each county in which any of the real property is  
8.30 located. The recorder or registrar of titles shall accept the lien for filing or recording. All  
8.31 recording or filing fees shall be paid by the Department of Human Services. The recorder  
8.32 or registrar of titles shall mail the recorded lien to the Department of Human Services.  
8.33 The lien need not be attested, certified, or acknowledged as a condition of recording or  
8.34 filing. Upon recording or filing of a lien against a life estate or a joint tenancy interest,  
8.35 the interest subject to the lien shall merge into the remainder interest or the interest the  
8.36 recipient and others owned jointly. The lien shall attach to and run with the property to

9.1 the extent of the decedent's interest in the property at the time of the decedent's death  
9.2 as determined under this section.

9.3 (f) The department shall make no adjustment or recovery under the lien until after  
9.4 the decedent's spouse or survivor of a cohabiting couple, if any, has died, and only at a  
9.5 time when the decedent has no surviving child described in subdivision 3. The estate, any  
9.6 owner of an interest in the property which is or may be subject to the lien, or any other  
9.7 interested party, may voluntarily pay off, settle, or otherwise satisfy the claim secured or  
9.8 to be secured by the lien at any time before or after the lien is filed or recorded. Such  
9.9 payoffs, settlements, and satisfactions shall be deemed to be voluntary repayments of past  
9.10 medical assistance payments for the benefit of the deceased recipient, and neither the  
9.11 process of settling the claim, the payment of the claim, or the acceptance of a payment  
9.12 shall constitute an adjustment or recovery that is prohibited under this subdivision.

9.13 (g) The lien under this subdivision may be enforced or foreclosed in the manner  
9.14 provided by law for the enforcement of judgment liens against real estate or by a  
9.15 foreclosure by action under chapter 581. When the lien is paid, satisfied, or otherwise  
9.16 discharged, the state or county agency shall prepare and file a release of lien at its own  
9.17 expense. No action to foreclose the lien shall be commenced unless the lienholder has first  
9.18 given 30 days' prior written notice to pay the lien to the owners and parties in possession  
9.19 of the property subject to the lien. The notice shall:

9.20 (1) include the name, address, and telephone number of the lienholder;

9.21 (2) describe the lien;

9.22 (3) give the amount of the lien;

9.23 (4) inform the owner or party in possession that payment of the lien in full must be  
9.24 made to the lienholder within 30 days after service of the notice or the lienholder may  
9.25 begin proceedings to foreclose the lien; and

9.26 (5) be served by personal service, certified mail, return receipt requested, ordinary  
9.27 first class mail, or by publishing it once in a newspaper of general circulation in the county  
9.28 in which any part of the property is located. Service of the notice shall be complete upon  
9.29 mailing or publication.

9.30 Sec. 6. Minnesota Statutes 2008, section 256B.15, subdivision 1j, is amended to read:

9.31 Subd. 1j. **Claims in estates of decedents survived by other survivors.** For  
9.32 purposes of this subdivision, the provisions in subdivision 1i, paragraphs (a) to (c) apply.

9.33 (a) If payment of a claim filed under this section is limited as provided in subdivision  
9.34 4, and if the estate does not have other assets sufficient to pay the claim in full, as allowed,  
9.35 the personal representative or the court shall make, execute, and deliver a lien on the

10.1 property in the estate that is exempt from the claim under subdivision 4 in favor of the  
10.2 commissioner of human services on forms provided by the commissioner to the county  
10.3 agency filing the claim. If the estate pays a claim filed under this section in full from other  
10.4 assets of the estate, no lien shall be filed against the property described in subdivision 4.

10.5 (b) The lien shall be in an amount equal to the unpaid balance of the allowed  
10.6 claim under this section remaining after the estate has applied all other available assets  
10.7 of the estate to pay the claim. The property exempt under subdivision 4 shall not be  
10.8 sold, assigned, transferred, conveyed, encumbered, or distributed until after the personal  
10.9 representative has determined the estate has other assets sufficient to pay the allowed  
10.10 claim in full, or until after the lien has been filed or recorded. The lien shall bear interest  
10.11 as provided under section 524.3-806, shall attach to the property it describes upon filing  
10.12 or recording, and shall remain a lien on the real property it describes for a period of 20  
10.13 years from the date it is filed or recorded. The lien shall be a disposition of the claim  
10.14 sufficient to permit the estate to close.

10.15 (c) The state or county agency shall file or record the lien in the office of the county  
10.16 recorder or registrar of titles in each county in which any of the real property is located.  
10.17 The department shall pay the filing fees. The lien need not be attested, certified, or  
10.18 acknowledged as a condition of recording or filing. The recorder or registrar of titles  
10.19 shall accept the lien for filing or recording.

10.20 (d) The commissioner shall make no adjustment or recovery under the lien until  
10.21 none of the persons listed in subdivision 4 are residing on the property or until the property  
10.22 is sold or transferred. The estate or any owner of an interest in the property that is or  
10.23 may be subject to the lien, or any other interested party, may voluntarily pay off, settle,  
10.24 or otherwise satisfy the claim secured or to be secured by the lien at any time before or  
10.25 after the lien is filed or recorded. The payoffs, settlements, and satisfactions shall be  
10.26 deemed to be voluntary repayments of past medical assistance payments for the benefit  
10.27 of the deceased recipient and neither the process of settling the claim, the payment of  
10.28 the claim, or acceptance of a payment shall constitute an adjustment or recovery that is  
10.29 prohibited under this subdivision.

10.30 (e) A lien under this subdivision may be enforced or foreclosed in the manner  
10.31 provided for by law for the enforcement of judgment liens against real estate or by  
10.32 a foreclosure by action under chapter 581. When the lien has been paid, satisfied, or  
10.33 otherwise discharged, the claimant shall prepare and file a release of lien at the claimant's  
10.34 expense. No action to foreclose the lien shall be commenced unless the lienholder has first  
10.35 given 30 days prior written notice to pay the lien to the record owners of the property and  
10.36 the parties in possession of the property subject to the lien. The notice shall:

- 11.1 (1) include the name, address, and telephone number of the lienholder;
- 11.2 (2) describe the lien;
- 11.3 (3) give the amount of the lien;
- 11.4 (4) inform the owner or party in possession that payment of the lien in full must be
- 11.5 made to the lienholder within 30 days after service of the notice or the lienholder may
- 11.6 begin proceedings to foreclose the lien; and
- 11.7 (5) be served by personal service, certified mail, return receipt requested, ordinary
- 11.8 first class mail, or by publishing it once in a newspaper of general circulation in the county
- 11.9 in which any part of the property is located. Service shall be complete upon mailing
- 11.10 or publication.
- 11.11 (f) Upon filing or recording of a lien against a life estate or joint tenancy interest
- 11.12 under this subdivision, the interest subject to the lien shall merge into the remainder
- 11.13 interest or the interest the decedent and others owned jointly, effective on the date of
- 11.14 recording and filing. The lien shall attach to and run with the property to the extent of
- 11.15 the decedent's interest in the property at the time of the decedent's death as determined
- 11.16 under this section.
- 11.17 (g)(1) An affidavit may be provided by a personal representative, at their discretion,
- 11.18 stating the personal representative has determined in good faith that a decedent survived
- 11.19 by a spouse, the survivor of a cohabiting couple, or a person listed in subdivision 3, or
- 11.20 by a person listed in subdivision 4, or the decedent's predeceased spouse or predeceased
- 11.21 partner of a cohabiting couple did not receive any medical assistance giving rise to a claim
- 11.22 under this section, or that the real property described in subdivision 4 is not needed to pay
- 11.23 in full a claim arising under this section.
- 11.24 (2) The affidavit shall:
- 11.25 (i) describe the property and the interest being extinguished;
- 11.26 (ii) name the decedent and give the date of death;
- 11.27 (iii) state the facts listed in clause (1);
- 11.28 (iv) state that the affidavit is being filed to terminate the life estate or joint tenancy
- 11.29 interest created under this subdivision;
- 11.30 (v) be signed by the personal representative; and
- 11.31 (vi) contain any other information that the affiant deems appropriate.
- 11.32 (3) Except as provided in section 514.981, subdivision 6, when the affidavit is filed
- 11.33 or recorded, the life estate or joint tenancy interest in real property that the affidavit
- 11.34 describes shall be terminated effective as of the date of filing or recording. The termination
- 11.35 shall be final and may not be set aside for any reason.

12.1 Sec. 7. Minnesota Statutes 2008, section 256B.15, subdivision 2, is amended to read:

12.2 Subd. 2. **Limitations on claims.** The claim shall include only the total amount  
 12.3 of medical assistance rendered after age 55 or during a period of institutionalization  
 12.4 described in subdivision 1a, clause (b), and the total amount of general assistance medical  
 12.5 care rendered, and shall not include interest. Claims that have been allowed but not  
 12.6 paid shall bear interest according to section 524.3-806, paragraph (d). A claim against  
 12.7 the estate of a surviving spouse or the estate of the survivor of a cohabiting couple who  
 12.8 did not receive medical assistance, for medical assistance rendered for the predeceased  
 12.9 spouse or predeceased partner of a cohabiting couple, is limited to the value of the assets  
 12.10 of the estate that were marital property or jointly owned property at any time during the  
 12.11 marriage. Claims for alternative care shall be net of all premiums paid under section  
 12.12 256B.0913, subdivision 12, on or after July 1, 2003, and shall be limited to services  
 12.13 provided on or after July 1, 2003.

12.14 Sec. 8. Minnesota Statutes 2008, section 256B.15, subdivision 3, is amended to read:

12.15 Subd. 3. **Surviving spouse, survivor of a cohabiting couple, minor, blind, or**  
 12.16 **disabled children.** If a decedent is survived by a spouse or partner of a cohabiting couple,  
 12.17 or was single ~~or~~ the surviving spouse of a married couple, or the survivor of a cohabiting  
 12.18 couple and is survived by a child who is under age 21 or blind or permanently and totally  
 12.19 disabled according to the supplemental security income program criteria, a claim shall be  
 12.20 filed against the estate according to this section.

12.21 Sec. 9. Minnesota Statutes 2008, section 256B.15, subdivision 4, is amended to read:

12.22 Subd. 4. **Other survivors.** (a) If the decedent who was single ~~or~~ the surviving  
 12.23 spouse of a married couple, or the survivor of a cohabiting couple is survived by one of  
 12.24 the following persons, a claim exists against the estate payable first from the value of the  
 12.25 nonhomestead property included in the estate and the personal representative shall make,  
 12.26 execute, and deliver to the county agency a lien against the homestead property in the  
 12.27 estate for any unpaid balance of the claim to the claimant as provided under this section:

12.28 (1) a sibling who resided in the decedent medical assistance recipient's home at  
 12.29 least one year before the decedent's institutionalization and continuously since the date  
 12.30 of institutionalization; or

12.31 (2) a son or daughter or a grandchild who resided in the decedent medical assistance  
 12.32 recipient's home for at least two years immediately before the parent's or grandparent's  
 12.33 institutionalization and continuously since the date of institutionalization, and who  
 12.34 establishes by a preponderance of the evidence having provided care to the parent

13.1 or grandparent who received medical assistance, that the care was provided before  
13.2 institutionalization, and that the care permitted the parent or grandparent to reside at  
13.3 home rather than in an institution.

13.4 (b) For purposes of this subdivision, "institutionalization" means receiving care:

13.5 (1) in a nursing facility or swing bed, or intermediate care facility for persons with  
13.6 developmental disabilities; or

13.7 (2) through home and community-based services under section 256B.0915,  
13.8 256B.092, or 256B.49.