

SENATE BILL NO. 64—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE STATE TREASURER)

PREFILED NOVEMBER 20, 2024

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing the recovery of certain benefits paid under Medicaid. (BDR 38-479)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to Medicaid; prohibiting the State Government from the recovery of Medicaid benefits from an account established under the Nevada ABLE Savings Program in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing federal law allows for the creation of a tax-advantaged savings account
2 for a person who has certain qualifying disabilities, which is commonly known as
3 an ABLE Account. Under the program, any person may make a contribution to the
4 ABLE Account of a person with a qualified disability. Any interest or other growth
5 in the value of the ABLE Account is not taxed, and any distribution from the ABLE
6 Account is not taxed if the distribution is used to pay expenses related to living a
7 life with a disability, including, without limitation, education, housing,
8 transportation, health care, employment training and support, and assistive
9 technology and personal support services. Money in an ABLE Account or
10 distributions from an ABLE Account do not affect the eligibility of a person for
11 certain public benefits such as Social Security disability payments, Supplemental
12 Nutrition Assistance Program benefits and Medicaid. To qualify for these
13 advantages of an ABLE Account, the savings account into which contributions are
14 made on behalf of a qualified person must be established and maintained by the
15 qualified person’s state of residence or another state that has adopted a qualified
16 program and entered into a contract with the qualified person’s state of residence.
17 (26 U.S.C. § 529A) Existing state law requires the State Treasurer, in cooperation
18 with the Aging and Disability Services Division of the Department of Health and
19 Human Services, to establish or otherwise ensure the establishment of the Nevada



20 ABLE Savings Program as a qualified program under federal law. (NRS
21 427A.882-427A.896)

22 Existing federal and state law provide that under certain circumstances, the
23 Department is required to recover benefits correctly paid under Medicaid from the
24 estate of a deceased person who received those benefits or any recipient of money
25 or property from the estate of such a deceased person. (42 U.S.C. § 1396p; NRS
26 422.29302) Under existing federal law, upon the death of the designated
27 beneficiary of an ABLE Account, a state is authorized to file a claim for payment
28 from the ABLE Account to recover benefits paid under Medicaid on behalf of the
29 designated beneficiary that are recoverable by the state. (26 U.S.C. § 529A(f))

30 **Sections 1 and 3** of this bill provide that unless federal law otherwise requires,
31 the Department or any other officer or agency of State Government is prohibited
32 from seeking to recover benefits correctly paid under Medicaid for a designated
33 beneficiary of an ABLE Account: (1) from any money remaining in the ABLE
34 Account upon the death of the designated beneficiary; or (2) by filing a claim for
35 recovery from the ABLE Account. **Section 1** additionally requires the Director of
36 the Department to apply for any necessary federal approval to carry out these
37 provisions. **Section 2** of this bill authorizes the Director to administer the
38 provisions of **section 1** in the same manner that the Director administers existing
39 law governing the recovery of benefits paid under Medicaid.

40 **Section 4** of this bill provides that upon the passage and approval of this bill,
41 the Department and any other officer or agency of the State Government are
42 required to terminate any attempt to recover Medicaid benefits from an ABLE
43 Account, unless recovery from an ABLE Account is required by federal law.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 422 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except to the extent required by federal law, upon the*
4 *death of a designated beneficiary of a savings trust account*
5 *established under the Nevada ABLÉ Savings Program pursuant to*
6 *NRS 427A.889, the Department or any other officer or agency of*
7 *the State Government shall not:*

8 *(a) Seek recovery under NRS 422.29302 of any amount*
9 *remaining in the savings trust account for any benefits that were*
10 *correctly paid under Medicaid after the savings trust account was*
11 *established; or*

12 *(b) File a claim for payment from the savings trust account*
13 *pursuant to 26 U.S.C. § 529A(f).*

14 **2. The Director shall:**

15 *(a) Apply to the Secretary of Health and Human Services for*
16 *any waiver of federal law or apply for any amendment of the State*
17 *Plan for Medicaid that is necessary to carry out the provisions of*
18 *subsection 1.*

19 *(b) Fully cooperate in good faith with the Federal Government*
20 *during the application process to satisfy the requirements of the*



1 *Federal Government for obtaining a waiver or amendment*
2 *pursuant to paragraph (a).*

3 **Sec. 2.** NRS 422.29301 is hereby amended to read as follows:

4 422.29301 The Director:

5 1. Shall administer the provisions of NRS 422.29302,
6 422.29304 and 422.29306 ~~§~~ *and section 1 of this act;*

7 2. May adopt such regulations as are necessary for the
8 administration of those provisions; and

9 3. May invoke any legal, equitable or special procedures for
10 the enforcement of those provisions.

11 **Sec. 3.** NRS 422.29302 is hereby amended to read as follows:

12 422.29302 1. Except as otherwise provided in this section
13 *and section 1 of this act* and to the extent it is not prohibited by
14 federal law and when circumstances allow, the Department shall
15 recover benefits correctly paid for Medicaid from:

16 (a) The undivided estate of the person who received those
17 benefits; and

18 (b) Any recipient of money or property from the undivided
19 estate of the person who received those benefits.

20 2. The Department shall not recover benefits pursuant to
21 subsection 1, except from a person who is neither a surviving spouse
22 nor a child, until after the death of the surviving spouse, if any, and
23 only at a time when the person who received the benefits has no
24 surviving child who is under 21 years of age, blind or disabled.

25 3. Except as otherwise provided by federal law, if a transfer of
26 real or personal property by a recipient of Medicaid is made for less
27 than fair market value, the Department may pursue any remedy
28 available pursuant to chapter 112 of NRS with respect to the
29 transfer.

30 4. The amount of Medicaid paid to or on behalf of a person is a
31 claim against the estate in any probate proceeding only at a time
32 when there is no surviving spouse or surviving child who is under
33 21 years of age, blind or disabled.

34 5. The Director may elect not to file a claim against the estate
35 of a recipient of Medicaid or the spouse of the recipient if the
36 Director determines that the filing of the claim will cause an undue
37 hardship for the spouse or other survivors of the recipient. The
38 Director shall adopt regulations defining the circumstances that
39 constitute an undue hardship.

40 6. Any recovery of money obtained pursuant to this section
41 must be applied first to the cost of recovering the money. Any
42 remaining money must be divided among the Federal Government,
43 the Department and the county in the proportion that the amount of
44 assistance each contributed to the recipient bears to the total amount
45 of the assistance contributed.



1 7. Any recovery by the Department from the undivided estate
2 of a recipient pursuant to this section must be paid in cash to the
3 extent of:

4 (a) The amount of Medicaid paid to or on behalf of the recipient
5 after October 1, 1993; or

6 (b) The value of the remaining assets in the undivided estate,
7 ↪ whichever is less.

8 **Sec. 4.** 1. The Department of Health and Human Services
9 and other officers and agencies of the State Government shall
10 terminate all efforts for recovery or claims for payment from an
11 ABLE savings trust account which are prohibited by the provisions
12 of section 1 of this act.

13 2. As used in this section, "ABLE savings trust account" means
14 a savings trust account established under the Nevada ABLE Savings
15 Program pursuant to NRS 427A.889.

16 **Sec. 5.** This act becomes effective upon passage and approval.

