STATE OF NEW YORK

165

2017-2018 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2017

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to the recovery of property from persons who have fraudulently failed to disclose property and liens for medical assistance on claims and suits for personal injury; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 103 of the social services law is REPEALED.

§ 2. Section 104 of the social services law, subdivision 1 as amended by chapter 573 of the laws of 1964, subdivision 2 as amended by chapter 909 of the laws of 1974, subdivision 3 as added by chapter 433 of the laws of 1993, and subdivision 4 as added by chapter 340 of the laws of 2003, is amended to read as follows:

§ 104. Recovery from a person discovered to have property. 1. A public welfare official may bring **an** action or proceeding against a person discovered to have **fraudulently failed to disclose** real or personal property[~~, or against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property, if such person, or any one for whose support he is or was liable, received assistance and care during the preceding ten years, and~~] **in their possession at the time of application or recertification that otherwise would not have been exempt pursuant to section one hundred thirty-one-n of this chapter. Such public welfare official** shall be entitled to recover up to the **cost of assistance or care, so long as it does not exceed the** value of such property [~~the cost of such assistance or care. Any public assistance or care received by such person shall constitute an implied contract. No claim of a public welfare official against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~property, shall be barred or defeated, in whole or in part, by any lack of sufficiency of ability on the part of such person during the period assistance and care were received.~~

~~Nor shall the claim asserted by a public welfare official against any person under this section be impaired, impeded, barred or defeated, in whole or in part, on the grounds that another person or persons may also have been liable to contribute.~~

~~In all claims of the public welfare official made under this section the public welfare official shall be deemed a preferred creditor.~~

~~2. No right of action shall accrue against a person under twenty-one years of age by reason of the assistance or care granted to him unless at the time it was granted the person was possessed of money and property in excess of his reasonable requirements, taking into account his maintenance, education, medical care and any other factors applicable to his condition.~~

~~3. To the extent described in section 7-1.12 of the estates, powers and trusts law, the trustee of a supplemental needs trust which conforms to the provisions of such section 7-1.12 shall not be deemed to be holding assets for the benefit of a beneficiary who may otherwise be the subject of a claim under this section and no action may be brought against either the trust or the trustee to recover the cost of assistance or care provided to such person, or anyone for whose support such person is or was liable~~].

[~~4.~~] **2. (a) No public welfare official shall be entitled to recoup any public assistance unless such recoupment is otherwise required by federal law, is necessary to reimburse the state for properly paid safety net assistance while the recipient had a pending application for federal Supplemental Security Income that was subsequently approved, or such public assistance was received by fraudulent means.**

(b) Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.

§ 3. Section 104-b of the social services law, as added by chapter 382 of the laws of 1964, and renumbered by chapter 550 of the laws of 1971, subdivision 1 as amended by section 52-g of part H of chapter 59 of the laws of 2011, subdivision 2 as amended by chapter 281 of the laws of 2005, subdivision 5 as added and subdivisions 6, 7, 8, 9, 10, 11, 12 and 13 as renumbered by chapter 560 of the laws of 1969, and subdivision 14 as added by chapter 340 of the laws of 2003, is amended to read as follows:

§ 104-b. Liens for [~~public~~] **medical** assistance [~~and care~~] on claims and suits for personal injuries. 1. If a recipient of [~~public~~] **medical** assistance [~~and care~~] shall have a right of action, suit, claim, counterclaim or demand against another on account of any personal injuries suffered by such recipient, then the [~~public welfare~~] **medicaid** official for the [~~public welfare~~] **social services** district providing such **medical** assistance [~~and care~~] shall have a lien for such amount as may be fixed by the [~~public welfare~~] **medicaid** official not exceeding, however, the total amount of such **medical** assistance [~~and care~~] furnished by such [~~public welfare~~] **social services** official on and after the date when such injuries were incurred. In all such cases, notice of the commencement of such an action shall be served upon the [~~public welfare~~] **social services** district that has provided or is providing such **medical** assistance [~~and care~~], or upon the department of health.

The commissioner shall endeavor to ascertain whether such person, firm or corporation alleged to be responsible for such injuries is insured with a liability insurance company, as the case may be, and the name thereof.

2. No such lien shall be effective, however, unless a written notice containing the name and address of the injured recipient, the date and place of the accident, and the name of the person, firm or corporation alleged to be liable to the injured party for such injuries, together with a brief statement of the nature of the lien, the amount claimed and that a lien is claimed upon the said right of action, suit, claim, counterclaim or demand by the [~~public welfare~~] medicaid official be served prior to the payment of any moneys to such injured party, by certified with return receipt or registered mail upon such person, firm or corporation, and his or her, its or their attorney, if known, and upon any insurance carrier which has insured such person, firm or corporation against such liability. A copy of the notice of lien shall be mailed to such carrier at least twenty days prior to the date on which such carrier makes a payment to the injured party. Except as against such carrier, the effectiveness of the lien against any other party shall not be impaired by the failure to mail the required notice to such carrier. In addition, a true copy of such notice shall be served by regular mail to the [~~welfare~~] medicaid recipient and to his or her attorney, if known. Such mailing shall be deemed to be effective, notwithstanding any inaccuracy or omission, if the information contained therein shall be sufficient to enable those to whom the notice is given to identify the injured recipient and the occurrence upon which his or her claim for damages is based.

3. Upon the service of the notice, as aforesaid, the local [~~public welfare~~] medicaid official shall file a true copy thereof in the office of the clerk of the county in which his office is located, and, thereupon the lien of the [~~public welfare~~] medicaid official in the amount therein stated shall attach to any verdict, decision, decree, judgment, award or final order in any suit, action or proceeding in any court or administrative tribunal of this state respecting such injuries, as well as the proceeds of any settlement thereof, and the proceeds of any settlement of any claim or demand respecting such injuries prior to suit or action.

4. An amended notice of lien may be served and filed by such [~~public welfare~~] medicaid official in the same manner and subject to the provisions of this section governing the notice of lien originally served and filed pursuant to this section.

5. (a) The person, firm, corporation or insurance carrier, having notice that a [~~social services~~] medicaid official has served and filed a notice of lien, and intending to make payment on the personal injury claim upon which the lien was filed, shall notify the [~~social services~~] medicaid official by certified or registered mail, at least ten days prior to the date such payment is proposed to be made, of the amount and date thereof.

(b) Notwithstanding any inconsistent provision of this section, the [~~social services~~] medicaid official shall have the right to serve and file by certified or registered mail, within five days after receipt of such notice, excluding Saturdays, Sundays, and holidays, an amended notice of lien to include the amount of [~~public~~] medical assistance [~~and care~~] furnished to the recipient after the date such official served and filed the notice of lien or the last previous amendment thereof.

(c) A person, firm, corporation or insurance carrier that fails to give the notice required by paragraph (a) of this subdivision shall be liable to the [~~social services~~] **medicaid** official to the same extent that it would have been liable had such notice been given and the [~~social services~~] **medicaid** official had filed the amended notice of lien provided for in paragraph (b) of this subdivision.

6. Such lien may be enforced by action against those alleged to be liable for such injuries, as aforesaid, by the [~~local public welfare~~] **medicaid** official in any court of appropriate jurisdiction.

7. The aforesaid lien shall be valid and effective, when the notice thereof and the statement are served and filed as aforesaid, and shall continue until released and discharged by the [~~local public welfare~~] **medicaid** official by an instrument in writing and filed in the said county clerk's office, and no release, payment, discharge or satisfaction of any such claim, demand, right of action, suit or counterclaim shall be valid or effective against such lien.

8. The county clerk shall, at the expense of the county, provide a suitable book with proper index, to be called the [~~public welfare~~] **medicaid** lien docket, in which he shall enter the names of the [~~public welfare~~] **medicaid** official and the recipient, the date and place of the accident and the name or names of those alleged to be liable for such injuries, as aforesaid.

9. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subject and subordinate to the lien on the amount recovered by verdict, report, decision, judgment, award or decree, settlement or compromise, of any attorney or attorneys retained by any such injured person to prosecute his claim for damages for personal injuries, having or acquiring by virtue of such retainer a lien on the cause of action of any such injured person, or on the verdict, report, decision, judgment, decree made in, or any settlement or compromise of, any such action or claim for damages for personal injuries.

10. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subordinate to the lien of any hospital claimed under and to the extent recognized by section one hundred eighty-nine of the lien law, but only for treatment, care and maintenance given, prior to or in excess of the [~~public~~] **medical** assistance [~~and care~~] granted by the [~~public welfare~~] **medicaid** official.

11. The provisions of this section shall not be deemed to adversely affect the right of a [~~public welfare~~] **medicaid** official who has taken an assignment of the proceeds of any such right of action, suit, claim, counterclaim or demand, to recover under such assignment the total amount of **medical** assistance [~~and care~~] for which such assignment was made.

12. The provisions of this section to the contrary notwithstanding, the lien herein created shall not apply with respect to any claim or benefits payable to the recipients of any form of [~~public~~] **medical** assistance [~~or care~~], part of which is paid for by the government of the United States or any agency thereof when, in the opinion of the commissioner, such lien would jeopardize the continuation of such federal contribution.

13. The provisions of this section to the contrary notwithstanding, the [~~public welfare~~] **medicaid** official may in his discretion release to the injured person an amount not to exceed the cost of two years' maintenance from the lien herein created.

[~~14. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim~~

~~under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.~~]

This section shall not apply to any claim or award which is or may be allowed pursuant to the provisions of the [~~workmen's~~] workers' compensation law or the volunteer [~~firemen's~~] firefighters' benefit law.

§ 4. Section 131-r of the social services law is REPEALED.

§ 5. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.