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S.F. No. 175 - Medical Assistance and Alternative Care Estate Recovery and Liens (The Delete Everything Amendment)

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Date: February 1, 2005

S.F. No. 175 reinstates the pre-2003 state policy with respect to estate recoveries for the cost of medical care. It reverses the policy adopted in 2003 that extends a deceased's interests in a life estate or joint tenancy after death for the purposes of Medical Assistance (MA) or Alternative Care (AC) recovery. It reverses the policy that allows the state to recover from estates for the purposes of reimbursing AC costs. It makes a number of technical changes consistent with these policy reversals. It requires any amounts collected since 2003 under the policies being reversed to be refunded. It includes a blank appropriation to replace the lost revenue that would result from passage of this bill.

Section 1 (256B.15, subdivision 1) deletes language that continues life estates and joint tenancies after a recipient's death for purposes of MA estate claims. This section also reinstates language that was in effect until 2003 that prohibited MA estate claims to collect for AC service costs.

Section 2 (256B.15, subdivision 1a) excludes AC costs from MA estate claims and removes language allowing counties to retain ten percent of their AC related collections.

Section 3 (256B.15, subdivision 1d) deletes, from a subdivision establishing the effect of a notice of potential claim, references to the continuation of life estate and joint tenancy interests after death.

Section 4 (256B.15, subdivision 1e) deletes, from a subdivision regarding the claimant's right to release a lien, references to the continuation of life estate and joint tenancy interests.

Section 5 (256B.15, subdivision 1f) deletes, from a subdivision regarding the establishment of liens against real estate, references to the continuation of life estate and joint tenancy interests.

Section 6 (256B.15, subdivision 1h) deletes, from a subdivision regarding the estates of specific MA recipients, references to the continuation of life estate and joint tenancy interests.

Section 7 (256B.15, subdivision 1i) deletes, from a subdivision regarding the estates of MA recipients survived by others, references to the continuation of life estate and joint tenancy interests.

Section 8 (256B.15, subdivision 1j) deletes, from a subdivision regarding the estates of MA recipients survived by other survivors, references to the continuation of life estate and joint tenancy interests.

Section 9 (256B.15, subdivision 2) deletes another reference to MA estate claims for AC costs.

Section 10 (256B.15, subdivision 3) reinstates language that was in effect before the 2003 session barring estate claims if the decedent, who was either single or the surviving spouse of a married couple, is survived by a child who is under age 21, or is blind, or is permanently and totally disabled.

Section 11 (256B.15, subdivision 4) deletes language adopted in 2003 authorizing liens against homestead property in an estate for any unpaid balance of a claim in cases where the claim is limited to the value of the nonhomestead property in the estate.

Section 12 (514.981, subdivision 6) deletes language added to the state lien law in 2003 authorizing liens against life estates and joint tenant interests.

Section 13 (524.3 805) deletes language added to the Uniform Probate Code in 2003 referencing MA estate claims for AC costs.

Section 14 relates to refunds and notices.

Paragraph (a) requires refunds to be paid of any amounts collected from the estate of a recipient of alternative care services or because of the continuation of life estates and joint tenancies after the death of the recipient.

Paragraph (b) establishes procedures for paying refunds.

Paragraph (c) makes lien notices ineffective against life estates or joint tenancies after the death of the recipient unless continued after death by the document creating the life estate or joint tenancy.

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Paragraph (d) establishes legal immunity for the Department of Human Services, counties, and elected officials for their activities with respect to the 2003 laws being amended or repealed in this bill, and with respect to this bill.

Section 15 is a blank appropriation section.

Section 16 is a repealer section. It repeals Minnesota Statutes, section 256B.15, subdivision 1g, which makes a life estate or joint tenancy interest part of a deceased's estate for purposes of MA estate recovery. It also repeals Minnesota Statutes, sections 514.991 through 514.995. These sections were adopted in 2003 and establish Alternative Care liens and procedures for enforcing them.

DG:rdr

Senators Skoe, Lourey, Dille, Koering and Stumpf introduced--
S.F. No. 175: Referred to the Committee on Health and Family Security.

A bill for an act

relating to human services; modifying medical assistance estate recovery provisions; eliminating recoveries for alternative care costs; removing liens against life estates and joint tenant interests; appropriating money; amending Minnesota Statutes 2004, sections 256B.15, subdivisions 1, 1a, 2, 3, 4; 514.981, subdivision 6; 524.3-805; repealing Minnesota Statutes 2004, sections 256B.15, subdivisions 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k; 514.991; 514.992; 514.993; 514.994; 514.995.

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

Section 1. Minnesota Statutes 2004, section 256B.15, subdivision 1, is amended to read:

Subdivision 1. [~~POLICY, APPLICABILITY, PURPOSE, AND CONSTRUCTION, DEFINITION.~~] ~~(a) It is the policy of this state that individuals or couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the total cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state. The following provisions apply:~~
~~(1) subdivisions 1c to 1k shall not apply to claims arising under this section which are presented under section 525.313;~~
~~(2) the provisions of subdivisions 1c to 1k expanding the interests included in an estate for purposes of recovery under this section give effect to the provisions of United States Code, title 42, section 1396p, governing recoveries, but do not give rise to any express or implied liens in favor of any other~~

1 parties-not-named-in-these-provisions,

2 (3)-the-continuation-of-a-recipient's-life-estate-or-joint
3 tenancy-interest-in-real-property-after-the-recipient's-death
4 for-the-purpose-of-recovering-medical-assistance-under-this
5 section-modifies-common-law-principles-holding-that-these
6 interests-terminate-on-the-death-of-the-holder,

7 (4)-all-laws,rules,and-regulations-governing-or-involved
8 with-a-recovery-of-medical-assistance-shall-be-liberally
9 construed-to-accomplish-their-intended-purposes,

10 (5)-a-deceased-recipient's-life-estate-and-joint-tenancy
11 interests-continued-under-this-section-shall-be-owned-by-the
12 remaindermen-or-surviving-joint-tenants-as-their-interests-may
13 appear-on-the-date-of-the-recipient's-death.--They-shall-not-be
14 merged-into-the-remainder-interest-or-the-interests-of-the
15 surviving-joint-tenants-by-reason-of-ownership.--They-shall-be
16 subject-to-the-provisions-of-this-section.--Any-conveyance,
17 transfer,sale,assignment,or-encumbrance-by-a-remainderman,a
18 surviving-joint-tenant,or-their-heirs,successors,and-assigns
19 shall-be-deemed-to-include-all-of-their-interest-in-the-deceased
20 recipient's-life-estate-or-joint-tenancy-interest-continued
21 under-this-section,-and

22 (6)-the-provisions-of-subdivisions-1c-to-1k-continuing-a
23 recipient's-joint-tenancy-interests-in-real-property-after-the
24 recipient's-death-do-not-apply-to-a-homestead-owned-of-record,
25 on-the-date-the-recipient-dies,-by-the-recipient-and-the
26 recipient's-spouse-as-joint-tenants-with-a-right-of
27 survivorship.--Homestead-means-the-real-property-occupied-by-the
28 surviving-joint-tenant-spouse-as-their-sole-residence-on-the
29 date-the-recipient-dies-and-classified-and-taxed-to-the
30 recipient-and-surviving-joint-tenant-spouse-as-homestead
31 property-for-property-tax-purposes-in-the-calendar-year-in-which
32 the-recipient-dies.--For-purposes-of-this-exemption,-real
33 property-the-recipient-and-their-surviving-joint-tenant-spouse
34 purchase-solely-with-the-proceeds-from-the-sale-of-their-prior
35 homestead,-own-of-record-as-joint-tenants,-and-qualify-as
36 homestead-property-under-section-273.124-in-the-calendar-year-in

1 ~~which-the-recipient-dies-and-prior-to-the-recipient's-death~~
 2 ~~shall-be-deemed-to-be-real-property-classified-and-taxed-to-the~~
 3 ~~recipient-and-their-surviving-joint-tenant-spouse-as-homestead~~
 4 ~~property-in-the-calendar-year-in-which-the-recipient-dies.--The~~
 5 ~~surviving-spouse,or-any-person-with-personal-knowledge-of-the~~
 6 ~~facts,may-provide-an-affidavit-describing-the-homestead~~
 7 ~~property-affected-by-this-clause-and-stating-facts-showing~~
 8 ~~compliance-with-this-clause.--The-affidavit-shall-be-prima-facie~~
 9 ~~evidence-of-the-facts-it-states.~~

10 (b) For purposes of this section, "medical assistance"
 11 includes the medical assistance program under this chapter and
 12 the general assistance medical care program under chapter 256D
 13 and but does not include the alternative care program for
 14 nonmedical assistance recipients under section 256B.0913.

15 [EFFECTIVE DATE.] This section is effective retroactive
 16 from July 1, 2003.

17 Sec. 2. Minnesota Statutes 2004, section 256B.15,
 18 subdivision 1a, is amended to read:

19 Subd. 1a. [ESTATES SUBJECT TO CLAIMS.] If a person
 20 receives any medical assistance hereunder, on the person's
 21 death, if single, or on the death of the survivor of a married
 22 couple, either or both of whom received medical assistance, or
 23 ~~as-otherwise-provided-for-in-this-section,~~ the total amount paid
 24 for medical assistance rendered for the person and spouse shall
 25 be filed as a claim against the estate of the person or the
 26 estate of the surviving spouse in the court having jurisdiction
 27 to probate the estate or to issue a decree of descent according
 28 to sections 525.31 to 525.313.

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

32 (a) the person was over 55 years of age, and received
 33 services under this chapter, excluding alternative care;

34 (b) the person resided in a medical institution for six
 35 months or longer, received services under this chapter,
 36 excluding alternative care, and, at the time of

1 institutionalization or application for medical assistance,
 2 whichever is later, the person could not have reasonably been
 3 expected to be discharged and returned home, as certified in
 4 writing by the person's treating physician. For purposes of
 5 this section only, a "medical institution" means a skilled
 6 nursing facility, intermediate care facility, intermediate care
 7 facility for persons with mental retardation, nursing facility,
 8 or inpatient hospital; or

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

11 The claim shall be considered an expense of the last
 12 illness of the decedent for the purpose of section 524.3-805.
 13 Any statute of limitations that purports to limit any county
 14 agency or the state agency, or both, to recover for medical
 15 assistance granted hereunder shall not apply to any claim made
 16 hereunder for reimbursement for any medical assistance granted
 17 hereunder. Notice of the claim shall be given to all heirs and
 18 devisees of the decedent whose identity can be ascertained with
 19 reasonable diligence. The notice must include procedures and
 20 instructions for making an application for a hardship waiver
 21 under subdivision 5; time frames for submitting an application
 22 and determination; and information regarding appeal rights and
 23 procedures. Counties are entitled to one-half of the nonfederal
 24 share of medical assistance collections from estates that are
 25 directly attributable to county effort. ~~Counties-are-entitled~~
 26 ~~to-ten-percent-of-the-collections-for-alternative-care-directly~~
 27 ~~attributable-to-county-effort.~~

28 [EFFECTIVE DATE.] This section is effective retroactive
 29 from July 1, 2003.

30 Sec. 3. Minnesota Statutes 2004, section 256B.15,
 31 subdivision 2, is amended to read:

32 Subd. 2. [LIMITATIONS ON CLAIMS.] The claim shall include
 33 only the total amount of medical assistance rendered after age
 34 55 or during a period of institutionalization described in
 35 subdivision 1a, clause (b), and the total amount of general
 36 assistance medical care rendered, and shall not include

1 interest. Claims that have been allowed but not paid shall bear
 2 interest according to section 524.3-806, paragraph (d). A claim
 3 against the estate of a surviving spouse who did not receive
 4 medical assistance, for medical assistance rendered for the
 5 predeceased spouse, is limited to the value of the assets of the
 6 estate that were marital property or jointly owned property at
 7 any time during the marriage. ~~Claims-for-alternative-care-shall~~
 8 ~~be-net-of-all-premiums-paid-under-section-256B-09137-subdivision~~
 9 ~~127-on-or-after-July-17-2003,-and-shall-be-limited-to-services~~
 10 ~~provided-on-or-after-July-17-2003-~~

11 [EFFECTIVE DATE.] This section is effective retroactive
 12 from July 1, 2003.

13 Sec. 4. Minnesota Statutes 2004, section 256B.15,
 14 subdivision 3, is amended to read:

15 Subd. 3. ~~[SURVIVING-SPOUSE, MINOR, BLIND, OR DISABLED~~
 16 ~~CHILDREN.]~~ If a decedent ~~is-survived-by-a-spouse,-or~~ who was
 17 single or who was the surviving spouse of a married couple and
 18 is survived by a child who is under age 21 or blind or
 19 permanently and totally disabled according to the supplemental
 20 security income program criteria, a no claim shall be filed
 21 against the estate ~~according-to-this-section.~~

22 [EFFECTIVE DATE.] This section is effective retroactive
 23 from July 1, 2003.

24 Sec. 5. Minnesota Statutes 2004, section 256B.15,
 25 subdivision 4, is amended to read:

26 Subd. 4. ~~[OTHER SURVIVORS.]~~ If the decedent who was single
 27 or the surviving spouse of a married couple is survived by one
 28 of the following persons, a claim exists against the estate in
 29 an amount not to exceed the value of the nonhomestead property
 30 included in the estate ~~and-the-personal-representative-shall~~
 31 ~~make,-execute,-and-deliver-to-the-county-agency-a-lien-against~~
 32 ~~the-homestead-property-in-the-estate-for-any-unpaid-balance-of~~
 33 ~~the-claim-to-the-claimant-as-provided-under-this-section:~~

34 (a) a sibling who resided in the decedent medical
 35 assistance recipient's home at least one year before the
 36 decedent's institutionalization and continuously since the date

1 of institutionalization; or

2 (b) a son or daughter or a grandchild who resided in the
3 decedent medical assistance recipient's home for at least two
4 years immediately before the parent's or grandparent's
5 institutionalization and continuously since the date of
6 institutionalization, and who establishes by a preponderance of
7 the evidence having provided care to the parent or grandparent
8 who received medical assistance, that the care was provided
9 before institutionalization, and that the care permitted the
10 parent or grandparent to reside at home rather than in an
11 institution.

12 [EFFECTIVE DATE.] This section is effective retroactive
13 from July 1, 2003.

14 Sec. 6. Minnesota Statutes 2004, section 514.981,
15 subdivision 6, is amended to read:

16 Subd. 6. [~~TIME LIMITS; CLAIM LIMITS; LIENS-ON-LIFE-ESTATES~~
17 ~~AND-JOINT-TENANCIES.~~] (a) A medical assistance lien is a lien on
18 the real property it describes for a period of ten years from
19 the date it attaches according to section 514.981, subdivision
20 2, paragraph (a), except as otherwise provided for in sections
21 514.980 to 514.985. The agency may renew a medical assistance
22 lien for an additional ten years from the date it would
23 otherwise expire by recording or filing a certificate of renewal
24 before the lien expires. The certificate shall be recorded or
25 filed in the office of the county recorder or registrar of
26 titles for the county in which the lien is recorded or filed.
27 The certificate must refer to the recording or filing data for
28 the medical assistance lien it renews. The certificate need not
29 be attested, certified, or acknowledged as a condition for
30 recording or filing. The registrar of titles or the recorder
31 shall file, record, index, and return the certificate of renewal
32 in the same manner as provided for medical assistance liens in
33 section 514.982, subdivision 2.

34 (b) A medical assistance lien is not enforceable against
35 the real property of an estate to the extent there is a
36 determination by a court of competent jurisdiction, or by an

1 officer of the court designated for that purpose, that there are
2 insufficient assets in the estate to satisfy the agency's
3 medical assistance lien in whole or in part because of the
4 homestead exemption under section 256B.15, subdivision 4, the
5 rights of the surviving spouse or minor children under section
6 524.2-403, paragraphs (a) and (b), or claims with a priority
7 under section 524.3-805, paragraph (a), clauses (1) to (4). For
8 purposes of this section, the rights of the decedent's adult
9 children to exempt property under section 524.2-403, paragraph
10 (b), shall not be considered costs of administration under
11 section 524.3-805, paragraph (a), clause (1).

12 ~~(c)-Notwithstanding any law or rule to the contrary, the~~
13 ~~provisions in clauses (1) to (7) apply if a life estate subject~~
14 ~~to a medical assistance lien ends according to its terms, or if~~
15 ~~a medical assistance recipient who owns a life estate or any~~
16 ~~interest in real property as a joint tenant that is subject to a~~
17 ~~medical assistance lien dies.~~

18 ~~(1)-The medical assistance recipient's life estate or joint~~
19 ~~tenancy interest in the real property shall not end upon the~~
20 ~~recipient's death but shall merge into the remainder interest or~~
21 ~~other interest in real property the medical assistance recipient~~
22 ~~owned in joint tenancy with others,--The medical assistance lien~~
23 ~~shall attach to and run with the remainder or other interest in~~
24 ~~the real property to the extent of the medical assistance~~
25 ~~recipient's interest in the property at the time of the~~
26 ~~recipient's death as determined under this section.~~

27 ~~(2)-If the medical assistance recipient's interest was a~~
28 ~~life estate in real property, the lien shall be a lien against~~
29 ~~the portion of the remainder equal to the percentage factor for~~
30 ~~the life estate of a person the medical assistance recipient's~~
31 ~~age on the date the life estate ended according to its terms or~~
32 ~~the date of the medical assistance recipient's death as listed~~
33 ~~in the Life Estate Mortality Table in the health care program's~~
34 ~~manual.~~

35 ~~(3)-If the medical assistance recipient owned the interest~~
36 ~~in real property in joint tenancy with others, the lien shall be~~

1 a-lien-against-the-portion-of-that-interest-equal-to-the
2 fractional-interest-the-medical-assistance-recipient-would-have
3 owned-in-the-jointly-owned-interest-had-the-medical-assistance
4 recipient-and-the-other-owners-held-title-to-that-interest-as
5 tenants-in-common-on-the-date-the-medical-assistance-recipient
6 died.

7 (4)-The-medical-assistance-lien-shall-remain-a-lien-against
8 the-remainder-or-other-jointly-owned-interest-for-the-length-of
9 time-and-be-renewable-as-provided-in-paragraph-(a);

10 (5)-Subdivision-5, paragraph-(a), clause-(4), paragraph
11 (b), clauses-(1)-and-(2), and subdivision-6, paragraph-(b), do
12 not-apply-to-medical-assistance-liens-which-attach-to-interests
13 in-real-property-as-provided-under-this-subdivision.

14 (6)-The-continuation-of-a-medical-assistance-recipient's
15 life-estate-or-joint-tenancy-interest-in-real-property-after-the
16 medical-assistance-recipient's-death-for-the-purpose-of
17 recovering-medical-assistance-provided-for-in-sections-514.980
18 to-514.985-modifies-common-law-principles-holding-that-these
19 interests-terminate-on-the-death-of-the-holder.

20 (7)-Notwithstanding-any-law-or-rule-to-the-contrary, no
21 release, satisfaction, discharge, or affidavit under section
22 256B.15 shall extinguish or terminate the life-estate or joint
23 tenancy interest of a medical-assistance-recipient subject to a
24 lien under sections 514.980 to 514.985 on the date the recipient
25 dies.

26 (8)-The-provisions-of-clauses-(1)-to-(7)-do-not-apply-to-a
27 homestead-owned-of-record, on-the-date-the-recipient-dies, by
28 the-recipient-and-the-recipient's-spouse-as-joint-tenants-with-a
29 right-of-survivorship.--Homestead-means-the-real-property
30 occupied-by-the-surviving-joint-tenant-spouse-as-their-sole
31 residence-on-the-date-the-recipient-dies-and-classified-and
32 taxed-to-the-recipient-and-surviving-joint-tenant-spouse-as
33 homestead-property-for-property-tax-purposes-in-the-calendar
34 year-in-which-the-recipient-dies.--For-purposes-of-this
35 exemption, real-property-the-recipient-and-their-surviving-joint
36 tenant-spouse-purchase-solely-with-the-proceeds-from-the-sale-of

1 ~~their-prior-homestead,-own-of-record-as-joint-tenants,-and~~
 2 ~~qualify-as-homestead-property-under-section-273.124-in-the~~
 3 ~~calendar-year-in-which-the-recipient-dies-and-prior-to-the~~
 4 ~~recipient's-death-shall-be-deemed-to-be-real-property-classified~~
 5 ~~and-taxed-to-the-recipient-and-their-surviving-joint-tenant~~
 6 ~~spouse-as-homestead-property-in-the-calendar-year-in-which-the~~
 7 ~~recipient-dies.--The-surviving-spouse,-or-any-person-with~~
 8 ~~personal-knowledge-of-the-facts,-may-provide-an-affidavit~~
 9 ~~describing-the-homestead-property-affected-by-this-clause-and~~
 10 ~~stating-facts-showing-compliance-with-this-clause.--The~~
 11 ~~affidavit-shall-be-prima-facie-evidence-of-the-facts-it-states-~~

12 [EFFECTIVE DATE.] This section is effective retroactive
 13 from July 1, 2003, and applies to medical assistance liens
 14 recorded or filed on or after that date.

15 Sec. 7. Minnesota Statutes 2004, section 524.3-805, is
 16 amended to read:

17 524.3-805 [CLASSIFICATION OF CLAIMS.]

18 (a) If the applicable assets of the estate are insufficient
 19 to pay all claims in full, the personal representative shall
 20 make payment in the following order:

21 (1) costs and expenses of administration;

22 (2) reasonable funeral expenses;

23 (3) debts and taxes with preference under federal law;

24 (4) reasonable and necessary medical, hospital, or nursing
 25 home expenses of the last illness of the decedent, including
 26 compensation of persons attending the decedent, ~~a-claim-filed~~
 27 ~~under-section-256B.15-for-recovery-of-expenditures-for~~
 28 ~~alternative-care-for-nonmedical-assistance-recipients-under~~
 29 ~~section-256B.0913,~~ and including a claim filed pursuant to
 30 section 256B.15;

31 (5) reasonable and necessary medical, hospital, and nursing
 32 home expenses for the care of the decedent during the year
 33 immediately preceding death;

34 (6) debts with preference under other laws of this state,
 35 and state taxes;

36 (7) all other claims.

1 (b) No preference shall be given in the payment of any
 2 claim over any other claim of the same class, and a claim due
 3 and payable shall not be entitled to a preference over claims
 4 not due, except that if claims for expenses of the last illness
 5 involve only claims filed under section ~~256B.15-for-recovery-of~~
 6 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~
 7 ~~recipients-under-section-256B.0913~~, section 246.53 for costs of
 8 state hospital care and claims filed under section 256B.15,
 9 ~~claims-filed-to-recover-expenditures-for-alternative-care-for~~
 10 ~~nonmedical-assistance-recipients-under-section-256B.0913-shall~~
 11 ~~have-preference-over-claims-filed-under-both-sections-246.53-and~~
 12 ~~other-claims-filed-under-section-256B.15~~, and. Claims filed
 13 under section 246.53 have preference over claims filed under
 14 section 256B.15 ~~for-recovery-of-amounts-other-than-those-for~~
 15 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~
 16 ~~recipients-under-section-256B.0913~~.

17 [EFFECTIVE DATE.] This section is effective retroactive
 18 from July 1, 2003.

19 Sec. 8. [APPROPRIATION.]

20 \$. is appropriated from the general fund to the
 21 commissioner of human services for the fiscal year beginning
 22 July 1, 2005, for the purposes of sections 1 to 7 and 9.

23 Sec. 9. [REPEALER.]

24 (a) Minnesota Statutes 2004, section 256B.15, subdivisions
 25 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, and 1k, are repealed
 26 retroactively from July 1, 2003.

27 (b) Minnesota Statutes 2004, sections 514.991; 514.992;
 28 514.993; 514.994; and 514.995, are repealed retroactively from
 29 July 1, 2003.

APPENDIX
Repealed Minnesota Statutes for 05-0435

256B.15 CLAIMS AGAINST ESTATES.

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

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

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

Subd. 1d. **Effect of notice.** From the time it takes effect, the notice shall be notice to remaindermen, joint tenants, or to anyone else owning or acquiring an interest in or encumbrance against the property described in the notice that the medical assistance recipient's life estate, joint tenancy, or other interests in the real estate described in the notice:

(1) shall, in the case of life estate and joint tenancy interests, continue to exist for purposes of this section, and be subject to liens and claims as provided in this section;

(2) shall be subject to a lien in favor of the claimant effective upon the death of the recipient and dealt with as provided in this section;

(3) may be included in the recipient's estate, as defined in this section; and

(4) may be subject to administration and all other provisions of chapter 524 and may be sold, assigned, transferred, or encumbered free and clear of their interest or encumbrance to satisfy claims under this section.

Subd. 1e. **Full or partial release of notice.** (a) The claimant may fully or partially release the notice and the lien arising out of the notice of record in the real estate records where the notice is filed or recorded at any time. The claimant may give a full or partial release to extinguish any life estates or joint tenancy interests which are or may be continued under this section or whose existence or nonexistence may create a cloud on the title to real property at any time whether or not a notice has been filed. The recorder or registrar of titles

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shall accept the release for recording or filing. If the release is a partial release, it must include a legal description of the property being released.

(b) At any time, the claimant may, at the claimant's discretion, wholly or partially release, subordinate, modify, or amend the recorded notice and the lien arising out of the notice.

Subd. 1f. Agency lien. (a) The notice shall constitute a lien in favor of the Department of Human Services against the recipient's interests in the real estate it describes for a period of 20 years from the date of filing or the date of the recipient's death, whichever is later. Notwithstanding any law or rule to the contrary, a recipient's life estate and joint tenancy interests shall not end upon the recipient's death but shall continue according to subdivisions 1h, 1i, and 1j. The amount of the lien shall be equal to the total amount of the claims that could be presented in the recipient's estate under this section.

(b) If no estate has been opened for the deceased recipient, any holder of an interest in the property may apply to the lien holder for a statement of the amount of the lien or for a full or partial release of the lien. The application shall include the applicant's name, current mailing address, current home and work telephone numbers, and a description of their interest in the property, a legal description of the recipient's interest in the property, and the deceased recipient's name, date of birth, and Social Security number. The lien holder shall send the applicant by certified mail, return receipt requested, a written statement showing the amount of the lien, whether the lien holder is willing to release the lien and under what conditions, and inform them of the right to a hearing under section 256.045. The lien holder shall have the discretion to compromise and settle the lien upon any terms and conditions the lien holder deems appropriate.

(c) Any holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the validity, extent, or amount of the lien. The request must be in writing, and must include the names, current addresses, and home and business telephone numbers for all other parties holding an interest in the property. A request for a hearing by any holder of an interest in the property shall be deemed to be a request for a hearing by all parties owning interests in the property. Notice of the hearing shall be given to the lien holder, the party filing the appeal, and all of the other holders of interests in the property at the addresses listed in the appeal by certified mail, return receipt requested, or by ordinary mail. Any owner of an interest in the property to whom notice of the hearing is mailed shall be deemed to have waived any and all claims or defenses in respect to the lien unless they appear and assert any claims or defenses at the hearing.

(d) If the claim the lien secures could be filed under subdivision 1h, the lien holder may collect, compromise, settle, or release the lien upon any terms and conditions it deems appropriate. If the claim the lien secures could be filed under subdivision 1i or 1j, the lien may be adjusted or enforced to the same extent had it been filed under subdivisions 1i and 1j, and the provisions of subdivisions 1i, clause (f), and 1j, clause (d), shall apply to voluntary payment, settlement, or satisfaction of the lien.

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(e) If no probate proceedings have been commenced for the recipient as of the date the lien holder executes a release of the lien on a recipient's life estate or joint tenancy interest, created for purposes of this section, the release shall terminate the life estate or joint tenancy interest created under this section as of the date it is recorded or filed to the extent of the release. If the claimant executes a release for purposes of extinguishing a life estate or a joint tenancy interest created under this section to remove a cloud on title to real property, the release shall have the effect of extinguishing any life estate or joint tenancy interests in the property it describes which may have been continued by reason of this section retroactive to the date of death of the deceased life tenant or joint tenant except as provided for in section 514.981, subdivision 6.

(f) If the deceased recipient's estate is probated, a claim shall be filed under this section. The amount of the lien shall be limited to the amount of the claim as finally allowed. If the claim the lien secures is filed under subdivision lh, the lien may be released in full after any allowance of the claim becomes final or according to any agreement to settle and satisfy the claim. The release shall release the lien but shall not extinguish or terminate the interest being released. If the claim the lien secures is filed under subdivision li or lj, the lien shall be released after the lien under subdivision li or lj is filed or recorded, or settled according to any agreement to settle and satisfy the claim. The release shall not extinguish or terminate the interest being released. If the claim is finally disallowed in full, the claimant shall release the claimant's lien at the claimant's expense.

Subd. lg. Estate property. Notwithstanding any law or rule to the contrary, if a claim is presented under this section, interests or the proceeds of interests in real property a decedent owned as a life tenant or a joint tenant with a right of survivorship shall be part of the decedent's estate, subject to administration, and shall be dealt with as provided in this section.

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

(b) For purposes of this section, the person's estate consists of: (1) their probate estate; (2) all of the person's interests or proceeds of those interests in real property the person owned as a life tenant or as a joint tenant with a right of survivorship at the time of the person's death; (3) all of the person's interests or proceeds of those interests in securities the person owned in beneficiary form as provided under sections 524.6-301 to 524.6-311 at the time of the person's death, to the extent they become part of the probate estate under section 524.6-307; and (4) all of the person's interests in joint accounts, multiple party accounts, and pay on death accounts, or the proceeds of those accounts, as provided under sections 524.6-201 to 524.6-214 at the time of the person's death to the extent they become part of the probate estate under section 524.6-207. Notwithstanding any law or rule to the contrary, a state or county agency with a claim under

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this section shall be a creditor under section 524.6-307.

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

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

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

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

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

(h) Subject to administration, the personal representative shall use all of the cash or proceeds of interests to pay an allowable claim under this section. The remaindermen or surviving joint tenants and their spouses, if any, may enter

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into a written agreement with the personal representative or the claimant to settle and satisfy obligations imposed at any time before or after a claim is filed.

(i) The personal representative may, at their discretion, provide any or all of the other owners, remaindermen, or surviving joint tenants with an affidavit terminating the decedent's estate's interest in real property the decedent owned as a life tenant or as a joint tenant with others, if the personal representative determines in good faith that neither the decedent nor any of the decedent's predeceased spouses received any medical assistance for which a claim could be filed under this section, or if the personal representative has filed an affidavit with the court that the estate has other assets sufficient to pay a claim, as presented, or if there is a written agreement under paragraph (h), or if the claim, as allowed, has been paid in full or to the full extent of the assets the estate has available to pay it. The affidavit may be recorded in the office of the county recorder or filed in the Office of the Registrar of Titles for the county in which the real property is located. Except as provided in section 514.981, subdivision 6, when recorded or filed, the affidavit shall terminate the decedent's interest in real estate the decedent owned as a life tenant or a joint tenant with others. The affidavit shall: (1) be signed by the personal representative; (2) identify the decedent and the interest being terminated; (3) give recording information sufficient to identify the instrument that created the interest in real property being terminated; (4) legally describe the affected real property; (5) state that the personal representative has determined that neither the decedent nor any of the decedent's predeceased spouses received any medical assistance for which a claim could be filed under this section; (6) state that the decedent's estate has other assets sufficient to pay the claim, as presented, or that there is a written agreement between the personal representative and the claimant and the other owners or remaindermen or other joint tenants to satisfy the obligations imposed under this subdivision; and (7) state that the affidavit is being given to terminate the estate's interest under this subdivision, and any other contents as may be appropriate. The recorder or registrar of titles shall accept the affidavit for recording or filing. The affidavit shall be effective as provided in this section and shall constitute notice even if it does not include recording information sufficient to identify the instrument creating the interest it terminates. The affidavit shall be conclusive evidence of the stated facts.

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

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

Subd. 1i. Estates of persons receiving medical

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assistance and survived by others. (a) For purposes of this subdivision, the person's estate consists of the person's probate estate and all of the person's interests in real property the person owned as a life tenant or a joint tenant at the time of the person's death.

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

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

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

(e) The state or county agency shall file or record the lien in the office of the county recorder or registrar of titles for each county in which any of the real property is located. The recorder or registrar of titles shall accept the lien for filing or recording. All recording or filing fees shall be paid by the Department of Human Services. The recorder or registrar of titles shall mail the recorded lien to the Department of Human Services. The lien need not be attested, certified, or acknowledged as a condition of recording or filing. Upon recording or filing of a lien against a life estate or a joint tenancy interest, the interest subject to the lien shall merge into the remainder interest or the interest the recipient and others owned jointly. The lien shall attach to and run with the property to the extent of the decedent's interest in the property at the time of the decedent's death as determined under this section.

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

(g) The lien under this subdivision may be enforced or foreclosed in the manner provided by law for the enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. When the lien is paid, satisfied, or otherwise discharged, the state or county agency shall prepare and file a release of lien at its own expense. No action to foreclose the lien shall be commenced unless the lien holder has first given 30 days' prior written notice to pay the lien to the owners and parties in possession of the property subject to the lien. The notice shall: (1) include the name, address, and telephone number of the lien holder; (2) describe the lien; (3) give the amount of the lien; (4) inform the owner or party in possession that payment of the lien in full must be made to the lien holder within 30 days after service of the notice or the lien holder may begin proceedings to foreclose the lien; and (5) be served by personal service, certified mail, return receipt requested, ordinary first class mail, or by publishing it once in a newspaper of general circulation in the county in which any part of the property is located. Service of the notice shall be complete upon mailing or publication.

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

(a) If payment of a claim filed under this section is limited as provided in subdivision 4, and if the estate does not have other assets sufficient to pay the claim in full, as allowed, the personal representative or the court shall make, execute, and deliver a lien on the property in the estate that is exempt from the claim under subdivision 4 in favor of the commissioner of human services on forms provided by the commissioner to the county agency filing the claim. If the estate pays a claim filed under this section in full from other assets of the estate, no lien shall be filed against the property described in subdivision 4.

(b) The lien shall be in an amount equal to the unpaid balance of the allowed claim under this section remaining after the estate has applied all other available assets of the estate to pay the claim. The property exempt under subdivision 4 shall not be sold, assigned, transferred, conveyed, encumbered, or distributed until after the personal representative has determined the estate has other assets sufficient to pay the allowed claim in full, or until after the lien has been filed or recorded. The lien shall bear interest as provided under section 524.3-806, shall attach to the property it describes upon filing or recording, and shall remain a lien on the real

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property it describes for a period of 20 years from the date it is filed or recorded. The lien shall be a disposition of the claim sufficient to permit the estate to close.

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

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

(e) A lien under this subdivision may be enforced or foreclosed in the manner provided for by law for the enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. When the lien has been paid, satisfied, or otherwise discharged, the claimant shall prepare and file a release of lien at the claimant's expense. No action to foreclose the lien shall be commenced unless the lien holder has first given 30 days prior written notice to pay the lien to the record owners of the property and the parties in possession of the property subject to the lien. The notice shall: (1) include the name, address, and telephone number of the lien holder; (2) describe the lien; (3) give the amount of the lien; (4) inform the owner or party in possession that payment of the lien in full must be made to the lien holder within 30 days after service of the notice or the lien holder may begin proceedings to foreclose the lien; and (5) be served by personal service, certified mail, return receipt requested, ordinary first class mail, or by publishing it once in a newspaper of general circulation in the county in which any part of the property is located. Service shall be complete upon mailing or publication.

(f) Upon filing or recording of a lien against a life estate or joint tenancy interest under this subdivision, the interest subject to the lien shall merge into the remainder interest or the interest the decedent and others owned jointly, effective on the date of recording and filing. The lien shall attach to and run with the property to the extent of the decedent's interest in the property at the time of the decedent's death as determined under this section.

(g)(1) An affidavit may be provided by a personal representative, at their discretion, stating the personal representative has determined in good faith that a decedent survived by a spouse or a person listed in subdivision 3, or by a person listed in subdivision 4, or the decedent's predeceased spouse did not receive any medical assistance giving rise to a

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claim under this section, or that the real property described in subdivision 4 is not needed to pay in full a claim arising under this section.

(2) The affidavit shall:

(i) describe the property and the interest being extinguished;

(ii) name the decedent and give the date of death;

(iii) state the facts listed in clause (1);

(iv) state that the affidavit is being filed to terminate the life estate or joint tenancy interest created under this subdivision;

(v) be signed by the personal representative; and

(vi) contain any other information that the affiant deems appropriate.

(3) Except as provided in section 514.981, subdivision 6, when the affidavit is filed or recorded, the life estate or joint tenancy interest in real property that the affidavit describes shall be terminated effective as of the date of filing or recording. The termination shall be final and may not be set aside for any reason.

Subd. 1k. Filing. Any notice, lien, release, or other document filed under subdivisions 1c to 1l, and any lien, release of lien, or other documents relating to a lien filed under subdivisions 1h, 1i, and 1j must be filed or recorded in the office of the county recorder or registrar of titles, as appropriate, in the county where the affected real property is located. Notwithstanding section 386.77, the state or county agency shall pay any applicable filing fee. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the filing is registered property, the registrar of titles shall record the filing on the certificate of title for each parcel of property described in the filing. If the property described in the filing is abstract property, the recorder shall file and index the property in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the filing. The recorder or registrar of titles shall return the filed document to the party filing it at no cost. If the party making the filing provides a duplicate copy of the filing, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the party at no extra cost.

514.991 ALTERNATIVE CARE LIENS; DEFINITIONS.

Subdivision 1. Applicability. The definitions in this section apply to sections 514.991 to 514.995.

Subd. 2. Alternative care agency, agency, or department. "Alternative care agency," "agency," or "department" means the Department of Human Services when it pays for or provides alternative care benefits for a nonmedical assistance recipient directly or through a county social services agency under chapter 256B according to section 256B.0913.

Subd. 3. Alternative care benefit or benefits. "Alternative care benefit" or "benefits" means a benefit provided to a nonmedical assistance recipient under chapter 256B according to section 256B.0913.

Subd. 4. Alternative care recipient or recipient. "Alternative care recipient" or "recipient" means a person who receives alternative care grant benefits.

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Subd. 5. Alternative care lien or lien. "Alternative care lien" or "lien" means a lien filed under sections 514.992 to 514.995.

514.992 ALTERNATIVE CARE LIEN.

Subdivision 1. Property subject to lien; lien amount.

(a) Subject to sections 514.991 to 514.995, payments made by an alternative care agency to provide benefits to a recipient or to the recipient's spouse who owns property in this state constitute a lien in favor of the agency on all real property the recipient owns at and after the time the benefits are first paid.

(b) The amount of the lien is limited to benefits paid for services provided to recipients over 55 years of age and provided on and after July 1, 2003.

Subd. 2. Attachment. (a) A lien attaches to and becomes enforceable against specific real property as of the date when all of the following conditions are met:

(1) the agency has paid benefits for a recipient;

(2) the recipient has been given notice and an opportunity for a hearing under paragraph (b);

(3) the lien has been filed as provided for in section 514.993 or memorialized on the certificate of title for the property it describes; and

(4) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a lien until it has sent the recipient, their authorized representative, or their legal representative written notice of its lien rights by certified mail, return receipt requested, or registered mail and there has been an opportunity for a hearing under section 256.045. No person other than the recipient shall have a right to a hearing under section 256.045 prior to the time the lien is filed. The hearing shall be limited to whether the agency has met all of the prerequisites for filing the lien and whether any of the exceptions in this section apply.

(c) An agency may not file a lien against the recipient's homestead when any of the following exceptions apply:

(1) while the recipient's spouse is also physically present and lawfully and continuously residing in the homestead;

(2) a child of the recipient who is under age 21 or who is blind or totally and permanently disabled according to supplemental security income criteria is also physically present on the property and lawfully and continuously residing on the property from and after the date the recipient first receives benefits;

(3) a child of the recipient who has also lawfully and continuously resided on the property for a period beginning at least two years before the first day of the month in which the recipient began receiving alternative care, and who provided uncompensated care to the recipient which enabled the recipient to live without alternative care services for the two-year period;

(4) a sibling of the recipient who has an ownership interest in the property of record in the office of the county recorder or registrar of titles for the county in which the real property is located and who has also continuously occupied the homestead for a period of at least one year immediately prior to the first day of the first month in which the recipient received benefits and continuously since that date.

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(d) A lien only applies to the real property it describes.

Subd. 3. Continuation of lien. A lien remains effective from the time it is filed until it is paid, satisfied, discharged, or becomes unenforceable under sections 514.991 to 514.995.

Subd. 4. Priority of lien. (a) A lien which attaches to the real property it describes is subject to the rights of anyone else whose interest in the real property is perfected of record before the lien has been recorded or filed under section 514.993, including:

(1) an owner, other than the recipient or the recipient's spouse;

(2) a good faith purchaser for value without notice of the lien;

(3) a holder of a mortgage or security interest; or

(4) a judgment lien creditor whose judgment lien has attached to the recipient's interest in the real property.

(b) The rights of the other person have the same protections against an alternative care lien as are afforded against a judgment lien that arises out of an unsecured obligation and arises as of the time of the filing of an alternative care grant lien under section 514.993. The lien shall be inferior to a lien for property taxes and special assessments and shall be superior to all other matters first appearing of record after the time and date the lien is filed or recorded.

Subd. 5. Settlement, subordination, and release. (a) An agency may, with absolute discretion, settle or subordinate the lien to any other lien or encumbrance of record upon the terms and conditions it deems appropriate.

(b) The agency filing the lien shall release and discharge the lien:

(1) if it has been paid, discharged, or satisfied;

(2) if it has received reimbursement for the amounts secured by the lien, has entered into a binding and legally enforceable agreement under which it is reimbursed for the amount of the lien, or receives other collateral sufficient to secure payment of the lien;

(3) against some, but not all, of the property it describes upon the terms, conditions, and circumstances the agency deems appropriate;

(4) to the extent it cannot be lawfully enforced against the property it describes because of an error, omission, or other material defect in the legal description contained in the lien or a necessary prerequisite to enforcement of the lien; and

(5) if, in its discretion, it determines the filing or enforcement of the lien is contrary to the public interest.

(c) The agency executing the lien shall execute and file the release as provided for in section 514.993, subdivision 2.

Subd. 6. Length of lien. (a) A lien shall be a lien on the real property it describes for a period of ten years from the date it attaches according to subdivision 2, paragraph (a), except as otherwise provided for in sections 514.992 to 514.995. The agency filing the lien may renew the lien for one additional ten-year period from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate of renewal shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed.

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The certificate must refer to the recording or filing data for the lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The recorder or registrar of titles shall record, file, index, and return the certificate of renewal in the same manner provided for liens in section 514.993, subdivision 2.

(b) An alternative care lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of a surviving spouse or a minor child under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

514.993 LIEN; CONTENTS AND FILING.

Subdivision 1. Contents. A lien shall be dated and must contain:

- (1) the recipient's full name, last known address, and Social Security number;
- (2) a statement that benefits have been paid to or for the recipient's benefit;
- (3) a statement that all of the recipient's interests in the real property described in the lien may be subject to or affected by the agency's right to reimbursement for benefits;
- (4) a legal description of the real property subject to the lien and whether it is registered or abstract property; and
- (5) such other contents, if any, as the agency deems appropriate.

Subd. 2. Filing. Any lien, release, or other document required or permitted to be filed under sections 514.991 to 514.995 must be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any documents filed under sections 514.991 to 514.995. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the lien is registered property, the registrar of titles shall record it on the certificate of title for each parcel of property described in the lien. If the property described in the lien is abstract property, the recorder shall file the lien in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the lien. The recorder or registrar shall return the recorded or filed lien to the agency at no cost. If the agency provides a duplicate copy of the lien, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the agency at no cost. The agency is responsible for filing any lien, release, or other documents under sections 514.991 to 514.995.

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Repealed Minnesota Statutes for 05-0435

514.994 ENFORCEMENT; OTHER REMEDIES.

Subdivision 1. Foreclosure or enforcement of lien. The agency may enforce or foreclose a lien filed under sections 514.991 to 514.995 in the manner provided for by law for enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. The lien shall remain enforceable as provided for in sections 514.991 to 514.995 notwithstanding any laws limiting the enforceability of judgments.

Subd. 2. Homestead exemption. The lien may not be enforced against the homestead property of the recipient or the spouse while they physically occupy it as their lawful residence.

Subd. 3. Agency claim or remedy. Sections 514.992 to 514.995 do not limit the agency's right to file a claim against the recipient's estate or the estate of the recipient's spouse, do not limit any other claims for reimbursement the agency may have, and do not limit the availability of any other remedy to the agency.

514.995 AMOUNTS RECEIVED TO SATISFY LIEN.

Amounts the agency receives to satisfy the lien must be deposited in the state treasury and credited to the fund from which the benefits were paid.

Burfin

1 Senator moves to amend S.F. No. 175 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 256B.15,
4 subdivision 1, is amended to read:

5 Subdivision 1. [~~POLICY,--APPLICABILITY,--PURPOSE,--AND~~
6 ~~CONSTRUCTION, DEFINITION.~~] (a) It is the policy of this state
7 that individuals or couples, either or both of whom participate
8 in the medical assistance program, use their own assets to pay
9 their share of the total cost of their care during or after
10 their enrollment in the program according to applicable federal
11 law and the laws of this state. The following provisions apply:

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

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

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

25 ~~(4) (2) all laws, rules, and regulations governing or~~
26 ~~involved with a recovery of medical assistance shall must be~~
27 ~~liberally construed to accomplish their intended purposes;~~

28 ~~(5) a deceased recipient's life estate and joint tenancy~~
29 ~~interests continued under this section shall be owned by the~~
30 ~~remaindermen or surviving joint tenants as their interests may~~
31 ~~appear on the date of the recipient's death.---They shall not be~~
32 ~~merged into the remainder interest or the interests of the~~
33 ~~surviving joint tenants by reason of ownership.---They shall be~~
4 ~~subject to the provisions of this section.---Any conveyance,~~
35 ~~transfer, sale, assignment, or encumbrance by a remainderman, a~~
36 ~~surviving joint tenant, or their heirs, successors, and assigns~~

1 shall-be-deemed-to-include-all-of-their-interest-in-the-deceased
2 recipient's-life-estate-or-joint-tenancy-interest-continued
3 under-this-section, and

4 (6) the provisions of subdivisions 1c to 1k continuing a
5 recipient's joint-tenancy interests in real property after the
6 recipient's death do not apply to a homestead owned of record,
7 on the date the recipient dies, by the recipient and the
8 recipient's spouse as joint tenants with a right of
9 survivorship. -- Homestead means the real property occupied by the
10 surviving joint-tenant spouse as their sole residence on the
11 date the recipient dies and classified and taxed to the
12 recipient and surviving joint-tenant spouse as homestead
13 property for property tax purposes in the calendar year in which
14 the recipient dies. -- For purposes of this exemption, real
15 property the recipient and their surviving joint-tenant spouse
16 purchase solely with the proceeds from the sale of their prior
17 homestead, own of record as joint tenants, and qualify as
18 homestead property under section 273.124 in the calendar year in
19 which the recipient dies and prior to the recipient's death
20 shall be deemed to be real property classified and taxed to the
21 recipient and their surviving joint-tenant spouse as homestead
22 property in the calendar year in which the recipient dies. -- The
23 surviving spouse, or any person with personal knowledge of the
24 facts, may provide an affidavit describing the homestead
25 property affected by this clause and stating facts showing
26 compliance with this clause. -- The affidavit shall be prima facie
27 evidence of the facts it states.

28 (b) For purposes of this section, "medical assistance"
29 includes the medical assistance program under this chapter and
30 the general assistance medical care program under chapter 256D
31 and but does not include the alternative care program for
32 nonmedical assistance recipients under section 256B.0913.

33 [EFFECTIVE DATE.] The amendments in this section relating
34 to the alternative care program are effective retroactively from
35 July 1, 2003, and apply to the estates of decedents who die on
36 or after that date. The remaining amendments in this section

1 are effective retroactively from August 1, 2003, and apply to
2 the estates of decedents who die on or after that date.

3 Sec. 2. Minnesota Statutes 2004, section 256B.15,
4 subdivision 1a, is amended to read:

5 Subd. 1a. [ESTATES SUBJECT TO CLAIMS.] If a person
6 receives any medical assistance hereunder, on the person's
7 death, if single, or on the death of the survivor of a married
8 couple, either or both of whom received medical assistance, ~~or~~
9 ~~as-otherwise-provided-for-in-this-section,~~ the total amount paid
10 for medical assistance rendered for the person and spouse shall
11 be filed as a claim against the estate of the person or the
12 estate of the surviving spouse in the court having jurisdiction
13 to probate the estate or to issue a decree of descent according
14 to sections 525.31 to 525.313.

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

18 (a) the person was over 55 years of age, and received
19 services under this chapter, excluding alternative care;

20 (b) the person resided in a medical institution for six
21 months or longer, received services under this chapter,
22 excluding alternative care, and, at the time of
23 institutionalization or application for medical assistance,
24 whichever is later, the person could not have reasonably been
25 expected to be discharged and returned home, as certified in
26 writing by the person's treating physician. For purposes of
27 this section only, a "medical institution" means a skilled
28 nursing facility, intermediate care facility, intermediate care
29 facility for persons with mental retardation, nursing facility,
30 or inpatient hospital; or

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

33 The claim shall be considered an expense of the last
34 illness of the decedent for the purpose of section 524.3-805.
35 Any statute of limitations that purports to limit any county
36 agency or the state agency, or both, to recover for medical

1 assistance granted hereunder shall not apply to any claim made
 2 hereunder for reimbursement for any medical assistance granted
 3 hereunder. Notice of the claim shall be given to all heirs and
 4 devisees of the decedent whose identity can be ascertained with
 5 reasonable diligence. The notice must include procedures and
 6 instructions for making an application for a hardship waiver
 7 under subdivision 5; time frames for submitting an application
 8 and determination; and information regarding appeal rights and
 9 procedures. Counties are entitled to one-half of the nonfederal
 10 share of medical assistance collections from estates that are
 11 directly attributable to county effort. ~~Counties-are-entitled~~
 12 ~~to-ten-percent-of-the-collections-for-alternative-care-directly~~
 13 ~~attributable-to-county-effort.~~

14 [EFFECTIVE DATE.] The amendments in this section relating
 15 to the alternative care program are effective retroactively from
 16 July 1, 2003, and apply to the estates of decedents who die on
 17 or after that date. The remaining amendments in this section
 18 are effective retroactively from August 1, 2003, and apply to
 19 the estates of decedents who die on or after that date.

20 Sec. 3. Minnesota Statutes 2004, section 256B.15,
 21 subdivision 1d, is amended to read:

22 Subd. 1d. [EFFECT OF NOTICE.] From the time it takes
 23 effect, the notice shall be notice to remaindermen, joint
 24 tenants, or to anyone else owning or acquiring an interest in or
 25 encumbrance against the property described in the notice that
 26 the medical assistance recipient's life-estate, joint-tenancy,
 27 or other interests in the real estate described in the notice:

28 (1) ~~shall, in the case of life-estate and joint-tenancy~~
 29 ~~interests, continue to exist for purposes of this section, and~~
 30 ~~be subject to liens and claims as provided in this section;~~

31 (2) shall be subject to a lien in favor of the claimant
 32 effective upon the death of the recipient and dealt with as
 33 provided in this section;

34 (3) (2) may be included in the recipient's estate, as
 35 defined in this section; and

36 (4) (3) may be subject to administration and all other

1 provisions of chapter 524 and may be sold, assigned,
2 transferred, or encumbered free and clear of their interest or
3 encumbrance to satisfy claims under this section.

4 [EFFECTIVE DATE.] This section is effective retroactively
5 from August 1, 2003.

6 Sec. 4. Minnesota Statutes 2004, section 256B.15,
7 subdivision 1e, is amended to read:

8 Subd. 1e. [FULL OR PARTIAL RELEASE OF NOTICE.] (a) The
9 claimant may fully or partially release the notice and the lien
10 arising out of the notice of record in the real estate records
11 where the notice is filed or recorded at any time. ~~The claimant~~
12 ~~may give a full or partial release to extinguish any life~~
13 ~~estates or joint tenancy interests which are or may be continued~~
14 ~~under this section or whose existence or nonexistence may create~~
15 ~~a cloud on the title to real property at any time whether or not~~
16 ~~a notice has been filed.~~ The recorder or registrar of titles
17 shall accept the release for recording or filing. If the
18 release is a partial release, it must include a legal
19 description of the property being released.

20 (b) At any time, the claimant may, at the claimant's
21 discretion, wholly or partially release, subordinate, modify, or
22 amend the recorded notice and the lien arising out of the notice.

23 [EFFECTIVE DATE.] This section is effective retroactively
24 from August 1, 2003.

25 Sec. 5. Minnesota Statutes 2004, section 256B.15,
26 subdivision 1f, is amended to read:

27 Subd. 1f. [AGENCY LIEN.] (a) The notice shall constitute a
28 lien in favor of the Department of Human Services against the
29 recipient's interests in the real estate it describes for a
30 period of 20 years from the date of filing or the date of the
31 recipient's death, whichever is later. ~~Notwithstanding any law~~
32 ~~or rule to the contrary, a recipient's life estate and joint~~
33 ~~tenancy interests shall not end upon the recipient's death but~~
34 ~~shall continue according to subdivisions 1h, 1i, and 1j.~~ The
35 amount of the lien shall be equal to the total amount of the
36 claims that could be presented in the recipient's estate under

1 this section.

2 (b) If no estate has been opened for the deceased
3 recipient, any holder of an interest in the property may apply
4 to the lien holder for a statement of the amount of the lien or
5 for a full or partial release of the lien. The application
6 shall include the applicant's name, current mailing address,
7 current home and work telephone numbers, and a description of
8 their interest in the property, a legal description of the
9 recipient's interest in the property, and the deceased
10 recipient's name, date of birth, and Social Security number.
11 The lien holder shall send the applicant by certified mail,
12 return receipt requested, a written statement showing the amount
13 of the lien, whether the lien holder is willing to release the
14 lien and under what conditions, and inform them of the right to
15 a hearing under section 256.045. The lien holder shall have the
16 discretion to compromise and settle the lien upon any terms and
17 conditions the lien holder deems appropriate.

18 (c) Any holder of an interest in property subject to the
19 lien has a right to request a hearing under section 256.045 to
20 determine the validity, extent, or amount of the lien. The
21 request must be in writing, and must include the names, current
22 addresses, and home and business telephone numbers for all other
23 parties holding an interest in the property. A request for a
24 hearing by any holder of an interest in the property shall be
25 deemed to be a request for a hearing by all parties owning
26 interests in the property. Notice of the hearing shall be given
27 to the lien holder, the party filing the appeal, and all of the
28 other holders of interests in the property at the addresses
29 listed in the appeal by certified mail, return receipt
30 requested, or by ordinary mail. Any owner of an interest in the
31 property to whom notice of the hearing is mailed shall be deemed
32 to have waived any and all claims or defenses in respect to the
33 lien unless they appear and assert any claims or defenses at the
34 hearing.

35 (d) If the claim the lien secures could be filed under
36 subdivision 1h, the lien holder may collect, compromise, settle,

1 or release the lien upon any terms and conditions it deems
2 appropriate. If the claim the lien secures could be filed under
3 subdivision 1i or 1j, the lien may be adjusted or enforced to
4 the same extent had it been filed under subdivisions 1i and 1j,
5 and the provisions of subdivisions 1i, clause ~~{f}~~ (e), and 1j,
6 clause (d), shall apply to voluntary payment, settlement, or
7 satisfaction of the lien.

8 ~~(e) If no probate proceedings have been commenced for the~~
9 ~~recipient as of the date the lien holder executes a release of~~
10 ~~the lien on a recipient's life estate or joint tenancy interest,~~
11 ~~created for purposes of this section, the release shall~~
12 ~~terminate the life estate or joint tenancy interest created~~
13 ~~under this section as of the date it is recorded or filed to the~~
14 ~~extent of the release. -- If the claimant executes a release for~~
15 ~~purposes of extinguishing a life estate or a joint tenancy~~
16 ~~interest created under this section to remove a cloud on title~~
17 ~~to real property, the release shall have the effect of~~
18 ~~extinguishing any life estate or joint tenancy interests in the~~
19 ~~property it describes which may have been continued by reason of~~
20 ~~this section retroactive to the date of death of the deceased~~
21 ~~life tenant or joint tenant except as provided for in section~~
22 ~~514.9817, subdivision 6.~~

23 {f} If the deceased recipient's estate is probated, a claim
24 shall be filed under this section. The amount of the lien shall
25 be limited to the amount of the claim as finally allowed. If
26 the claim the lien secures is filed under subdivision 1h, the
27 lien may be released in full after any allowance of the claim
28 becomes final or according to any agreement to settle and
29 satisfy the claim. The release shall release the lien but shall
30 not extinguish or terminate the interest being released. If the
31 claim the lien secures is filed under subdivision 1i or 1j, the
32 lien shall be released after the lien under subdivision 1i or 1j
33 is filed or recorded, or settled according to any agreement to
34 settle and satisfy the claim. The release shall not extinguish
35 or terminate the interest being released. If the claim is
36 finally disallowed in full, the claimant shall release the

1 claimant's lien at the claimant's expense.

2 [EFFECTIVE DATE.] This section is effective retroactively
3 from August 1, 2003.

4 Sec. 6. Minnesota Statutes 2004, section 256B.15,
5 subdivision 1h, is amended to read:

6 Subd. 1h. [ESTATES OF SPECIFIC PERSONS RECEIVING MEDICAL
7 ASSISTANCE.] (a) For purposes of this section, paragraphs (b) ~~to~~
8 ~~(k)~~ and (c) apply if a person received medical assistance for
9 which a claim may be filed under this section and died single,
10 or the surviving spouse of the couple and was not survived by
11 any of the persons described in subdivisions 3 and 4.

12 (b) For purposes of this section, the person's estate
13 consists of: (1) their probate estate; (2) ~~all-of-the-person's~~
14 ~~interests-or-proceeds-of-these-interests-in-real-property-the~~
15 ~~person-owned-as-a-life-tenant-or-as-a-joint-tenant-with-a-right~~
16 ~~of-survivorship-at-the-time-of-the-person's-death;~~ ~~(3)~~ all of
17 the person's interests or proceeds of those interests in
18 securities the person owned in beneficiary form as provided
19 under sections 524.6-301 to 524.6-311 at the time of the
20 person's death, to the extent they become part of the probate
21 estate under section 524.6-307; and ~~(4)~~ (3) all of the person's
22 interests in joint accounts, multiple party accounts, and pay on
23 death accounts, or the proceeds of those accounts, as provided
24 under sections 524.6-201 to 524.6-214 at the time of the
25 person's death to the extent they become part of the probate
26 estate under section 524.6-207. Notwithstanding any law or rule
27 to the contrary, a state or county agency with a claim under
28 this section shall be a creditor under section 524.6-307.

29 ~~(c)-Notwithstanding-any-law-or-rule-to-the-contrary,-the~~
30 ~~person's-life-estate-or-joint-tenancy-interest-in-real-property~~
31 ~~not-subject-to-a-medical-assistance-lien-under-sections-514-980~~
32 ~~to-514-985-on-the-date-of-the-person's-death-shall-not-end-upon~~
33 ~~the-person's-death-and-shall-continue-as-provided-in-this~~
34 ~~subdivision.---The-life-estate-in-the-person's-estate-shall-be~~
35 ~~that-portion-of-the-interest-in-the-real-property-subject-to-the~~
36 ~~life-estate-that-is-equal-to-the-life-estate-percentage-factor~~

1 ~~for the life estate as listed in the Life Estate Mortality Table~~
2 ~~of the health care program's manual for a person who was the age~~
3 ~~of the medical assistance recipient on the date of the person's~~
4 ~~death. The joint tenancy interest in real property in the~~
5 ~~estate shall be equal to the fractional interest the person~~
6 ~~would have owned in the jointly held interest in the property~~
7 ~~had they and the other owners held title to the property as~~
8 ~~tenants in common on the date the person died.~~

9 ~~(d) The court upon its own motion, or upon motion by the~~
10 ~~personal representative or any interested party, may enter an~~
11 ~~order directing the remaindermen or surviving joint tenants and~~
12 ~~their spouses, if any, to sign all documents, take all actions,~~
13 ~~and otherwise fully cooperate with the personal representative~~
14 ~~and the court to liquidate the decedent's life estate or joint~~
15 ~~tenancy interests in the estate and deliver the cash or the~~
16 ~~proceeds of those interests to the personal representative and~~
17 ~~provide for any legal and equitable sanctions as the court deems~~
18 ~~appropriate to enforce and carry out the order, including an~~
19 ~~award of reasonable attorney fees.~~

20 ~~(e) The personal representative may make, execute, and~~
21 ~~deliver any conveyances or other documents necessary to convey~~
22 ~~the decedent's life estate or joint tenancy interest in the~~
23 ~~estate that are necessary to liquidate and reduce to cash the~~
24 ~~decedent's interest or for any other purposes.~~

25 ~~(f) Subject to administration, all costs, including~~
26 ~~reasonable attorney fees, directly and immediately related to~~
27 ~~liquidating the decedent's life estate or joint tenancy interest~~
28 ~~in the decedent's estate, shall be paid from the gross proceeds~~
29 ~~of the liquidation allocable to the decedent's interest and the~~
30 ~~net proceeds shall be turned over to the personal representative~~
31 ~~and applied to payment of the claim presented under this section.~~

32 ~~(g) The personal representative shall bring a motion in the~~
33 ~~district court in which the estate is being probated to compel~~
34 ~~the remaindermen or surviving joint tenants to account for and~~
35 ~~deliver to the personal representative all or any part of the~~
36 ~~proceeds of any sale, mortgage, transfer, conveyance, or any~~

1 disposition-of-real-property-allocable-to-the-decedent's-life
2 estate-or-joint-tenancy-interest-in-the-decedent's-estate,-and
3 do-everything-necessary-to-liquidate-and-reduce-to-cash-the
4 decedent's-interest-and-turn-the-proceeds-of-the-sale-or-other
5 disposition-over-to-the-personal-representative.--The-court-may
6 grant-any-legal-or-equitable-relief-including,-but-not-limited
7 to,-ordering-a-partition-of-real-estate-under-chapter-558
8 necessary-to-make-the-value-of-the-decedent's-life-estate-or
9 joint-tenancy-interest-available-to-the-estate-for-payment-of-a
10 claim-under-this-section.

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

18 (i)-The-personal-representative-may,-at-their-discretion,-
19 provide-any-or-all-of-the-other-owners,-remaindermen,-or
20 surviving-joint-tenants-with-an-affidavit-terminating-the
21 decedent's-estate's-interest-in-real-property-the-decedent-owned
22 as-a-life-tenant-or-as-a-joint-tenant-with-others,-if-the
23 personal-representative-determines-in-good-faith-that-neither
24 the-decedent-nor-any-of-the-decedent's-predeceased-spouses
25 received-any-medical-assistance-for-which-a-claim-could-be-filed
26 under-this-section,-or-if-the-personal-representative-has-filed
27 an-affidavit-with-the-court-that-the-estate-has-other-assets
28 sufficient-to-pay-a-claim,-as-presented,-or-if-there-is-a
29 written-agreement-under-paragraph-(h),-or-if-the-claim,-as
30 allowed,-has-been-paid-in-full-or-to-the-full-extent-of-the
31 assets-the-estate-has-available-to-pay-it.--The-affidavit-may-be
32 recorded-in-the-office-of-the-county-recorder-or-filed-in-the
33 Office-of-the-Registrar-of-Titles-for-the-county-in-which-the
34 real-property-is-located.--Except-as-provided-in-section
35 514.981,-subdivision-6,-when-recorded-or-filed,-the-affidavit
36 shall-terminate-the-decedent's-interest-in-real-estate-the

1 decedent-owned-as-a-life-tenant-or-a-joint-tenant-with-others.
2 The-affidavit-shall:--(1)-be-signed-by-the-personal
3 representative;-(2)-identify-the-decedent-and-the-interest-being
4 terminated;-(3)-give-recording-information-sufficient-to
5 identify-the-instrument-that-created-the-interest-in-real
6 property-being-terminated;-(4)-legally-describe-the-affected
7 real-property;-(5)-state-that-the-personal-representative-has
8 determined-that-neither-the-decedent-nor-any-of-the-decedent's
9 predeceased-spouses-received-any-medical-assistance-for-which-a
10 claim-could-be-filed-under-this-section;-(6)-state-that-the
11 decedent's-estate-has-other-assets-sufficient-to-pay-the-claim,
12 as-presented;--or-that-there-is-a-written-agreement-between-the
13 personal-representative-and-the-claimant-and-the-other-owners-or
14 remaindermen-or-other-joint-tenants-to-satisfy-the-obligations
15 imposed-under-this-subdivision;--and-(7)-state-that-the-affidavit
16 is-being-given-to-terminate-the-estate's-interest-under-this
17 subdivision;--and-any-other-contents-as-may-be-appropriate.
18 The-recorder-or-registrar-of-titles-shall-accept-the-affidavit
19 for-recording-or-filing.--The-affidavit-shall-be-effective-as
20 provided-in-this-section-and-shall-constitute-notice-even-if-it
21 does-not-include-recording-information-sufficient-to-identify
22 the-instrument-creating-the-interest-it-terminates.--The
23 affidavit-shall-be-conclusive-evidence-of-the-stated-facts.

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

27 (k) (c) If a lien arising under subdivision 1c is not
28 released under paragraph (j), prior to closing the estate, the
29 personal representative shall deed the interest subject to the
30 lien to the remaindermen or surviving joint tenants as their
31 interests may appear.--Upon recording or filing, the deed shall
32 work a merger of the recipient's life estate or joint tenancy
33 interest, subject to the lien, into the remainder interest or
34 interest the decedent and others owned jointly heirs or devisees
35 subject to the lien. The lien shall attach to and run with the
36 property to the extent of the decedent's interest at the time of

1 the decedent's death.

2 [EFFECTIVE DATE.] This section is effective retroactively
 3 from August 1, 2003.

4 Sec. 7. Minnesota Statutes 2004, section 256B.15,
 5 subdivision 1i, is amended to read:

6 Subd. 1i. [ESTATES OF PERSONS RECEIVING MEDICAL ASSISTANCE
 7 AND SURVIVED BY OTHERS.] (a) For purposes of this subdivision,
 8 the person's estate ~~consists of the person's probate estate and~~
 9 ~~all of the person's interests in real property the person owned~~
 10 ~~as a life tenant or a joint tenant at the time of the person's~~
 11 ~~death~~ is as defined in subdivision 1h, paragraph (b).

12 (b) Notwithstanding any law or rule to the contrary, this
 13 subdivision applies if a person received medical assistance for
 14 which a claim could be filed under this section but for the fact
 15 the person was survived by a spouse or by a person listed in
 16 subdivision 3, or if subdivision 4 applies to a claim arising
 17 under this section.

18 ~~(c) The person's life estate or joint tenancy interests in~~
 19 ~~real property not subject to a medical assistance lien under~~
 20 ~~sections 514.980 to 514.985 on the date of the person's death~~
 21 ~~shall not end upon death and shall continue as provided in this~~
 22 ~~subdivision. The life estate in the estate shall be the portion~~
 23 ~~of the interest in the property subject to the life estate that~~
 24 ~~is equal to the life estate percentage factor for the life~~
 25 ~~estate as listed in the Life Estate Mortality Table of the~~
 26 ~~health care program's manual for a person who was the age of the~~
 27 ~~medical assistance recipient on the date of the person's death.~~
 28 ~~The joint tenancy interest in the estate shall be equal to the~~
 29 ~~fractional interest the medical assistance recipient would have~~
 30 ~~owned in the jointly held interest in the property had they and~~
 31 ~~the other owners held title to the property as tenants in common~~
 32 ~~on the date the medical assistance recipient died.~~

33 (d) The county agency shall file a claim in the estate
 34 under this section on behalf of the claimant who shall be the
 35 commissioner of human services, notwithstanding that the
 36 decedent is survived by a spouse or a person listed in

1 subdivision 3. The claim, as allowed, shall not be paid by the
2 estate and shall be disposed of as provided in this paragraph.
3 The personal representative or the court shall make, execute,
4 and deliver a lien in favor of the claimant on the decedent's
5 interest in real property in the estate in the amount of the
6 allowed claim on forms provided by the commissioner to the
7 county agency filing the lien. The lien shall bear interest as
8 provided under section 524.3-806, shall attach to the property
9 it describes upon filing or recording, and shall remain a lien
10 on the real property it describes for a period of 20 years from
11 the date it is filed or recorded. The lien shall be a
12 disposition of the claim sufficient to permit the estate to
13 close.

14 ~~(e)~~ (d) The state or county agency shall file or record the
15 lien in the office of the county recorder or registrar of titles
16 for each county in which any of the real property is located.
17 The recorder or registrar of titles shall accept the lien for
18 filing or recording. All recording or filing fees shall be paid
19 by the Department of Human Services. The recorder or registrar
20 of titles shall mail the recorded lien to the Department of
21 Human Services. The lien need not be attested, certified, or
22 acknowledged as a condition of recording or filing. Upon
23 ~~recording-or-filing-of-a-lien-against-a-life-estate-or-a-joint~~
24 ~~tenancy-interest,-the-interest-subject-to-the-lien-shall-merge~~
25 ~~into-the-remainder-interest-or-the-interest-the-recipient-and~~
26 ~~others-owned-jointly.--The-lien-shall-attach-to-and-run-with-the~~
27 ~~property-to-the-extent-of-the-decedent's-interest-in-the~~
28 ~~property-at-the-time-of-the-decedent's-death-as-determined-under~~
29 ~~this-section-~~

30 (f) (e) The department shall make no adjustment or recovery
31 under the lien until after the decedent's spouse, if any, has
32 died, and only at a time when the decedent has no surviving
33 child described in subdivision 3. The estate, any owner of an
34 interest in the property which is or may be subject to the lien,
35 or any other interested party, may voluntarily pay off, settle,
36 or otherwise satisfy the claim secured or to be secured by the

1 lien at any time before or after the lien is filed or recorded.
2 Such payoffs, settlements, and satisfactions shall be deemed to
3 be voluntary repayments of past medical assistance payments for
4 the benefit of the deceased recipient, and neither the process
5 of settling the claim, the payment of the claim, or the
6 acceptance of a payment shall constitute an adjustment or
7 recovery that is prohibited under this subdivision.

8 ~~(g)~~ (f) The lien under this subdivision may be enforced or
9 foreclosed in the manner provided by law for the enforcement of
10 judgment liens against real estate or by a foreclosure by action
11 under chapter 581. When the lien is paid, satisfied, or
12 otherwise discharged, the state or county agency shall prepare
13 and file a release of lien at its own expense. No action to
14 foreclose the lien shall be commenced unless the lien holder has
15 first given 30 days' prior written notice to pay the lien to the
16 owners and parties in possession of the property subject to the
17 lien. The notice shall: (1) include the name, address, and
18 telephone number of the lien holder; (2) describe the lien; (3)
19 give the amount of the lien; (4) inform the owner or party in
20 possession that payment of the lien in full must be made to the
21 lien holder within 30 days after service of the notice or the
22 lien holder may begin proceedings to foreclose the lien; and (5)
23 be served by personal service, certified mail, return receipt
24 requested, ordinary first class mail, or by publishing it once
25 in a newspaper of general circulation in the county in which any
26 part of the property is located. Service of the notice shall be
27 complete upon mailing or publication.

28 **[EFFECTIVE DATE.]** This section is effective retroactively
29 from August 1, 2003.

30 Sec. 8. Minnesota Statutes 2004, section 256B.15,
31 subdivision 1j, is amended to read:

32 Subd. 1j. [CLAIMS IN ESTATES OF DECEDENTS SURVIVED BY
33 OTHER SURVIVORS.] For purposes of this subdivision, the
34 provisions in subdivision 1i, paragraphs (a) ~~to~~-(e) and (b)
35 apply.

36 (a) If payment of a claim filed under this section is

1 limited as provided in subdivision 4, and if the estate does not
2 have other assets sufficient to pay the claim in full, as
3 allowed, the personal representative or the court shall make,
4 execute, and deliver a lien on the property in the estate that
5 is exempt from the claim under subdivision 4 in favor of the
6 commissioner of human services on forms provided by the
7 commissioner to the county agency filing the claim. If the
8 estate pays a claim filed under this section in full from other
9 assets of the estate, no lien shall be filed against the
10 property described in subdivision 4.

11 (b) The lien shall be in an amount equal to the unpaid
12 balance of the allowed claim under this section remaining after
13 the estate has applied all other available assets of the estate
14 to pay the claim. The property exempt under subdivision 4 shall
15 not be sold, assigned, transferred, conveyed, encumbered, or
16 distributed until after the personal representative has
17 determined the estate has other assets sufficient to pay the
18 allowed claim in full, or until after the lien has been filed or
19 recorded. The lien shall bear interest as provided under
20 section 524.3-806, shall attach to the property it describes
21 upon filing or recording, and shall remain a lien on the real
22 property it describes for a period of 20 years from the date it
23 is filed or recorded. The lien shall be a disposition of the
24 claim sufficient to permit the estate to close.

25 (c) The state or county agency shall file or record the
26 lien in the office of the county recorder or registrar of titles
27 in each county in which any of the real property is located.
28 The department shall pay the filing fees. The lien need not be
29 attested, certified, or acknowledged as a condition of recording
30 or filing. The recorder or registrar of titles shall accept the
31 lien for filing or recording.

32 (d) The commissioner shall make no adjustment or recovery
33 under the lien until none of the persons listed in subdivision 4
34 are residing on the property or until the property is sold or
35 transferred. The estate or any owner of an interest in the
36 property that is or may be subject to the lien, or any other

1 interested party, may voluntarily pay off, settle, or otherwise
2 satisfy the claim secured or to be secured by the lien at any
3 time before or after the lien is filed or recorded. The
4 payoffs, settlements, and satisfactions shall be deemed to be
5 voluntary repayments of past medical assistance payments for the
6 benefit of the deceased recipient and neither the process of
7 settling the claim, the payment of the claim, or acceptance of a
8 payment shall constitute an adjustment or recovery that is
9 prohibited under this subdivision.

10 (e) A lien under this subdivision may be enforced or
11 foreclosed in the manner provided for by law for the enforcement
12 of judgment liens against real estate or by a foreclosure by
13 action under chapter 581. When the lien has been paid,
14 satisfied, or otherwise discharged, the claimant shall prepare
15 and file a release of lien at the claimant's expense. No action
16 to foreclose the lien shall be commenced unless the lien holder
17 has first given 30 days prior written notice to pay the lien to
18 the record owners of the property and the parties in possession
19 of the property subject to the lien. The notice shall: (1)
20 include the name, address, and telephone number of the lien
21 holder; (2) describe the lien; (3) give the amount of the lien;
22 (4) inform the owner or party in possession that payment of the
23 lien in full must be made to the lien holder within 30 days
24 after service of the notice or the lien holder may begin
25 proceedings to foreclose the lien; and (5) be served by personal
26 service, certified mail, return receipt requested, ordinary
27 first class mail, or by publishing it once in a newspaper of
28 general circulation in the county in which any part of the
29 property is located. Service shall be complete upon mailing or
30 publication.

31 ~~(f) Upon filing or recording of a lien against a life~~
32 ~~estate or joint tenancy interest under this subdivision, the~~
33 ~~interest subject to the lien shall merge into the remainder~~
34 ~~interest or the interest the decedent and others owned jointly,~~
35 ~~effective on the date of recording and filing. The lien shall~~
36 ~~attach to and run with the property to the extent of the~~

1 ~~decedent's interest in the property at the time of the~~
2 ~~decedent's death as determined under this section.~~

3 ~~(g)~~(1) An affidavit may be provided by a personal
4 representative, at their discretion, stating the personal
5 representative has determined in good faith that a decedent
6 survived by a spouse or a person listed in subdivision 3, or by
7 a person listed in subdivision 4, or the decedent's predeceased
8 spouse did not receive any medical assistance giving rise to a
9 claim under this section, or that the real property described in
10 subdivision 4 is not needed to pay in full a claim arising under
11 this section.

12 (2) The affidavit shall:

13 (i) describe the property and the interest being
14 extinguished;

15 (ii) name the decedent and give the date of death;

16 (iii) state the facts listed in clause (1);

17 (iv) state that the affidavit is being filed to terminate
18 the life estate or joint tenancy interest created under this
19 subdivision;

20 (v) be signed by the personal representative; and

21 (vi) contain any other information that the affiant deems
22 appropriate.

23 ~~(3) Except as provided in section 514.981, subdivision 6,~~
24 ~~when the affidavit is filed or recorded, the life estate or~~
25 ~~joint tenancy interest in real property that the affidavit~~
26 ~~describes shall be terminated effective as of the date of filing~~
27 ~~or recording. The termination shall be final and may not be set~~
28 ~~aside for any reason.~~

29 **[EFFECTIVE DATE.]** This section is effective retroactively
30 from August 1, 2003.

31 Sec. 9. Minnesota Statutes 2004, section 256B.15,
32 subdivision 2, is amended to read:

33 Subd. 2. **[LIMITATIONS ON CLAIMS.]** The claim shall include
34 only the total amount of medical assistance rendered after age
35 55 or during a period of institutionalization described in
36 subdivision 1a, clause (b), and the total amount of general

1 assistance medical care rendered, and shall not include
 2 interest. Claims that have been allowed but not paid shall bear
 3 interest according to section 524.3-806, paragraph (d). A claim
 4 against the estate of a surviving spouse who did not receive
 5 medical assistance, for medical assistance rendered for the
 6 predeceased spouse, is limited to the value of the assets of the
 7 estate that were marital property or jointly owned property at
 8 any time during the marriage. ~~Claims for alternative care shall~~
 9 ~~be net of all premiums paid under section 256B.0913, subdivision~~
 10 ~~12, on or after July 1, 2003, and shall be limited to services~~
 11 ~~provided on or after July 1, 2003.~~

12 [EFFECTIVE DATE.] This section is effective retroactively
 13 from July 1, 2003, for decedents dying on or after that date.

14 Sec. 10. Minnesota Statutes 2004, section 256B.15,
 15 subdivision 3, is amended to read:

16 Subd. 3. ~~[SURVIVING SPOUSE,~~ MINOR, BLIND, OR DISABLED
 17 CHILDREN.] If a decedent ~~is survived by a spouse, or~~ who was
 18 single or who was the surviving spouse of a married couple and
 19 is survived by a child who is under age 21 or blind or
 20 permanently and totally disabled according to the supplemental
 21 security income program criteria, a no claim shall be filed
 22 against the estate ~~according to this section.~~

23 [EFFECTIVE DATE.] This section is effective retroactively
 24 from August 1, 2003.

25 Sec. 11. Minnesota Statutes 2004, section 256B.15,
 26 subdivision 4, is amended to read:

27 Subd. 4. [OTHER SURVIVORS.] If the decedent who was single
 28 or the surviving spouse of a married couple is survived by one
 29 of the following persons, a claim exists against the estate in
 30 an amount not to exceed the value of the nonhomestead property
 31 included in the estate ~~and the personal representative shall~~
 32 ~~make, execute, and deliver to the county agency a lien against~~
 33 ~~the homestead property in the estate for any unpaid balance of~~
 34 ~~the claim to the claimant as provided under this section:~~

35 (a) (1) a sibling who resided in the decedent medical
 36 assistance recipient's home at least one year before the

1 decedent's institutionalization and continuously since the date
2 of institutionalization; or

3 (b) (2) a son or daughter or a grandchild who resided in
4 the decedent medical assistance recipient's home for at least
5 two years immediately before the parent's or grandparent's
6 institutionalization and continuously since the date of
7 institutionalization, and who establishes by a preponderance of
8 the evidence having provided care to the parent or grandparent
9 who received medical assistance, that the care was provided
10 before institutionalization, and that the care permitted the
11 parent or grandparent to reside at home rather than in an
12 institution.

13 [EFFECTIVE DATE.] This section is effective retroactively
14 from August 1, 2003, and applies to decedents who die on or
15 after that date.

16 Sec. 12. Minnesota Statutes 2004, section 514.981,
17 subdivision 6, is amended to read:

18 Subd. 6. ~~[TIME LIMITS; CLAIM LIMITS; LIENS-ON-LIFE-ESTATES~~
19 ~~AND-JOINT-TENANCIES.]~~ (a) A medical assistance lien is a lien on
20 the real property it describes for a period of ten years from
21 the date it attaches according to section 514.981, subdivision
22 2, paragraph (a), except as otherwise provided for in sections
23 514.980 to 514.985. The agency may renew a medical assistance
24 lien for an additional ten years from the date it would
25 otherwise expire by recording or filing a certificate of renewal
26 before the lien expires. The certificate shall be recorded or
27 filed in the office of the county recorder or registrar of
28 titles for the county in which the lien is recorded or filed.
29 The certificate must refer to the recording or filing data for
30 the medical assistance lien it renews. The certificate need not
31 be attested, certified, or acknowledged as a condition for
32 recording or filing. The registrar of titles or the recorder
33 shall file, record, index, and return the certificate of renewal
34 in the same manner as provided for medical assistance liens in
35 section 514.982, subdivision 2.

36 (b) A medical assistance lien is not enforceable against

1 the real property of an estate to the extent there is a
2 determination by a court of competent jurisdiction, or by an
3 officer of the court designated for that purpose, that there are
4 insufficient assets in the estate to satisfy the agency's
5 medical assistance lien in whole or in part because of the
6 homestead exemption under section 256B.15, subdivision 4, the
7 rights of the surviving spouse or minor children under section
8 524.2-403, paragraphs (a) and (b), or claims with a priority
9 under section 524.3-805, paragraph (a), clauses (1) to (4). For
10 purposes of this section, the rights of the decedent's adult
11 children to exempt property under section 524.2-403, paragraph
12 (b), shall not be considered costs of administration under
13 section 524.3-805, paragraph (a), clause (1).

14 ~~(c)-Notwithstanding any law or rule to the contrary, the~~
15 ~~provisions in clauses (1) to (7) apply if a life estate subject~~
16 ~~to a medical assistance lien ends according to its terms, or if~~
17 ~~a medical assistance recipient who owns a life estate or any~~
18 ~~interest in real property as a joint tenant that is subject to a~~
19 ~~medical assistance lien dies.~~

20 ~~(1)-The medical assistance recipient's life estate or joint~~
21 ~~tenancy interest in the real property shall not end upon the~~
22 ~~recipient's death but shall merge into the remainder interest or~~
23 ~~other interest in real property the medical assistance recipient~~
24 ~~owned in joint tenancy with others.--The medical assistance lien~~
25 ~~shall attach to and run with the remainder or other interest in~~
26 ~~the real property to the extent of the medical assistance~~
27 ~~recipient's interest in the property at the time of the~~
28 ~~recipient's death as determined under this section.~~

29 ~~(2)-If the medical assistance recipient's interest was a~~
30 ~~life estate in real property, the lien shall be a lien against~~
31 ~~the portion of the remainder equal to the percentage factor for~~
32 ~~the life estate of a person the medical assistance recipient's~~
33 ~~age on the date the life estate ended according to its terms or~~
34 ~~the date of the medical assistance recipient's death as listed~~
35 ~~in the Life Estate Mortality Table in the health care program's~~
36 ~~manual.~~

1 ~~(3)-If-the-medical-assistance-recipient-owned-the-interest~~
2 ~~in-real-property-in-joint-tenancy-with-others,-the-lien-shall-be~~
3 ~~a-lien-against-the-portion-of-that-interest-equal-to-the~~
4 ~~fractional-interest-the-medical-assistance-recipient-would-have~~
5 ~~owned-in-the-jointly-owned-interest-had-the-medical-assistance~~
6 ~~recipient-and-the-other-owners-held-title-to-that-interest-as~~
7 ~~tenants-in-common-on-the-date-the-medical-assistance-recipient~~
8 ~~died.~~

9 ~~(4)-The-medical-assistance-lien-shall-remain-a-lien-against~~
10 ~~the-remainder-or-other-jointly-owned-interest-for-the-length-of~~
11 ~~time-and-be-renewable-as-provided-in-paragraph-(a).~~

12 ~~(5)-Subdivision-5,-paragraph-(a),-clause-(4),-paragraph~~
13 ~~(b),-clauses-(1)-and-(2),-and-subdivision-6,-paragraph-(b),-do~~
14 ~~not-apply-to-medical-assistance-liens-which-attach-to-interests~~
15 ~~in-real-property-as-provided-under-this-subdivision.~~

16 ~~(6)-The-continuation-of-a-medical-assistance-recipient's~~
17 ~~life-estate-or-joint-tenancy-interest-in-real-property-after-the~~
18 ~~medical-assistance-recipient's-death-for-the-purpose-of~~
19 ~~recovering-medical-assistance-provided-for-in-sections-514.980~~
20 ~~to-514.985-modifies-common-law-principles-holding-that-these~~
21 ~~interests-terminate-on-the-death-of-the-holder.~~

22 ~~(7)-Notwithstanding-any-law-or-rule-to-the-contrary,-no~~
23 ~~release,-satisfaction,-discharge,-or-affidavit-under-section~~
24 ~~256B.15-shall-extinguish-or-terminate-the-life-estate-or-joint~~
25 ~~tenancy-interest-of-a-medical-assistance-recipient-subject-to-a~~
26 ~~lien-under-sections-514.980-to-514.985-on-the-date-the-recipient~~
27 ~~dies.~~

28 ~~(8)-The-provisions-of-clauses-(1)-to-(7)-do-not-apply-to-a~~
29 ~~homestead-owned-of-record,-on-the-date-the-recipient-dies,-by~~
30 ~~the-recipient-and-the-recipient's-spouse-as-joint-tenants-with-a~~
31 ~~right-of-survivorship.--Homestead-means-the-real-property~~
32 ~~occupied-by-the-surviving-joint-tenant-spouse-as-their-sole~~
33 ~~residence-on-the-date-the-recipient-dies-and-classified-and~~
4 ~~taxed-to-the-recipient-and-surviving-joint-tenant-spouse-as~~
35 ~~homestead-property-for-property-tax-purposes-in-the-calendar~~
36 ~~year-in-which-the-recipient-dies.--For-purposes-of-this~~

1 exemption, real property the recipient and their surviving joint
 2 tenant spouse purchase solely with the proceeds from the sale of
 3 their prior homestead, own of record as joint tenants, and
 4 qualify as homestead property under section 273.124 in the
 5 calendar year in which the recipient dies and prior to the
 6 recipient's death shall be deemed to be real property classified
 7 and taxed to the recipient and their surviving joint tenant
 8 spouse as homestead property in the calendar year in which the
 9 recipient dies. -- The surviving spouse, or any person with
 10 personal knowledge of the facts, may provide an affidavit
 11 describing the homestead property affected by this clause and
 12 stating facts showing compliance with this clause. -- The
 13 affidavit shall be prima facie evidence of the facts it states.

14 [EFFECTIVE DATE.] This section is effective retroactively
 15 from August 1, 2003.

16 Sec. 13. Minnesota Statutes 2004, section 524.3-805, is
 17 amended to read:

18 524.3-805 [CLASSIFICATION OF CLAIMS.]

19 (a) If the applicable assets of the estate are insufficient
 20 to pay all claims in full, the personal representative shall
 21 make payment in the following order:

- 22 (1) costs and expenses of administration;
- 23 (2) reasonable funeral expenses;
- 24 (3) debts and taxes with preference under federal law;
- 25 (4) reasonable and necessary medical, hospital, or nursing
 26 home expenses of the last illness of the decedent, including
 27 compensation of persons attending the decedent, a claim filed
 28 under section 256B.15 for recovery of expenditures for
 29 alternative care for nonmedical assistance recipients under
 30 section 256B.0913, and including a claim filed pursuant to
 31 section 256B.15;

- 32 (5) reasonable and necessary medical, hospital, and nursing
 33 home expenses for the care of the decedent during the year
 34 immediately preceding death;

- 35 (6) debts with preference under other laws of this state,
 36 and state taxes;

1 (7) all other claims.

2 (b) No preference shall be given in the payment of any
 3 claim over any other claim of the same class, and a claim due
 4 and payable shall not be entitled to a preference over claims
 5 not due, except that if claims for expenses of the last illness
 6 involve only claims filed under section ~~256B.15-for-recovery-of~~
 7 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~
 8 ~~recipients-under-section-256B.0913~~, section 246.53 for costs of
 9 state hospital care and claims filed under section 256B.15,
 10 ~~claims-filed-to-recover-expenditures-for-alternative-care-for~~
 11 ~~nonmedical-assistance-recipients-under-section-256B.0913-shall~~
 12 ~~have-preference-over-claims-filed-under-both-sections-246.53-and~~
 13 ~~other-claims-filed-under-section-256B.15-and.~~ Claims filed
 14 under section 246.53 have preference over claims filed under
 15 section 256B.15 ~~for-recovery-of-amounts-other-than-these-for~~
 16 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~
 17 ~~recipients-under-section-256B.0913.~~

18 [EFFECTIVE DATE.] This section is effective retroactively
 19 from July 1, 2003, for decedents dying on or after that date.

20 Sec. 14. [REFUNDS; NOTICES, AND IMMUNITY.]

21 (a) The commissioner of human services and any county
 22 agency that, after a recipient's death, has collected any sum
 23 (1) from the estate of a recipient of alternative case services,
 24 or (2) attributable to a life estate or joint tenancy interest
 25 in real estate that was continued after the death of the
 26 recipient, shall promptly refund the amount collected to the
 27 person or persons who paid the amount collected, in proportion
 28 to each person's contribution to the amount.

29 (b) If the commissioner determines a person entitled to a
 30 refund is dead, the commissioner shall pay the refund to the
 31 person's estate if it is open, or to their heirs or devisees as
 32 finally determined in any completed probate proceedings or under
 33 a final decree of descent. In all other cases, the refund shall
 4 be deemed to be abandoned property and the commissioner shall
 35 pay and deliver the refund to the commissioner of commerce. The
 36 commissioner of commerce shall administer and dispose of the

1 refund in accordance with Minnesota Statutes, sections 345.42
2 through 345.60. The commissioner of human services shall not be
3 liable to anyone with respect to the refund after paying or
4 delivering the refund as provided for in this paragraph.

5 (c) Lien notices of record against life estate or joint
6 tenancy interests filed on and after August 1, 2003, shall have
7 no effect and shall not constitute record notice after the death
8 of the person named in the lien or notice unless continued after
9 that time by the terms of the instrument creating the interest,
10 shall be disregarded by examiners of title, and shall not be
11 carried forward to subsequent certificates of title.

12 (d) The commissioner of human services, county agencies,
13 elected officials, and their employees are immune from all
14 liability for actions taken or not taken in accordance with Laws
15 2003, First Special Session chapter 14, article 2, sections 47
16 to 52; article 12, sections 40 to 52 and 90; and sections 1 to
17 14 of this act.

18 [EFFECTIVE DATE.] This section is effective the day
19 following final enactment.

20 Sec. 15. [APPROPRIATIONS.]

21 §..... is appropriated from the general fund to the
22 commissioner of human services for fiscal years 2004 and 2005
23 for the purposes of sections 1 to 14. §..... is appropriated
24 from the general fund to the commissioner of human services for
25 fiscal years 2006 and 2007 for the purposes of sections 1 to 14.

26 Sec. 16. [REPEALER.]

27 Minnesota Statutes 2004, sections 256B.15, subdivision 1g;
28 514.991; 514.992; 514.993; 514.994; and 514.995, are repealed
29 retroactively from July 1, 2003."

30 Delete the title and insert:

31 "A bill for an act relating to human services; modifying
32 certain provisions regarding medical assistance liens;
33 eliminating recovery efforts for alternative care services;
34 appropriating money; amending Minnesota Statutes 2004, sections
35 256B.15, subdivisions 1, 1a, 1d, 1e, 1f, 1h, 1i, 1j, 2, 3, 4;
36 514.981, subdivision 6; 524.3-805; repealing Minnesota Statutes
37 2004, sections 256B.15, subdivision 1g; 514.991; 514.992;
38 514.993; 514.994; 514.995."

February 2, 2005

SF 175

To Whom It May Concern:

My husband Steve is 46 yrs old. He was promised the farm when he was 17. His dad had a triple heart bypass 2 yrs later and Steve took over. The farm was transferred after the siblings left in 1985. (20 Yrs ago). The income went to his mom to build social security.

Steve has never worked off this farm!! We have no outside income. I'm not eligible for social security because I've also been working on this farm for the past 20 years. There's not enough income to divide.

We built our house, a dairy barn, a cattle shed and a garage 150 feet from Dad's house.

We took care of Dad 3 years before he went to the nursing home needing constant supervision.

This bill penalizes us for staying home and taking care of his folks!

The lien is 34% of our investment in the farm. The value of the farm at time of transfer was less than 60,000. The value now is 229,000. According to Gregory Lulic, of the Special Recovery Unit, the % is not the value at the time of transfer; not the value at time of death; but the value at time of sale years down the road. In 20 years Steve will be 66- past retirement age. What are we working for? We're a small family 50 cow farm. This is our retirement.

This retroactive bill left us no options. *Thank you for your time.*

Julie Norman
Clearwater County

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S.F. No. 154 - Medical Assistance and Alternative Care Estate Recovery and Liens

Author: Senator Dennis Frederickson

Prepared by: David Giel, Senate Research (651/296-7178) 

Date: February 1, 2005

S.F. No. 154 reinstates the pre-2003 state policy with respect to estate recoveries for the cost of medical care. It reverses the policy adopted in 2003 that extends a deceased's interests in a life estate or joint tenancy after death for the purposes of Medical Assistance (MA) or Alternative Care (AC) recovery. It reverses the policy that allows the state to recover from estates for the purposes of reimbursing AC costs. It makes a number of technical changes consistent with these policy reversals. It requires any amounts collected since 2003 under the policies being reversed to be refunded. It includes a blank appropriation to replace the lost revenue that would result from passage of this bill.

Section 1 (256B.15, subdivision 1) deletes language that continues life estates and joint tenancies after a recipient's death for purposes of MA estate claims. This section also reinstates language that was in effect until 2003 that prohibited MA estate claims to collect for AC service costs.

Section 2 (256B.15, subdivision 1a) excludes AC costs from MA estate claims and removes language allowing counties to retain ten percent of their AC related collections.

Section 3 (256B.15, subdivision 1d) deletes, from a subdivision establishing the effect of a notice of potential claim, references to the continuation of life estate and joint tenancy interests after death.

Section 4 (256B.15, subdivision 1e) deletes, from a subdivision regarding the claimant's right to release a lien, references to the continuation of life estate and joint tenancy interests.

Section 5 (256B.15, subdivision 1f) deletes, from a subdivision regarding the establishment of liens against real estate, references to the continuation of life estate and joint tenancy interests.

Section 6 (256B.15, subdivision 1h) deletes, from a subdivision regarding the estates of specific MA recipients, references to the continuation of life estate and joint tenancy interests.

Section 7 (256B.15, subdivision 1i) deletes, from a subdivision regarding the estates of MA recipients survived by others, references to the continuation of life estate and joint tenancy interests.

Section 8 (256B.15, subdivision 1j) deletes, from a subdivision regarding the estates of MA recipients survived by other survivors, references to the continuation of life estate and joint tenancy interests.

Section 9 (256B.15, subdivision 2) deletes another reference to MA estate claims for AC costs.

Section 10 (256B.15, subdivision 3) reinstates language that was in effect before the 2003 session barring estate claims if the decedent, who was either single or the surviving spouse of a married couple, is survived by a child who is under age 21, or is blind, or is permanently and totally disabled.

Section 11 (256B.15, subdivision 4) deletes language adopted in 2003 authorizing liens against homestead property in an estate for any unpaid balance of a claim in cases where the claim is limited to the value of the nonhomestead property in the estate.

Section 12 (514.981, subdivision 6) deletes language added to the state lien law in 2003 authorizing liens against life estates and joint tenant interests.

Section 13 (524.3 805) deletes language added to the Uniform Probate Code in 2003 referencing MA estate claims for AC costs.

Section 14 relates to refunds and notices.

Paragraph (a) requires refunds to be paid of any amounts collected from the estate of a recipient of alternative care services or because of the continuation of life estates and joint tenancies after the death of the recipient.

Paragraph (b) makes lien notices ineffective against life estates or joint tenancies after the death of the recipient unless continued after death by the document creating the life estate or joint tenancy.

Section 15 is a blank appropriation section.

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Section 16 is a repealer section. It repeals Minnesota Statutes, section 256B.15, subdivision 1g, which makes a life estate or joint tenancy interest part of a deceased's estate for purposes of MA estate recovery. It also repeals Minnesota Statutes, sections 514.991 through 514.995. These sections were adopted in 2003 and establish Alternative Care liens and procedures for enforcing them.

DG:rdr

Senators Frederickson, Belanger, Kierlin, Vickerman and Sams introduced--
S.F. No. 154: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to human services; modifying certain
3 provisions regarding medical assistance liens;
4 eliminating recovery efforts for alternative care
5 services; appropriating money; amending Minnesota
6 Statutes 2004, sections 256B.15, subdivisions 1, 1a,
7 1d, 1e, 1f, 1h, 1i, 1j, 2, 3, 4; 514.981, subdivision
8 6; 524.3-805; repealing Minnesota Statutes 2004,
9 sections 256B.15, subdivision 1g; 514.991; 514.992;
10 514.993; 514.994; 514.995.

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

12 Section 1. Minnesota Statutes 2004, section 256B.15,
13 subdivision 1, is amended to read:

14 Subdivision 1. [~~POLICY, APPLICABILITY, PURPOSE, AND~~
15 ~~CONSTRUCTION, DEFINITION.~~] (a) It is the policy of this state
16 that individuals or couples, either or both of whom participate
17 in the medical assistance program, use their own assets to pay
18 their share of the total cost of their care during or after
19 their enrollment in the program according to applicable federal
20 law and the laws of this state. The following provisions apply:

21 ~~(1) subdivisions 1c to 1k shall not apply to claims arising~~
22 ~~under this section which are presented under section 525.313,~~

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

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

6 (4) (2) all laws, rules, and regulations governing or
 7 involved with a recovery of medical assistance shall be
 8 liberally construed to accomplish their intended purposes.

9 ~~(5) a deceased recipient's life estate and joint tenancy~~
 10 ~~interests continued under this section shall be owned by the~~
 11 ~~remaindermen or surviving joint tenants as their interests may~~
 12 ~~appear on the date of the recipient's death. They shall not be~~
 13 ~~merged into the remainder interest or the interests of the~~
 14 ~~surviving joint tenants by reason of ownership. They shall be~~
 15 ~~subject to the provisions of this section. Any conveyance,~~
 16 ~~transfer, sale, assignment, or encumbrance by a remainderman, a~~
 17 ~~surviving joint tenant, or their heirs, successors, and assigns~~
 18 ~~shall be deemed to include all of their interest in the deceased~~
 19 ~~recipient's life estate or joint tenancy interest continued~~
 20 ~~under this section, and~~

21 (6) the provisions of subdivisions 1c to 1k continuing a
 22 recipient's joint tenancy interests in real property after the
 23 recipient's death do not apply to a homestead owned of record,
 24 on the date the recipient dies, by the recipient and the
 25 recipient's spouse as joint tenants with a right of
 26 survivorship. Homestead means the real property occupied by the
 27 surviving joint tenant spouse as their sole residence on the
 28 date the recipient dies and classified and taxed to the
 29 recipient and surviving joint tenant spouse as homestead
 30 property for property tax purposes in the calendar year in which
 31 the recipient dies. For purposes of this exemption, real
 32 property the recipient and their surviving joint tenant spouse
 33 purchase solely with the proceeds from the sale of their prior
 34 homestead, own of record as joint tenants, and qualify as
 35 homestead property under section 273.124 in the calendar year in
 36 which the recipient dies and prior to the recipient's death

1 ~~shall be deemed to be real property classified and taxed to the~~
 2 ~~recipient and their surviving joint tenant spouse as homestead~~
 3 ~~property in the calendar year in which the recipient dies. The~~
 4 ~~surviving spouse, or any person with personal knowledge of the~~
 5 ~~facts, may provide an affidavit describing the homestead~~
 6 ~~property affected by this clause and stating facts showing~~
 7 ~~compliance with this clause. The affidavit shall be prima facie~~
 8 ~~evidence of the facts it states.~~

9 (b) For purposes of this section, "medical assistance"
 10 includes the medical assistance program under this chapter and
 11 the general assistance medical care program under chapter 256D
 12 and but does not include the alternative care program for
 13 nonmedical assistance recipients under section 256B.0913.

14 [EFFECTIVE DATE.] The amendments in this section relating
 15 to the alternative care program are effective retroactively from
 16 July 1, 2003, and apply to the estates of decedents who die on
 17 or after that date. The remaining amendments in this section
 18 are effective retroactively from August 1, 2003, and apply to
 19 the estates of decedents who die on or after that date.

20 Sec. 2. Minnesota Statutes 2004, section 256B.15,
 21 subdivision 1a, is amended to read:

22 Subd. 1a. [ESTATES SUBJECT TO CLAIMS.] If a person
 23 receives any medical assistance hereunder, on the person's
 24 death, if single, or on the death of the survivor of a married
 25 couple, either or both of whom received medical assistance, ~~or~~
 26 ~~as otherwise provided for in this section,~~ the total amount paid
 27 for medical assistance rendered for the person and spouse shall
 28 be filed as a claim against the estate of the person or the
 29 estate of the surviving spouse in the court having jurisdiction
 30 to probate the estate or to issue a decree of descent according
 31 to sections 525.31 to 525.313.

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

35 (a) the person was over 55 years of age, and received
 36 services under this chapter, excluding alternative care;

1 (b) the person resided in a medical institution for six
2 months or longer, received services under this chapter,
3 excluding alternative care, and, at the time of
4 institutionalization or application for medical assistance,
5 whichever is later, the person could not have reasonably been
6 expected to be discharged and returned home, as certified in
7 writing by the person's treating physician. For purposes of
8 this section only, a "medical institution" means a skilled
9 nursing facility, intermediate care facility, intermediate care
10 facility for persons with mental retardation, nursing facility,
11 or inpatient hospital; or

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

14 The claim shall be considered an expense of the last
15 illness of the decedent for the purpose of section 524.3-805.
16 Any statute of limitations that purports to limit any county
17 agency or the state agency, or both, to recover for medical
18 assistance granted hereunder shall not apply to any claim made
19 hereunder for reimbursement for any medical assistance granted
20 hereunder. Notice of the claim shall be given to all heirs and
21 devisees of the decedent whose identity can be ascertained with
22 reasonable diligence. The notice must include procedures and
23 instructions for making an application for a hardship waiver
24 under subdivision 5; time frames for submitting an application
25 and determination; and information regarding appeal rights and
26 procedures. Counties are entitled to one-half of the nonfederal
27 share of medical assistance collections from estates that are
28 directly attributable to county effort. ~~Counties-are-entitled~~
29 ~~to-ten-percent-of-the-collections-for-alternative-care-directly~~
30 ~~attributable-to-county-effort.~~

31 [EFFECTIVE DATE.] The amendments in this section relating
32 to the alternative care program are effective retroactively from
33 July 1, 2003, and apply to the estates of decedents who die on
34 or after that date. The remaining amendments in this section
35 are effective retroactively from August 1, 2003, and apply to
36 the estates of decedents who die on or after that date.

1 Sec. 3. Minnesota Statutes 2004, section 256B.15,
2 subdivision 1d, is amended to read:

3 Subd. 1d. [EFFECT OF NOTICE.] From the time it takes
4 effect, the notice shall be notice to remaindermen~~7-joint~~
5 tenants~~7-or-to~~ anyone else owning or acquiring an interest in or
6 encumbrance against the property described in the notice that
7 the medical assistance recipient's life-estate~~7-joint-tenancy~~
8 or other interests in the real estate described in the notice:

9 (1) ~~shall7-in-the-case-of-life-estate-and-joint-tenancy~~
10 ~~interests7-continue-to-exist-for-purposes-of-this-section7-and~~
11 ~~be-subject-to-liens-and-claims-as-provided-in-this-section7~~

12 (2) shall be subject to a lien in favor of the claimant
13 effective upon the death of the recipient and dealt with as
14 provided in this section;

15 (3) (2) may be included in the recipient's estate, as
16 defined in this section; and

17 (4) (3) may be subject to administration and all other
18 provisions of chapter 524 and may be sold, assigned,
19 transferred, or encumbered free and clear of their interest or
20 encumbrance to satisfy claims under this section.

21 [EFFECTIVE DATE.] This section is effective retroactively
22 from August 1, 2003.

23 Sec. 4. Minnesota Statutes 2004, section 256B.15,
24 subdivision 1e, is amended to read:

25 Subd. 1e. [FULL OR PARTIAL RELEASE OF NOTICE.] (a) The
26 claimant may fully or partially release the notice and the lien
27 arising out of the notice of record in the real estate records
28 where the notice is filed or recorded at any time. ~~The claimant~~
29 ~~may-give-a-full-or-partial-release-to-extinguish-any-life~~
30 ~~estates-or-joint-tenancy-interests-which-are-or-may-be-continued~~
31 ~~under-this-section-or-whose-existence-or-nonexistence-may-create~~
32 ~~a-cloud-on-the-title-to-real-property-at-any-time-whether-or-not~~
33 ~~a-notice-has-been-filed.~~ The recorder or registrar of titles
34 shall accept the release for recording or filing. If the
35 release is a partial release, it must include a legal
36 description of the property being released.

1 (b) At any time, the claimant may, at the claimant's
2 discretion, wholly or partially release, subordinate, modify, or
3 amend the recorded notice and the lien arising out of the notice.

4 [EFFECTIVE DATE.] This section is effective retroactively
5 from August 1, 2003.

6 Sec. 5. Minnesota Statutes 2004, section 256B.15,
7 subdivision 1f, is amended to read:

8 Subd. 1f. [AGENCY LIEN.] (a) The notice shall constitute a
9 lien in favor of the Department of Human Services against the
10 recipient's interests in the real estate it describes for a
11 period of 20 years from the date of filing or the date of the
12 recipient's death, whichever is later. ~~Notwithstanding any law~~
13 ~~or rule to the contrary, a recipient's life estate and joint~~
14 ~~tenancy interests shall not end upon the recipient's death but~~
15 ~~shall continue according to subdivisions 1h, 1i, and 1j.~~ The
16 amount of the lien shall be equal to the total amount of the
17 claims that could be presented in the recipient's estate under
18 this section.

19 (b) If no estate has been opened for the deceased
20 recipient, any holder of an interest in the property may apply
21 to the lien holder for a statement of the amount of the lien or
22 for a full or partial release of the lien. The application
23 shall include the applicant's name, current mailing address,
24 current home and work telephone numbers, and a description of
25 their interest in the property, a legal description of the
26 recipient's interest in the property, and the deceased
27 recipient's name, date of birth, and Social Security number.
28 The lien holder shall send the applicant by certified mail,
29 return receipt requested, a written statement showing the amount
30 of the lien, whether the lien holder is willing to release the
31 lien and under what conditions, and inform them of the right to
32 a hearing under section 256.045. The lien holder shall have the
33 discretion to compromise and settle the lien upon any terms and
34 conditions the lien holder deems appropriate.

35 (c) Any holder of an interest in property subject to the
36 lien has a right to request a hearing under section 256.045 to

1 determine the validity, extent, or amount of the lien. The
2 request must be in writing, and must include the names, current
3 addresses, and home and business telephone numbers for all other
4 parties holding an interest in the property. A request for a
5 hearing by any holder of an interest in the property shall be
6 deemed to be a request for a hearing by all parties owning
7 interests in the property. Notice of the hearing shall be given
8 to the lien holder, the party filing the appeal, and all of the
9 other holders of interests in the property at the addresses
10 listed in the appeal by certified mail, return receipt
11 requested, or by ordinary mail. Any owner of an interest in the
12 property to whom notice of the hearing is mailed shall be deemed
13 to have waived any and all claims or defenses in respect to the
14 lien unless they appear and assert any claims or defenses at the
15 hearing.

16 (d) If the claim the lien secures could be filed under
17 subdivision lh, the lien holder may collect, compromise, settle,
18 or release the lien upon any terms and conditions it deems
19 appropriate. If the claim the lien secures could be filed under
20 subdivision li or lj, the lien may be adjusted or enforced to
21 the same extent had it been filed under subdivisions li and lj,
22 and the provisions of subdivisions li, clause ~~(f)~~ (e), and lj,
23 clause (d), shall apply to voluntary payment, settlement, or
24 satisfaction of the lien.

25 ~~(e) If no probate proceedings have been commenced for the~~
26 ~~recipient as of the date the lien holder executes a release of~~
27 ~~the lien on a recipient's life estate or joint tenancy interest,~~
28 ~~created for purposes of this section, the release shall~~
29 ~~terminate the life estate or joint tenancy interest created~~
30 ~~under this section as of the date it is recorded or filed to the~~
31 ~~extent of the release.---If the claimant executes a release for~~
32 ~~purposes of extinguishing a life estate or a joint tenancy~~
33 ~~interest created under this section to remove a cloud on title~~
34 ~~to real property, the release shall have the effect of~~
35 ~~extinguishing any life estate or joint tenancy interests in the~~
36 ~~property it describes which may have been continued by reason of~~

~~1 this-section-retroactive-to-the-date-of-death-of-the-deceased~~
~~2 life-tenant-or-joint-tenant-except-as-provided-for-in-section~~
~~3 514.9817-subdivision-6-~~

4 {f} If the deceased recipient's estate is probated, a claim
5 shall be filed under this section. The amount of the lien shall
6 be limited to the amount of the claim as finally allowed. If
7 the claim the lien secures is filed under subdivision lh, the
8 lien may be released in full after any allowance of the claim
9 becomes final or according to any agreement to settle and
10 satisfy the claim. The release shall release the lien but shall
11 not extinguish or terminate the interest being released. If the
12 claim the lien secures is filed under subdivision li or lj, the
13 lien shall be released after the lien under subdivision li or lj
14 is filed or recorded, or settled according to any agreement to
15 settle and satisfy the claim. The release shall not extinguish
16 or terminate the interest being released. If the claim is
17 finally disallowed in full, the claimant shall release the
18 claimant's lien at the claimant's expense.

19 [EFFECTIVE DATE.] This section is effective retroactively
20 from August 1, 2003.

21 Sec. 6. Minnesota Statutes 2004, section 256B.15,
22 subdivision lh, is amended to read:

23 Subd. lh. [ESTATES OF SPECIFIC PERSONS RECEIVING MEDICAL
24 ASSISTANCE.] (a) For purposes of this section, paragraphs (b) to
25 {k} and (c) apply if a person received medical assistance for
26 which a claim may be filed under this section and died single,
27 or the surviving spouse of the couple and was not survived by
28 any of the persons described in subdivisions 3 and 4.

29 (b) For purposes of this section, the person's estate
30 consists of: (1) their probate estate; (2) ~~all-of-the-person's~~
31 ~~interests-or-proceeds-of-those-interests-in-real-property-the~~
32 ~~person-owned-as-a-life-tenant-or-as-a-joint-tenant-with-a-right~~
33 ~~of-survivorship-at-the-time-of-the-person's-death;-(3)~~ all of
34 the person's interests or proceeds of those interests in
35 securities the person owned in beneficiary form as provided
36 under sections 524.6-301 to 524.6-311 at the time of the

1 person's death, to the extent they become part of the probate
2 estate under section 524.6-307; and ~~(4)~~ (3) all of the person's
3 interests in joint accounts, multiple party accounts, and pay on
4 death accounts, or the proceeds of those accounts, as provided
5 under sections 524.6-201 to 524.6-214 at the time of the
6 person's death to the extent they become part of the probate
7 estate under section 524.6-207. Notwithstanding any law or rule
8 to the contrary, a state or county agency with a claim under
9 this section shall be a creditor under section 524.6-307.

10 ~~(c)-Notwithstanding any law or rule to the contrary, the~~
11 ~~person's life estate or joint tenancy interest in real property~~
12 ~~not subject to a medical assistance lien under sections 514.980~~
13 ~~to 514.985 on the date of the person's death shall not end upon~~
14 ~~the person's death and shall continue as provided in this~~
15 ~~subdivision. The life estate in the person's estate shall be~~
16 ~~that portion of the interest in the real property subject to the~~
17 ~~life estate that is equal to the life estate percentage factor~~
18 ~~for the life estate as listed in the Life Estate Mortality Table~~
19 ~~of the health care program's manual for a person who was the age~~
20 ~~of the medical assistance recipient on the date of the person's~~
21 ~~death. The joint tenancy interest in real property in the~~
22 ~~estate shall be equal to the fractional interest the person~~
23 ~~would have owned in the jointly held interest in the property~~
24 ~~had they and the other owners held title to the property as~~
25 ~~tenants in common on the date the person died.~~

26 ~~(d)-The court upon its own motion, or upon motion by the~~
27 ~~personal representative or any interested party, may enter an~~
28 ~~order directing the remaindermen or surviving joint tenants and~~
29 ~~their spouses, if any, to sign all documents, take all actions,~~
30 ~~and otherwise fully cooperate with the personal representative~~
31 ~~and the court to liquidate the decedent's life estate or joint~~
32 ~~tenancy interests in the estate and deliver the cash or the~~
33 ~~proceeds of those interests to the personal representative and~~
34 ~~provide for any legal and equitable sanctions as the court deems~~
35 ~~appropriate to enforce and carry out the order, including an~~
36 ~~award of reasonable attorney fees.~~

1 ~~(e)-The personal representative may make, execute, and~~
2 ~~deliver any conveyances or other documents necessary to convey~~
3 ~~the decedent's life estate or joint tenancy interest in the~~
4 ~~estate that are necessary to liquidate and reduce to cash the~~
5 ~~decedent's interest or for any other purposes.~~

6 ~~(f)-Subject to administration, all costs, including~~
7 ~~reasonable attorney fees, directly and immediately related to~~
8 ~~liquidating the decedent's life estate or joint tenancy interest~~
9 ~~in the decedent's estate, shall be paid from the gross proceeds~~
10 ~~of the liquidation allocable to the decedent's interest and the~~
11 ~~net proceeds shall be turned over to the personal representative~~
12 ~~and applied to payment of the claim presented under this section.~~

13 ~~(g)-The personal representative shall bring a motion in the~~
14 ~~district court in which the estate is being probated to compel~~
15 ~~the remaindermen or surviving joint tenants to account for and~~
16 ~~deliver to the personal representative all or any part of the~~
17 ~~proceeds of any sale, mortgage, transfer, conveyance, or any~~
18 ~~disposition of real property allocable to the decedent's life~~
19 ~~estate or joint tenancy interest in the decedent's estate, and~~
20 ~~do everything necessary to liquidate and reduce to cash the~~
21 ~~decedent's interest and turn the proceeds of the sale or other~~
22 ~~disposition over to the personal representative. The court may~~
23 ~~grant any legal or equitable relief, including, but not limited~~
24 ~~to, ordering a partition of real estate under chapter 558~~
25 ~~necessary to make the value of the decedent's life estate or~~
26 ~~joint tenancy interest available to the estate for payment of a~~
27 ~~claim under this section.~~

28 ~~(h)-Subject to administration, the personal representative~~
29 ~~shall use all of the cash or proceeds of interests to pay an~~
30 ~~allowable claim under this section. The remaindermen or~~
31 ~~surviving joint tenants and their spouses, if any, may enter~~
32 ~~into a written agreement with the personal representative or the~~
33 ~~claimant to settle and satisfy obligations imposed at any time~~
34 ~~before or after a claim is filed.~~

35 ~~(i)-The personal representative may, at their discretion,~~
36 ~~provide any or all of the other owners, remaindermen, or~~

1 surviving-joint-tenants-with-an-affidavit-terminating-the
2 decedent's-estate's-interest-in-real-property-the-decedent-owned
3 as-a-life-tenant-or-as-a-joint-tenant-with-others, if-the
4 personal-representative-determines-in-good-faith-that-neither
5 the-decedent-nor-any-of-the-decedent's-predeceased-spouses
6 received-any-medical-assistance-for-which-a-claim-could-be-filed
7 under-this-section, or-if-the-personal-representative-has-filed
8 an-affidavit-with-the-court-that-the-estate-has-other-assets
9 sufficient-to-pay-a-claim, as-presented, or-if-there-is-a
10 written-agreement-under-paragraph-(h), or-if-the-claim, as
11 allowed, has-been-paid-in-full-or-to-the-full-extent-of-the
12 assets-the-estate-has-available-to-pay-it.--The-affidavit-may-be
13 recorded-in-the-office-of-the-county-recorder-or-filed-in-the
14 Office-of-the-Registrar-of-Titles-for-the-county-in-which-the
15 real-property-is-located.--Except-as-provided-in-section
16 514.981, subdivision-6, when-recorded-or-filed, the-affidavit
17 shall-terminate-the-decedent's-interest-in-real-estate-the
18 decedent-owned-as-a-life-tenant-or-a-joint-tenant-with-others.
19 The-affidavit-shall:--(1)-be-signed-by-the-personal
20 representative;--(2)-identify-the-decedent-and-the-interest-being
21 terminated;--(3)-give-recording-information-sufficient-to
22 identify-the-instrument-that-created-the-interest-in-real
23 property-being-terminated;--(4)-legally-describe-the-affected
24 real-property;--(5)-state-that-the-personal-representative-has
25 determined-that-neither-the-decedent-nor-any-of-the-decedent's
26 predeceased-spouses-received-any-medical-assistance-for-which-a
27 claim-could-be-filed-under-this-section;--(6)-state-that-the
28 decedent's-estate-has-other-assets-sufficient-to-pay-the-claim,
29 as-presented, or-that-there-is-a-written-agreement-between-the
30 personal-representative-and-the-claimant-and-the-other-owners-or
31 remaindermen-or-other-joint-tenants-to-satisfy-the-obligations
32 imposed-under-this-subdivision;--and-(7)-state-that-the-affidavit
33 is-being-given-to-terminate-the-estate's-interest-under-this
34 subdivision, and-any-other-contents-as-may-be-appropriate.
35 The-recorder-or-registrar-of-titles-shall-accept-the-affidavit
36 for-recording-or-filing.--The-affidavit-shall-be-effective-as

1 ~~provided in this section and shall constitute notice even if it~~
 2 ~~does not include recording information sufficient to identify~~
 3 ~~the instrument creating the interest it terminates.---The~~
 4 ~~affidavit shall be conclusive evidence of the stated facts.~~

5 ~~{j} The holder of a lien arising under subdivision lc shall~~
 6 ~~release the lien at the holder's expense against an interest~~
 7 ~~terminated under paragraph {h} to the extent of the termination.~~

8 ~~{k} (c) If a lien arising under subdivision lc is not~~
 9 ~~released under paragraph {j}, prior to closing the estate, the~~
 10 ~~personal representative shall deed the interest subject to the~~
 11 ~~lien to the remaindermen or surviving joint tenants as their~~
 12 ~~interests may appear.---Upon recording or filing, the deed shall~~
 13 ~~work a merger of the recipient's life estate or joint tenancy~~
 14 ~~interest, subject to the lien, into the remainder interest or~~
 15 ~~interest the decedent and others owned jointly heirs or devisees~~
 16 ~~subject to the lien. The lien shall attach to and run with the~~
 17 ~~property to the extent of the decedent's interest at the time of~~
 18 ~~the decedent's death.~~

19 ~~[EFFECTIVE DATE.] This section is effective retroactively~~
 20 ~~from August 1, 2003.~~

21 Sec. 7. Minnesota Statutes 2004, section 256B.15,
 22 subdivision li, is amended to read:

23 Subd. li. [ESTATES OF PERSONS RECEIVING MEDICAL ASSISTANCE
 24 AND SURVIVED BY OTHERS.] (a) For purposes of this subdivision,
 25 the person's estate ~~consists of the person's probate estate and~~
 26 ~~all of the person's interests in real property the person owned~~
 27 ~~as a life tenant or a joint tenant at the time of the person's~~
 28 ~~death is as defined in subdivision lh, paragraph (b).~~

29 (b) Notwithstanding any law or rule to the contrary, this
 30 subdivision applies if a person received medical assistance for
 31 which a claim could be filed under this section but for the fact
 32 the person was survived by a spouse or by a person listed in
 33 subdivision 3, or if subdivision 4 applies to a claim arising
 34 under this section.

35 ~~(c) The person's life estate or joint tenancy interests in~~
 36 ~~real property not subject to a medical assistance lien under~~

~~1 sections-514-980-to-514-985-on-the-date-of-the-person's-death
2 shall-not-end-upon-death-and-shall-continue-as-provided-in-this
3 subdivision.--The-life-estate-in-the-estate-shall-be-the-portion
4 of-the-interest-in-the-property-subject-to-the-life-estate-that
5 is-equal-to-the-life-estate-percentage-factor-for-the-life
6 estate-as-listed-in-the-Life-Estate-Mortality-Table-of-the
7 health-care-program's-manual-for-a-person-who-was-the-age-of-the
8 medical-assistance-recipient-on-the-date-of-the-person's-death.
9 The-joint-tenancy-interest-in-the-estate-shall-be-equal-to-the
10 fractional-interest-the-medical-assistance-recipient-would-have
11 owned-in-the-jointly-held-interest-in-the-property-had-they-and
12 the-other-owners-held-title-to-the-property-as-tenants-in-common
13 on-the-date-the-medical-assistance-recipient-died.~~

14 (d) The county agency shall file a claim in the estate
15 under this section on behalf of the claimant who shall be the
16 commissioner of human services, notwithstanding that the
17 decedent is survived by a spouse or a person listed in
18 subdivision 3. The claim, as allowed, shall not be paid by the
19 estate and shall be disposed of as provided in this paragraph.
20 The personal representative or the court shall make, execute,
21 and deliver a lien in favor of the claimant on the decedent's
22 interest in real property in the estate in the amount of the
23 allowed claim on forms provided by the commissioner to the
24 county agency filing the lien. The lien shall bear interest as
25 provided under section 524.3-806, shall attach to the property
26 it describes upon filing or recording, and shall remain a lien
27 on the real property it describes for a period of 20 years from
28 the date it is filed or recorded. The lien shall be a
29 disposition of the claim sufficient to permit the estate to
30 close.

31 (e) (d) The state or county agency shall file or record the
32 lien in the office of the county recorder or registrar of titles
33 for each county in which any of the real property is located.
34 The recorder or registrar of titles shall accept the lien for
35 filing or recording. All recording or filing fees shall be paid
36 by the Department of Human Services. The recorder or registrar

1 of titles shall mail the recorded lien to the Department of
 2 Human Services. The lien need not be attested, certified, or
 3 acknowledged as a condition of recording or filing. Upon
 4 ~~recording-or-filing-of-a-lien-against-a-life-estate-or-a-joint~~
 5 ~~tenancy-interest,-the-interest-subject-to-the-lien-shall-merge~~
 6 ~~into-the-remainder-interest-or-the-interest-the-recipient-and~~
 7 ~~others-owned-jointly.--The-lien-shall-attach-to-and-run-with-the~~
 8 ~~property-to-the-extent-of-the-decedent's-interest-in-the~~
 9 ~~property-at-the-time-of-the-decedent's-death-as-determined-under~~
 10 ~~this-section.~~

11 †f† (e) The department shall make no adjustment or recovery
 12 under the lien until after the decedent's spouse, if any, has
 13 died, and only at a time when the decedent has no surviving
 14 child described in subdivision 3. The estate, any owner of an
 15 interest in the property which is or may be subject to the lien,
 16 or any other interested party, may voluntarily pay off, settle,
 17 or otherwise satisfy the claim secured or to be secured by the
 18 lien at any time before or after the lien is filed or recorded.
 19 Such payoffs, settlements, and satisfactions shall be deemed to
 20 be voluntary repayments of past medical assistance payments for
 21 the benefit of the deceased recipient, and neither the process
 22 of settling the claim, the payment of the claim, or the
 23 acceptance of a payment shall constitute an adjustment or
 24 recovery that is prohibited under this subdivision.

25 †g† (f) The lien under this subdivision may be enforced or
 26 foreclosed in the manner provided by law for the enforcement of
 27 judgment liens against real estate or by a foreclosure by action
 28 under chapter 581. When the lien is paid, satisfied, or
 29 otherwise discharged, the state or county agency shall prepare
 30 and file a release of lien at its own expense. No action to
 31 foreclose the lien shall be commenced unless the lien holder has
 32 first given 30 days' prior written notice to pay the lien to the
 33 owners and parties in possession of the property subject to the
 34 lien. The notice shall: (1) include the name, address, and
 35 telephone number of the lien holder; (2) describe the lien; (3)
 36 give the amount of the lien; (4) inform the owner or party in

1 possession that payment of the lien in full must be made to the
2 lien holder within 30 days after service of the notice or the
3 lien holder may begin proceedings to foreclose the lien; and (5)
4 be served by personal service, certified mail, return receipt
5 requested, ordinary first class mail, or by publishing it once
6 in a newspaper of general circulation in the county in which any
7 part of the property is located. Service of the notice shall be
8 complete upon mailing or publication.

9 [EFFECTIVE DATE.] This section is effective retroactively
10 from August 1, 2003.

11 Sec. 8. Minnesota Statutes 2004, section 256B.15,
12 subdivision 1j, is amended to read:

13 Subd. 1j. [CLAIMS IN ESTATES OF DECEDENTS SURVIVED BY
14 OTHER SURVIVORS.] For purposes of this subdivision, the
15 provisions in subdivision 1i, paragraphs (a) ~~to (e)~~ and (b)
16 apply.

17 (a) If payment of a claim filed under this section is
18 limited as provided in subdivision 4, and if the estate does not
19 have other assets sufficient to pay the claim in full, as
20 allowed, the personal representative or the court shall make,
21 execute, and deliver a lien on the property in the estate that
22 is exempt from the claim under subdivision 4 in favor of the
23 commissioner of human services on forms provided by the
24 commissioner to the county agency filing the claim. If the
25 estate pays a claim filed under this section in full from other
26 assets of the estate, no lien shall be filed against the
27 property described in subdivision 4.

28 (b) The lien shall be in an amount equal to the unpaid
29 balance of the allowed claim under this section remaining after
30 the estate has applied all other available assets of the estate
31 to pay the claim. The property exempt under subdivision 4 shall
32 not be sold, assigned, transferred, conveyed, encumbered, or
33 distributed until after the personal representative has
34 determined the estate has other assets sufficient to pay the
35 allowed claim in full, or until after the lien has been filed or
36 recorded. The lien shall bear interest as provided under

1 section 524.3-806, shall attach to the property it describes
2 upon filing or recording, and shall remain a lien on the real
3 property it describes for a period of 20 years from the date it
4 is filed or recorded. The lien shall be a disposition of the
5 claim sufficient to permit the estate to close.

6 (c) The state or county agency shall file or record the
7 lien in the office of the county recorder or registrar of titles
8 in each county in which any of the real property is located.
9 The department shall pay the filing fees. The lien need not be
10 attested, certified, or acknowledged as a condition of recording
11 or filing. The recorder or registrar of titles shall accept the
12 lien for filing or recording.

13 (d) The commissioner shall make no adjustment or recovery
14 under the lien until none of the persons listed in subdivision 4
15 are residing on the property or until the property is sold or
16 transferred. The estate or any owner of an interest in the
17 property that is or may be subject to the lien, or any other
18 interested party, may voluntarily pay off, settle, or otherwise
19 satisfy the claim secured or to be secured by the lien at any
20 time before or after the lien is filed or recorded. The
21 payoffs, settlements, and satisfactions shall be deemed to be
22 voluntary repayments of past medical assistance payments for the
23 benefit of the deceased recipient and neither the process of
24 settling the claim, the payment of the claim, or acceptance of a
25 payment shall constitute an adjustment or recovery that is
26 prohibited under this subdivision.

27 (e) A lien under this subdivision may be enforced or
28 foreclosed in the manner provided for by law for the enforcement
29 of judgment liens against real estate or by a foreclosure by
30 action under chapter 581. When the lien has been paid,
31 satisfied, or otherwise discharged, the claimant shall prepare
32 and file a release of lien at the claimant's expense. No action
33 to foreclose the lien shall be commenced unless the lien holder
34 has first given 30 days prior written notice to pay the lien to
35 the record owners of the property and the parties in possession
36 of the property subject to the lien. The notice shall: (1)

1 include the name, address, and telephone number of the lien
 2 holder; (2) describe the lien; (3) give the amount of the lien;
 3 (4) inform the owner or party in possession that payment of the
 4 lien in full must be made to the lien holder within 30 days
 5 after service of the notice or the lien holder may begin
 6 proceedings to foreclose the lien; and (5) be served by personal
 7 service, certified mail, return receipt requested, ordinary
 8 first class mail, or by publishing it once in a newspaper of
 9 general circulation in the county in which any part of the
 10 property is located. Service shall be complete upon mailing or
 11 publication.

12 ~~(f) Upon filing or recording of a lien against a life~~
 13 ~~estate or joint tenancy interest under this subdivision, the~~
 14 ~~interest subject to the lien shall merge into the remainder~~
 15 ~~interest or the interest the decedent and others owned jointly,~~
 16 ~~effective on the date of recording and filing. The lien shall~~
 17 ~~attach to and run with the property to the extent of the~~
 18 ~~decedent's interest in the property at the time of the~~
 19 ~~decedent's death as determined under this section.~~

20 (g)(1) An affidavit may be provided by a personal
 21 representative, at their discretion, stating the personal
 22 representative has determined in good faith that a decedent
 23 survived by a spouse or a person listed in subdivision 3, or by
 24 a person listed in subdivision 4, or the decedent's predeceased
 25 spouse did not receive any medical assistance giving rise to a
 26 claim under this section, or that the real property described in
 27 subdivision 4 is not needed to pay in full a claim arising under
 28 this section.

29 (2) The affidavit shall:

30 (i) describe the property and the interest being
 31 extinguished;

32 (ii) name the decedent and give the date of death;

33 (iii) state the facts listed in clause (1);

34 (iv) state that the affidavit is being filed to terminate
 35 the life estate or joint tenancy interest created under this
 36 subdivision;

1 (v) be signed by the personal representative; and
 2 (vi) contain any other information that the affiant deems
 3 appropriate.

4 ~~(3)-Except-as-provided-in-section-514.9817-subdivision-67~~
 5 ~~when-the-affidavit-is-filed-or-recorded7-the-life-estate-or~~
 6 ~~joint-tenancy-interest-in-real-property-that-the-affidavit~~
 7 ~~describes-shall-be-terminated-effective-as-of-the-date-of-filing~~
 8 ~~or-recording---The-termination-shall-be-final-and-may-not-be-set~~
 9 ~~aside-for-any-reason-~~

10 [EFFECTIVE DATE.] This section is effective retroactively
 11 from August 1, 2003.

12 Sec. 9. Minnesota Statutes 2004, section 256B.15,
 13 subdivision 2, is amended to read:

14 Subd. 2. [LIMITATIONS ON CLAIMS.] The claim shall include
 15 only the total amount of medical assistance rendered after age
 16 55 or during a period of institutionalization described in
 17 subdivision 1a, clause (b), and the total amount of general
 18 assistance medical care rendered, and shall not include
 19 interest. Claims that have been allowed but not paid shall bear
 20 interest according to section 524.3-806, paragraph (d). A claim
 21 against the estate of a surviving spouse who did not receive
 22 medical assistance, for medical assistance rendered for the
 23 predeceased spouse, is limited to the value of the assets of the
 24 estate that were marital property or jointly owned property at
 25 any time during the marriage. ~~Claims-for-alternative-care-shall~~
 26 ~~be-net-of-all-premiums-paid-under-section-256B.09137-subdivision~~
 27 ~~127-on-or-after-July-17-20037-and-shall-be-limited-to-services~~
 28 ~~provided-on-or-after-July-17-2003-~~

29 [EFFECTIVE DATE.] This section is effective retroactively
 30 from July 1, 2003, for decedents dying on or after that date.

31 Sec. 10. Minnesota Statutes 2004, section 256B.15,
 32 subdivision 3, is amended to read:

33 Subd. 3. [SURVIVING-SPOUSE7 MINOR, BLIND, OR DISABLED
 34 CHILDREN.] If a decedent ~~is-survived-by-a-spouse7-or~~ who was
 35 single or who was the surviving spouse of a married couple and
 36 is survived by a child who is under age 21 or blind or

1 permanently and totally disabled according to the supplemental
 2 security income program criteria, a no claim shall be filed
 3 against the estate ~~according to this section.~~

4 [EFFECTIVE DATE.] This section is effective retroactively
 5 from August 1, 2003.

6 Sec. 11. Minnesota Statutes 2004, section 256B.15,
 7 subdivision 4, is amended to read:

8 Subd. 4. [OTHER SURVIVORS.] If the decedent who was single
 9 or the surviving spouse of a married couple is survived by one
 10 of the following persons, a claim exists against the estate in
 11 an amount not to exceed the value of the nonhomestead property
 12 included in the estate ~~and the personal representative shall~~
 13 ~~make, execute, and deliver to the county agency a lien against~~
 14 ~~the homestead property in the estate for any unpaid balance of~~
 15 ~~the claim to the claimant as provided under this section:~~

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

20 (b) (2) a son or daughter or a grandchild who resided in
 21 the decedent medical assistance recipient's home for at least
 22 two years immediately before the parent's or grandparent's
 23 institutionalization and continuously since the date of
 24 institutionalization, and who establishes by a preponderance of
 25 the evidence having provided care to the parent or grandparent
 26 who received medical assistance, that the care was provided
 27 before institutionalization, and that the care permitted the
 28 parent or grandparent to reside at home rather than in an
 29 institution.

30 [EFFECTIVE DATE.] This section is effective retroactively
 31 from August 1, 2003, and applies to decedents who die on or
 32 after that date.

33 Sec. 12. Minnesota Statutes 2004, section 514.981,
 34 subdivision 6, is amended to read:

35 Subd. 6. [TIME LIMITS; CLAIM LIMITS, ~~BIENS-ON-LIFE-ESTATES~~
 36 ~~AND JOINT TENANCIES.] (a) A medical assistance lien is a lien on~~

1 the real property it describes for a period of ten years from
2 the date it attaches according to section 514.981, subdivision
3 2, paragraph (a), except as otherwise provided for in sections
4 514.980 to 514.985. The agency may renew a medical assistance
5 lien for an additional ten years from the date it would
6 otherwise expire by recording or filing a certificate of renewal
7 before the lien expires. The certificate shall be recorded or
8 filed in the office of the county recorder or registrar of
9 titles for the county in which the lien is recorded or filed.
10 The certificate must refer to the recording or filing data for
11 the medical assistance lien it renews. The certificate need not
12 be attested, certified, or acknowledged as a condition for
13 recording or filing. The registrar of titles or the recorder
14 shall file, record, index, and return the certificate of renewal
15 in the same manner as provided for medical assistance liens in
16 section 514.982, subdivision 2.

17 (b) A medical assistance lien is not enforceable against
18 the real property of an estate to the extent there is a
19 determination by a court of competent jurisdiction, or by an
20 officer of the court designated for that purpose, that there are
21 insufficient assets in the estate to satisfy the agency's
22 medical assistance lien in whole or in part because of the
23 homestead exemption under section 256B.15, subdivision 4, the
24 rights of the surviving spouse or minor children under section
25 524.2-403, paragraphs (a) and (b), or claims with a priority
26 under section 524.3-805, paragraph (a), clauses (1) to (4). For
27 purposes of this section, the rights of the decedent's adult
28 children to exempt property under section 524.2-403, paragraph
29 (b), shall not be considered costs of administration under
30 section 524.3-805, paragraph (a), clause (1).

31 ~~(c) Notwithstanding any law or rule to the contrary, the~~
32 ~~provisions in clauses (1) to (7) apply if a life estate subject~~
33 ~~to a medical assistance lien ends according to its terms, or if~~
34 ~~a medical assistance recipient who owns a life estate or any~~
35 ~~interest in real property as a joint tenant that is subject to a~~
36 ~~medical assistance lien dies.~~

1 ~~(1)-The medical assistance recipient's life estate or joint~~
2 ~~tenancy interest in the real property shall not end upon the~~
3 ~~recipient's death but shall merge into the remainder interest or~~
4 ~~other interest in real property the medical assistance recipient~~
5 ~~owned in joint tenancy with others. The medical assistance lien~~
6 ~~shall attach to and run with the remainder or other interest in~~
7 ~~the real property to the extent of the medical assistance~~
8 ~~recipient's interest in the property at the time of the~~
9 ~~recipient's death as determined under this section.~~

10 ~~(2)-If the medical assistance recipient's interest was a~~
11 ~~life estate in real property, the lien shall be a lien against~~
12 ~~the portion of the remainder equal to the percentage factor for~~
13 ~~the life estate of a person the medical assistance recipient's~~
14 ~~age on the date the life estate ended according to its terms or~~
15 ~~the date of the medical assistance recipient's death as listed~~
16 ~~in the Life Estate Mortality Table in the health care program's~~
17 ~~manual.~~

18 ~~(3)-If the medical assistance recipient owned the interest~~
19 ~~in real property in joint tenancy with others, the lien shall be~~
20 ~~a lien against the portion of that interest equal to the~~
21 ~~fractional interest the medical assistance recipient would have~~
22 ~~owned in the jointly owned interest had the medical assistance~~
23 ~~recipient and the other owners held title to that interest as~~
24 ~~tenants in common on the date the medical assistance recipient~~
25 ~~died.~~

26 ~~(4)-The medical assistance lien shall remain a lien against~~
27 ~~the remainder or other jointly owned interest for the length of~~
28 ~~time and be renewable as provided in paragraph (a).~~

29 ~~(5)-Subdivision 5, paragraph (a), clause (4), paragraph~~
30 ~~(b), clauses (1) and (2), and subdivision 6, paragraph (b), do~~
31 ~~not apply to medical assistance liens which attach to interests~~
32 ~~in real property as provided under this subdivision.~~

33 ~~(6)-The continuation of a medical assistance recipient's~~
34 ~~life estate or joint tenancy interest in real property after the~~
35 ~~medical assistance recipient's death for the purpose of~~
36 ~~recovering medical assistance provided for in sections 514.980~~

1 to-514.985-modifies-common-law-principles-holding-that-these
2 interests-terminate-on-the-death-of-the-holder.

3 (7)-Notwithstanding-any-law-or-rule-to-the-contrary, no
4 release, satisfaction, discharge, or affidavit under section
5 256B.15 shall extinguish or terminate the life estate or joint
6 tenancy interest of a medical assistance recipient subject to a
7 lien under sections 514.980 to 514.985 on the date the recipient
8 dies.

9 (8)-The provisions of clauses (1) to (7) do not apply to a
10 homestead owned of record, on the date the recipient dies, by
11 the recipient and the recipient's spouse as joint tenants with a
12 right of survivorship. Homestead means the real property
13 occupied by the surviving joint tenant spouse as their sole
14 residence on the date the recipient dies and classified and
15 taxed to the recipient and surviving joint tenant spouse as
16 homestead property for property tax purposes in the calendar
17 year in which the recipient dies. For purposes of this
18 exemption, real property the recipient and their surviving joint
19 tenant spouse purchase solely with the proceeds from the sale of
20 their prior homestead, own of record as joint tenants, and
21 qualify as homestead property under section 273.124 in the
22 calendar year in which the recipient dies and prior to the
23 recipient's death shall be deemed to be real property classified
24 and taxed to the recipient and their surviving joint tenant
25 spouse as homestead property in the calendar year in which the
26 recipient dies. The surviving spouse, or any person with
27 personal knowledge of the facts, may provide an affidavit
28 describing the homestead property affected by this clause and
29 stating facts showing compliance with this clause. The
30 affidavit shall be prima facie evidence of the facts it states.

31 [EFFECTIVE DATE.] This section is effective retroactively
32 from August 1, 2003.

33 Sec. 13. Minnesota Statutes 2004, section 524.3-805, is
34 amended to read:

35 524.3-805 [CLASSIFICATION OF CLAIMS.]

36 (a) If the applicable assets of the estate are insufficient

1 to pay all claims in full, the personal representative shall
2 make payment in the following order:

3 (1) costs and expenses of administration;

4 (2) reasonable funeral expenses;

5 (3) debts and taxes with preference under federal law;

6 (4) reasonable and necessary medical, hospital, or nursing
7 home expenses of the last illness of the decedent, including
8 compensation of persons attending the decedent, ~~a claim filed~~
9 ~~under section 256B.15 for recovery of expenditures for~~
10 ~~alternative care for nonmedical assistance recipients under~~
11 ~~section 256B.0913,~~ and including a claim filed pursuant to
12 section 256B.15;

13 (5) reasonable and necessary medical, hospital, and nursing
14 home expenses for the care of the decedent during the year
15 immediately preceding death;

16 (6) debts with preference under other laws of this state,
17 and state taxes;

18 (7) all other claims.

19 (b) No preference shall be given in the payment of any
20 claim over any other claim of the same class, and a claim due
21 and payable shall not be entitled to a preference over claims
22 not due, except that if claims for expenses of the last illness
23 involve only claims filed under section 256B.15 ~~for recovery of~~
24 ~~expenditures for alternative care for nonmedical assistance~~
25 ~~recipients under section 256B.0913,~~ section 246.53 for costs of
26 state hospital care and claims filed under section 256B.15,
27 ~~claims filed to recover expenditures for alternative care for~~
28 ~~nonmedical assistance recipients under section 256B.0913 shall~~
29 ~~have preference over claims filed under both sections 246.53 and~~
30 ~~other claims filed under section 256B.15,~~ and. Claims filed
31 under section 246.53 have preference over claims filed under
32 section 256B.15 ~~for recovery of amounts other than those for~~
33 ~~expenditures for alternative care for nonmedical assistance~~
34 ~~recipients under section 256B.0913.~~

35 [EFFECTIVE DATE.] This section is effective retroactively
36 from July 1, 2003, for decedents dying on or after that date.

1 Sec. 14. [REFUNDS; NOTICES, AND IMMUNITY.]

2 (a) The commissioner of human services and any county
3 agency that, after a recipient's death, has collected any sum
4 (1) from the estate of a recipient of alternative case services,
5 or (2) attributable to a life estate or joint tenancy interest
6 in real estate that was continued after the death of the
7 recipient, shall promptly refund the amount collected to the
8 person or persons who paid the amount collected, in proportion
9 to each person's contribution to the amount.

10 (b) Lien notices of record against life estate or joint
11 tenancy interests filed on and after August 1, 2003, shall have
12 no effect beyond the death of the recipient unless continued
13 after that time by the terms of the instrument creating the
14 interest, shall be disregarded by examiners of title, and shall
15 not be carried forward to subsequent certificates of title.

16 [EFFECTIVE DATE.] This section is effective the day
17 following final enactment.

18 Sec. 15. [APPROPRIATIONS.]

19 \$..... is appropriated from the general fund to the
20 commissioner of human services for fiscal years 2004 and 2005
21 for the purposes of sections 1 to 14. \$..... is appropriated
22 from the general fund to the commissioner of human services for
23 fiscal years 2006 and 2007 for the purposes of sections 1 to 14.

24 Sec. 16. [REPEALER.]

25 Minnesota Statutes 2004, sections 256B.15, subdivision 1g;
26 514.991; 514.992; 514.993; 514.994; and 514.995, are repealed
27 retroactively from July 1, 2003.

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256B.15 CLAIMS AGAINST ESTATES.

Subd. 1g. Estate property. Notwithstanding any law or rule to the contrary, if a claim is presented under this section, interests or the proceeds of interests in real property a decedent owned as a life tenant or a joint tenant with a right of survivorship shall be part of the decedent's estate, subject to administration, and shall be dealt with as provided in this section.

514.991 ALTERNATIVE CARE LIENS; DEFINITIONS.

Subdivision 1. Applicability. The definitions in this section apply to sections 514.991 to 514.995.

Subd. 2. Alternative care agency, agency, or department. "Alternative care agency," "agency," or "department" means the Department of Human Services when it pays for or provides alternative care benefits for a nonmedical assistance recipient directly or through a county social services agency under chapter 256B according to section 256B.0913.

Subd. 3. Alternative care benefit or benefits. "Alternative care benefit" or "benefits" means a benefit provided to a nonmedical assistance recipient under chapter 256B according to section 256B.0913.

Subd. 4. Alternative care recipient or recipient. "Alternative care recipient" or "recipient" means a person who receives alternative care grant benefits.

Subd. 5. Alternative care lien or lien. "Alternative care lien" or "lien" means a lien filed under sections 514.992 to 514.995.

514.992 ALTERNATIVE CARE LIEN.

Subdivision 1. Property subject to lien; lien amount.

(a) Subject to sections 514.991 to 514.995, payments made by an alternative care agency to provide benefits to a recipient or to the recipient's spouse who owns property in this state constitute a lien in favor of the agency on all real property the recipient owns at and after the time the benefits are first paid.

(b) The amount of the lien is limited to benefits paid for services provided to recipients over 55 years of age and provided on and after July 1, 2003.

Subd. 2. Attachment. (a) A lien attaches to and becomes enforceable against specific real property as of the date when all of the following conditions are met:

- (1) the agency has paid benefits for a recipient;
- (2) the recipient has been given notice and an opportunity for a hearing under paragraph (b);
- (3) the lien has been filed as provided for in section 514.993 or memorialized on the certificate of title for the property it describes; and
- (4) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a lien until it has sent the recipient, their authorized representative, or their legal representative written notice of its lien rights by certified mail, return receipt requested, or registered mail and there has been an opportunity for a hearing under section 256.045. No person other than the recipient shall have a right to a hearing under section 256.045 prior to the time the lien is filed. The hearing shall be limited to whether the agency has met all of the prerequisites for filing the lien and whether any of the

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exceptions in this section apply.

(c) An agency may not file a lien against the recipient's homestead when any of the following exceptions apply:

- (1) while the recipient's spouse is also physically present and lawfully and continuously residing in the homestead;
- (2) a child of the recipient who is under age 21 or who is blind or totally and permanently disabled according to supplemental security income criteria is also physically present on the property and lawfully and continuously residing on the property from and after the date the recipient first receives benefits;
- (3) a child of the recipient who has also lawfully and continuously resided on the property for a period beginning at least two years before the first day of the month in which the recipient began receiving alternative care, and who provided uncompensated care to the recipient which enabled the recipient to live without alternative care services for the two-year period;
- (4) a sibling of the recipient who has an ownership interest in the property of record in the office of the county recorder or registrar of titles for the county in which the real property is located and who has also continuously occupied the homestead for a period of at least one year immediately prior to the first day of the first month in which the recipient received benefits and continuously since that date.

(d) A lien only applies to the real property it describes.

Subd. 3. Continuation of lien. A lien remains effective from the time it is filed until it is paid, satisfied, discharged, or becomes unenforceable under sections 514.991 to 514.995.

Subd. 4. Priority of lien. (a) A lien which attaches to the real property it describes is subject to the rights of anyone else whose interest in the real property is perfected of record before the lien has been recorded or filed under section 514.993, including:

- (1) an owner, other than the recipient or the recipient's spouse;
- (2) a good faith purchaser for value without notice of the lien;
- (3) a holder of a mortgage or security interest; or
- (4) a judgment lien creditor whose judgment lien has attached to the recipient's interest in the real property.

(b) The rights of the other person have the same protections against an alternative care lien as are afforded against a judgment lien that arises out of an unsecured obligation and arises as of the time of the filing of an alternative care grant lien under section 514.993. The lien shall be inferior to a lien for property taxes and special assessments and shall be superior to all other matters first appearing of record after the time and date the lien is filed or recorded.

Subd. 5. Settlement, subordination, and release. (a) An agency may, with absolute discretion, settle or subordinate the lien to any other lien or encumbrance of record upon the terms and conditions it deems appropriate.

(b) The agency filing the lien shall release and discharge the lien:

- (1) if it has been paid, discharged, or satisfied;
- (2) if it has received reimbursement for the amounts

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secured by the lien, has entered into a binding and legally enforceable agreement under which it is reimbursed for the amount of the lien, or receives other collateral sufficient to secure payment of the lien;

(3) against some, but not all, of the property it describes upon the terms, conditions, and circumstances the agency deems appropriate;

(4) to the extent it cannot be lawfully enforced against the property it describes because of an error, omission, or other material defect in the legal description contained in the lien or a necessary prerequisite to enforcement of the lien; and

(5) if, in its discretion, it determines the filing or enforcement of the lien is contrary to the public interest.

(c) The agency executing the lien shall execute and file the release as provided for in section 514.993, subdivision 2.

Subd. 6. Length of lien. (a) A lien shall be a lien on the real property it describes for a period of ten years from the date it attaches according to subdivision 2, paragraph (a), except as otherwise provided for in sections 514.992 to 514.995. The agency filing the lien may renew the lien for one additional ten-year period from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate of renewal shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed. The certificate must refer to the recording or filing data for the lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The recorder or registrar of titles shall record, file, index, and return the certificate of renewal in the same manner provided for liens in section 514.993, subdivision 2.

(b) An alternative care lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of a surviving spouse or a minor child under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

514.993 LIEN; CONTENTS AND FILING.

Subdivision 1. Contents. A lien shall be dated and must contain:

(1) the recipient's full name, last known address, and Social Security number;

(2) a statement that benefits have been paid to or for the recipient's benefit;

(3) a statement that all of the recipient's interests in the real property described in the lien may be subject to or affected by the agency's right to reimbursement for benefits;

(4) a legal description of the real property subject to the lien and whether it is registered or abstract property; and

(5) such other contents, if any, as the agency deems appropriate.

APPENDIX
Repealed Minnesota Statutes for 05-0645

Subd. 2. **Filing.** Any lien, release, or other document required or permitted to be filed under sections 514.991 to 514.995 must be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any documents filed under sections 514.991 to 514.995. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the lien is registered property, the registrar of titles shall record it on the certificate of title for each parcel of property described in the lien. If the property described in the lien is abstract property, the recorder shall file the lien in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the lien. The recorder or registrar shall return the recorded or filed lien to the agency at no cost. If the agency provides a duplicate copy of the lien, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the agency at no cost. The agency is responsible for filing any lien, release, or other documents under sections 514.991 to 514.995.

514.994 ENFORCEMENT; OTHER REMEDIES.

Subdivision 1. **Foreclosure or enforcement of lien.**

The agency may enforce or foreclose a lien filed under sections 514.991 to 514.995 in the manner provided for by law for enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. The lien shall remain enforceable as provided for in sections 514.991 to 514.995 notwithstanding any laws limiting the enforceability of judgments.

Subd. 2. **Homestead exemption.** The lien may not be enforced against the homestead property of the recipient or the spouse while they physically occupy it as their lawful residence.

Subd. 3. **Agency claim or remedy.** Sections 514.992 to 514.995 do not limit the agency's right to file a claim against the recipient's estate or the estate of the recipient's spouse, do not limit any other claims for reimbursement the agency may have, and do not limit the availability of any other remedy to the agency.

514.995 AMOUNTS RECEIVED TO SATISFY LIEN.

Amounts the agency receives to satisfy the lien must be deposited in the state treasury and credited to the fund from which the benefits were paid.

Higgins

1 Senator moves to amend S.F. No. 254 as follows:

2 Page 2, line 7, strike "shall" and insert "must"

3 Page 5, line 5, strike "else"

4 Page 24, delete section 14 and insert:

5 "Sec. 14. [REFUNDS; NOTICES, AND IMMUNITY.]

6 (a) The commissioner of human services and any county
7 agency that, after a recipient's death, has collected any sum
8 (1) from the estate of a recipient of alternative case services,
9 or (2) attributable to a life estate or joint tenancy interest
10 in real estate that was continued after the death of the
11 recipient, shall promptly refund the amount collected to the
12 person or persons who paid the amount collected, in proportion
13 to each person's contribution to the amount.

14 (b) If the commissioner determines a person entitled to a
15 refund is dead, the commissioner shall pay the refund to the
16 person's estate if it is open, or to their heirs or devisees as
17 finally determined in any completed probate proceedings or under
18 a final decree of descent. In all other cases, the refund shall
19 be deemed to be abandoned property and the commissioner shall
20 pay and deliver the refund to the commissioner of commerce. The
21 commissioner of commerce shall administer and dispose of the
22 refund in accordance with Minnesota Statutes, sections 345.42
23 through 345.60. The commissioner of human services shall not be
24 liable to anyone with respect to the refund after paying or
25 delivering the refund as provided for in this paragraph.

26 (c) Lien notices of record against life estate or joint
27 tenancy interests filed on and after August 1, 2003, shall have
28 no effect and shall not constitute record notice after the death
29 of the person named in the lien or notice unless continued after
30 that time by the terms of the instrument creating the interest,
31 shall be disregarded by examiners of title, and shall not be
32 carried forward to subsequent certificates of title.

33 (d) The commissioner of human services, county agencies,
34 elected officials, and their employees are immune from all
35 liability for actions taken or not taken in accordance with Laws
36 2003, First Special Session chapter 14, article 2, sections 47

1 to 52; article 12, sections 40 to 52 and 90; and sections 1 to
2 14 of this act.

3 [EFFECTIVE DATE.] This section is effective the day
4 following final enactment."

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State of Minnesota

S.F. No. 254 - Human Services Provisions and Tax Modifications

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ARTICLE 1 HUMAN SERVICES

Section 1 (252.27, subdivision 2a) amends the parental fee schedule for children receiving services under TEFRA and Community Based Services waiver options. Below are two tables showing the proposed language and current law.

Proposed language

Adjusted Gross Income (AGI) as a percentage of the Federal Poverty Guidelines (FPG)	Parental Fee
175% up to 575% ⁶	Sliding scale from 1% to 7.5% of AGI
575% up to 675%	7.5% of AGI
675% and less than 975%	10% of AGI
975% and above	12.5% of AGI

Current Law

Adjusted Gross Income as a percentage of the FPG	Fee
175% up to 375%	Sliding scale 1% to 7.5% of AGI
375% up to 675%	7.5% of AGI
675% up to 975%	10% of AGI
975% and above	12.5% of AGI

Further, under current law the parent’s AGI is reduced by \$2400 if the child lives with the parent. The proposed language increases the reduction to \$5000. In paragraph (d), excludes from the definition of income funds from early withdrawn qualified retirement accounts, effective retroactive from July 1, 2003. In paragraph (g), related to child support, the language is changed to allow the amount of the child support to be deducted from the fee. Under current law, the annualized amount of child support is deducted from the AGI.

Sections 2 and 3 (256J.21, subdivision 2, and 256J.95, subdivision 9) strikes references to provisions repealed in section 4.

Section 4 repeals Minnesota Statutes, section 256J.37, subdivisions 3a and 3b, which are MFIP provisions that count \$50 of a rental subsidy as unearned income and reduce the MFIP cash grant by \$125 per Supplemental Security Income recipient living in the household, respectively.

ARTICLE 2
MEDICAL ASSISTANCE LIENS

Section 1 (256B.15, subdivision 1) deletes language making life estates and joint tenancies subject to MA estate claims. This section also reinstates language that was in effect until 2003 that prohibited MA estate claims to collect for Alternative Care (AC) service costs.

Section 2 (256B.15, subdivision 1a) excludes AC costs from MA estate claims and removes language allowing counties to retain ten percent of their AC related collections.

Section 3 (256B.15, subdivision 1d) deletes, from a subdivision establishing the effect of a notice of potential claim, references to the continuation of life estate and joint tenancy interests after death.

Section 4 (256B.15, subdivision 1e) deletes, from a subdivision regarding the claimant’s right to release a lien, references to the continuation of life estate and joint tenancy interests.

Section 5 (256B.15, subdivision 1f) deletes, from a subdivision regarding the establishment of liens against real estate, references to the continuation of life estate and joint tenancy interests.

Section 6 (256B.15, subdivision 1h) deletes, from a subdivision regarding the estates of specific MA recipients, references to the continuation of life estate and joint tenancy interests.

Section 7 (256B.15, subdivision 1i) deletes, from a subdivision regarding the estates of MA recipients survived by others, references to the continuation of life estate and joint tenancy interests.

Section 8 (256B.15, subdivision 1j) deletes, from a subdivision regarding the estates of MA recipients survived by other survivors, references to the continuation of life estate and joint tenancy interests.

Section 9 (256B.15, subdivision 2) deletes another reference to MA estate claims for AC costs.

Section 10 (256B.15, subdivision 3) reinstates language that was in effect before the 2003 session barring state claims if the decedent, who was either single or the surviving spouse of a married couple, is survived by a child who is under age 21, or is blind, or is permanently and totally disabled.

Section 11 (256B.15, subdivision 4) deletes language adopted in 2003 authorizing liens against homestead property in an estate for any unpaid balance of a claim in cases where the claim is limited to the value of the nonhomestead property in the estate.

Section 12 (514.981, subdivision 6) deletes language added to the state lien law in 2003 authorizing liens against life estates and joint tenant interests.

Section 13 (524.3 805) deletes language added to the Uniform Probate Code in 2003 referencing MA estate claims for AC costs.

Section 14 relates to refunds and notices.

Paragraph (a) requires refunds to be paid of any amounts collected from the estate of a recipient of alternative care services or because of the continuation of life estates and joint tenancies after the death of the recipient.

Paragraph (b) makes lien notices ineffective against life estates or joint tenancies after the death of the recipient unless continued after death by the document creating the life estate or joint tenancy.

Section 15 is a blank appropriation section.

Section 16 is a repealer section. It repeals Minnesota Statutes, section 256B.15, subdivision 1g, which makes a life estate or joint tenancy interest part of a deceased's estate for purposes of MA estate recovery. It also repeals Minnesota Statutes, sections 514.991 through 514.995. These sections were adopted in 2003 and establish Alternative Care liens and procedures for enforcing them.

ARTICLE 3
INDIVIDUAL INCOME TAX AND
CORPORATE FRANCHISE TAX

Article 3 amends sections of the income tax and corporate franchise tax provisions by establishing criteria for designation of a foreign operating corporation, reducing or eliminating certain deductions, and apportioning income to Minnesota that is not taxed in any other state. All sections are effective for tax years beginning after January 31, 2004.

Section 1 (290.01, subdivision 6b, Foreign Operating Corporation) amends Minnesota Statutes to clarify that in order to qualify as a foreign operating corporation, the corporation must have at least 80 percent of its property and payroll located outside of the United States. This section also adds new requirements for foreign operating corporations, that they must have at least \$2,000,000 of property and \$1,000,000 of payroll located outside of the United States.

Section 2 (290.01, subdivision 19d, Unitary Business, Foreign Operating Corporation) amends Minnesota Statutes to delete the deduction from income for corporate franchise tax for royalties received from a foreign operating corporation or a foreign corporation that is part of the same unitary business.

Section 3 (290.17, subdivision 2, Allocation of Deferred Compensation) amends Minnesota Statutes by removing the exemption from Minnesota income tax for deferred compensation that was earned while the taxpayer was a resident of this state and paid after the taxpayer was no longer a Minnesota resident. The change will require that Minnesota-earned deferred compensation be allocated to this state for income tax purposes.

Section 4 (290.17, subdivision 4, Unitary Business Principle) amends Minnesota Statutes to remove the deduction from corporate franchise tax for dividends, interest, royalties, or capital gains received from a foreign operating corporation.

Senators Berglin; Pogemiller; Johnson, D.E.; Lourey and Koering introduced--
S.F. No. 254: Referred to the Committee on Health and Family Security.

1 A bill for an act
2 relating to the operation of state government;
3 modifying parental contributions; modifying several
4 MFIP provisions; modifying medical assistance estate
5 recovery provisions; eliminating recoveries for
6 alternative care costs; removing liens against life
7 estates and joint tenant interests; changing certain
8 income tax provisions; appropriating money; amending
9 Minnesota Statutes 2004, sections 252.27, subdivision
10 2a; 256B.15, subdivisions 1, 1a, 1d, 1e, 1f, 1h, 1i,
11 1j, 2, 3, 4; 256J.21, subdivision 2; 256J.95,
12 subdivision 9; 290.01, subdivisions 6b, 19d; 290.17,
13 subdivisions 2, 4; 514.981, subdivision 6; 524.3-805;
14 repealing Minnesota Statutes 2004, sections 256B.15,
15 subdivision 1g; 256J.37, subdivisions 3a, 3b; 514.991;
16 514.992; 514.993; 514.994; 514.995.

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

18 ARTICLE 1

19 HUMAN SERVICES

20 Section 1. Minnesota Statutes 2004, section 252.27,
21 subdivision 2a, is amended to read:

22 Subd. 2a. [CONTRIBUTION AMOUNT.] (a) The natural or
23 adoptive parents of a minor child, including a child determined
24 eligible for medical assistance without consideration of
25 parental income, must contribute to the cost of services used by
26 making monthly payments on a sliding scale based on income,
27 unless the child is married or has been married, parental rights
28 have been terminated, or the child's adoption is subsidized
29 according to section 259.67 or through title IV-E of the Social
30 Security Act.

31 (b) For households with adjusted gross income equal to or

1 greater than 100 percent of federal poverty guidelines, the
2 parental contribution shall be computed by applying the
3 following schedule of rates to the adjusted gross income of the
4 natural or adoptive parents:

5 (1) if the adjusted gross income is equal to or greater
6 than 100 percent of federal poverty guidelines and less than 175
7 percent of federal poverty guidelines, the parental contribution
8 is \$4 per month;

9 (2) if the adjusted gross income is equal to or greater
10 than 175 percent of federal poverty guidelines and less than or
11 equal to ~~375~~ 575 percent of federal poverty guidelines, the
12 parental contribution shall be determined using a sliding fee
13 scale established by the commissioner of human services which
14 begins at one percent of adjusted gross income at 175 percent of
15 federal poverty guidelines and increases to 7.5 percent of
16 adjusted gross income for those with adjusted gross income up to
17 ~~375~~ 575 percent of federal poverty guidelines;

18 (3) if the adjusted gross income is greater than ~~375~~ 575
19 percent of federal poverty guidelines and less than 675 percent
20 of federal poverty guidelines, the parental contribution shall
21 be 7.5 percent of adjusted gross income;

22 (4) if the adjusted gross income is equal to or greater
23 than 675 percent of federal poverty guidelines and less than 975
24 percent of federal poverty guidelines, the parental contribution
25 shall be ten percent of adjusted gross income; and

26 (5) if the adjusted gross income is equal to or greater
27 than 975 percent of federal poverty guidelines, the parental
28 contribution shall be 12.5 percent of adjusted gross income.

29 If the child lives with the parent, the annual adjusted
30 gross income is reduced by ~~\$2,400~~ \$5,000 prior to calculating
31 the parental contribution. If the child resides in an
32 institution specified in section 256B.35, the parent is
33 responsible for the personal needs allowance specified under
34 that section in addition to the parental contribution determined
35 under this section. The parental contribution is reduced by any
36 amount required to be paid directly to the child pursuant to a

1 court order, but only if actually paid.

2 (c) The household size to be used in determining the amount
3 of contribution under paragraph (b) includes natural and
4 adoptive parents and their dependents, including the child
5 receiving services. Adjustments in the contribution amount due
6 to annual changes in the federal poverty guidelines shall be
7 implemented on the first day of July following publication of
8 the changes.

9 (d) For purposes of paragraph (b), "income" means the
10 adjusted gross income of the natural or adoptive parents
11 determined according to the previous year's federal tax form,
12 except, effective retroactive to July 1, 2003, taxable capital
13 gains to the extent the funds have been used to purchase a
14 home and funds from early withdrawn qualified retirement
15 accounts under the Internal Revenue Code shall not be counted as
16 income.

17 (e) The contribution shall be explained in writing to the
18 parents at the time eligibility for services is being
19 determined. The contribution shall be made on a monthly basis
20 effective with the first month in which the child receives
21 services. Annually upon redetermination or at termination of
22 eligibility, if the contribution exceeded the cost of services
23 provided, the local agency or the state shall reimburse that
24 excess amount to the parents, either by direct reimbursement if
25 the parent is no longer required to pay a contribution, or by a
26 reduction in or waiver of parental fees until the excess amount
27 is exhausted.

28 (f) The monthly contribution amount must be reviewed at
29 least every 12 months; when there is a change in household size;
30 and when there is a loss of or gain in income from one month to
31 another in excess of ten percent. The local agency shall mail a
32 written notice 30 days in advance of the effective date of a
33 change in the contribution amount. A decrease in the
34 contribution amount is effective in the month that the parent
35 verifies a reduction in income or change in household size.

36 (g) Parents of a minor child who do not live with each

1 other shall each pay the contribution required under paragraph
2 ~~(a)---An-amount-equal-to-the-annual~~, except that a court-ordered
3 child support payment actually paid on behalf of the child
4 receiving services shall be deducted from the ~~adjusted-gross~~
5 ~~income~~ contribution of the parent making the payment ~~prior-to~~
6 ~~calculating-the-parental-contribution-under-paragraph-(b)~~.

7 (h) The contribution under paragraph (b) shall be increased
8 by an additional five percent if the local agency determines
9 that insurance coverage is available but not obtained for the
10 child. For purposes of this section, "available" means the
11 insurance is a benefit of employment for a family member at an
12 annual cost of no more than five percent of the family's annual
13 income. For purposes of this section, "insurance" means health
14 and accident insurance coverage, enrollment in a nonprofit
15 health service plan, health maintenance organization,
16 self-insured plan, or preferred provider organization.

17 Parents who have more than one child receiving services
18 shall not be required to pay more than the amount for the child
19 with the highest expenditures. There shall be no resource
20 contribution from the parents. The parent shall not be required
21 to pay a contribution in excess of the cost of the services
22 provided to the child, not counting payments made to school
23 districts for education-related services. Notice of an increase
24 in fee payment must be given at least 30 days before the
25 increased fee is due.

26 (i) The contribution under paragraph (b) shall be reduced
27 by \$300 per fiscal year if, in the 12 months prior to July 1:

28 (1) the parent applied for insurance for the child;
29 (2) the insurer denied insurance;
30 (3) the parents submitted a complaint or appeal, in writing
31 to the insurer, submitted a complaint or appeal, in writing, to
32 the commissioner of health or the commissioner of commerce, or
33 litigated the complaint or appeal; and

34 (4) as a result of the dispute, the insurer reversed its
35 decision and granted insurance.

36 For purposes of this section, "insurance" has the meaning

1 given in paragraph (h).

2 A parent who has requested a reduction in the contribution
3 amount under this paragraph shall submit proof in the form and
4 manner prescribed by the commissioner or county agency,
5 including, but not limited to, the insurer's denial of
6 insurance, the written letter or complaint of the parents, court
7 documents, and the written response of the insurer approving
8 insurance. The determinations of the commissioner or county
9 agency under this paragraph are not rules subject to chapter 14.

10 Sec. 2. Minnesota Statutes 2004, section 256J.21,
11 subdivision 2, is amended to read:

12 Subd. 2. [INCOME EXCLUSIONS.] The following must be
13 excluded in determining a family's available income:

14 (1) payments for basic care, difficulty of care, and
15 clothing allowances received for providing family foster care to
16 children or adults under Minnesota Rules, parts 9545.0010 to
17 9545.0260 and 9555.5050 to 9555.6265, and payments received and
18 used for care and maintenance of a third-party beneficiary who
19 is not a household member;

20 (2) reimbursements for employment training received through
21 the Workforce Investment Act of 1998, United States Code, title
22 20, chapter 73, section 9201;

23 (3) reimbursement for out-of-pocket expenses incurred while
24 performing volunteer services, jury duty, employment, or
25 informal carpooling arrangements directly related to employment;

26 (4) all educational assistance, except the county agency
27 must count graduate student teaching assistantships,
28 fellowships, and other similar paid work as earned income and,
29 after allowing deductions for any unmet and necessary
30 educational expenses, shall count scholarships or grants awarded
31 to graduate students that do not require teaching or research as
32 unearned income;

33 (5) loans, regardless of purpose, from public or private
34 lending institutions, governmental lending institutions, or
35 governmental agencies;

36 (6) loans from private individuals, regardless of purpose,

1 provided an applicant or participant documents that the lender
2 expects repayment;

3 (7)(i) state income tax refunds; and

4 (ii) federal income tax refunds;

5 (8)(i) federal earned income credits;

6 (ii) Minnesota working family credits;

7 (iii) state homeowners and renters credits under chapter
8 290A; and

9 (iv) federal or state tax rebates;

10 (9) funds received for reimbursement, replacement, or
11 rebate of personal or real property when these payments are made
12 by public agencies, awarded by a court, solicited through public
13 appeal, or made as a grant by a federal agency, state or local
14 government, or disaster assistance organizations, subsequent to
15 a presidential declaration of disaster;

16 (10) the portion of an insurance settlement that is used to
17 pay medical, funeral, and burial expenses, or to repair or
18 replace insured property;

19 (11) reimbursements for medical expenses that cannot be
20 paid by medical assistance;

21 (12) payments by a vocational rehabilitation program
22 administered by the state under chapter 268A, except those
23 payments that are for current living expenses;

24 (13) in-kind income, including any payments directly made
25 by a third party to a provider of goods and services;

26 (14) assistance payments to correct underpayments, but only
27 for the month in which the payment is received;

28 (15) payments for short-term emergency needs under section
29 256J.626, subdivision 2;

30 (16) funeral and cemetery payments as provided by section
31 256.935;

32 (17) nonrecurring cash gifts of \$30 or less, not exceeding
33 \$30 per participant in a calendar month;

34 (18) any form of energy assistance payment made through
35 Public Law 97-35, Low-Income Home Energy Assistance Act of 1981,
36 payments made directly to energy providers by other public and

1 private agencies, and any form of credit or rebate payment
2 issued by energy providers;

3 (19) Supplemental Security Income (SSI), including
4 retroactive SSI payments and other income of an SSI recipient,
5 ~~except-as-described-in-section-256J.37, subdivision-3b;~~

6 (20) Minnesota supplemental aid, including retroactive
7 payments;

8 (21) proceeds from the sale of real or personal property;

9 (22) state adoption assistance payments under section
10 259.67, and up to an equal amount of county adoption assistance
11 payments;

12 (23) state-funded family subsidy program payments made
13 under section 252.32 to help families care for children with
14 mental retardation or related conditions, consumer support grant
15 funds under section 256.476, and resources and services for a
16 disabled household member under one of the home and
17 community-based waiver services programs under chapter 256B;

18 (24) interest payments and dividends from property that is
19 not excluded from and that does not exceed the asset limit;

20 (25) rent rebates;

21 (26) income earned by a minor caregiver, minor child
22 through age 6, or a minor child who is at least a half-time
23 student in an approved elementary or secondary education
24 program;

25 (27) income earned by a caregiver under age 20 who is at
26 least a half-time student in an approved elementary or secondary
27 education program;

28 (28) MFIP child care payments under section 119B.05;

29 (29) all other payments made through MFIP to support a
30 caregiver's pursuit of greater economic stability;

31 (30) income a participant receives related to shared living
32 expenses;

33 (31) reverse mortgages;

34 (32) benefits provided by the Child Nutrition Act of 1966,
35 United States Code, title 42, chapter 13A, sections 1771 to
36 1790;

1 (33) benefits provided by the women, infants, and children
2 (WIC) nutrition program, United States Code, title 42, chapter
3 13A, section 1786;

4 (34) benefits from the National School Lunch Act, United
5 States Code, title 42, chapter 13, sections 1751 to 1769e;

6 (35) relocation assistance for displaced persons under the
7 Uniform Relocation Assistance and Real Property Acquisition
8 Policies Act of 1970, United States Code, title 42, chapter 61,
9 subchapter II, section 4636, or the National Housing Act, United
10 States Code, title 12, chapter 13, sections 1701 to 1750jj;

11 (36) benefits from the Trade Act of 1974, United States
12 Code, title 19, chapter 12, part 2, sections 2271 to 2322;

13 (37) war reparations payments to Japanese Americans and
14 Aleuts under United States Code, title 50, sections 1989 to
15 1989d;

16 (38) payments to veterans or their dependents as a result
17 of legal settlements regarding Agent Orange or other chemical
18 exposure under Public Law 101-239, section 10405, paragraph
19 (a)(2)(E);

20 (39) income that is otherwise specifically excluded from
21 MFIP consideration in federal law, state law, or federal
22 regulation;

23 (40) security and utility deposit refunds;

24 (41) American Indian tribal land settlements excluded under
25 Public Laws 98-123, 98-124, and 99-377 to the Mississippi Band
26 Chippewa Indians of White Earth, Leech Lake, and Mille Lacs
27 reservations and payments to members of the White Earth Band,
28 under United States Code, title 25, chapter 9, section 331, and
29 chapter 16, section 1407;

30 (42) all income of the minor parent's parents and
31 stepparents when determining the grant for the minor parent in
32 households that include a minor parent living with parents or
33 stepparents on MFIP with other children;

34 (43) income of the minor parent's parents and stepparents
35 equal to 200 percent of the federal poverty guideline for a
36 family size not including the minor parent and the minor

1 parent's child in households that include a minor parent living
 2 with parents or stepparents not on MFIP when determining the
 3 grant for the minor parent. The remainder of income is deemed
 4 as specified in section 256J.37, subdivision 1b;

5 (44) payments made to children eligible for relative
 6 custody assistance under section 257.85;

7 (45) vendor payments for goods and services made on behalf
 8 of a client unless the client has the option of receiving the
 9 payment in cash; and

10 (46) the principal portion of a contract for deed payment.

11 Sec. 3. Minnesota Statutes 2004, section 256J.95,
 12 subdivision 9, is amended to read:

13 Subd. 9. [PROPERTY AND INCOME LIMITATIONS.] The asset
 14 limits and exclusions in section 256J.20 apply to applicants and
 15 recipients of DWP. All payments, unless excluded in section
 16 256J.21, must be counted as income to determine eligibility for
 17 the diversionary work program. The county shall treat income as
 18 outlined in section 256J.37~~-except-for-subdivision-3a~~. The
 19 initial income test and the disregards in section 256J.21,
 20 subdivision 3, shall be followed for determining eligibility for
 21 the diversionary work program.

22 Sec. 4. [REPEALER.]

23 Minnesota Statutes 2004, section 256J.37, subdivisions 3a
 24 and 3b, are repealed effective July 1, 2005.

25 ARTICLE 2

26 MEDICAL ASSISTANCE LIENS

27 Section 1. Minnesota Statutes 2004, section 256B.15,
 28 subdivision 1, is amended to read:

29 Subdivision 1. [~~POLICY, APPLICABILITY, PURPOSE, AND~~
 30 ~~CONSTRUCTION; DEFINITION.~~] (a) It is the policy of this state
 31 that individuals or couples, either or both of whom participate
 32 in the medical assistance program, use their own assets to pay
 33 their share of the total cost of their care during or after
 4 their enrollment in the program according to applicable federal
 35 law and the laws of this state. The following provisions apply:

36 (1) ~~subdivisions 1c to 1k shall not apply to claims arising~~

~~1 under this section which are presented under section 525.313,~~

~~2 (2) the provisions of subdivisions 1c to 1k expanding the~~
~~3 interests included in an estate for purposes of recovery under~~
~~4 this section give effect to the provisions of United States~~
~~5 Code, title 42, section 1396p, governing recoveries, but do not~~
~~6 give rise to any express or implied liens in favor of any other~~
~~7 parties not named in these provisions; and~~

~~8 (3) the continuation of a recipient's life estate or joint~~
~~9 tenancy interest in real property after the recipient's death~~
~~10 for the purpose of recovering medical assistance under this~~
~~11 section modifies common law principles holding that these~~
~~12 interests terminate on the death of the holder;~~

~~13 (4) (2) all laws, rules, and regulations governing or~~
~~14 involved with a recovery of medical assistance shall must be~~
~~15 liberally construed to accomplish their intended purposes;.~~

~~16 (5) a deceased recipient's life estate and joint tenancy~~
~~17 interests continued under this section shall be owned by the~~
~~18 remaindermen or surviving joint tenants as their interests may~~
~~19 appear on the date of the recipient's death. They shall not be~~
~~20 merged into the remainder interest or the interests of the~~
~~21 surviving joint tenants by reason of ownership. They shall be~~
~~22 subject to the provisions of this section. Any conveyance,~~
~~23 transfer, sale, assignment, or encumbrance by a remainderman, a~~
~~24 surviving joint tenant, or their heirs, successors, and assigns~~
~~25 shall be deemed to include all of their interest in the deceased~~
~~26 recipient's life estate or joint tenancy interest continued~~
~~27 under this section; and~~

~~28 (6) the provisions of subdivisions 1c to 1k continuing a~~
~~29 recipient's joint tenancy interests in real property after the~~
~~30 recipient's death do not apply to a homestead owned of record,~~
~~31 on the date the recipient dies, by the recipient and the~~
~~32 recipient's spouse as joint tenants with a right of~~
~~33 survivorship. Homestead means the real property occupied by the~~
~~34 surviving joint tenant spouse as their sole residence on the~~
~~35 date the recipient dies and classified and taxed to the~~
~~36 recipient and surviving joint tenant spouse as homestead~~

~~1 property-for-property-tax-purposes-in-the-calendar-year-in-which~~
~~2 the-recipient-dies.--For-purposes-of-this-exemption, real~~
~~3 property-the-recipient-and-their-surviving-joint-tenant-spouse~~
~~4 purchase-solely-with-the-proceeds-from-the-sale-of-their-prior~~
~~5 homestead, own-of-record-as-joint-tenants, and-qualify-as~~
~~6 homestead-property-under-section-273.124-in-the-calendar-year-in~~
~~7 which-the-recipient-dies-and-prior-to-the-recipient's-death~~
~~8 shall-be-deemed-to-be-real-property-classified-and-taxed-to-the~~
~~9 recipient-and-their-surviving-joint-tenant-spouse-as-homestead~~
~~10 property-in-the-calendar-year-in-which-the-recipient-dies.--The~~
~~11 surviving-spouse, or-any-person-with-personal-knowledge-of-the~~
~~12 facts, may-provide-an-affidavit-describing-the-homestead~~
~~13 property-affected-by-this-clause-and-stating-facts-showing~~
~~14 compliance-with-this-clause.--The-affidavit-shall-be-prima-facie~~
~~15 evidence-of-the-facts-it-states.~~

16 (b) For purposes of this section, "medical assistance"
 17 includes the medical assistance program under this chapter and
 18 the general assistance medical care program under chapter 256D
 19 and but does not include the alternative care program for
 20 nonmedical assistance recipients under section 256B.0913.

21 [EFFECTIVE DATE.] The amendments in this section relating
 22 to the alternative care program are effective retroactively from
 23 July 1, 2003, and apply to the estates of decedents who die on
 24 or after that date. The remaining amendments in this section
 25 are effective retroactively from August 1, 2003, and apply to
 26 the estates of decedents who die on or after that date.

27 Sec. 2. Minnesota Statutes 2004, section 256B.15,
 28 subdivision 1a, is amended to read:

29 Subd. 1a. [ESTATES SUBJECT TO CLAIMS.] If a person
 30 receives any medical assistance hereunder, on the person's
 31 death, if single, or on the death of the survivor of a married
 32 couple, either or both of whom received medical assistance, or
 33 ~~as-otherwise-provided-for-in-this-section,~~ the total amount paid
 34 for medical assistance rendered for the person and spouse shall
 35 be filed as a claim against the estate of the person or the
 36 estate of the surviving spouse in the court having jurisdiction

1 to probate the estate or to issue a decree of descent according
2 to sections 525.31 to 525.313.

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

6 (a) the person was over 55 years of age, and received
7 services under this chapter, excluding alternative care;

8 (b) the person resided in a medical institution for six
9 months or longer, received services under this chapter,
10 excluding alternative care, and, at the time of
11 institutionalization or application for medical assistance,
12 whichever is later, the person could not have reasonably been
13 expected to be discharged and returned home, as certified in
14 writing by the person's treating physician. For purposes of
15 this section only, a "medical institution" means a skilled
16 nursing facility, intermediate care facility, intermediate care
17 facility for persons with mental retardation, nursing facility,
18 or inpatient hospital; or

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

21 The claim shall be considered an expense of the last
22 illness of the decedent for the purpose of section 524.3-805.
23 Any statute of limitations that purports to limit any county
24 agency or the state agency, or both, to recover for medical
25 assistance granted hereunder shall not apply to any claim made
26 hereunder for reimbursement for any medical assistance granted
27 hereunder. Notice of the claim shall be given to all heirs and
28 devisees of the decedent whose identity can be ascertained with
29 reasonable diligence. The notice must include procedures and
30 instructions for making an application for a hardship waiver
31 under subdivision 5; time frames for submitting an application
32 and determination; and information regarding appeal rights and
33 procedures. Counties are entitled to one-half of the nonfederal
34 share of medical assistance collections from estates that are
35 directly attributable to county effort. ~~Counties are entitled~~
36 ~~to ten percent of the collections for alternative care directly~~

1 ~~attributable-to-county-effort.~~

2 [EFFECTIVE DATE.] The amendments in this section relating
 3 to the alternative care program are effective retroactively from
 4 July 1, 2003, and apply to the estates of decedents who die on
 5 or after that date. The remaining amendments in this section
 6 are effective retroactively from August 1, 2003, and apply to
 7 the estates of decedents who die on or after that date.

8 Sec. 3. Minnesota Statutes 2004, section 256B.15,
 9 subdivision 1d, is amended to read:

10 Subd. 1d. [EFFECT OF NOTICE.] From the time it takes
 11 effect, the notice shall be notice to remaindermen~~7-joint~~
 12 tenants~~7-or-to~~ anyone else owning or acquiring an interest in or
 13 encumbrance against the property described in the notice that
 14 the medical assistance recipient's ~~life-estate7-joint-tenancy7~~
 15 or other interests in the real estate described in the notice:

16 (1) ~~shall7-in-the-case-of-life-estate-and-joint-tenancy~~
 17 ~~interests7-continue-to-exist-for-purposes-of-this-section7-and~~
 18 ~~be-subject-to-liens-and-claims-as-provided-in-this-section7~~

19 (2) shall be subject to a lien in favor of the claimant
 20 effective upon the death of the recipient and dealt with as
 21 provided in this section;

22 (3) (2) may be included in the recipient's estate, as
 23 defined in this section; and

24 (4) (3) may be subject to administration and all other
 25 provisions of chapter 524 and may be sold, assigned,
 26 transferred, or encumbered free and clear of their interest or
 27 encumbrance to satisfy claims under this section.

28 [EFFECTIVE DATE.] This section is effective retroactively
 29 from August 1, 2003.

30 Sec. 4. Minnesota Statutes 2004, section 256B.15,
 31 subdivision 1e, is amended to read:

32 Subd. 1e. [FULL OR PARTIAL RELEASE OF NOTICE.] (a) The
 33 claimant may fully or partially release the notice and the lien
 34 arising out of the notice of record in the real estate records
 35 where the notice is filed or recorded at any time. ~~The claimant~~
 36 ~~may-give-a-full-or-partial-release-to-extinguish-any-life~~

1 ~~estates-or-joint-tenancy-interests-which-are-or-may-be-continued~~
 2 ~~under-this-section-or-whose-existence-or-nonexistence-may-create~~
 3 ~~a-cloud-on-the-title-to-real-property-at-any-time-whether-or-not~~
 4 ~~a-notice-has-been-filed.~~ The recorder or registrar of titles
 5 shall accept the release for recording or filing. If the
 6 release is a partial release, it must include a legal
 7 description of the property being released.

8 (b) At any time, the claimant may, at the claimant's
 9 discretion, wholly or partially release, subordinate, modify, or
 10 amend the recorded notice and the lien arising out of the notice.

11 [EFFECTIVE DATE.] This section is effective retroactively
 12 from August 1, 2003.

13 Sec. 5. Minnesota Statutes 2004, section 256B.15,
 14 subdivision 1f, is amended to read:

15 Subd. 1f. [AGENCY LIEN.] (a) The notice shall constitute a
 16 lien in favor of the Department of Human Services against the
 17 recipient's interests in the real estate it describes for a
 18 period of 20 years from the date of filing or the date of the
 19 recipient's death, whichever is later. ~~Notwithstanding-any-law~~
 20 ~~or-rule-to-the-contrary, a recipient's life-estate-and-joint~~
 21 ~~tenancy-interests-shall-not-end-upon-the-recipient's-death-but~~
 22 ~~shall-continue-according-to-subdivisions-1h, 1i, and 1j.~~ The
 23 amount of the lien shall be equal to the total amount of the
 24 claims that could be presented in the recipient's estate under
 25 this section.

26 (b) If no estate has been opened for the deceased
 27 recipient, any holder of an interest in the property may apply
 28 to the lien holder for a statement of the amount of the lien or
 29 for a full or partial release of the lien. The application
 30 shall include the applicant's name, current mailing address,
 31 current home and work telephone numbers, and a description of
 32 their interest in the property, a legal description of the
 33 recipient's interest in the property, and the deceased
 34 recipient's name, date of birth, and Social Security number.
 35 The lien holder shall send the applicant by certified mail,
 36 return receipt requested, a written statement showing the amount

1 of the lien, whether the lien holder is willing to release the
2 lien and under what conditions, and inform them of the right to
3 a hearing under section 256.045. The lien holder shall have the
4 discretion to compromise and settle the lien upon any terms and
5 conditions the lien holder deems appropriate.

6 (c) Any holder of an interest in property subject to the
7 lien has a right to request a hearing under section 256.045 to
8 determine the validity, extent, or amount of the lien. The
9 request must be in writing, and must include the names, current
10 addresses, and home and business telephone numbers for all other
11 parties holding an interest in the property. A request for a
12 hearing by any holder of an interest in the property shall be
13 deemed to be a request for a hearing by all parties owning
14 interests in the property. Notice of the hearing shall be given
15 to the lien holder, the party filing the appeal, and all of the
16 other holders of interests in the property at the addresses
17 listed in the appeal by certified mail, return receipt
18 requested, or by ordinary mail. Any owner of an interest in the
19 property to whom notice of the hearing is mailed shall be deemed
20 to have waived any and all claims or defenses in respect to the
21 lien unless they appear and assert any claims or defenses at the
22 hearing.

23 (d) If the claim the lien secures could be filed under
24 subdivision lh, the lien holder may collect, compromise, settle,
25 or release the lien upon any terms and conditions it deems
26 appropriate. If the claim the lien secures could be filed under
27 subdivision li or lj, the lien may be adjusted or enforced to
28 the same extent had it been filed under subdivisions li and lj,
29 and the provisions of subdivisions li, clause ~~(f)~~ (e), and lj,
30 clause (d), shall apply to voluntary payment, settlement, or
31 satisfaction of the lien.

32 ~~(e) If no probate proceedings have been commenced for the~~
33 ~~recipient as of the date the lien holder executes a release of~~
34 ~~the lien on a recipient's life estate or joint tenancy interest,~~
35 ~~created for purposes of this section, the release shall~~
36 ~~terminate the life estate or joint tenancy interest created~~

1 ~~under this section as of the date it is recorded or filed to the~~
 2 ~~extent of the release.---if the claimant executes a release for~~
 3 ~~purposes of extinguishing a life estate or a joint tenancy~~
 4 ~~interest created under this section to remove a cloud on title~~
 5 ~~to real property, the release shall have the effect of~~
 6 ~~extinguishing any life estate or joint tenancy interests in the~~
 7 ~~property it describes which may have been continued by reason of~~
 8 ~~this section retroactive to the date of death of the deceased~~
 9 ~~life tenant or joint tenant except as provided for in section~~
 10 ~~514.981, subdivision 6.~~

11 (f) If the deceased recipient's estate is probated, a claim
 12 shall be filed under this section. The amount of the lien shall
 13 be limited to the amount of the claim as finally allowed. If
 14 the claim the lien secures is filed under subdivision lh, the
 15 lien may be released in full after any allowance of the claim
 16 becomes final or according to any agreement to settle and
 17 satisfy the claim. The release shall release the lien but shall
 18 not extinguish or terminate the interest being released. If the
 19 claim the lien secures is filed under subdivision li or lj, the
 20 lien shall be released after the lien under subdivision li or lj
 21 is filed or recorded, or settled according to any agreement to
 22 settle and satisfy the claim. The release shall not extinguish
 23 or terminate the interest being released. If the claim is
 24 finally disallowed in full, the claimant shall release the
 25 claimant's lien at the claimant's expense.

26 [EFFECTIVE DATE.] This section is effective retroactively
 27 from August 1, 2003.

28 Sec. 6. Minnesota Statutes 2004, section 256B.15,
 29 subdivision lh, is amended to read:

30 Subd. 1h. [ESTATES OF SPECIFIC PERSONS RECEIVING MEDICAL
 31 ASSISTANCE.] (a) For purposes of this section, paragraphs (b) to
 32 (*) (d) apply if a person received medical assistance for which
 33 a claim may be filed under this section and died single, or the
 34 surviving spouse of the couple and was not survived by any of
 35 the persons described in subdivisions 3 and 4.

36 (b) For purposes of this section, the person's estate

1 consists of: (1) their probate estate; (2) ~~all of the person's~~
2 ~~interests or proceeds of those interests in real property the~~
3 ~~person owned as a life tenant or as a joint tenant with a right~~
4 ~~of survivorship at the time of the person's death;~~ (3) all of
5 the person's interests or proceeds of those interests in
6 securities the person owned in beneficiary form as provided
7 under sections 524.6-301 to 524.6-311 at the time of the
8 person's death, to the extent they become part of the probate
9 estate under section 524.6-307; and ~~(4)~~ (3) all of the person's
10 interests in joint accounts, multiple party accounts, and pay on
11 death accounts, or the proceeds of those accounts, as provided
12 under sections 524.6-201 to 524.6-214 at the time of the
13 person's death to the extent they become part of the probate
14 estate under section 524.6-207. Notwithstanding any law or rule
15 to the contrary, a state or county agency with a claim under
16 this section shall be a creditor under section 524.6-307.

17 ~~(c) Notwithstanding any law or rule to the contrary, the~~
18 ~~person's life estate or joint tenancy interest in real property~~
19 ~~not subject to a medical assistance lien under sections 514.980~~
20 ~~to 514.985 on the date of the person's death shall not end upon~~
21 ~~the person's death and shall continue as provided in this~~
22 ~~subdivision:--The life estate in the person's estate shall be~~
23 ~~that portion of the interest in the real property subject to the~~
24 ~~life estate that is equal to the life estate percentage factor~~
25 ~~for the life estate as listed in the Life Estate Mortality Table~~
26 ~~of the health care program's manual for a person who was the age~~
27 ~~of the medical assistance recipient on the date of the person's~~
28 ~~death:--The joint tenancy interest in real property in the~~
29 ~~estate shall be equal to the fractional interest the person~~
30 ~~would have owned in the jointly held interest in the property~~
31 ~~had they and the other owners held title to the property as~~
32 ~~tenants in common on the date the person died.~~

33 ~~(d) The court upon its own motion, or upon motion by the~~
34 ~~personal representative or any interested party, may enter an~~
35 ~~order directing the remaindermen or surviving joint tenants and~~
36 ~~their spouses, if any, to sign all documents, take all actions,~~

1 and otherwise fully cooperate with the personal representative
2 and the court to liquidate the decedent's life estate or joint
3 tenancy interests in the estate and deliver the cash or the
4 proceeds of those interests to the personal representative and
5 provide for any legal and equitable sanctions as the court deems
6 appropriate to enforce and carry out the order, including an
7 award of reasonable attorney fees.

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

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

20 (g) The personal representative shall bring a motion in the
21 district court in which the estate is being probated to compel
22 the remaindermen or surviving joint tenants to account for and
23 deliver to the personal representative all or any part of the
24 proceeds of any sale, mortgage, transfer, conveyance, or any
25 disposition of real property allocable to the decedent's life
26 estate or joint tenancy interest in the decedent's estate, and
27 do everything necessary to liquidate and reduce to cash the
28 decedent's interest and turn the proceeds of the sale or other
29 disposition over to the personal representative. The court may
30 grant any legal or equitable relief, including, but not limited
31 to, ordering a partition of real estate under chapter 55B
32 necessary to make the value of the decedent's life estate or
33 joint tenancy interest available to the estate for payment of a
34 claim under this section.

35 (h) Subject to administration, the personal representative
36 shall use all of the cash or proceeds of interests to pay an

1 allowable-claim-under-this-section.--The-remaindermen-or
2 surviving-joint-tenants-and-their-spouses,--if-any,--may-enter
3 into-a-written-agreement-with-the-personal-representative-or-the
4 claimant-to-settle-and-satisfy-obligations-imposed-at-any-time
5 before-or-after-a-claim-is-filed.

6 (i)-The-personal-representative-may,--at-their-discretion,
7 provide-any-or-all-of-the-other-owners,--remaindermen,--or
8 surviving-joint-tenants-with-an-affidavit-terminating-the
9 decedent's-estate's-interest-in-real-property-the-decedent-owned
10 as-a-life-tenant-or-as-a-joint-tenant-with-others,--if-the
11 personal-representative-determines-in-good-faith-that-neither
12 the-decedent-nor-any-of-the-decedent's-predeceased-spouses
13 received-any-medical-assistance-for-which-a-claim-could-be-filed
14 under-this-section,--or-if-the-personal-representative-has-filed
15 an-affidavit-with-the-court-that-the-estate-has-other-assets
16 sufficient-to-pay-a-claim,--as-presented,--or-if-there-is-a
17 written-agreement-under-paragraph-(h),--or-if-the-claim,--as
18 allowed,--has-been-paid-in-full-or-to-the-full-extent-of-the
19 assets-the-estate-has-available-to-pay-it.--The-affidavit-may-be
20 recorded-in-the-office-of-the-county-recorder-or-filed-in-the
21 Office-of-the-Registrar-of-Titles-for-the-county-in-which-the
22 real-property-is-located.--Except-as-provided-in-section
23 514.981,--subdivision-6,--when-recorded-or-filed,--the-affidavit
24 shall-terminate-the-decedent's-interest-in-real-estate-the
25 decedent-owned-as-a-life-tenant-or-a-joint-tenant-with-others.
26 The-affidavit-shall:--(1)-be-signed-by-the-personal
27 representative,--(2)-identify-the-decedent-and-the-interest-being
28 terminated,--(3)-give-recording-information-sufficient-to
29 identify-the-instrument-that-created-the-interest-in-real
30 property-being-terminated,--(4)-legally-describe-the-affected
31 real-property,--(5)-state-that-the-personal-representative-has
32 determined-that-neither-the-decedent-nor-any-of-the-decedent's
33 predeceased-spouses-received-any-medical-assistance-for-which-a
34 claim-could-be-filed-under-this-section,--(6)-state-that-the
35 decedent's-estate-has-other-assets-sufficient-to-pay-the-claim,
36 as-presented,--or-that-there-is-a-written-agreement-between-the

~~1 personal-representative-and-the-claimant-and-the-other-owners-or~~
~~2 remaindermen-or-other-joint-tenants-to-satisfy-the-obligations~~
~~3 imposed-under-this-subdivision,--and-(7)--state-that-the-affidavit~~
~~4 is-being-given-to-terminate-the-estate's-interest-under-this~~
~~5 subdivision,--and-any-other-contents-as-may-be-appropriate.~~
~~6 The-recorder-or-registrar-of-titles-shall-accept-the-affidavit~~
~~7 for-recording-or-filing.---The-affidavit-shall-be-effective-as~~
~~8 provided-in-this-section-and-shall-constitute-notice-even-if-it~~
~~9 does-not-include-recording-information-sufficient-to-identify~~
~~10 the-instrument-creating-the-interest-it-terminates.---The~~
~~11 affidavit-shall-be-conclusive-evidence-of-the-stated-facts.~~

~~12 (j) (c) The holder of a lien arising under subdivision 1c~~
~~13 shall release the lien at the holder's expense against an~~
~~14 interest terminated under paragraph (h) this subdivision to the~~
~~15 extent of the termination.~~

~~16 (k) (d) If a lien arising under subdivision 1c is not~~
~~17 released under paragraph (j) (c), prior to closing the estate,~~
~~18 the personal representative shall deed the interest subject to~~
~~19 the lien to the remaindermen-or-surviving-joint-tenants-as-their~~
~~20 interests-may-appear.---Upon-recording-or-filing,--the-deed-shall~~
~~21 work-a-merger-of-the-recipient's-life-estate-or-joint-tenancy~~
~~22 interest,--subject-to-the-lien,--into-the-remainder-interest-or~~
~~23 interest-the-decedent-and-others-owned-jointly heirs or devisees~~
~~24 subject to the lien. The lien shall attach to and run with the~~
~~25 property to the extent of the decedent's interest at the time of~~
~~26 the decedent's death.~~

~~27 [EFFECTIVE DATE.] This section is effective retroactively~~
~~28 from August 1, 2003.~~

~~29 Sec. 7. Minnesota Statutes 2004, section 256B.15,~~
~~30 subdivision 1i, is amended to read:~~

~~31 Subd. 1i. [ESTATES OF PERSONS RECEIVING MEDICAL ASSISTANCE~~
~~32 AND SURVIVED BY OTHERS.] (a) For purposes of this subdivision,~~
~~33 the person's estate consists-of-the-person's-probate-estate-and~~
~~34 all-of-the-person's-interests-in-real-property-the-person-owned~~
~~35 as-a-life-tenant-or-a-joint-tenant-at-the-time-of-the-person's~~
~~36 death is their estate as defined in subdivision 1h, paragraph~~

1 (b).

2 (b) Notwithstanding any law or rule to the contrary, this
3 subdivision applies if a person received medical assistance for
4 which a claim could be filed under this section but for the fact
5 the person was survived by a spouse or by a person listed in
6 subdivision 3, or if subdivision 4 applies to a claim arising
7 under this section.

8 ~~(c) The person's life estate or joint tenancy interests in~~
9 ~~real property not subject to a medical assistance lien under~~
10 ~~sections 514.980 to 514.985 on the date of the person's death~~
11 ~~shall not end upon death and shall continue as provided in this~~
12 ~~subdivision. The life estate in the estate shall be the portion~~
13 ~~of the interest in the property subject to the life estate that~~
14 ~~is equal to the life estate percentage factor for the life~~
15 ~~estate as listed in the Life Estate Mortality Table of the~~
16 ~~health care program's manual for a person who was the age of the~~
17 ~~medical assistance recipient on the date of the person's death.~~
18 ~~The joint tenancy interest in the estate shall be equal to the~~
19 ~~fractional interest the medical assistance recipient would have~~
20 ~~owned in the jointly held interest in the property had they and~~
21 ~~the other owners held title to the property as tenants in common~~
22 ~~on the date the medical assistance recipient died.~~

23 (d) The county agency shall file a claim in the estate
24 under this section on behalf of the claimant who shall be the
25 commissioner of human services, notwithstanding that the
26 decedent is survived by a spouse or a person listed in
27 subdivision 3. The claim, as allowed, shall not be paid by the
28 estate and shall be disposed of as provided in this paragraph.
29 The personal representative or the court shall make, execute,
30 and deliver a lien in favor of the claimant on the decedent's
31 interest in real property in the estate in the amount of the
32 allowed claim on forms provided by the commissioner to the
33 county agency filing the lien. The lien shall bear interest as
34 provided under section 524.3-806, shall attach to the property
35 it describes upon filing or recording, and shall remain a lien
36 on the real property it describes for a period of 20 years from

1 the date it is filed or recorded. The lien shall be a
2 disposition of the claim sufficient to permit the estate to
3 close.

4 (e) (d) The state or county agency shall file or record the
5 lien in the office of the county recorder or registrar of titles
6 for each county in which any of the real property is located.
7 The recorder or registrar of titles shall accept the lien for
8 filing or recording. All recording or filing fees shall be paid
9 by the Department of Human Services. The recorder or registrar
10 of titles shall mail the recorded lien to the Department of
11 Human Services. The lien need not be attested, certified, or
12 acknowledged as a condition of recording or filing. Upon
13 ~~recording-or-filing-of-a-lien-against-a-life-estate-or-a-joint~~
14 ~~tenancy-interest, the interest subject to the lien shall merge~~
15 ~~into the remainder interest or the interest the recipient and~~
16 ~~others owned jointly. The lien shall attach to and run with the~~
17 ~~property to the extent of the decedent's interest in the~~
18 ~~property at the time of the decedent's death as determined under~~
19 ~~this section.~~

20 (f) (e) The department shall make no adjustment or recovery
21 under the lien until after the decedent's spouse, if any, has
22 died, and only at a time when the decedent has no surviving
23 child described in subdivision 3. The estate, any owner of an
24 interest in the property which is or may be subject to the lien,
25 or any other interested party, may voluntarily pay off, settle,
26 or otherwise satisfy the claim secured or to be secured by the
27 lien at any time before or after the lien is filed or recorded.
28 Such payoffs, settlements, and satisfactions shall be deemed to
29 be voluntary repayments of past medical assistance payments for
30 the benefit of the deceased recipient, and neither the process
31 of settling the claim, the payment of the claim, or the
32 acceptance of a payment shall constitute an adjustment or
33 recovery that is prohibited under this subdivision.

34 (g) (f) The lien under this subdivision may be enforced or
35 foreclosed in the manner provided by law for the enforcement of
36 judgment liens against real estate or by a foreclosure by action

1 under chapter 581. When the lien is paid, satisfied, or
 2 otherwise discharged, the state or county agency shall prepare
 3 and file a release of lien at its own expense. No action to
 4 foreclose the lien shall be commenced unless the lien holder has
 5 first given 30 days' prior written notice to pay the lien to the
 6 owners and parties in possession of the property subject to the
 7 lien. The notice shall: (1) include the name, address, and
 8 telephone number of the lien holder; (2) describe the lien; (3)
 9 give the amount of the lien; (4) inform the owner or party in
 10 possession that payment of the lien in full must be made to the
 11 lien holder within 30 days after service of the notice or the
 12 lien holder may begin proceedings to foreclose the lien; and (5)
 13 be served by personal service, certified mail, return receipt
 14 requested, ordinary first class mail, or by publishing it once
 15 in a newspaper of general circulation in the county in which any
 16 part of the property is located. Service of the notice shall be
 17 complete upon mailing or publication.

18 [EFFECTIVE DATE.] This section is effective retroactively
 19 from August 1, 2003.

20 Sec. 8. Minnesota Statutes 2004, section 256B.15,
 21 subdivision 1j, is amended to read:

22 Subd. 1j. [CLAIMS IN ESTATES OF DECEDENTS SURVIVED BY
 23 OTHER SURVIVORS.] For purposes of this subdivision, the
 24 provisions in subdivision 1i, paragraphs (a) ~~to (c)~~ and (b)
 25 apply.

26 (a) If payment of a claim filed under this section is
 27 limited as provided in subdivision 4, and if the estate does not
 28 have other assets sufficient to pay the claim in full, as
 29 allowed, the personal representative or the court shall make,
 30 execute, and deliver a lien on the property in the estate that
 31 is exempt from the claim under subdivision 4 in favor of the
 32 commissioner of human services on forms provided by the
 33 commissioner to the county agency filing the claim. If the
 34 estate pays a claim filed under this section in full from other
 35 assets of the estate, no lien shall be filed against the
 36 property described in subdivision 4.

1 (b) The lien shall be in an amount equal to the unpaid
2 balance of the allowed claim under this section remaining after
3 the estate has applied all other available assets of the estate
4 to pay the claim. The property exempt under subdivision 4 shall
5 not be sold, assigned, transferred, conveyed, encumbered, or
6 distributed until after the personal representative has
7 determined the estate has other assets sufficient to pay the
8 allowed claim in full, or until after the lien has been filed or
9 recorded. The lien shall bear interest as provided under
10 section 524.3-806, shall attach to the property it describes
11 upon filing or recording, and shall remain a lien on the real
12 property it describes for a period of 20 years from the date it
13 is filed or recorded. The lien shall be a disposition of the
14 claim sufficient to permit the estate to close.

15 (c) The state or county agency shall file or record the
16 lien in the office of the county recorder or registrar of titles
17 in each county in which any of the real property is located.
18 The department shall pay the filing fees. The lien need not be
19 attested, certified, or acknowledged as a condition of recording
20 or filing. The recorder or registrar of titles shall accept the
21 lien for filing or recording.

22 (d) The commissioner shall make no adjustment or recovery
23 under the lien until none of the persons listed in subdivision 4
24 are residing on the property or until the property is sold or
25 transferred. The estate or any owner of an interest in the
26 property that is or may be subject to the lien, or any other
27 interested party, may voluntarily pay off, settle, or otherwise
28 satisfy the claim secured or to be secured by the lien at any
29 time before or after the lien is filed or recorded. The
30 payoffs, settlements, and satisfactions shall be deemed to be
31 voluntary repayments of past medical assistance payments for the
32 benefit of the deceased recipient and neither the process of
33 settling the claim, the payment of the claim, or acceptance of a
34 payment shall constitute an adjustment or recovery that is
35 prohibited under this subdivision.

36 (e) A lien under this subdivision may be enforced or

1 foreclosed in the manner provided for by law for the enforcement
2 of judgment liens against real estate or by a foreclosure by
3 action under chapter 581. When the lien has been paid,
4 satisfied, or otherwise discharged, the claimant shall prepare
5 and file a release of lien at the claimant's expense. No action
6 to foreclose the lien shall be commenced unless the lien holder
7 has first given 30 days prior written notice to pay the lien to
8 the record owners of the property and the parties in possession
9 of the property subject to the lien. The notice shall: (1)
10 include the name, address, and telephone number of the lien
11 holder; (2) describe the lien; (3) give the amount of the lien;
12 (4) inform the owner or party in possession that payment of the
13 lien in full must be made to the lien holder within 30 days
14 after service of the notice or the lien holder may begin
15 proceedings to foreclose the lien; and (5) be served by personal
16 service, certified mail, return receipt requested, ordinary
17 first class mail, or by publishing it once in a newspaper of
18 general circulation in the county in which any part of the
19 property is located. Service shall be complete upon mailing or
20 publication.

21 ~~(f) Upon filing or recording of a lien against a life~~
22 ~~estate or joint tenancy interest under this subdivision, the~~
23 ~~interest subject to the lien shall merge into the remainder~~
24 ~~interest or the interest the decedent and others owned jointly,~~
25 ~~effective on the date of recording and filing. The lien shall~~
26 ~~attach to and run with the property to the extent of the~~
27 ~~decedent's interest in the property at the time of the~~
28 ~~decedent's death as determined under this section.~~

29 (g)(1) An affidavit may be provided by a personal
30 representative, at their discretion, stating the personal
31 representative has determined in good faith that a decedent
32 survived by a spouse or a person listed in subdivision 3, or by
33 a person listed in subdivision 4, or the decedent's predeceased
34 spouse did not receive any medical assistance giving rise to a
35 claim under this section, or that the real property described in
36 subdivision 4 is not needed to pay in full a claim arising under

1 this section.

2 (2) The affidavit shall:

3 (i) describe the property and the interest being
4 extinguished;

5 (ii) name the decedent and give the date of death;

6 (iii) state the facts listed in clause (1);

7 (iv) state that the affidavit is being filed to terminate
8 the life estate or joint tenancy interest created under this
9 subdivision;

10 (v) be signed by the personal representative; and

11 (vi) contain any other information that the affiant deems
12 appropriate.

13 ~~(3)-Except-as-provided-in-section-514.9817-subdivision-67~~
14 ~~when-the-affidavit-is-filed-or-recorded, the life estate or~~
15 ~~joint-tenancy-interest-in-real-property-that-the-affidavit~~
16 ~~describes-shall-be-terminated-effective-as-of-the-date-of-filing~~
17 ~~or-recording.--The-termination-shall-be-final-and-may-not-be-set~~
18 ~~aside-for-any-reason.~~

19 [EFFECTIVE DATE.] This section is effective retroactively
20 from August 1, 2003.

21 Sec. 9. Minnesota Statutes 2004, section 256B.15,
22 subdivision 2, is amended to read:

23 Subd. 2. [LIMITATIONS ON CLAIMS.] The claim shall include
24 only the total amount of medical assistance rendered after age
25 55 or during a period of institutionalization described in
26 subdivision 1a, clause (b), and the total amount of general
27 assistance medical care rendered, and shall not include
28 interest. Claims that have been allowed but not paid shall bear
29 interest according to section 524.3-806, paragraph (d). A claim
30 against the estate of a surviving spouse who did not receive
31 medical assistance, for medical assistance rendered for the
32 predeceased spouse, is limited to the value of the assets of the
33 estate that were marital property or jointly owned property at
34 any time during the marriage. ~~Claims-for-alternative-care-shall~~
35 ~~be-net-of-all-premiums-paid-under-section-256B.09137-subdivision~~
36 ~~127-on-or-after-July-17-20037-and-shall-be-limited-to-services~~

1 ~~provided-on-or-after-July-17-2003-~~

2 [EFFECTIVE DATE.] This section is effective retroactively
3 from July 1, 2003, for decedents dying on or after that date.

4 Sec. 10. Minnesota Statutes 2004, section 256B.15,
5 subdivision 3, is amended to read:

6 Subd. 3. ~~[SURVIVING-SPOUSE, MINOR, BLIND, OR DISABLED~~
7 ~~CHILDREN.]~~ If a decedent ~~is-survived-by-a-spouse-or~~ who was
8 single or who was the surviving spouse of a married couple and
9 is survived by a child who is under age 21 or blind or
10 permanently and totally disabled according to the supplemental
11 security income program criteria, a no claim shall be filed
12 against the estate ~~according-to-this-section.~~

13 [EFFECTIVE DATE.] This section is effective retroactively
14 from August 1, 2003.

15 Sec. 11. Minnesota Statutes 2004, section 256B.15,
16 subdivision 4, is amended to read:

17 Subd. 4. [OTHER SURVIVORS.] If the decedent who was single
18 or the surviving spouse of a married couple is survived by one
19 of the following persons, a claim exists against the estate in
20 an amount not to exceed the value of the nonhomestead property
21 included in the estate ~~and-the-personal-representative-shall~~
22 ~~make, execute, and deliver to the county agency a lien against~~
23 ~~the homestead property in the estate for any unpaid balance of~~
24 ~~the claim to the claimant as provided under this section:~~

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

29 (b) (2) a son or daughter or a grandchild who resided in
30 the decedent medical assistance recipient's home for at least
31 two years immediately before the parent's or grandparent's
32 institutionalization and continuously since the date of
33 institutionalization, and who establishes by a preponderance of
34 the evidence having provided care to the parent or grandparent
35 who received medical assistance, that the care was provided
36 before institutionalization, and that the care permitted the

1 parent or grandparent to reside at home rather than in an
2 institution.

3 [EFFECTIVE DATE.] This section is effective retroactively
4 from August 1, 2003, and applies to decedents who die on or
5 after that date.

6 Sec. 12. Minnesota Statutes 2004, section 514.981,
7 subdivision 6, is amended to read:

8 Subd. 6. [~~TIME LIMITS; CLAIM LIMITS; LIENS-ON-LIFE-ESTATES~~
9 ~~AND-JOINT-TENANCIES.~~] (a) A medical assistance lien is a lien on
10 the real property it describes for a period of ten years from
11 the date it attaches according to section 514.981, subdivision
12 2, paragraph (a), except as otherwise provided for in sections
13 514.980 to 514.985. The agency may renew a medical assistance
14 lien for an additional ten years from the date it would
15 otherwise expire by recording or filing a certificate of renewal
16 before the lien expires. The certificate shall be recorded or
17 filed in the office of the county recorder or registrar of
18 titles for the county in which the lien is recorded or filed.
19 The certificate must refer to the recording or filing data for
20 the medical assistance lien it renews. The certificate need not
21 be attested, certified, or acknowledged as a condition for
22 recording or filing. The registrar of titles or the recorder
23 shall file, record, index, and return the certificate of renewal
24 in the same manner as provided for medical assistance liens in
25 section 514.982, subdivision 2.

26 (b) A medical assistance lien is not enforceable against
27 the real property of an estate to the extent there is a
28 determination by a court of competent jurisdiction, or by an
29 officer of the court designated for that purpose, that there are
30 insufficient assets in the estate to satisfy the agency's
31 medical assistance lien in whole or in part because of the
32 homestead exemption under section 256B.15, subdivision 4, the
33 rights of the surviving spouse or minor children under section
34 524.2-403, paragraphs (a) and (b), or claims with a priority
35 under section 524.3-805, paragraph (a), clauses (1) to (4). For
36 purposes of this section, the rights of the decedent's adult

1 children to exempt property under section 524.2-403, paragraph
2 (b), shall not be considered costs of administration under
3 section 524.3-805, paragraph (a), clause (1).

4 ~~(c)-Notwithstanding any law or rule to the contrary, the~~
5 ~~provisions in clauses (1) to (7) apply if a life estate subject~~
6 ~~to a medical assistance lien ends according to its terms, or if~~
7 ~~a medical assistance recipient who owns a life estate or any~~
8 ~~interest in real property as a joint tenant that is subject to a~~
9 ~~medical assistance lien dies.~~

10 ~~(1)-The medical assistance recipient's life estate or joint~~
11 ~~tenancy interest in the real property shall not end upon the~~
12 ~~recipient's death but shall merge into the remainder interest or~~
13 ~~other interest in real property the medical assistance recipient~~
14 ~~owned in joint tenancy with others. The medical assistance lien~~
15 ~~shall attach to and run with the remainder or other interest in~~
16 ~~the real property to the extent of the medical assistance~~
17 ~~recipient's interest in the property at the time of the~~
18 ~~recipient's death as determined under this section.~~

19 ~~(2)-If the medical assistance recipient's interest was a~~
20 ~~life estate in real property, the lien shall be a lien against~~
21 ~~the portion of the remainder equal to the percentage factor for~~
22 ~~the life estate of a person the medical assistance recipient's~~
23 ~~age on the date the life estate ended according to its terms or~~
24 ~~the date of the medical assistance recipient's death as listed~~
25 ~~in the Life Estate Mortality Table in the health care program's~~
26 ~~manual.~~

27 ~~(3)-If the medical assistance recipient owned the interest~~
28 ~~in real property in joint tenancy with others, the lien shall be~~
29 ~~a lien against the portion of that interest equal to the~~
30 ~~fractional interest the medical assistance recipient would have~~
31 ~~owned in the jointly owned interest had the medical assistance~~
32 ~~recipient and the other owners held title to that interest as~~
33 ~~tenants in common on the date the medical assistance recipient~~
34 ~~died.~~

35 ~~(4)-The medical assistance lien shall remain a lien against~~
36 ~~the remainder or other jointly owned interest for the length of~~

1 ~~time-and-be-renewable-as-provided-in-paragraph-(a)-~~
2 ~~(5)-Subdivision-5-paragraph-(a)-clause-(4)-paragraph~~
3 ~~(b)-clauses-(1)-and-(2)-and-subdivision-6-paragraph-(b)-do~~
4 ~~not-apply-to-medical-assistance-liens-which-attach-to-interests~~
5 ~~in-real-property-as-provided-under-this-subdivision-~~
6 ~~(6)-The-continuation-of-a-medical-assistance-recipient's~~
7 ~~life-estate-or-joint-tenancy-interest-in-real-property-after-the~~
8 ~~medical-assistance-recipient's-death-for-the-purpose-of~~
9 ~~recovering-medical-assistance-provided-for-in-sections-514.980~~
10 ~~to-514.985-modifies-common-law-principles-holding-that-these~~
11 ~~interests-terminate-on-the-death-of-the-holder-~~
12 ~~(7)-Notwithstanding-any-law-or-rule-to-the-contrary-no~~
13 ~~release,-satisfaction,-discharge,-or-affidavit-under-section~~
14 ~~256B.15-shall-extinguish-or-terminate-the-life-estate-or-joint~~
15 ~~tenancy-interest-of-a-medical-assistance-recipient-subject-to-a~~
16 ~~lien-under-sections-514.980-to-514.985-on-the-date-the-recipient~~
17 ~~dies-~~
18 ~~(8)-The-provisions-of-clauses-(1)-to-(7)-do-not-apply-to-a~~
19 ~~homestead-owned-of-record,-on-the-date-the-recipient-dies,-by~~
20 ~~the-recipient-and-the-recipient's-spouse-as-joint-tenants-with-a~~
21 ~~right-of-survivorship.--Homestead-means-the-real-property~~
22 ~~occupied-by-the-surviving-joint-tenant-spouse-as-their-sole~~
23 ~~residence-on-the-date-the-recipient-dies-and-classified-and~~
24 ~~taxed-to-the-recipient-and-surviving-joint-tenant-spouse-as~~
25 ~~homestead-property-for-property-tax-purposes-in-the-calendar~~
26 ~~year-in-which-the-recipient-dies.--For-purposes-of-this~~
27 ~~exemption,-real-property-the-recipient-and-their-surviving-joint~~
28 ~~tenant-spouse-purchase-solely-with-the-proceeds-from-the-sale-of~~
29 ~~their-prior-homestead,-own-of-record-as-joint-tenants,-and~~
30 ~~qualify-as-homestead-property-under-section-273.124-in-the~~
31 ~~calendar-year-in-which-the-recipient-dies-and-prior-to-the~~
32 ~~recipient's-death-shall-be-deemed-to-be-real-property-classified~~
33 ~~and-taxed-to-the-recipient-and-their-surviving-joint-tenant~~
34 ~~spouse-as-homestead-property-in-the-calendar-year-in-which-the~~
35 ~~recipient-dies.--The-surviving-spouse,-or-any-person-with~~
36 ~~personal-knowledge-of-the-facts,-may-provide-an-affidavit~~

1 ~~describing-the-homestead-property-affected-by-this-clause-and~~
 2 ~~stating-facts-showing-compliance-with-this-clause.--The~~
 3 ~~affidavit-shall-be-prima-facie-evidence-of-the-facts-it-states.~~

4 [EFFECTIVE DATE.] This section is effective retroactively
 5 from August 1, 2003.

6 Sec. 13. Minnesota Statutes 2004, section 524.3-805, is
 7 amended to read:

8 524.3-805 [CLASSIFICATION OF CLAIMS.]

9 (a) If the applicable assets of the estate are insufficient
 10 to pay all claims in full, the personal representative shall
 11 make payment in the following order:

12 (1) costs and expenses of administration;

13 (2) reasonable funeral expenses;

14 (3) debts and taxes with preference under federal law;

15 (4) reasonable and necessary medical, hospital, or nursing

16 home expenses of the last illness of the decedent, including

17 compensation of persons attending the decedent, ~~a-claim-filed~~

18 ~~under-section-256B.15-for-recovery-of-expenditures-for~~

19 ~~alternative-care-for-nonmedical-assistance-recipients-under~~

20 ~~section-256B.09137~~, and including a claim filed pursuant to

21 section 256B.15;

22 (5) reasonable and necessary medical, hospital, and nursing

23 home expenses for the care of the decedent during the year

24 immediately preceding death;

25 (6) debts with preference under other laws of this state,

26 and state taxes;

27 (7) all other claims.

28 (b) No preference shall be given in the payment of any

29 claim over any other claim of the same class, and a claim due

30 and payable shall not be entitled to a preference over claims

31 not due, except that if claims for expenses of the last illness

32 involve only claims filed under section ~~256B.15-for-recovery-of~~

33 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~

34 ~~recipients-under-section-256B.09137~~-section 246.53 for costs of

35 state hospital care and claims filed under section 256B.157

36 ~~claims-filed-to-recover-expenditures-for-alternative-care-for~~

1 ~~nonmedical-assistance-recipients-under-section-256B-0913-shall~~
 2 ~~have-preference-over-claims-filed-under-both-sections-246.53-and~~
 3 ~~other-claims-filed-under-section-256B.15-and.~~ Claims filed
 4 under section 246.53 have preference over claims filed under
 5 section 256B.15 ~~for-recovery-of-amounts-other-than-those-for~~
 6 ~~expenditures-for-alternative-care-for-nonmedical-assistance~~
 7 ~~recipients-under-section-256B-0913.~~

8 [EFFECTIVE DATE.] This section is effective retroactively
 9 from July 1, 2003, for decedents dying on or after that date.

10 Sec. 14. [REFUNDS; NOTICES AND IMMUNITY.]

11 (a) The commissioner of human services and any county
 12 agency that, after a recipient's death, has collected any sum
 13 (1) from the estate of a recipient of alternative case services,
 14 or (2) attributable to a life estate or joint tenancy interest
 15 in real estate that was continued after the death of the
 16 recipient, shall promptly refund the amount collected to the
 17 person or persons who paid the amount collected, in proportion
 18 to each person's contribution to the amount.

19 (b) Lien notices of record against life estate or joint
 20 tenancy interests filed on and after August 1, 2003, have no
 21 effect beyond the death of the recipient unless continued after
 22 that time by the terms of the instrument creating the interest,
 23 must be disregarded by examiners of title, and must not be
 24 carried forward to subsequent certificates of title.

25 [EFFECTIVE DATE.] This section is effective the day
 26 following final enactment.

27 Sec. 15. [APPROPRIATIONS.]

28 \$..... is appropriated from the general fund to the
 29 commissioner of human services for fiscal years 2004 and 2005
 30 and \$..... is appropriated from the general fund to the
 31 commissioner of human services for fiscal years 2006 and 2007
 32 for the purposes of sections 1 to 14.

33 Sec. 16. [REPEALER.]

34 Minnesota Statutes 2004, sections 256B.15, subdivision 1g;
 35 514.991; 514.992; 514.993; 514.994; and 514.995, are repealed
 36 retroactively from July 1, 2003.

ARTICLE 3

INDIVIDUAL INCOME TAX AND CORPORATE FRANCHISE TAX

Section 1. Minnesota Statutes 2004, section 290.01, subdivision 6b, is amended to read:

Subd. 6b. [FOREIGN OPERATING CORPORATION.] The term "foreign operating corporation," when applied to a corporation, means a domestic corporation with the following characteristics:

(1) it is part of a unitary business at least one member of which is taxable in this state;

(2) it is not a foreign sales corporation under section 922 of the Internal Revenue Code, as amended through December 31, 1999, for the taxable year; and

(3) either (i) the average of the percentages of its property and payrolls assigned to locations ~~inside~~ outside the United States ~~and the District of Columbia, excluding the commonwealth of Puerto Rico and possessions of the United States,~~ as determined under section 290.191 or 290.20, is ~~20~~ 80 percent or ~~less~~ greater and it has at least \$2,000,000 of property and \$1,000,000 of payroll as determined under section 290.191 or 290.20; or (ii) it has in effect a valid election under section 936 of the Internal Revenue Code.

[EFFECTIVE DATE.] This section is effective for tax years beginning after December 31, 2004.

Sec. 2. Minnesota Statutes 2004, section 290.01, subdivision 19d, is amended to read:

Subd. 19d. [CORPORATIONS; MODIFICATIONS DECREASING FEDERAL TAXABLE INCOME.] For corporations, there shall be subtracted from federal taxable income after the increases provided in subdivision 19c:

(1) the amount of foreign dividend gross-up added to gross income for federal income tax purposes under section 78 of the Internal Revenue Code;

(2) the amount of salary expense not allowed for federal income tax purposes due to claiming the federal jobs credit under section 51 of the Internal Revenue Code;

(3) any dividend (not including any distribution in

1 liquidation) paid within the taxable year by a national or state
2 bank to the United States, or to any instrumentality of the
3 United States exempt from federal income taxes, on the preferred
4 stock of the bank owned by the United States or the
5 instrumentality;

6 (4) amounts disallowed for intangible drilling costs due to
7 differences between this chapter and the Internal Revenue Code
8 in taxable years beginning before January 1, 1987, as follows:

9 (i) to the extent the disallowed costs are represented by
10 physical property, an amount equal to the allowance for
11 depreciation under Minnesota Statutes 1986, section 290.09,
12 subdivision 7, subject to the modifications contained in
13 subdivision 19e; and

14 (ii) to the extent the disallowed costs are not represented
15 by physical property, an amount equal to the allowance for cost
16 depletion under Minnesota Statutes 1986, section 290.09,
17 subdivision 8;

18 (5) the deduction for capital losses pursuant to sections
19 1211 and 1212 of the Internal Revenue Code, except that:

20 (i) for capital losses incurred in taxable years beginning
21 after December 31, 1986, capital loss carrybacks shall not be
22 allowed;

23 (ii) for capital losses incurred in taxable years beginning
24 after December 31, 1986, a capital loss carryover to each of the
25 15 taxable years succeeding the loss year shall be allowed;

26 (iii) for capital losses incurred in taxable years
27 beginning before January 1, 1987, a capital loss carryback to
28 each of the three taxable years preceding the loss year, subject
29 to the provisions of Minnesota Statutes 1986, section 290.16,
30 shall be allowed; and

31 (iv) for capital losses incurred in taxable years beginning
32 before January 1, 1987, a capital loss carryover to each of the
33 five taxable years succeeding the loss year to the extent such
34 loss was not used in a prior taxable year and subject to the
35 provisions of Minnesota Statutes 1986, section 290.16, shall be
36 allowed;

1 (6) an amount for interest and expenses relating to income
2 not taxable for federal income tax purposes, if (i) the income
3 is taxable under this chapter and (ii) the interest and expenses
4 were disallowed as deductions under the provisions of section
5 171(a)(2), 265 or 291 of the Internal Revenue Code in computing
6 federal taxable income;

7 (7) in the case of mines, oil and gas wells, other natural
8 deposits, and timber for which percentage depletion was
9 disallowed pursuant to subdivision 19c, clause (11), a
10 reasonable allowance for depletion based on actual cost. In the
11 case of leases the deduction must be apportioned between the
12 lessor and lessee in accordance with rules prescribed by the
13 commissioner. In the case of property held in trust, the
14 allowable deduction must be apportioned between the income
15 beneficiaries and the trustee in accordance with the pertinent
16 provisions of the trust, or if there is no provision in the
17 instrument, on the basis of the trust's income allocable to
18 each;

19 (8) for certified pollution control facilities placed in
20 service in a taxable year beginning before December 31, 1986,
21 and for which amortization deductions were elected under section
22 169 of the Internal Revenue Code of 1954, as amended through
23 December 31, 1985, an amount equal to the allowance for
24 depreciation under Minnesota Statutes 1986, section 290.09,
25 subdivision 7;

26 (9) amounts included in federal taxable income that are due
27 to refunds of income, excise, or franchise taxes based on net
28 income or related minimum taxes paid by the corporation to
29 Minnesota, another state, a political subdivision of another
30 state, the District of Columbia, or a foreign country or
31 possession of the United States to the extent that the taxes
32 were added to federal taxable income under section 290.01,
33 subdivision 19c, clause (1), in a prior taxable year;

34 ~~(10) 80-percent-of-royalties,-fees,-or-other-like-income~~
35 ~~accrued-or-received-from-a-foreign-operating-corporation-or-a~~
36 ~~foreign-corporation-which-is-part-of-the-same-unitary-business~~

1 ~~as-the-receiving-corporation;~~

2 ~~{11}~~ income or gains from the business of mining as defined
3 in section 290.05, subdivision 1, clause (a), that are not
4 subject to Minnesota franchise tax;

5 ~~{12}~~ (11) the amount of handicap access expenditures in the
6 taxable year which are not allowed to be deducted or capitalized
7 under section 44(d)(7) of the Internal Revenue Code;

8 ~~{13}~~ (12) the amount of qualified research expenses not
9 allowed for federal income tax purposes under section 280C(c) of
10 the Internal Revenue Code, but only to the extent that the
11 amount exceeds the amount of the credit allowed under section
12 290.068;

13 ~~{14}~~ (13) the amount of salary expenses not allowed for
14 federal income tax purposes due to claiming the Indian
15 employment credit under section 45A(a) of the Internal Revenue
16 Code;

17 ~~{15}~~ (14) the amount of any refund of environmental taxes
18 paid under section 59A of the Internal Revenue Code;

19 ~~{16}~~ (15) for taxable years beginning before January 1,
20 2008, the amount of the federal small ethanol producer credit
21 allowed under section 40(a)(3) of the Internal Revenue Code
22 which is included in gross income under section 87 of the
23 Internal Revenue Code;

24 ~~{17}~~ (16) for a corporation whose foreign sales
25 corporation, as defined in section 922 of the Internal Revenue
26 Code, constituted a foreign operating corporation during any
27 taxable year ending before January 1, 1995, and a return was
28 filed by August 15, 1996, claiming the deduction under section
29 290.21, subdivision 4, for income received from the foreign
30 operating corporation, an amount equal to 1.23 multiplied by the
31 amount of income excluded under section 114 of the Internal
32 Revenue Code, provided the income is not income of a foreign
33 operating company;

34 ~~{18}~~ (17) any decrease in subpart F income, as defined in
35 section 952(a) of the Internal Revenue Code, for the taxable
36 year when subpart F income is calculated without regard to the

1 provisions of section 614 of Public Law 107-147; and
2 ~~(19)~~ (18) in each of the five tax years immediately
3 following the tax year in which an addition is required under
4 subdivision 19c, clause (16), an amount equal to one-fifth of
5 the delayed depreciation. For purposes of this clause, "delayed
6 depreciation" means the amount of the addition made by the
7 taxpayer under subdivision 19c, clause (16). The resulting
8 delayed depreciation cannot be less than zero.

9 [EFFECTIVE DATE.] This section is effective for tax years
10 beginning after December 31, 2004.

11 Sec. 3. Minnesota Statutes 2004, section 290.17,
12 subdivision 2, is amended to read:

13 Subd. 2. [INCOME NOT DERIVED FROM CONDUCT OF A TRADE OR
14 BUSINESS.] The income of a taxpayer subject to the allocation
15 rules that is not derived from the conduct of a trade or
16 business must be assigned in accordance with paragraphs (a) to
17 (f):

18 (a)(1) Subject to paragraphs (a)(2)~~7~~ and (a)(3), and
19 ~~(a)(4)~~~~7~~ income from wages as defined in section 3401(a) and (f)
20 of the Internal Revenue Code is assigned to this state if, and
21 to the extent that, the work of the employee is performed within
22 it; all other income from such sources is treated as income from
23 sources without this state.

24 Severance pay shall be considered income from labor or
25 personal or professional services.

26 (2) In the case of an individual who is a nonresident of
27 Minnesota and who is an athlete or entertainer, income from
28 compensation for labor or personal services performed within
29 this state shall be determined in the following manner:

30 (i) The amount of income to be assigned to Minnesota for an
31 individual who is a nonresident salaried athletic team employee
32 shall be determined by using a fraction in which the denominator
33 contains the total number of days in which the individual is
34 under a duty to perform for the employer, and the numerator is
35 the total number of those days spent in Minnesota. For purposes
36 of this paragraph, off-season training activities, unless

1 conducted at the team's facilities as part of a team imposed
 2 program, are not included in the total number of duty days.
 3 Bonuses earned as a result of play during the regular season or
 4 for participation in championship, play-off, or all-star games
 5 must be allocated under the formula. Signing bonuses are not
 6 subject to allocation under the formula if they are not
 7 conditional on playing any games for the team, are payable
 8 separately from any other compensation, and are nonrefundable;
 9 and

10 (ii) The amount of income to be assigned to Minnesota for
 11 an individual who is a nonresident, and who is an athlete or
 12 entertainer not listed in clause (i), for that person's athletic
 13 or entertainment performance in Minnesota shall be determined by
 14 assigning to this state all income from performances or athletic
 15 contests in this state.

16 (3) For purposes of this section, amounts received by a
 17 nonresident as "retirement income" as defined in section (b)(1)
 18 of the State Income Taxation of Pension Income Act, Public Law
 19 104-95, are not considered income derived from carrying on a
 20 trade or business or from wages or other compensation for work
 21 an employee performed in Minnesota, and are not taxable under
 22 this chapter.

23 ~~(4)-Wages, otherwise assigned to this state under clause~~
 24 ~~(1) and not qualifying under clause (3), are not taxable under~~
 25 ~~this chapter if the following conditions are met:~~

26 ~~(i) the recipient was not a resident of this state for any~~
 27 ~~part of the taxable year in which the wages were received, and~~

28 ~~(ii) the wages are for work performed while the recipient~~
 29 ~~was a resident of this state.~~

30 (b) Income or gains from tangible property located in this
 31 state that is not employed in the business of the recipient of
 32 the income or gains must be assigned to this state.

33 (c) Income or gains from intangible personal property not
 34 employed in the business of the recipient of the income or gains
 35 must be assigned to this state if the recipient of the income or
 36 gains is a resident of this state or is a resident trust or

1 estate.

2 Gain on the sale of a partnership interest is allocable to
3 this state in the ratio of the original cost of partnership
4 tangible property in this state to the original cost of
5 partnership tangible property everywhere, determined at the time
6 of the sale. If more than 50 percent of the value of the
7 partnership's assets consists of intangibles, gain or loss from
8 the sale of the partnership interest is allocated to this state
9 in accordance with the sales factor of the partnership for its
10 first full tax period immediately preceding the tax period of
11 the partnership during which the partnership interest was sold.

12 Gain on the sale of goodwill or income from a covenant not
13 to compete that is connected with a business operating all or
14 partially in Minnesota is allocated to this state to the extent
15 that the income from the business in the year preceding the year
16 of sale was assignable to Minnesota under subdivision 3.

17 When an employer pays an employee for a covenant not to
18 compete, the income allocated to this state is in the ratio of
19 the employee's service in Minnesota in the calendar year
20 preceding leaving the employment of the employer over the total
21 services performed by the employee for the employer in that year.

22 (d) Income from winnings on a bet made by an individual
23 while in Minnesota is assigned to this state. In this
24 paragraph, "bet" has the meaning given in section 609.75,
25 subdivision 2, as limited by section 609.75, subdivision 3,
26 clauses (1), (2), and (3).

27 (e) All items of gross income not covered in paragraphs (a)
28 to (d) and not part of the taxpayer's income from a trade or
29 business shall be assigned to the taxpayer's domicile.

30 (f) For the purposes of this section, working as an
31 employee shall not be considered to be conducting a trade or
32 business.

33 [EFFECTIVE DATE.] This section is effective for tax years
34 beginning after December 31, 2004.

35 Sec. 4. Minnesota Statutes 2004, section 290.17,
36 subdivision 4, is amended to read:

1 Subd. 4. [UNITARY BUSINESS PRINCIPLE.] (a) If a trade or
2 business conducted wholly within this state or partly within and
3 partly without this state is part of a unitary business, the
4 entire income of the unitary business is subject to
5 apportionment pursuant to section 290.191. Notwithstanding
6 subdivision 2, paragraph (c), none of the income of a unitary
7 business is considered to be derived from any particular source
8 and none may be allocated to a particular place except as
9 provided by the applicable apportionment formula. The
10 provisions of this subdivision do not apply to business income
11 subject to subdivision 5, income of an insurance company, or
12 income of an investment company determined under section 290.36.

13 (b) The term "unitary business" means business activities
14 or operations which result in a flow of value between them. The
15 term may be applied within a single legal entity or between
16 multiple entities and without regard to whether each entity is a
17 sole proprietorship, a corporation, a partnership or a trust.

18 (c) Unity is presumed whenever there is unity of ownership,
19 operation, and use, evidenced by centralized management or
20 executive force, centralized purchasing, advertising,
21 accounting, or other controlled interaction, but the absence of
22 these centralized activities will not necessarily evidence a
23 nonunitary business. Unity is also presumed when business
24 activities or operations are of mutual benefit, dependent upon
25 or contributory to one another, either individually or as a
26 group.

27 (d) Where a business operation conducted in Minnesota is
28 owned by a business entity that carries on business activity
29 outside the state different in kind from that conducted within
30 this state, and the other business is conducted entirely outside
31 the state, it is presumed that the two business operations are
32 unitary in nature, interrelated, connected, and interdependent
33 unless it can be shown to the contrary.

34 (e) Unity of ownership is not deemed to exist when a
35 corporation is involved unless that corporation is a member of a
36 group of two or more business entities and more than 50 percent

1 of the voting stock of each member of the group is directly or
2 indirectly owned by a common owner or by common owners, either
3 corporate or noncorporate, or by one or more of the member
4 corporations of the group. For this purpose, the term "voting
5 stock" shall include membership interests of mutual insurance
6 holding companies formed under section 60A.077.

7 (f) The net income and apportionment factors under section
8 290.191 or 290.20 of foreign corporations and other foreign
9 entities which are part of a unitary business shall not be
10 included in the net income or the apportionment factors of the
11 unitary business. A foreign corporation or other foreign entity
12 which is required to file a return under this chapter shall file
13 on a separate return basis. The net income and apportionment
14 factors under section 290.191 or 290.20 of foreign operating
15 corporations shall not be included in the net income or the
16 apportionment factors of the unitary business except as provided
17 in paragraph (g).

18 (g) The adjusted net income of a foreign operating
19 corporation shall be deemed to be paid as a dividend on the last
20 day of its taxable year to each shareholder thereof, in
21 proportion to each shareholder's ownership, with which such
22 corporation is engaged in a unitary business. Such deemed
23 dividend shall be treated as a dividend under section 290.21,
24 subdivision 4. The dividends-received deduction must not be
25 allowed on dividends, interest, royalties, or capital gains
26 received by the foreign operating corporation included in the
27 deemed dividend.

28 Dividends actually paid by a foreign operating corporation
29 to a corporate shareholder which is a member of the same unitary
30 business as the foreign operating corporation shall be
31 eliminated from the net income of the unitary business in
32 preparing a combined report for the unitary business. The
33 adjusted net income of a foreign operating corporation shall be
34 its net income adjusted as follows:

35 (1) any taxes paid or accrued to a foreign country, the
36 commonwealth of Puerto Rico, or a United States possession or

1 political subdivision of any of the foregoing shall be a
2 deduction; and

3 (2) the subtraction from federal taxable income for
4 payments received from foreign corporations or foreign operating
5 corporations under section 290.01, subdivision 19d, clause (10),
6 shall not be allowed.

7 If a foreign operating corporation incurs a net loss,
8 neither income nor deduction from that corporation shall be
9 included in determining the net income of the unitary business.

10 (h) For purposes of determining the net income of a unitary
11 business and the factors to be used in the apportionment of net
12 income pursuant to section 290.191 or 290.20, there must be
13 included only the income and apportionment factors of domestic
14 corporations or other domestic entities other than foreign
15 operating corporations that are determined to be part of the
16 unitary business pursuant to this subdivision, notwithstanding
17 that foreign corporations or other foreign entities might be
18 included in the unitary business.

19 (i) Deductions for expenses, interest, or taxes otherwise
20 allowable under this chapter that are connected with or
21 allocable against dividends, deemed dividends described in
22 paragraph (g), or royalties, fees, or other like income
23 described in section 290.01, subdivision 19d, clause (10), shall
24 not be disallowed.

25 (j) Each corporation or other entity, except a sole
26 proprietorship, that is part of a unitary business must file
27 combined reports as the commissioner determines. On the
28 reports, all intercompany transactions between entities included
29 pursuant to paragraph (h) must be eliminated and the entire net
30 income of the unitary business determined in accordance with
31 this subdivision is apportioned among the entities by using each
32 entity's Minnesota factors for apportionment purposes in the
33 numerators of the apportionment formula and the total factors
34 for apportionment purposes of all entities included pursuant to
35 paragraph (h) in the denominators of the apportionment formula.

36 (k) If a corporation has been divested from a unitary

1 business and is included in a combined report for a fractional
2 part of the common accounting period of the combined report:

3 (1) its income includable in the combined report is its
4 income incurred for that part of the year determined by
5 proration or separate accounting; and

6 (2) its sales, property, and payroll included in the
7 apportionment formula must be prorated or accounted for
8 separately.

9 [EFFECTIVE DATE.] This section is effective for tax years
10 beginning after December 31, 2004.

Article 1 HUMAN SERVICES..... page 1
Article 2 MEDICAL ASSISTANCE LIENS..... page 9
Article 3 INDIVIDUAL INCOME TAX AND CORPORATE FRANCHISE TAX..... page 33

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256B.15 CLAIMS AGAINST ESTATES.

Subd. 1g. Estate property. Notwithstanding any law or rule to the contrary, if a claim is presented under this section, interests or the proceeds of interests in real property a decedent owned as a life tenant or a joint tenant with a right of survivorship shall be part of the decedent's estate, subject to administration, and shall be dealt with as provided in this section.

256J.37 TREATMENT OF INCOME AND LUMP SUMS.

Subd. 3a. Rental subsidies; unearned income. (a) Effective July 1, 2003, the county agency shall count \$50 of the value of public and assisted rental subsidies provided through the Department of Housing and Urban Development (HUD) as unearned income to the cash portion of the MFIP grant. The full amount of the subsidy must be counted as unearned income when the subsidy is less than \$50. The income from this subsidy shall be budgeted according to section 256J.34.

(b) The provisions of this subdivision shall not apply to an MFIP assistance unit which includes a participant who is:

- (1) age 60 or older;
- (2) a caregiver who is suffering from an illness, injury, or incapacity that has been certified by a qualified professional when the illness, injury, or incapacity is expected to continue for more than 30 days and prevents the person from obtaining or retaining employment; or
- (3) a caregiver whose presence in the home is required due to the illness or incapacity of another member in the assistance unit, a relative in the household, or a foster child in the household when the illness or incapacity and the need for the participant's presence in the home has been certified by a qualified professional and is expected to continue for more than 30 days.

(c) The provisions of this subdivision shall not apply to an MFIP assistance unit where the parental caregiver is an SSI recipient.

(d) Prior to implementing this provision, the commissioner must identify the MFIP participants subject to this provision and provide written notice to these participants at least 30 days before the first grant reduction. The notice must inform the participant of the basis for the potential grant reduction, the exceptions to the provision, if any, and inform the participant of the steps necessary to claim an exception. A person who is found not to meet one of the exceptions to the provision must be notified and informed of the right to a fair hearing under section 256J.40. The notice must also inform the participant that the participant may be eligible for a rent reduction resulting from a reduction in the MFIP grant and encourage the participant to contact the local housing authority.

Subd. 3b. Treatment of supplemental security income. Effective July 1, 2003, the county shall reduce the cash portion of the MFIP grant by \$125 per SSI recipient who resides in the household, and who would otherwise be included in the MFIP assistance unit under section 256J.24, subdivision 2, but is excluded solely due to the SSI recipient status under section 256J.24, subdivision 3, paragraph (a), clause (1). If the SSI recipient receives less than \$125 of SSI, only the amount received shall be used in calculating the MFIP cash assistance payment. This provision does not apply to relative caregivers who could elect to be included in the MFIP assistance unit under

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section 256J.24, subdivision 4, unless the caregiver's children or stepchildren are included in the MFIP assistance unit.
514.991 ALTERNATIVE CARE LIENS; DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 514.991 to 514.995.

Subd. 2. **Alternative care agency, agency, or department.** "Alternative care agency," "agency," or "department" means the Department of Human Services when it pays for or provides alternative care benefits for a nonmedical assistance recipient directly or through a county social services agency under chapter 256B according to section 256B.0913.

Subd. 3. **Alternative care benefit or benefits.** "Alternative care benefit" or "benefits" means a benefit provided to a nonmedical assistance recipient under chapter 256B according to section 256B.0913.

Subd. 4. **Alternative care recipient or recipient.** "Alternative care recipient" or "recipient" means a person who receives alternative care grant benefits.

Subd. 5. **Alternative care lien or lien.** "Alternative care lien" or "lien" means a lien filed under sections 514.992 to 514.995.

514.992 ALTERNATIVE CARE LIEN.

Subdivision 1. **Property subject to lien; lien amount.**

(a) Subject to sections 514.991 to 514.995, payments made by an alternative care agency to provide benefits to a recipient or to the recipient's spouse who owns property in this state constitute a lien in favor of the agency on all real property the recipient owns at and after the time the benefits are first paid.

(b) The amount of the lien is limited to benefits paid for services provided to recipients over 55 years of age and provided on and after July 1, 2003.

Subd. 2. **Attachment.** (a) A lien attaches to and becomes enforceable against specific real property as of the date when all of the following conditions are met:

(1) the agency has paid benefits for a recipient;

(2) the recipient has been given notice and an opportunity for a hearing under paragraph (b);

(3) the lien has been filed as provided for in section 514.993 or memorialized on the certificate of title for the property it describes; and

(4) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a lien until it has sent the recipient, their authorized representative, or their legal representative written notice of its lien rights by certified mail, return receipt requested, or registered mail and there has been an opportunity for a hearing under section 256.045. No person other than the recipient shall have a right to a hearing under section 256.045 prior to the time the lien is filed. The hearing shall be limited to whether the agency has met all of the prerequisites for filing the lien and whether any of the exceptions in this section apply.

(c) An agency may not file a lien against the recipient's homestead when any of the following exceptions apply:

(1) while the recipient's spouse is also physically present and lawfully and continuously residing in the homestead;

(2) a child of the recipient who is under age 21 or who is

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blind or totally and permanently disabled according to supplemental security income criteria is also physically present on the property and lawfully and continuously residing on the property from and after the date the recipient first receives benefits;

(3) a child of the recipient who has also lawfully and continuously resided on the property for a period beginning at least two years before the first day of the month in which the recipient began receiving alternative care, and who provided uncompensated care to the recipient which enabled the recipient to live without alternative care services for the two-year period;

(4) a sibling of the recipient who has an ownership interest in the property of record in the office of the county recorder or registrar of titles for the county in which the real property is located and who has also continuously occupied the homestead for a period of at least one year immediately prior to the first day of the first month in which the recipient received benefits and continuously since that date.

(d) A lien only applies to the real property it describes.

Subd. 3. Continuation of lien. A lien remains effective from the time it is filed until it is paid, satisfied, discharged, or becomes unenforceable under sections 514.991 to 514.995.

Subd. 4. Priority of lien. (a) A lien which attaches to the real property it describes is subject to the rights of anyone else whose interest in the real property is perfected of record before the lien has been recorded or filed under section 514.993, including:

- (1) an owner, other than the recipient or the recipient's spouse;
- (2) a good faith purchaser for value without notice of the lien;
- (3) a holder of a mortgage or security interest; or
- (4) a judgment lien creditor whose judgment lien has attached to the recipient's interest in the real property.

(b) The rights of the other person have the same protections against an alternative care lien as are afforded against a judgment lien that arises out of an unsecured obligation and arises as of the time of the filing of an alternative care grant lien under section 514.993. The lien shall be inferior to a lien for property taxes and special assessments and shall be superior to all other matters first appearing of record after the time and date the lien is filed or recorded.

Subd. 5. Settlement, subordination, and release. (a) An agency may, with absolute discretion, settle or subordinate the lien to any other lien or encumbrance of record upon the terms and conditions it deems appropriate.

(b) The agency filing the lien shall release and discharge the lien:

- (1) if it has been paid, discharged, or satisfied;
- (2) if it has received reimbursement for the amounts secured by the lien, has entered into a binding and legally enforceable agreement under which it is reimbursed for the amount of the lien, or receives other collateral sufficient to secure payment of the lien;
- (3) against some, but not all, of the property it describes upon the terms, conditions, and circumstances the agency deems

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appropriate;

(4) to the extent it cannot be lawfully enforced against the property it describes because of an error, omission, or other material defect in the legal description contained in the lien or a necessary prerequisite to enforcement of the lien; and

(5) if, in its discretion, it determines the filing or enforcement of the lien is contrary to the public interest.

(c) The agency executing the lien shall execute and file the release as provided for in section 514.993, subdivision 2.

Subd. 6. Length of lien. (a) A lien shall be a lien on the real property it describes for a period of ten years from the date it attaches according to subdivision 2, paragraph (a), except as otherwise provided for in sections 514.992 to 514.995. The agency filing the lien may renew the lien for one additional ten-year period from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate of renewal shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed. The certificate must refer to the recording or filing data for the lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The recorder or registrar of titles shall record, file, index, and return the certificate of renewal in the same manner provided for liens in section 514.993, subdivision 2.

(b) An alternative care lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of a surviving spouse or a minor child under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

514.993 LIEN; CONTENTS AND FILING.

Subdivision 1. Contents. A lien shall be dated and must contain:

(1) the recipient's full name, last known address, and Social Security number;

(2) a statement that benefits have been paid to or for the recipient's benefit;

(3) a statement that all of the recipient's interests in the real property described in the lien may be subject to or affected by the agency's right to reimbursement for benefits;

(4) a legal description of the real property subject to the lien and whether it is registered or abstract property; and

(5) such other contents, if any, as the agency deems appropriate.

Subd. 2. Filing. Any lien, release, or other document required or permitted to be filed under sections 514.991 to 514.995 must be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. Notwithstanding section 386.77, the agency shall pay the applicable filing fee

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for any documents filed under sections 514.991 to 514.995. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the lien is registered property, the registrar of titles shall record it on the certificate of title for each parcel of property described in the lien. If the property described in the lien is abstract property, the recorder shall file the lien in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the lien. The recorder or registrar shall return the recorded or filed lien to the agency at no cost. If the agency provides a duplicate copy of the lien, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the agency at no cost. The agency is responsible for filing any lien, release, or other documents under sections 514.991 to 514.995.

514.994 ENFORCEMENT; OTHER REMEDIES.

Subdivision 1. Foreclosure or enforcement of lien.

The agency may enforce or foreclose a lien filed under sections 514.991 to 514.995 in the manner provided for by law for enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. The lien shall remain enforceable as provided for in sections 514.991 to 514.995 notwithstanding any laws limiting the enforceability of judgments.

Subd. 2. Homestead exemption. The lien may not be enforced against the homestead property of the recipient or the spouse while they physically occupy it as their lawful residence.

Subd. 3. Agency claim or remedy. Sections 514.992 to 514.995 do not limit the agency's right to file a claim against the recipient's estate or the estate of the recipient's spouse, do not limit any other claims for reimbursement the agency may have, and do not limit the availability of any other remedy to the agency.

514.995 AMOUNTS RECEIVED TO SATISFY LIEN.

Amounts the agency receives to satisfy the lien must be deposited in the state treasury and credited to the fund from which the benefits were paid.

1 Senator moves to amend S.F. No. 254 as follows:

2 Page 16, line 31, strike "to"

3 Page 16, line 32, delete "(d)" and insert "and (c)"

4 Page 20, lines 12 and 14, delete the new language and

5 strike the old language

6 Page 20, lines 13 and 15, strike the old language

7 Page 20, line 16, delete "(d)" and insert "(c)"

8 Page 20, line 17, strike "under paragraph" and delete "(c)"

9 and strike the first comma

10 Page 20, line 36, delete "their estate"

11 Page 32, delete section 14 and insert:

12 "Sec. 14. [REFUNDS; NOTICES, AND IMMUNITY.]

13 (a) The commissioner of human services and any county

14 agency that, after a recipient's death, has collected any sum

15 (1) from the estate of a recipient of alternative case services,

16 or (2) attributable to a life estate or joint tenancy interest

17 in real estate that was continued after the death of the

18 recipient, shall promptly refund the amount collected to the

19 person or persons who paid the amount collected, in proportion

20 to each person's contribution to the amount.

21 (b) If the commissioner determines a person entitled to a

22 refund is dead, the commissioner shall pay the refund to the

23 person's estate if it is open, or to their heirs or devisees as

24 finally determined in any completed probate proceedings or under

25 a final decree of descent. In all other cases, the refund shall

26 be deemed to be abandoned property and the commissioner shall

27 pay and deliver the refund to the commissioner of commerce. The

28 commissioner of commerce shall administer and dispose of the

29 refund in accordance with Minnesota Statutes, sections 345.42

30 through 345.60. The commissioner of human services shall not be

31 liable to anyone with respect to the refund after paying or

32 delivering the refund as provided for in this paragraph.

33 (c) Lien notices of record against life estate or joint

34 tenancy interests filed on and after August 1, 2003, shall have

35 no effect and shall not constitute record notice after the death

36 of the person named in the lien or notice unless continued after

1 that time by the terms of the instrument creating the interest,
2 shall be disregarded by examiners of title, and shall not be
3 carried forward to subsequent certificates of title.

4 (d) The commissioner of human services, county agencies,
5 elected officials, and their employees are immune from all
6 liability for actions taken or not taken in accordance with Laws
7 2003, First Special Session chapter 14, article 2, sections 47
8 to 52; article 12, sections 40 to 52 and 90; and sections 1 to
9 14 of this act.

10 [EFFECTIVE DATE.] This section is effective the day
11 following final enactment."

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**Testimony of Legal Services Advocacy Project in Support of SF 254
Health and Family Security Committee**

Good afternoon. My name is Reggie Wagner and I am an attorney with the Legal Services Advocacy Project. Our office engages in education, policy analysis and administrative and legislative advocacy on a range of issues affecting low-income persons, including welfare-to-work, health care, family law, landlord/tenant and consumer issues.

I am here this afternoon to speak in favor SF 254 and the repeal of the grant reductions imposed on families receiving income support with basic needs through the state's welfare-to-work program, the Minnesota Family Investment Program (MFIP).

This modest income support was **reduced by up to \$125 for each disabled family member** living in the household and by up to \$50 for those living in public housing or receiving Section 8 rent assistance.

Of the two grant reductions, the one affecting disabled households is having the most severe impact, both in terms of numbers of households affected and the loss of monthly income: Approximately 6,800 families have had their grants reduced an average of \$142/month. **Of these families, we estimate that almost 75% of them are "child-only cases" in which the child receives MFIP cash assistance to help meet their basic needs because the parent they live with is disabled and unable to work and the other parent is not paying child support.**

These children receive financial help from MFIP when because neither parent, albeit for different reasons, are able to contribute to the support of their children. I emphasize this point not to blame those fathers. There are many reasons child support does not get paid: these fathers may be unable to find a job, or may be earning so little that they cannot make a payment with putting themselves at risk of being homeless.

Congress created the SSI program to provide modest financial help to people over 65 or people who are disabled or blind and have no other means of supporting themselves. The monthly benefit is about \$564, or 80% of the poverty level.

People who receive SSI support each month first and foremost because they meet very strict disability criteria set forth by the government. It isn't just any health problem that will qualify someone for SSI: it must be one that results in severe limitations and is expected to result in death or which has lasted or can be expected to last longer than 12 months. The process is very difficult and often takes 2, 3 or even 4 years before a final decision is made. Data from the Social Security Administration confirm that only a small percentage of the applications received are ultimately approved. After 1996, the eligibility criteria for children were made even stricter,

Kathleen McDonough

resulting in thousands of children being found ineligible for benefits. It is safe to say that if a child is currently receiving SSI, the nature and extent of that disability is severe.

It has been said that a state's budget reflect its values: I do not believe that pushing children of disabled parents deeper into poverty is a value held by most Minnesotans, but that is clearly the result of the budget that was adopted last session. SF 254 will help to provide these households with much needed support to meet their basic needs, and will alleviate the stress and anxiety that are compounding the frail health of these disabled persons. As one parent told me the other day, "I feel so bad for my kids, like I'm not a good mother because I can't give them the things they need like I could do before this cut."

You are probably wondering why more of parents are not here today, filling this room and lining up to testify about the harm that was done to their children because of this cut. The answer is quite simple: They are, by and large, simply too disabled to travel to the Capitol and engage in the legislative process. That is the sad irony of this particular cut: Disabled parents with children on MFIP have seen perhaps the **largest mandatory reduction in their monthly incomes as a proportion of their family budgets – with absolutely no way to avoid it or to offset it** – than most of the families impacted by the numerous cuts and fee increases last session. Yet, precisely because of their severe disabilities, they are unable to be at this table and tell their stories.

In the past two weeks, I spoke with several parents on SSI whose children's MFIP grants have been cut, and eliminated altogether in some cases. They gave me permission to tell you about their families and how this grant reduction has impacted them:

Tammy lives in Austin. Tammy's has two sons, ages 15 and 13. Tammy's disabilities consist of severe depression from years of abuse, chronic bronchitis and other health problems that prevent her from working. Tammy was very reluctant to talk with me about her disabilities, but during our conversation she told me that she was taking numerous prescription drugs, suffers from panic attacks and rarely leaves the house. Her older son, Tyler, is also disabled due to mental illness and the trauma from abuse he experienced years earlier. Until July 1, 2003 Tammy's youngest son, Travis, received \$250 from MFIP to assist with meeting his basic needs. He receives no child support from his father. Because two members of the household receive SSI, Travis' MFIP grant was reduced to \$0. As a result,

- Tammy immediately fell behind in rent. She soon moved from a 3-BR to a 2-BR apartment to save costs. In order to ensure that her disabled son has his own room to provide space for both boys, Tammy sleeps in the living room.
- She's behind in rent again as well as her utilities. She fears her utilities will be shut off when the cold-weather protection ends in April.
- She has stopped buying some of the prescription drugs she is advised to take because of new co-pays in Medical Assistance that affect her. She made her own decisions about which ones to stop taking, and didn't consult with a doctor.
- She has developed ulcers since July caused by the stress this lack of income has placed on her. She told me that has become more depressed and cries often because she cannot provide for her sons like she used to.

Sheila lives in Worthington with her 16-year old son. She has severe depression, suicidal tendencies, irritable bowel syndrome with frequent diarrhea, chronic pain syndrome, has severe back pain which makes it hard for her to stand or sit for very long, cannot hold on to objects with her hands. She receives \$564 in SSI benefits for her basic needs and her son, who receives no child support, now receives only \$125 from MFIP rather than the \$250 she used to. She lives in a mobile home she is buying. Since the grant reduction, she has had trouble buying groceries for her son after her food support benefits run out. "Do you know how much a 16-year old boy can eat?" she asked me. She is worried about being able to make her monthly home payments and the insurance payments that are due every three months and the taxes that are due every six months. She, too, is paying more for prescription drugs and office visits than she was before those changes took effect. She finds that the stress from not knowing what will happen month to month with their bills and living expenses has made aggravated her depression and suicidal thoughts. "I have neighbors who listen, so I call them to try and calm me down."

Tracy has Multiple Sclerosis. She has difficulty walking and standing for long periods and has limited physical mobility. She wanted to come to the hearing today but was unable to do so because she is starting weekly chemotherapy treatment. She is married and lives with her husband and their three children in St. Paul. Her husband works but has not been able to work enough hours in this economy to move the family from welfare to self-sufficiency.

- With the family's MFIP grant reduced by \$125 since July 1, they run out of money a lot earlier in the month. They barely have enough money to cover the rent and utilities and little else.
- Have had to borrow from family several times to pay bills and pay for new prescription drug co-pays.
- Spend less for groceries after their food support grant is used up.

**Minnesota Department of Human Services
Deductions to MFIP Cash Grants in October 2004**

SSI and housing deductions to MFIP cash grant	SSI	Housing subsidy	Both
Deduction taken from cash grant	6488	6065	329
Net cash grant > \$0	5778	5838	298
Net cash grant = \$0	710	227	31
Mean total grant reduction (SSI and housing subsidy)	\$145	\$56	\$183
No deduction taken from cash grant > \$0*	578	0	0
No cash portion	546	1209	62
Suspended	59	149	9
Zero cash portion (before deduction)	424	851	41
Requested opt-out	79	188	16
Did not request opt-out	345	663	25
Opted out of positive cash portion	63	209	12
Total cases for cash grant deduction	7612	7274	391
Race/ethnicity of case applicant**	SSI	Housing subsidy	MFIP caseload***
White	33.6%	35.3%	44.8%
African American	29.7%	35.9%	24.1%
Somali	4.1%	13.6%	4.9%
American Indian	5.6%	4.5%	8.8%
Hispanic	3.3%	3.8%	7.3%
Non-Somali black immigrant	1.2%	3.2%	2.1%
Non-Hmong Asian	3.8%	1.5%	2.3%
Hmong	18.1%	1.1%	4.6%

Note: In this table, SSI deduction is taken first and housing subsidy deduction second (if any cash grant remains), but they are lumped together in the budget.

*Usually relative care cases.

**Sums to less than 100%. Cases excluded from race/ethnicity table either chose multiple races or were missing.

*** December 2003 eligible MFIP cases.

MFIP Cases with SSI member(s) in October 2004	7,612
Mean number of SSI adults	0.82
Mean number of SSI children	0.39
Mean number of eligible adults	0.42
Mean number of eligible children	2.23
Number of active MFIP cases in October 2004	39,639

DHS/CFS/PAID 1/4/2005

ISSUE BRIEF: Cuts in MFIP for SSI Families

1/31/05

Background:

The 2003 legislature reduced MFIP grants for households with family members who have a disability severe enough that they receive Supplemental Security Income (SSI) benefits. A family's MFIP grant is reduced by \$125 per month for *each* family member on SSI. SSI is a federal program that provides assistance to adults and children with significant disabilities, including mental health, that either prevent employment or restrict normal functioning. SSI grants are approximately \$560 per month and are intended to help meet the needs of the person with the disability. Eligibility for SSI is strictly controlled (more than half of initial applications are rejected), meaning that applicants must demonstrate *significant disabilities* to qualify.

According to DHS data from October 2004, close to 6,500 families, including 7,850 people, have been affected by this legislative change. Twenty percent of the affected families have *two or more* family members with a disability, meaning that the average grant reduction is actually \$145 per month. Communities of color are disproportionately affected by the legislative changes. Although the majority of families on MFIP are white, Asians and African Americans were impacted more often by the SSI cuts. This was especially true of those households with two or more family members on SSI.

The cuts significantly limit a family's ability to meet their basic needs and care for their family members with disabilities. It can also limit a parent's ability to maintain employment and move off public assistance.

Example of the impact

Family of three, one parent, two children
One child has a disability and receives SSI benefit (\$564/month)
MFIP grant is based on family size of 2 since SSI recipient not counted when calculating the grant
Old law: MFIP grant = \$437
New law: MFIP grant = \$312

Result is a **28% reduction** in household income. (Even if the SSI benefit is considered to be available to the entire household, the new law results in a 12.6% reduction each month, from \$1,001 to \$876, which places this family **below** poverty.)

Change Needed:

Restore the full MFIP grant for households with family members with disabilities

Rationale:

- MFIP families that receive SSI are not better off than other MFIP families; caring for a person with a disability imposes additional costs on the family, for which SSI is intended. Reducing MFIP grants to families receiving SSI **undermines the family's ability** to care for the person with a disability and for parents to remain on the path toward work and self-sufficiency
- MFIP households with family members receiving SSI are some of the **poorest and most vulnerable families** in Minnesota and should not bear the brunt of solving the budget deficit
- Reducing the income of households that have family members with disabilities **decreases family stability**
- Because of these cuts, close to 6,500 families (including 23,000 family members) collectively have **\$1 million less in their family budgets** each month
- Minnesota is one of only a few states that reduce assistance for households with family members with disabilities; this **sets a bad precedent** and goes against Minnesota values

Prepared by Affirmative Options Coalition, Family & Children's Service, and Legal Services Advocacy Project.
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Angel Buechner

2-3-2005

Today we are here to testify in support of Senate File 254 - which should be familiar to you as Senate File 1991 from last year, and which had bipartisan support in the Senate as well as in the House. Here is what the bill will do.

SF254 will repeal two of the biggest and worst welfare cuts in the history of Minnesota, the \$125 per person, per month MFIP grant cut to families with disabled family members -- this is often called the "SSI Penalty" or the "125 Cut". It also repeals the \$50 per month MFIP grant cut to families in subsidized housing.

Here is how these cuts affect Minnesota families. Before these cuts, a family of three lived on a cash grant of \$532 per month, which put that mother and her kids over 50% below the poverty line, into what is called *extreme* poverty. But now \$125 is taken away each month for each disabled family member on SSI, and \$50 dollar per month for the housing cut. So, a family of four including one disabled child, living in subsidized housing is seeing their monthly MFIP grant go from \$532 to \$357. In other words, this families MFIP grant was cut by 33%. No one else suffered such extreme cuts in the 2003 session.

Over 11,000 *families* are affected by the \$50.00 subsidized housing cut. Over 6,500 *families* are effected by the SSI plenty. These cuts are affecting real people every day of their lives. Instead of sending people in subsidized housing *down*, this state should be bringing everyone *up* and out of poverty, by raising the welfare grants or providing affordable housing for ALL in need. Poor families on MFIP should not be penalized for dealing with disability in the family. If the parent or parents are disabled, it's not right to punish the children - the parents *can't* work, and neither can the kids. If the children are disabled, we know it makes it much harder for the parents to get a job, because of caring for the special needs of the children. These cuts are cruel, should never have happened, and must be undone.

The bill also undoes laws passed in the 2003 session that force people to use their assets to pay their share of Medical Assistance costs and that put liens on the property of sick people who are forced to use Medical Assistance because of serious or terminal illness. Finally, the bill also reduces the parental fees for families who use TEFRA to pay for health care and services for their disabled children - fees and income restrictions that rose astronomically because of the cuts that where past in the 2003 Legislative Session.

SF254 pays for itself by getting rid of a \$56 million tax loophole that has allowed some corporations that do business in Minnesota to get out of paying MN taxes, because they have a plaque on the wall in another state or a foreign country.

We want to end with the point that no one would be on welfare if we had a choice. The welfare issue always comes to jobs. There are simply not enough jobs for everyone who needs one, and certainly there are not enough livable wage jobs. In the past 4 years the number of unemployed adults has risen by 45,000. We see the fallout from that every day.

In our organizing, we stand outside the welfare offices every week, gathering names. We talk to hundreds of people on the phone. We let our community know about our basic rights in this system; and how the laws made right here affect our lives. Unfortunately, our basic rights of survival have been under attack these past several years. We hope that those of you in this room will join us in our fight to turn these attacks around.

Hello, My name is Virginia Weldon. I am a recipient of MFIP and a mother of 2.

I was working at a job, but because of a surgery and a medical condition that I still am suffering from, I was forced to leave my job. I needed to go on welfare in order to support my family.

While on MFIP, I was a victim of domestic violence from my husband. In 2001, I started doing job search.

This is about the same time that the recession hit, so I was competing with many others who needed jobs. The day I graduated from a training program, myself and my youngest child were evicted from our apartment unfairly in retaliation for reporting serious maintenance problems involving water damage and mold growth. So my son and I were put into the streets and had to go to a homeless shelter for about 5 weeks.

During all of this crisis I was also having to go to therapeutic pool therapy for spinal damage 2x a week, every week. I continued intensive job search and sent applications, but did not find a job. I have doing an average of 30 hours a week of job search. I have not been accepted for any job, have only been given one interview, and the rest have been rejection letters. Here is the documentation of all my work search and rejections. (show binders of work search)

During this time, up until July 2003, while I was dealing with severe medical problems, domestic violence, homelessness, joblessness and living in poverty, my son and I were trying to survive on a cash grant from MFIP of \$437 a month. The welfare is only a survival check, it is not something to be able to do anything beyond surviving, like doing anything enjoyable with my son. You can't look for a job easily, because you have no phone. And it really is not enough to even survive. It sucks. If my son has activities or events at school, I don't have the money to pay for them.

After paying rent and utilities, (and I have subsidized rent), if I have ANY money left after the first week of the month, it's less than \$100. And that's supposed to last me and my child for the rest of the month. I still need to buy household cleaning products, and personal hygiene products. Part of that money has to be used to buy food to supplement the food stamps which aren't enough to last a month. I have to take a bus to go get groceries, and then I have to spend money on a taxi to get all the groceries home. It can be hard to even find the money to pay for the bus ride to get anywhere. The convenience stores that are within walking distance charge triple the amount for food that the big stores do. But we often end up paying it, because we can't get to the bigger stores.

Now for the past year and a half, because of welfare cuts passed by Minnesota politicians, my son and I have had \$50 dollars a month cut in the MFIP grant. Now we are trying to survive on \$387 a month. Tell me how anyone in Minnesota thinks a family can survive on this little money? And why, when the state is in deficit, are they taking money away from our kids who are already just barely surviving?

Hello my name is Tracy Furney and I am a current welfare recipient. My husband and I both have disabilities and are unable to work we receive SSI for our disability. I have ~~X~~ two daughters that I receive MFIP for. My daughters MFIP grant was cut \$250.00 a month this leaves only \$289.00 a month for my two daughters to live on. This cut adds up to be \$3000 a year, which is a 49% CUT INTO THE CASH GRANT! The SSI money is suppose to be there to take care of me and my husbands disability.

After the cuts I find that it is not enough to stretch to the end of the month. The things that I have to pay like rent, garage rent, electricity, phone bill, gas, and car insurance are necessary things that we have to pay these are not leisure items. We also have household items and hygiene stuff that we have to buy that you cannot buy with food stamps. I only get \$221.00 in food stamps to feed 4 people so I find myself borrowing money thru out the month and then having to pay it back it becomes a vicious cycle. I have also had to pawn items in my household to compensate for the money that has been cut because I need to still buy clothes for my growing daughters and things that they might need for school. Why when are families are suffering they take money from the least when there are people who have way more then what they need who should be paying there fare share.

Since the cuts I have been feeling more and more stressed out which is having a more negative effect on my health. I feel that this is sending a message to my children that they are not worthy enough to have things like other people. I also feel like it is sending out a negative message that if you are on Public Assistance or you are receiving SSI that you deserve to live in poverty. I really do not think that this is the type of message that we should be sending to people.

Why should my daughters be punished when there are rich corporations getting out of paying their fare share in taxes?

Senator
Berglin

January 17, 2005

An individual called about the lien that was placed on her home.

"A Referee called up and had another Referee on the other line - 3 way conversation - This was the Hearing to put that lien against my house. I complained to them that I had talked to Mike Hatch, and they came down from 11,900 to \$5,026. They said they made a mistake. I talked to everyone to get the price for services they have here. Here was 2 fellows on the phone for the hearing and no one has yet told me what the cost of these services are.

I was told I could get the price of my services from my worker, and she doesn't know anything. She did, however, find out I was paying \$5.80 for each of those meals on wheels. I quit mine because I didn't want to get it charged to my house. After I quit, the person who brings the meals said that I could pay whatever I could afford. Now I go to a local community center and get meals much cheaper and the food is better.

You and the others gave me the number of 3 or 4 people who are in charge of what the costs are and still no one has gotten back to me regarding the actual costs. I've been promised a list in the mail to me.

When they had the hearing on the phone, he said he sent me a letter and I hadn't gotten it yet. I hear promises and then they had this hearing before I got the letter, and then I finally got it and they don't say anything in the letter.

If I go to K Mart to get a tube of toothpaste, I'm informed how much money it costs and what I get back, printed right on the receipt. I don't think they should have held the hearing until I know how much I spent. They slap a big lien on my house and won't even tell me what it's for.

Now I got a letter 2 days ago, that said they have a housekeeper comes 4 x a month. The housekeepers keep stealing everything, and it takes a couple of weeks to get a new one. And still they charge me for 4 times a month @ 4 hours at a time. Now no body comes and they still charge. If the girls are any good, right away they find a better job. One of them stole my brother's watch and my jewelry and they want me to call the police and prosecute her, but I am disabled I can't do it.

One of them even stole my dishtowels that my grandchildren made for me and she also stole my clothes (she was my size) One of them a good worker, but she was almost ready to deliver any minute. If she had a baby at my place I would have blood-pressure through the roof.

My son who lives up North in Minnesota is also disabled and lives on Social Security. He comes down to see me about twice a year. He's despondent over his divorce and is mad at the world and I can't take living with him. He can live here after I'm gone. They said they won't take the house from me and my son can live it until it's sold. I don't really believe anything unless it's on paper.

Legal Aid Man writes a very clear concise letter about what he can do to help me but he can't defend me. He said my child has to be under 21 and he claims I owe \$11,900 and now it's \$5,026.

I have the names and numbers of all these people and a couple of them have called me back, in the meantime they put a lien on my house. They don't even know how much anything was. I don't trust any government.

I told them on the phone hearing, no matter who I call they don't know anything. The Referee said "My job is only to put the lien on the house". It's a colossal joke being paid on the Seniors who have no recourse.

January 31, 2005

No I don't want to testify in public! I'd probably have a heart attack! Also, I'm very vulnerable here, and if the wrong people see my address they could come to my house.




I finally got an accounting of what is charged for the ACG Services. I'm exhausted, my blood pressure goes up so badly when I get into this.

The case manager who sees that I get services, gets \$ 500 a month and she only calls around to get someone to try to come. I haven't had anyone to clean house for 2 months.! The way they did my snow, the city sent me a letter to say they are charging me \$25.00 for snow removal. I talk and talk to them over at the County. I finally told them it was the most dishonest thing I ever saw. I'm not calling them anymore.

I can't take it, I'm 81. Its' a racket. They're tearing down Nursing Homes. Then they take a figure out of the air and slap a lien on your house.

Now, finally, I got the whole evidence down on paper, and so now I dropped all of the ACG services. It's not worth it! The house cleaners rip you off, the snow is done so poorly, and the food is cheaper at the Community Center. I don't want to testify, because as I get worse I may break down and may need to call for a Nurse to come to my house, and I'm afraid they'll retaliate because I told the world how it really is.

Legislative History of Minnesota Estate Recovery / Property Liens

<p>Example No. 1</p>  <p>\$100,000</p>	<p>Subject to Estate Recovery</p> <ul style="list-style-type: none"> • Home owned by recipient • Client may (may not) have a will to stipulate his/her heirs 	<p>Law Since 1967</p> <ul style="list-style-type: none"> • Sold before or after recipient dies 	<p>\$ Recovery against full value (full interest) (up to \$100,000)</p>
<p>Example No. 2</p>  <p>\$100,000</p>	<p>Subject to MA Lien Recovery</p> <ul style="list-style-type: none"> • Home owned by recipient and placed in life estate with children 	<p>Law 1993 to 2003</p> <ul style="list-style-type: none"> • Sold before recipient dies 	<p>\$ Recovery at value of life estate interest (Example: Life estate interest of person at age 90 is .28221)*. This example would allow for maximum recovery of \$28,221.</p>
		<ul style="list-style-type: none"> • Sold after recipient dies 	<p>\$0.00 No recovery; the client's life estate interest would disappear at death.</p>
<p>Example No. 3</p>  <p>\$100,000</p>	<p>Subject to MA/AC Recovery</p> <ul style="list-style-type: none"> • Home owned by recipient and placed in life estate with children 	<p>Law since 2003 (Clients who died after effective date)</p> <ul style="list-style-type: none"> • Sold before or after recipient dies 	<p>Recovery at value of life estate which is continued after death (up to \$28,221 in this example of a 90 year old person).</p>

*Note: The value of a life estate interest is determined by mortality tables adopted by the Social Security Administration for SSI.

*Department
Jan Taylor*



MADSA

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February 2, 2005

The Honorable Becky Lourey, Chair
and members of the Senate Health and Family Security Committee
G-24 State Capitol
St. Paul, MN 55155

Dear Senator Lourey and Committee members:

Please distribute this message with Committee materials for the Thursday, February 3, 2005, noontime hearing.

I am writing on behalf of the Minnesota Adult Day Services Association and with concern for our clients who have relied on Alternative Care Grants. MADSA is a non-profit organization that supports adult day programs that keep people in their communities without social isolation and necessary personal and medical care to the consumer and support to their caregivers.

Adult Day Services permit working family caregivers to provide largely uncompensated care to their elders and family members with disabilities, while caregivers remain employed, taxpaying citizens.

The agenda for the meeting includes several bills with reference to the Alternative Care Grant program. The message our organization has for the committee is this:

The Alternative Care Grant program's eligibility and recovery provisions that became law in 2003 have forced many frail and disabled older persons living in our communities to make hard choices. Licensed centers across the state report that seniors who formerly received necessary care in Adult Day Centers are being placed in Nursing Homes because families are unable to pay the additional fees. Caregivers in the workforce report lost time, a reduction in number of hours worked, or have left the work force entirely to stay home and provide care to their loved ones. Adult Day Centers report many seniors are choosing to stay at home without services, rather than place a lien on their home in order to remain eligible for Alternative Care funds.

With corroborating data from the Department of Human Services (2004), the impact of decreased resources formerly accessed in an Adult Day Center is associated with

increases in Vulnerable Adult cases, untimely and costly institutionalization and hospitalization; lost work-time and job security for the caregiver employed outside the home; and decreased support for home-bound caregivers facing burn-out. One center alone reports serving 26 participants on AC, all of whom live in an apartment or in an adult child's home. Two participants placed liens on their home in order to receive community services funded by the AC program; and twelve participants left the program once they were required to place a lien on their home to continue to receive AC funding.

It appears that families are willing to contribute towards the AC program, but seniors will refuse services rather than place a lien on their home. Here is just one case profile:

Mary was 84 years old. Her granddaughter moved in with her several years ago to help her remain in her own home. The house was an old two story, bathroom on the second floor which meant Mary, wheelchair bound, used a commode while at home. She had been receiving community services for years and with her granddaughter assisting with evening and weekend cares, she was able to remain in her home. Mary came to the adult day program during the day while the granddaughter went to work. When Mary was required to place a lien on her home to remain on the AC program, she refused and community service programs were no longer part of her options. What happened to Mary and her granddaughter? Unknown.

Thank you, Senator Lourey and Committee members, for considering and supporting legislation to restore access to Alternative Care Grant Services by restoring the eligibility standards in place prior to 2003.



Lynne Zimmerman
MN Adult Day Services

Minnesota – North Dakota
www.alzmdak.org
1-800-232-0851 24/7

alzheimer's association™

February 3, 2005

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The Honorable Becky Lourey, Chair
Senate Health and Family Security Committee
as well as Committee Members
Minnesota Senate
G-24 State Capitol
St. Paul, MN 55155

Dear Senator Lourey and the Health and Family Security Committee:

The Alzheimer's Association, Minnesota Dakotas, serves families struggling with dementia of many types and stages. Among these are people who depend on home and community-based services to delay or avoid nursing home admission. The Alternative Care Grant Program has been a lifeline for lower income people to access help with dementia care. Some particularly valuable services are home nursing, adult day services, transportation, and training for family caregivers.

We addressed this committee in 2003 (1) to register our concern about what were then proposed changes in the program and (2) to recommend that the Department of Human Services document the impact on elders who leave the program or discontinue their applications when faced with new restrictions. Today, we ask that you repair the 2003 damage of narrowed eligibility through action on the bills on today's agenda.

According to Department of Human Services 2004 data, our concerns were well founded. The expanded fees plus new recovery provisions with respect to property liens and claims against estates accounted for over 800 people leaving the program in the first three months that the new law was in effect. Over 350 applicants decided against seeking services through the Alternative Care Grant Program. Some of these people have pieced together help in other ways. Others have opted to go without. Others have been admitted to nursing homes.

We thank you all and applaud Senator Berglin for her leadership as an architect of the Alternative Care Grant Program years ago and for her work to assure that lower income people have some help in paying for care for their loved ones.

Sincerely,


Jane Ochrymowycz
Chair, Board of Directors

the compassion to care, the leadership to conquer

**Minnesota Department of Human Services
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African American	29.7%	35.9%	24.1%
Somali	4.1%	13.6%	4.9%
American Indian	5.6%	4.5%	8.8%
Hispanic	3.3%	3.8%	7.3%
Non-Somali black immigrant	1.2%	3.2%	2.1%
Non-Hmong Asian	3.8%	1.5%	2.3%
Hmong	18.1%	1.1%	4.6%

Note: In this table, SSI deduction is taken first and housing subsidy deduction second (if any cash grant remains), but they are lumped together in the budget.

*Usually relative care cases.

**Sums to less than 100%. Cases excluded from race/ethnicity table either chose multiple races or were missing.

*** December 2003 eligible MFIP cases.

MFIP Cases with SSI member(s) in October 2004	7,612
Mean number of SSI adults	0.82
Mean number of SSI children	0.39
Mean number of eligible adults	0.42
Mean number of eligible children	2.23
Number of active MFIP cases in October 2004	39,639