

# SENATE BILL REPORT

## SSB 5935

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As Passed Senate, April 11, 1997

**Title:** An act relating to recovery of the costs of long-term medical care paid by the department of social and health services.

**Brief Description:** Providing for the recovery of the costs of long-term medical care paid by the department of social and health services.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Wojahn, Fairley and Franklin; by request of Department of Social and Health Services).

**Brief History:**

**Committee Activity:** Ways & Means: 3/4/97, 3/7/97 [DPS, DNP].  
Passed Senate, 4/11/97, 42-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5935 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Fraser, Hochstatter, Kohl, Long, McDonald, Rossi, Snyder, Spanel, Swecker, Thibaudeau and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Roach and Schow.

**Staff:** Steve Jones (786-7440)

**Background:** Under the Long-Term Care program, the Department of Social and Health Services (DSHS) provides long-term medical care to persons meeting certain financial conditions. In a series of enactments over the past ten years, the Legislature has increased the ability of DSHS to recover from a recipient's estate the cost of the long-term medical care provided by the department.

In 1987, the financial recovery statutes were substantially revised in response to federal legislation that expanded the states' available methods for financial recovery. Under the 1987 legislation and federal law, costs can be recovered from the decedent's estate only if there is no surviving spouse or minor children. An exemption was provided for up to \$50,000 passing from the decedent's estate to any surviving adult children.

In 1993, the financial recovery statutes were amended to remove the \$50,000 exemption, replaced with a \$2,000 exemption for family heirlooms and personal effects passing to surviving children.

In 1994, the financial recovery statute was repealed and replaced with a statute that further expanded DSHS's financial recovery powers. A 1995 amendment extended this authority to include recovery from the decedent's nonprobate assets (assets that were owned by the decedent but passed to heirs outside of the decedent's will, such as a life insurance policy). However, recovery cannot be made from property passing under a community property agreement. In a typical community property agreement, a married couple's separate property is converted into community property, all future acquisitions are deemed to be community property, and all community property passes automatically to the surviving spouse upon the death of either spouse.

As a result of these multiple changes in the financial recovery statutes, litigation has questioned whether a decedent's estate is subject to the statutes in effect at the time of the decedent's death or at the time the benefits were paid by DSHS. In January 1997, the state Supreme Court ruled that, in the absence of contrary legislative intent, decedents' estates are subject to the financial recovery statutes in effect at the time the benefits were received. In other pending litigation, a decedent has challenged DSHS's current authority to recover benefits paid before the 1994 repeal of the prior financial recovery statutes.

**Summary of Bill:** For persons receiving medical assistance from the Department of Social and Health Services, the department may recover the cost of the assistance from the recipient's estate, based on the law in effect at the time the benefit was received. The Legislature confirms DSHS's authority to recover benefits paid prior to the 1994 repeal of financial recovery statutes. The exemption for recovery from property passing through a community property agreement is removed. DSHS is directed to fully disclose potential estate recovery costs to home care clients. No recovery is allowed for protective services provided by the department to frail elder or vulnerable adults.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** The bill confirms legislative intent to collect for benefits paid prior to 1994. The bill corrects the inequitable situation of persons using community property agreements to avoid estate recovery.

**Testimony Against:** None.

**Testified:** Carol Washburn, DSHS; Margaret Casey, Washington State Catholic Conference.