
SUBSTITUTE SENATE BILL 5935

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/10/97.

1 AN ACT Relating to recovery of the costs of long-term medical care
2 paid by the department of social and health services; amending RCW
3 43.20B.080, 74.34.010, and 74.39A.170; adding new sections to chapter
4 43.20B RCW; adding a new section to chapter 74.34 RCW; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.20B RCW
8 to read as follows:

9 (1) It is the intent of the legislature to ensure that needy
10 individuals have access to basic medical care without requiring them to
11 sell their homes. In the face of rising medical costs and limited
12 funding for social welfare programs, however, the state's medicaid and
13 state-funded long-term care programs have placed an increasing
14 financial burden on the state. By balancing the interests of
15 individuals with immediate and future unmet medical care needs,
16 surviving spouses and dependent children, adult nondependent children,
17 more distant heirs, and the state, the estate recovery provisions of
18 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
19 method of easing the state's financial burden while ensuring the

1 continued viability of the medicaid and state-funded long-term care
2 programs.

3 (2) It is further the intent of the legislature to confirm that
4 chapter 21, Laws of 1994, effective July 1, 1994, repealed and
5 substantially reenacted the state's medicaid estate recovery laws and
6 did not eliminate the department's authority to recover the cost of
7 medical assistance paid prior to October 1, 1993, from the estates of
8 deceased recipients regardless of whether they received benefits
9 before, on, or after July 1, 1994.

10 **Sec. 2.** RCW 43.20B.080 and 1995 1st sp.s. c 18 s 67 are each
11 amended to read as follows:

12 (1) The department shall file liens, seek adjustment, or otherwise
13 effect recovery for medical assistance correctly paid on behalf of an
14 individual (~~as required by this chapter and~~) consistent with 42
15 U.S.C. Sec. 1396p.

16 (2) Liens may be adjusted by foreclosure in accordance with chapter
17 61.12 RCW.

18 (3) In the case of an individual who was fifty-five years of age or
19 older when the individual received medical assistance, the department
20 shall seek adjustment or recovery from the individual's estate, and
21 from nonprobate assets of the individual as defined by RCW 11.02.005
22 (~~except property passing through a community property agreement~~), but
23 only for medical assistance consisting of nursing facility services,
24 home and community-based services, other services that the department
25 determines to be appropriate, and related hospital and prescription
26 drug services. Recovery from the individual's estate, including
27 foreclosure of liens imposed under this section, shall be undertaken as
28 soon as practicable, consistent with (~~the requirements of~~) 42 U.S.C.
29 Sec. 1396p.

30 (4) The department shall apply the medical assistance estate
31 recovery law as it existed on the date that benefits were received when
32 calculating an estate's liability to reimburse the department for those
33 benefits.

34 (5)(a) The department shall establish procedures consistent with
35 standards established by the federal department of health and human
36 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
37 such recovery would work an undue hardship.

1 (b) Recovery of medical assistance from a recipient's estate shall
2 not include property made exempt from claims by federal law or treaty,
3 including exemption for tribal artifacts that may be held by individual
4 Native Americans.

5 ~~((+5))~~ (6) A lien authorized under subsections (1) through (5) of
6 this section relates back to attach to any real property that the
7 decedent had an ownership interest in immediately before death and is
8 effective as of that date.

9 (7) The department is authorized to adopt rules to effect recovery
10 under this section. The department may adopt by rule later enactments
11 of the federal laws referenced in this section.

12 NEW SECTION. Sec. 3. A new section is added to chapter 43.20B RCW
13 to read as follows:

14 In disclosing estate recovery costs to potential home care clients
15 and their family members, the department shall provide a written
16 description of the costs incurred by the department. The description
17 should include, to the extent that the department can itemize or
18 estimate, the direct cost of the service as well as other costs for
19 supervision, training, taxes, and fringe benefits.

20 **Sec. 4.** RCW 74.34.010 and 1995 1st sp.s. c 18 s 82 are each
21 amended to read as follows:

22 The legislature finds that frail elders and vulnerable adults may
23 be subjected to abuse, neglect, exploitation, or abandonment. The
24 legislature finds that there are a number of adults sixty years of age
25 or older who lack the ability to perform or obtain those services
26 necessary to maintain or establish their well-being. The legislature
27 finds that many frail elders and vulnerable adults have health problems
28 that place them in a dependent position. The legislature further finds
29 that a significant number of frail elders and vulnerable adults have
30 mental and verbal limitations that leave them vulnerable and incapable
31 of asking for help and protection.

32 It is the intent of the legislature to prevent or remedy the abuse,
33 neglect, exploitation, or abandonment of persons sixty years of age or
34 older who have a functional, mental, or physical inability to care for
35 or protect themselves.

36 It is the intent of the legislature to assist frail elders and
37 vulnerable adults by providing these persons with the protection of the

1 courts and with the least-restrictive services, such as home care, and
2 by preventing or reducing inappropriate institutional care. The
3 legislature finds that it is in the interests of the public health,
4 safety, and welfare of the people of the state to provide a procedure
5 for identifying these vulnerable persons and providing the services and
6 remedies necessary for their well-being.

7 It is further the intent of the legislature that the cost of
8 protective services rendered to a frail elder or vulnerable adult under
9 this chapter that are paid with state funds only not be subject to
10 recovery from the recipient or the recipient's estate, whether by lien,
11 adjustment, or any other means of recovery, regardless of the income or
12 assets of the recipient of the services. In making this exemption the
13 legislature recognizes that receipt of such services is voluntary and
14 incentives to decline services or delay permission must be kept to a
15 minimum. There may be a need to act or intervene quickly to protect
16 the assets, health, or well-being of a frail elder or vulnerable adult;
17 to prevent or halt the exploitation, neglect, abandonment, or abuse of
18 the person or assets of a frail elder or vulnerable adult; or to
19 prevent or limit inappropriate placement or retention in an institution
20 providing long-term care. The delivery of such services is less likely
21 to be impeded, and consent to such services will be more readily
22 obtained, if the cost of these services is not subject to recovery.
23 The legislature recognizes that there will be a cost in not seeking
24 financial recovery for such services, but that this cost may be offset
25 by preventing costly and inappropriate institutional placement.

26 NEW SECTION. Sec. 5. A new section is added to chapter 74.34 RCW
27 to read as follows:

28 The cost of benefits and services provided to a frail elder or
29 vulnerable adult under this chapter with state funds only does not
30 constitute an obligation or lien and is not recoverable from the
31 recipient of the services or from the recipient's estate, whether by
32 lien, adjustment, or any other means of recovery.

33 **Sec. 6.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each
34 amended to read as follows:

35 (1) All payments made in state-funded long-term care shall be
36 recoverable as if they were medical assistance payments subject to
37 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)

1 without regard to the recipient's age, except the cost of state-funded
2 adult protective services provided under chapter 74.34 RCW to frail
3 elders and vulnerable adults.

4 (2) In determining eligibility for state-funded long-term care
5 services programs, except for protective services provided to frail
6 elders and vulnerable adults, the department shall impose the same
7 rules with respect to the transfer of assets for less than fair market
8 value as are imposed under 42 U.S.C. 1396p with respect to nursing home
9 and home and community services.

10 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately.

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