
SENATE BILL 5935

State of Washington

55th Legislature

1997 Regular Session

By Senators Wojahn, Fairley and Franklin; by request of Department of Social and Health Services

Read first time 02/20/97. Referred to Committee on Ways & Means.

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 a new section to chapter
4 43.20B RCW; and adding a new section to chapter 74.34 RCW.

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

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

8 (1) It is the intent of the legislature to ensure that needy
9 individuals have access to basic medical care without requiring them to
10 sell their homes. In the face of rising medical costs and limited
11 funding for social welfare programs, however, the state's medicaid and
12 state-funded long-term care programs have placed an increasing
13 financial burden on the state. By balancing the interests of
14 individuals with immediate and future unmet medical care needs,
15 surviving spouses and dependent children, adult nondependent children,
16 more distant heirs, and the state, the estate recovery provisions of
17 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
18 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4 chapter 21, Laws of 1994, effective July 1, 1994, repealed and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 died before, on, or
9 after July 1, 1994. The department may continue to recover the cost of
10 pre-October 1, 1993, medical assistance, whenever paid, from the
11 estates of deceased recipients under the estate recovery law in effect
12 at the time of the recipient's death.

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

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

19 (2) Liens may be adjusted by foreclosure in accordance with chapter
20 61.12 RCW.

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

33 (4) The provision that relates to the elimination of the community
34 property agreement exemption to recovery made by chapter ---, Laws of
35 1997 (this act) applies as follows:

36 (a) If a recipient received assistance subject to estate recovery
37 on or after the effective date of this act, the department may recover
38 from the estate or nonprobate assets of a deceased recipient the cost

1 of all the assistance received, whenever received, in accordance with
2 the law in effect at the time of the recipient's death; and

3 (b) If a recipient does not receive assistance subject to estate
4 recovery on or after the effective date of this act, but did receive
5 the assistance before the effective date of this act, the department
6 may recover from the estate or nonprobate assets of a deceased
7 recipient the cost of all the assistance received, whenever received,
8 in accordance with the law in effect at the time of the last assistance
9 payment made by the department on the recipient's behalf.

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

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

18 ~~((+5))~~ (6) A lien authorized under subsections (1) through (5) of
19 this section relates back to attach to any real property that the
20 decedent had an ownership interest in immediately before death and is
21 effective as of that date.

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

25 **Sec. 3.** RCW 74.34.010 and 1995 1st sp.s. c 18 s 82 are each
26 amended to read as follows:

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

37 It is the intent of the legislature to prevent or remedy the abuse,
38 neglect, exploitation, or abandonment of persons sixty years of age or

1 older who have a functional, mental, or physical inability to care for
2 or protect themselves.

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

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

30 NEW SECTION. Sec. 4. A new section is added to chapter 74.34 RCW
31 to read as follows:

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

1 **Sec. 5.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each
2 amended to read as follows:

3 (1) All payments made in state-funded long-term care shall be
4 recoverable as if they were medical assistance payments subject to
5 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)
6 without regard to the recipient's age, except the cost of state-funded
7 adult protective services provided under chapter 74.34 RCW to frail
8 elders and vulnerable adults.

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

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