

# HOUSE BILL REPORT

## SHB 2304

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### As Passed Legislature

**Title:** An act relating to debts owed to the department of social and health services for medical assistance and recovery of those debts.

**Brief Description:** Recovering debts owed to the state for medical assistance.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Sommers, McCoy and Williams; by request of Office of Financial Management).

### Brief History:

#### Committee Activity:

Appropriations: 3/28/05, 4/2/05 [DPS].

#### Floor Activity:

Passed House: 4/21/05, 56-41.

Senate Amended.

Passed Senate: 4/23/05, 40-9.

House Concurred.

Passed House: 4/23/05, 54-42.

Passed Legislature.

### Brief Summary of Substitute Bill

- Directs the Department of Social and Health Services (DSHS) to place liens on the property of clients who receive medical public assistance prior to their death, if their condition is such that they are unlikely to be discharged from a medical institution or return home.
- Authorizes the DSHS to file a request for notice of transfer or encumbrance on the real property of a medical assistance recipient.
- Changes the statute of limitations on enforcement of liens filed by DSHS to recover medical assistance payments from six years to 20 year.

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Priest, Schual-Berke, Talcott and Walsh.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Hinkle and Pearson.

**Staff:** Bernard Dean (786-7130).

**Background:**

The Department of Social and Health Services (DSHS) recovers the cost of publicly-funded long-term care and medical assistance expenses from the estates of deceased clients who received such services. In accordance with state and federal law, the DSHS is directed to seek estate recovery from persons who received medical assistance after age 55. Recovery may include placing liens on the property of a deceased recipient following the recipient's death. In limited circumstances, federal law permits the DSHS to place liens against a recipient's property prior to the recipient's death. Federal law requires deferral of recovery under liens against a recipient's home under some circumstances, including when a surviving spouse or minor or disabled child still lives in the home.

The DSHS cannot collect overpayments or other debts due to the DSHS six years after the DSHS gives notice of such overpayments or debts.

A homestead, which is the property an owner uses as a residence, is exempted from attachment, execution, and forced sale for the owner's debts up to \$40,000. Judgments against a homestead owner that are greater than \$40,000 become liens on the value of the homestead in excess of the homestead exemption.

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**Summary of Substitute Bill:**

When an individual who holds a title to real property receives medical assistance, the DSHS may file with the county clerk a request for a notice of transfer or encumbrance of the real property. Title insurance companies or agents that discovers such a request when performing a title search must disclose the request in a report preliminary to, or commitment to offer, title insurance for the property. A person who transfers or encumbers the affected property must notify the DSHS.

Consistent with federal law, the DSHS is directed to place liens on the property of a medical assistance recipient prior to the recipient's death if the recipient is unlikely to be discharged from a medical institution or return home.

A homestead exemption will not be available against an execution or forced sale to satisfy a judgment obtained on debts owed to the state for the recovery of medical assistance costs.

The statute of limitations for enforcement of liens filed by the DSHS to recover medical assistance costs is changed from six years to twenty years, and this time period begins to run from the date the DSHS lien was recorded. The DSHS is directed to adopt rules providing

notice and hearing rights for the property owner when it files liens or requests for notice of transfer or encumbrance.

The DSHS liens for recovery of medical assistance costs will be enforceable against a decedent's life estate or joint tenancy interest in real property immediately prior to the decedent's death.

The value of the life estate subject to the lien will be the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death. The value of the joint tenancy interest subject to the lien will be the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

For liens against life estates or joint tenancy interests, the DSHS may not enforce the lien either against a bona fide purchaser who obtains an interest in the property after the recipient died but before the DSHS filed a lien or against a property right that vested before July 1, 2005.

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**Appropriation:** None.

**Fiscal Note:** Requested on March 24, 2005.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) The Governor's budget and the Senate budget assume increased collections from estate recovery and provide increased resources for estate recovery. This legislation provides additional tools for the DSHS to achieve estate recovery. The DSHS will work with the title insurance industry to work out any differences. Better estate recovery will control the costs of medical assistance and lower the burden on the State General Fund.

**Testimony Against:** (Original bill) Better estate recovery is a good goal, but this is the wrong path to the solution. A request for notification of encumbrance is not a lien, and section 2 of the bill inappropriately places the burden of notifying DSHS on title insurance companies. In addition, this bill may operate as an unconstitutional taking by impairing vested real property rights of non-debtors. We would like to work with the DSHS to improve the bill.

**Persons Testifying:** (In support) Jonathan Eames, Washington Health Care Association and Washington Center for Assisted Living; and Stan Marshburn, Department of Social and Health Services.

(Opposed) Dwight Bickel, Washington Land Title Association.

**Persons Signed In To Testify But Not Testifying:** None.