
SENATE BILL 5318

State of Washington

68th Legislature

2023 Regular Session

By Senators Nobles, Kuderer, Nguyen, and C. Wilson

Read first time 01/12/23. Referred to Committee on Human Services.

1 AN ACT Relating to limiting estate recovery; and amending RCW
2 43.20B.080 and 70.129.040.

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

4 **Sec. 1.** RCW 43.20B.080 and 2010 c 94 s 12 are each amended to
5 read as follows:

6 (1) The department shall file liens, seek adjustment, or
7 otherwise effect recovery for medical assistance correctly paid on
8 behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The
9 department shall adopt a rule providing for prior notice and hearing
10 rights to the record title holder or purchaser under a land sale
11 contract.

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

14 (3) In the case of an individual who was fifty-five years of age
15 or older when the individual received medical assistance, the
16 department shall seek adjustment or recovery from the individual's
17 estate, and from nonprobate assets of the individual as defined by
18 RCW 11.02.005, but only for medical assistance consisting of nursing
19 facility services, home and community-based services, other services
20 that the department determines to be appropriate, and related
21 hospital and prescription drug services. Recovery from the

1 individual's estate, including foreclosure of liens imposed under
2 this section, shall be undertaken as soon as practicable, consistent
3 with 42 U.S.C. Sec. 1396p.

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

8 (5) (a) The department shall establish procedures consistent with
9 standards established by the federal department of health and human
10 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
11 such recovery would work an undue hardship. The department shall
12 recognize an undue hardship for a surviving domestic partner whenever
13 recovery would not have been permitted if he or she had been a
14 surviving spouse. The department is not authorized to pursue recovery
15 under such circumstances.

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

20 (6) A lien authorized under this section relates back to attach
21 to any real property that the decedent had an ownership interest in
22 immediately before death and is effective as of that date or date of
23 recording, whichever is earlier.

24 (7) The department may enforce a lien authorized under this
25 section against a decedent's life estate or joint tenancy interest in
26 real property held by the decedent immediately prior to his or her
27 death. Such a lien enforced under this subsection shall not end and
28 shall continue as provided in this subsection until the department's
29 lien has been satisfied.

30 (a) The value of the life estate subject to the lien shall be the
31 value of the decedent's interest in the property subject to the life
32 estate immediately prior to the decedent's death.

33 (b) The value of the joint tenancy interest subject to the lien
34 shall be the value of the decedent's fractional interest the
35 recipient would have owned in the jointly held interest in the
36 property had the recipient and the surviving joint tenants held title
37 to the property as tenants in common on the date of the recipient's
38 death.

39 (c) The department may not enforce the lien provided by this
40 subsection against a bona fide purchaser or encumbrancer that obtains

1 an interest in the property after the death of the recipient and
2 before the department records either its lien or the request for
3 notice of transfer or encumbrance as provided by RCW 43.20B.750.

4 (d) The department may not enforce a lien provided by this
5 subsection against any property right that vested prior to July 1,
6 2005.

7 ~~(8) ((a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a)~~
8 ~~and the conditions of this subsection (8), the department is~~
9 ~~authorized to file a lien against the property of an individual prior~~
10 ~~to his or her death, and to seek adjustment and recovery from the~~
11 ~~individual's estate or sale of the property subject to the lien, if:~~

12 ~~(i) The individual is an inpatient in a nursing facility,~~
13 ~~intermediate care facility for persons with intellectual~~
14 ~~disabilities, or other medical institution; and~~

15 ~~(ii) The department has determined after notice and opportunity~~
16 ~~for a hearing that the individual cannot reasonably be expected to be~~
17 ~~discharged from the medical institution and to return home.~~

18 ~~(b) If the individual is discharged from the medical facility and~~
19 ~~returns home, the department shall dissolve the lien.~~

20 ~~(9))~~ The department is authorized to adopt rules to effect
21 recovery under this section. The department may adopt by rule later
22 enactments of the federal laws referenced in this section.

23 ~~((10))~~ (9) It is the responsibility of the department to fully
24 disclose in advance verbally and in writing, in easy to understand
25 language, the terms and conditions of estate recovery to all persons
26 offered long-term care services subject to recovery of payments.

27 ~~((11))~~ (10) In disclosing estate recovery costs to potential
28 clients, and to family members at the consent of the client, the
29 department shall provide a written description of the community
30 service options.

31 **Sec. 2.** RCW 70.129.040 and 2021 c 159 s 24 are each amended to
32 read as follows:

33 (1) The resident has the right to manage his or her financial
34 affairs, and the facility may not require residents to deposit their
35 personal funds with the facility.

36 (2) Upon written authorization of a resident, if the facility
37 agrees to manage the resident's personal funds, the facility must
38 hold, safeguard, manage, and account for the personal funds of the
39 resident deposited with the facility as specified in this section.

1 (a) The facility must deposit a resident's personal funds in
2 excess of one hundred dollars in an interest-bearing account or
3 accounts that is separate from any of the facility's operating
4 accounts, and that credits all interest earned on residents' funds to
5 that account. In pooled accounts, there must be a separate accounting
6 for each resident's share.

7 (b) The facility must maintain a resident's personal funds that
8 do not exceed one hundred dollars in a noninterest-bearing account,
9 interest-bearing account, or petty cash fund.

10 (3) The facility must establish and maintain a system that
11 assures a full and complete and separate accounting of each
12 resident's personal funds entrusted to the facility on the resident's
13 behalf.

14 (a) The system must preclude any commingling of resident funds
15 with facility funds or with the funds of any person other than
16 another resident.

17 (b) The individual financial record must be available on request
18 to the resident, or resident representative to the extent provided by
19 law.

20 (4) Upon the death of a resident with personal funds deposited
21 with the facility, the facility must convey within thirty days the
22 resident's funds, and a final accounting of those funds, to the
23 individual or probate jurisdiction administering the resident's
24 estate(~~(; but in the case of a resident who received long-term care~~
25 ~~services paid for by the state, the funds and accounting shall be~~
26 ~~sent to the state of Washington, department of social and health~~
27 ~~services, office of financial recovery. The department shall~~
28 ~~establish a release procedure for use for burial expenses)).~~

29 (5) If any funds in excess of one hundred dollars are paid to an
30 adult family home by the resident or resident representative, as a
31 security deposit for performance of the resident's obligations, or as
32 prepayment of charges beyond the first month's residency, the funds
33 shall be deposited by the adult family home in an interest-bearing
34 account that is separate from any of the home's operating accounts,
35 and that credits all interest earned on the resident's funds to that
36 account. In pooled accounts, there must be a separate accounting for
37 each resident's share. The account or accounts shall be in a
38 financial institution as defined by RCW 30A.22.041, and the resident
39 shall be notified in writing of the name, address, and location of
40 the depository. The adult family home may not commingle resident

1 funds from these accounts with the adult family home's funds or with
2 the funds of any person other than another resident. The individual
3 resident's account record shall be available upon request by the
4 resident or resident representative to the extent provided by law.

5 (6) The adult family home shall provide the resident or resident
6 representative full disclosure in writing, prior to the receipt of
7 any funds for a deposit, security, prepaid charges, or any other fees
8 or charges, specifying what the funds are paid for and the basis for
9 retaining any portion of the funds if the resident dies, is
10 hospitalized, or is transferred or discharged from the adult family
11 home. The disclosure must be in a language that the resident or
12 resident representative understands, and be acknowledged in writing
13 by the resident or resident representative. The adult family home
14 shall retain a copy of the disclosure and the acknowledgment. The
15 adult family home may not retain funds for reasonable wear and tear
16 by the resident or for any basis that would violate RCW 70.129.150.

17 (7) Funds paid by the resident or resident representative to the
18 adult family home, which the adult family home in turn pays to a
19 placement agency or person, shall be governed by the disclosure
20 requirements of this section. If the resident then dies, is
21 hospitalized, or is transferred or discharged from the adult family
22 home, and is entitled to any refund of funds under this section or
23 RCW 70.129.150, the adult family home shall refund the funds to the
24 resident or resident representative to the extent provided by law,
25 within thirty days of the resident leaving the adult family home, and
26 may not require the resident to obtain the refund from the placement
27 agency or person.

28 (8) If, during the stay of the resident, the status of the adult
29 family home licensee or ownership is changed or transferred to
30 another, any funds in the resident's accounts affected by the change
31 or transfer shall simultaneously be deposited in an equivalent
32 account or accounts by the successor or new licensee or owner, who
33 shall promptly notify the resident or resident representative to the
34 extent provided by law, in writing of the name, address, and location
35 of the new depository.

36 (9) Because it is a matter of great public importance to protect
37 residents who need long-term care from deceptive disclosures and
38 unfair retention of deposits, fees, or prepaid charges by adult
39 family homes, a violation of this section or RCW 70.129.150 shall be
40 construed for purposes of the consumer protection act, chapter 19.86

1 RCW, to constitute an unfair or deceptive act or practice or an
2 unfair method of competition in the conduct of trade or commerce. The
3 resident's claim to any funds paid under this section shall be prior
4 to that of any creditor of the adult family home, its owner, or
5 licensee, even if such funds are commingled.

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