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SENATE BILL 5126

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State of Washington

55th Legislature

1997 Regular Session

By Senators Deccio, Wojahn and Winsley; by request of Department of Social and Health Services

Read first time 01/15/97. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to delegation of lien and subrogation rights to  
2 medical health care systems by contract; and amending RCW 74.09.180 and  
3 43.20B.060.

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

5 **Sec. 1.** RCW 74.09.180 and 1990 c 100 s 2 are each amended to read  
6 as follows:

7 (1) The provisions of this chapter shall not apply to recipients  
8 whose personal injuries are occasioned by negligence or wrong of  
9 another: PROVIDED, HOWEVER, That the secretary may furnish assistance,  
10 under the provisions of this chapter, for the results of injuries to or  
11 illness of a recipient, and the department shall thereby be subrogated  
12 to the recipient's rights against the recovery had from any tort feisor  
13 or the tort feisor's insurer, or both, and shall have a lien thereupon  
14 to the extent of the value of the assistance furnished by the  
15 department. To secure reimbursement for assistance provided under this  
16 section, the department may pursue its remedies under RCW 43.20B.060.

17 (2) The rights and remedies provided to the department in this  
18 section to secure reimbursement for assistance, including the  
19 department's lien and subrogation rights, may be delegated to a managed

1 health care system by contract entered into pursuant to RCW 74.09.522.  
2 A managed health care system may enforce all rights and remedies  
3 delegated to it by the department to secure and recover assistance  
4 provided under a managed health care system consistent with its  
5 agreement with the department.

6 **Sec. 2.** RCW 43.20B.060 and 1990 c 100 s 7 are each amended to read  
7 as follows:

8 (1) To secure reimbursement of any assistance paid under chapter  
9 74.09 RCW or reimbursement for any residential care provided by the  
10 department at a hospital for the mentally ill or habilitative care  
11 center for the developmentally disabled, as a result of injuries to or  
12 illness of a recipient caused by the negligence or wrong of another,  
13 the department shall be subrogated to the recipient's rights against a  
14 tort feisor or the tort feisor's insurer, or both.

15 (2) The department shall have a lien upon any recovery by or on  
16 behalf of the recipient from such tort feisor or the tort feisor's  
17 insurer, or both to the extent of the value of the assistance paid or  
18 residential care provided by the department, provided that such lien  
19 shall not be effective against recoveries subject to wrongful death  
20 when there are surviving dependents of the deceased. The lien shall  
21 become effective upon filing with the county auditor in the county  
22 where the assistance was authorized or where any action is brought  
23 against the tort feisor or insurer. The lien may also be filed in any  
24 other county or served upon the recipient in the same manner as a civil  
25 summons if, in the department's discretion, such alternate filing or  
26 service is necessary to secure the department's interest. The  
27 additional lien shall be effective upon filing or service.

28 (3) The lien of the department shall be upon any claim, right of  
29 action, settlement proceeds, money, or benefits arising from an  
30 insurance program to which the recipient might be entitled (a) against  
31 the tort feisor or insurer of the tort feisor, or both, and (b) under  
32 any contract of insurance purchased by the recipient or by any other  
33 person providing coverage for the illness or injuries for which the  
34 assistance or residential care is paid or provided by the department.

35 (4) If recovery is made by the department under this section and  
36 the subrogation is fully or partially satisfied through an action  
37 brought by or on behalf of the recipient, the amount paid to the

1 department shall bear its proportionate share of attorneys' fees and  
2 costs.

3 (a) The determination of the proportionate share to be borne by the  
4 department shall be based upon:

5 ~~((a))~~ (i) The fees and costs approved by the court in which the  
6 action was initiated; or

7 ~~((b))~~ (ii) The written agreement between the attorney and client  
8 which establishes fees and costs when fees and costs are not addressed  
9 by the court.

10 ~~((c))~~ (b) When fees and costs have been approved by a court,  
11 after notice to the department, the department shall have the right to  
12 be heard on the matter of attorneys' fees and costs or its  
13 proportionate share.

14 ~~((d))~~ (c) When fees and costs have not been addressed by the  
15 court, the department shall receive at the time of settlement a copy of  
16 the written agreement between the attorney and client which establishes  
17 fees and costs and may request and examine documentation of fees and  
18 costs associated with the case. The department may bring an action in  
19 superior court to void a settlement if it believes the attorneys'  
20 calculation of its proportionate share of fees and costs is  
21 inconsistent with the written agreement between the attorney and client  
22 which establishes fees and costs or if the fees and costs associated  
23 with the case are exorbitant in relation to cases of a similar nature.

24 (5) The rights and remedies provided to the department in this  
25 section to secure reimbursement for assistance, including the  
26 department's lien and subrogation rights, may be delegated to a managed  
27 health care system by contract entered into pursuant to RCW 74.09.522.  
28 A managed health care system may enforce all rights and remedies  
29 delegated to it by the department to secure and recover assistance  
30 provided under a managed health care system consistent with its  
31 agreement with the department.

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