CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2304

Chapter 292, Laws of 2005

59th Legislature
2005 Regular Session

MEDICAL ASSISTANCE--DEBT RECOVERY

EFFECTIVE DATE: 7/24/05

Passed by the House April 23, 2005
Yeas 54  Nays 42

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 23, 2005
Yeas 40  Nays 9

BRAD OWEN
President of the Senate

Approved May 4, 2005.

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2304 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER
Chief Clerk

FILED
May 4, 2005 - 4:03 p.m.

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to debts owed to the department of social and health services for medical assistance and recovery of those debts; amending RCW 65.04.050, 6.13.080, 43.20B.030, and 43.20B.080; adding a new section to chapter 43.20B RCW; and adding a new section to chapter 64.04 RCW.

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

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

(1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of social and health services may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The department shall present to the county auditor for recording a termination of request for notice of transfer or
encumbrance when, in the judgment of the department, it is no longer
necessary or appropriate for the department to monitor transfers or
encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for
notice of transfer or encumbrance and the termination of request for
notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient and a
departmental case identifier or other appropriate information that
links the individual who is the holder of record title to real property
or the purchaser under a land sale contract to the individual's public
assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the department to receive the
notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010
for those forms intended to be recorded.

(4) The department shall pay the recording fee required by the
county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in
this section does not affect title to real property and is not a lien
on, encumbrance of, or other interest in the real property.

NEW SECTION. Sec. 2. A new section is added to chapter 64.04 RCW
to read as follows:

(1) If the department of social and health services has filed a
request for notice of transfer or encumbrance under section 1 of this
act:

(a) A title insurance company or agent that discovers the presence
of a request for notice of transfer or encumbrance when performing a
title search on real property shall disclose the presence of the
request for notice of transfer or encumbrance in any report preliminary
to, or any commitment to offer, a certificate of title insurance for
the real property; and

(b) Any individual who transfers or encumbers real property shall
provide the department of social and health services with a notice of
transfer or encumbrance. The department of social and health services
shall adopt by rule a model form for notice of transfer or encumbrance
to be used by a purchaser or lender when notifying the department.
(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under section 1 of this act, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section.

Sec. 3. RCW 65.04.050 and 1996 c 143 s 4 are each amended to read as follows:

Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, ((or claims of separate or community property, or notice for request of transfer or encumbrance under section 1 of this act shall be placed on record. The auditor or recording officer shall also enter in the general index, the
name of the party or parties platting a town, village, or addition in
the column prescribed for "grantors," describing the grantee in such
case as "the public." However, the auditor or recording officer shall
not receive or record any such plat or map until it has been approved
by the mayor and common council of the municipality in which the
property so platted is situated, or if the property be not situated
within any municipal corporation, then the plat must be first approved
by the county legislative authority. The auditor or recording officer
shall not receive for record any plat, map, or subdivision of land
bearing a name the same or similar to the name of any map or plat
already on record in the office. The auditor or recording officer may
establish a name reservation system to preclude the possibility of
duplication of names.

Sec. 4. RCW 6.13.080 and 1993 c 200 s 4 are each amended to read
as follows:

The homestead exemption is not available against an execution or
forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction,
maritime, automobile repair, materialmen's or vendor's liens arising
out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as
collateral the property that is claimed as a homestead or (b) by
mortgages or deeds of trust on the premises that have been executed and
acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time
of that spouse's bankruptcy filing where (a) bankruptcy is filed by
both spouses within a six-month period, other than in a joint case or
a case in which their assets are jointly administered, and (b) the
other spouse exempts property from property of the estate under the
bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or
administrative order establishing a child support obligation or
obligation to pay spousal maintenance; 

(5) On debts owing to the state of Washington for recovery of
medical assistance correctly paid on behalf of an individual consistent
with 42 U.S.C. Sec. 1396p; or
On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection.

Sec. 5. RCW 43.20B.030 and 2003 c 207 s 1 are each amended to read as follows:

(1) Except as otherwise provided by law, including subsection (2) of this section, there will be no collection of overpayments and other debts due the department after the expiration of six years from the date of notice of such overpayment or other debt unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended shall cease to be a debt due the department at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) There will be no collection of debts due the department after the expiration of twenty years from the date a lien is recorded pursuant to RCW 43.20B.080.

(3) The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the department if it is no longer cost-effective to pursue. The department shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts.
Sec. 6. RCW 43.20B.080 and 1999 c 354 s 2 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

(b) The value of the joint tenancy interest subject to the lien shall 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.

(c) The department may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the department records either its lien or the request for notice of transfer or encumbrance as provided by section 1 of this act.

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

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

(i) The individual is an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution; and

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

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

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

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

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

((10) The department of social and health services shall develop
an implementation plan for notifying the client or his or her legal
representative at least quarterly of the types of services used and the
cost of those services (debt) that will be charged against the estate.
The estate planning implementation plan shall be submitted by December
12, 1999, to the appropriate standing committees of the house of
representatives and the senate, and to the joint legislative and
executive task force on long-term care.))

Passed by the House April 23, 2005.
Passed by the Senate April 23, 2005.
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