HOUSE BILL REPORT
SSB 5318

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to limiting estate recovery.

Brief Description: Limiting estate recovery.

Sponsors: Senate Committee on Human Services (originally sponsored by Senators Nobles, Kuderer, Nguyen and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/22/23, 3/24/23 [DP].

Brief Summary of Substitute Bill

- Removes the authority of the Washington Health Care Authority and Department of Social and Health Services to file liens against the property of certain individuals prior to death and seek adjustment and recovery from the individual's estate or sale of property subject to the lien.
- Removes the requirement that the personal funds and final accounting of certain long-term care facility residents be sent to the Department of Social and Health Services.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney.

Staff: John Burzynski (786-7133).

Background:

Washington law requires the Health Care Authority (HCA) and Department of Social and Health Services (DSHS) to file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual in accordance with federal law. To this end, the HCA and DSHS are authorized to file a lien against the property of an individual prior to their death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, but only if two conditions are present:

- First, the person must be an inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities, or other medical institution.
- Second, the agency seeking the lien must have determined after notice and opportunity for a hearing that the person cannot be expected to be discharged from the medical institution and return home.

If the person ultimately is discharged from the medical facility and returns home, the agency that sought the lien must dissolve it.

Additionally, state law governs the custody of resident personal funds by long-term care facilities, and requires that, upon the resident's death, the facility must convey within 30 days the resident's personal funds and a final accounting to the individual or probate jurisdiction administering the resident's estate. However, in the case of a resident who received long-term care services paid for by the state, the funds and accounting must be sent to the DSHS Office of Financial Recovery. The DSHS is required to have established procedures for the release of such personal funds for use in burial expenses.

Summary of Bill:

The authority of the HCA and DSHS to file a lien against the property of certain individuals prior to their death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to that lien, is removed from the underlying statutes.

The requirement that, upon the death of a resident of a long-term care facility who received long-term care services paid for by the state, the facility must send the resident's personal funds and final accounting to the DSHS Office of Financial Recovery, subject to release for burial expenses, is removed from the underlying statute.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The cost of long-term care is staggering and can range from $10,000 to $14,000 per month for nursing home care. Most people who need long-term care will exhaust their savings, and Medicare and most insurance does not cover long-term care. Medicaid is the largest payer in Washington. Medicaid allows applicants to own a residence if that is their last asset, but also allows states to be reimbursed after death.

The state collects its expenses from a person's estate after they die if they have received long-term care services. Washington law currently allows for a pre-death lien, but this is optional and the state is not required to permit pre-death liens.

Pre-death liens are insidious, stressful, and come out-of-the-blue. Often, the person living in the home that is the subject of the lien is the same person who took care of the individual now in long-term care. The suddenness of pre-death liens leaves families scrambling. Pre-death liens are unfair and counter productive.

Limiting the state to post-death liens allows families more time to plan, clear out belongings, and potentially transfer the house to a person who can refinance. Families have more options when faced with a post-death lien than they do for pre-death liens. It is essential that families be able to plan for estate recovery, but often people living in poverty don't have access to estate planning that could allow them to preserve wealth. Moreover, people living in poverty may not have access to healthcare, and thus may face longer periods of health care issues later in life, increasing their healthcare costs.

Pre-death liens have a disparate impact on communities of color and low-income individuals. The burden of estate recovery disproportionately falls on people of color in multigenerational households. People of color often lack access to wealth and credit, so the ability to pass on a family home to the next generation is crucial for closing the homeownership and wealth gaps. Estate recovery forces families to sell their homes to repay the state for healthcare, rather than passing the home on to the next generation. The state should promote generational wealth and should not put premature liens on property.

Under this bill, the state retains the power to place liens on a person's property after they die to recover costs. The bill does not affect post-death reimbursement.

The state makes millions by taking personal funds upon the death of certain long-term care residents. Those funds should be passed on to families to assist with funeral expenses or to a person's heirs.

This bill is consistent with good practices and will help the state live up to its values.

(Opposed) None.

Persons Testifying: Senator T'wina Nobles, prime sponsor; and Angela Macey-Cushman and Meredith Grigg, Washington State Bar Association Elder Law Section.

Persons Signed In To Testify But Not Testifying: None.