

SENIOR BULLETIN: Medicaid

Estate recovery changes adopted by 2005 Legislature

The Legislature has made some procedural changes relating to estate recovery for medical expenses paid for by the State. It did not expand the services that may result in the possibility of estate recovery. (So, for example, Medicaid-funded services – as distinguished from medical services that are exclusively state-funded – provided to an individual under 55 still do not expose the individual's estate to a claim for recovery.) But for those cases in which estate recovery is permitted, the recent changes give the State some additional legal resources to increase the likelihood that recovery occurs. This is especially true if the Medicaid recipient has an ownership interest in a home.

The recent changes were contained in Substitute House Bill 2304, which was signed by the Governor on May 4, 2005. The changes are described below.

1. The Department of Social & Health Services may record requests for notice of transfers or encumbrances of real property owned by individuals who have received medical assistance subject to recovery. The property owner is entitled to notice and opportunity for a hearing before a new request is recorded with a county auditor. Before implementing the new procedure, the Department is required to adopt rules.

The new request, by the terms of the legislation, “does not affect title to the real property and is not a lien on, encumbrance of, or other interest in the real property.” It is rather a device designed to help the Department keep track of property, and to exercise any rights it may have in the event of a transfer. (For example, if an uncompensated transfer is made, the transfer may have an effect on the Medicaid eligibility of the owner who made the transfer.) A duty is imposed on “any individual who transfers or encumbers real property” after a request for notice has been

recorded to provide notice to the Department of the transfer or encumbrance.

2. Estate recovery will be allowed against a Medicaid recipient's life-estate or joint-tenancy interest. The new legislation provides that the "value of the life estate subject to the [estate recovery] 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" and that 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 [sic] 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." The Department is not permitted to enforce any such lien "against any property right that vested prior to July 1, 2005" or "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 . . ." No new regulation is needed to enforce these provisions.

3. The Department may file a lien against the real property of a living resident of a nursing home or other medical institution if it determines, 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." If the individual nevertheless does return home, the lien must be dissolved. No lien may be filed if certain relatives reside in the home. These are: a spouse, child who is under 21 or who is blind or permanently disabled, or a sibling with an equity interest in the home who has lawfully resided in it for at least a year before the assistance recipient's admission to a medical institution.¹ The Department will adopt regulations before implementing this new provision.

4. In the event of a forced sale of a home in satisfaction of a judgment on a debt owing to the State "for recovery of medical assistance correctly paid" (i.e., in the case of estate recovery), the homestead exemption cannot be claimed by a person living on the property. This provision amends RCW 6.13.080. No new regulation is needed to implement it.

¹ These limitations on when a lien may be imposed are contained in 42 U.S.C. § 1396p(a).

5. Twenty years after a Medicaid lien is recorded (pursuant to RCW 43.20B.080), the authority to collect the corresponding debt expires.

This new provision extends a statute of limitations in RCW 43.20B.030 from 6 to 20 years. No new regulation is needed to implement it.

The text of SHB 2304 can be found on the web site of the Washington State Legislature at the following address:

<http://www1.leg.wa.gov/legislature>

Enter 2304 in the “bill search” box.

For information on estate recovery as it was before the recent legislative changes, see the Columbia Legal Services pamphlet “Estate recovery for medical services paid for by the State”:

<http://www.lawhelp.org/documents/1542715172.pdf?stateabbrev=/WA/>

Once new regulations have been adopted, a revised pamphlet will be published.