

## CHAPTER 283

[Substitute House Bill No. 274]

REVENUE RECOVERY PROCEDURES REVISED FOR THE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES

AN ACT Relating to revenue recovery for social and health services; amending RCW 43.20A.020, 43.20A.435, 48.21.240, 48.44.340, 48.46.290, 74.04.306, 74.09.210, 74.09.220, 74.46.180, and 74.09.180; adding new sections to chapter 43.20A RCW; adding a new section to chapter 74.09 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 18, Laws of 1970 ex. sess. as amended by section 61, chapter 141, Laws of 1979 and RCW 43.20A.020 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

(1) "Department" means the department of social and health services.

(2) "Secretary" means the secretary of the department of social and health services.

(3) "Deputy secretary" means the deputy secretary of the department of social and health services.

(4) "Overpayment" means any department payment or department benefit to a recipient or to a vendor in excess of that to which the recipient or vendor is entitled by law, rule, or contract, including amounts in dispute pending resolution.

(5) "Vendor" means an entity that provides goods or services to or for clientele of the department and that controls operational decisions.

Sec. 2. Section 17, chapter 41, Laws of 1983 1st ex. sess. and RCW 43.20A.435 are each amended to read as follows:

~~(1) ("Vendor", for the purposes of this section, means any public or private agency providing services under contract to or for clientele of the department.~~

~~(2)) Except as provided in subsection ((5)) (4) of this section, vendors ((of services to the department of social and health services)) shall pay interest on overpayments ((or erroneous payments made by the department on billings from the vendor)) at the rate of one percent per month((-but of at least one dollar per month)) or portion thereof. Where partial repayment of an overpayment is made, interest accrues on the remaining balance. Interest will not accrue when the overpayment occurred due to department error.~~

~~((3) The department may recover interest accrued under this section by setoff or recoupment against subsequent contract payments due to the vendor.~~

(4)) (2) If the overpayment is discovered by the vendor prior to discovery and notice by the department, the interest shall begin accruing

~~((thirty))~~ ninety days after ~~((notice to))~~ the vendor ~~((of overpayment or erroneous payment or the date of the final decision on any administrative or judicial remedy sought by the vendor, whichever is the later date))~~ notifies the department of such overpayment.

(3) If the overpayment is discovered by the department prior to discovery and notice by the vendor, the interest shall begin accruing as follows, whichever occurs first:

(a) Thirty days after the date of notice by the department to the vendor; or

(b) Ninety days after the date of overpayment to the vendor.

~~((5))~~ (4) This section does not apply to:

(a) Intergency or intergovernmental transactions;

(b) Contracts for public works, goods and services procured for the exclusive use of the department, equipment, or travel; and

~~((Claims subject to a good faith dispute. A good faith dispute exists when:~~

~~(i) The exact amount of the overpayment has not been established by agreement of the parties or by operation of law; or~~

~~(ii) All administrative or judicial remedies available have not been exhausted;~~

~~(d) Nursing homes licensed under chapter 18.51 RCW or portions of hospitals licensed under chapter 70.41 RCW and operating as a nursing home, if those facilities are subject to chapter 74.46 RCW;~~

~~((e))~~ Contracts entered into before September 1, 1979, for contracts with medical assistance funding, and August 23, 1983, for all other contracts.

Sec. 3. Section 1, chapter 35, Laws of 1983 as amended by section 2, chapter 184, Laws of 1986 and RCW 48.21.240 are each amended to read as follows:

(1) Each group insurer providing disability insurance coverage in this state for hospital or medical care under contracts which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; ~~((or))~~ (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this

section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group disability insurance contract may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the insurer.

(4) This section shall not apply to a group disability insurance contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

Sec. 4. Section 2, chapter 35, Laws of 1983 as amended by section 3, chapter 184, Laws of 1986 and RCW 48.44.340 are each amended to read as follows:

(1) Each health care service contractor providing hospital or medical services or benefits in this state under group contracts for health care services under this chapter which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; ~~((or))~~ (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for

quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group contract for health care services may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health care service contractor.

(4) This section shall not apply to a group health care service contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

Sec. 5. Section 3, chapter 35, Laws of 1983 as amended by section 4, chapter 184, Laws of 1986 and RCW 48.46.290 are each amended to read as follows:

(1) Each health maintenance organization providing services or benefits for hospital or medical care coverage in this state under group health maintenance agreements which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment to the enrolled participant and the enrolled participant's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by the health maintenance organization or the health maintenance organization refers the enrolled participant or the enrolled participant's covered dependents for treatment to: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; ((or)) (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group health maintenance agreement may provide that all the coverage for mental health treatment is waived for all covered members if

the contract holder so states in advance in writing to the health maintenance organization.

(4) This section shall not apply to a group health maintenance agreement that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

Sec. 6. Section 2, chapter 91, Laws of 1965 ex. sess. as amended by section 308, chapter 141, Laws of 1979 and RCW 74.04.306 are each amended to read as follows:

~~((The secretary shall commence action for the))~~ There will be no collection of overpayments and debts due the state ((within)) after the expiration of six years ((after the)) from the date of notice of such overpayment ((is given or within six years after the person ceases to be a recipient of public assistance, whichever is later. No proceedings for the collection of such overpayments or debts shall be begun after the expiration of such period)) 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 state at the expiration of ten years from the date of the notice of the underlying overpayment unless a court-ordered remedy would be in effect for a longer period.

The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of overpayments or debts due the state. The department shall adopt rules establishing the considerations to be made in the granting or denial of partial or total write-off and offers of compromise of disputed claims for overpayments and debts due the state.

Sec. 7. Section 2, chapter 152, Laws of 1979 ex. sess. and RCW 74.09.210 are each amended to read as follows:

(1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
- (b) By wilful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
  - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
  - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest (~~(on the amount of the excess benefits or payments)~~) at the rate (~~(of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state)~~) and in the manner provided in RCW 43.20A.435. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary (~~(of social and health services)~~) may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: **PROVIDED,** That these civil penalties shall not apply to any acts or omissions occurring prior to (~~(the effective date of this act)~~) September 1, 1979.

(3) All orders of the department assessing civil penalties shall become final twenty days after the same have been served unless a hearing is requested.

(4) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(5) In all proceedings under this section, service, hearings, and judicial review of such determinations shall be in accordance with chapter 34.04 RCW.

(6) Civil penalties shall be deposited in the general fund upon their receipt.

Sec. 8. Section 3, chapter 152, Laws of 1979 ex. sess. and RCW 74.09.220 are each amended to read as follows:

Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest (~~(on the amount of the excess benefits or payments)~~) calculated at the rate (~~(of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state.~~ **PROVIDED;** That no person, firm, corporation, partnership, association, agency, institution, or other legal entity shall be liable for payment of interest when excess benefits or payments were obtained as a result of errors made by the department of social and health services)) and in the manner provided in RCW 43.20A.435. Whenever a penalty (~~(or interest)~~) is due under RCW 74.09.210 (~~(or 74.09.220)~~) or interest is due under RCW 43.20A.435, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter.

Sec. 9. Section 18, chapter 177, Laws of 1980 as last amended by section 1, chapter 361, Laws of 1985 and RCW 74.46.180 are each amended to read as follows:

(1) The state shall make payment of any underpayments within thirty days after the date the preliminary or final settlement report is submitted to the contractor.

(2) A contractor found to have received either overpayments or erroneous payments under a preliminary or final settlement shall refund such payments to the state within thirty days after the date the preliminary or final settlement report is submitted to the contractor, subject to the provisions of subsections (3), (4), and (7) of this section.

(3) Within the cost centers of nursing services and food, all savings resulting from the respective allowable costs being lower than the respective reimbursement rate paid to the contractor during the report period shall be refunded. In computing a preliminary or final settlement, savings in a cost center may be shifted to cover a deficit in another cost center up to the amount of any savings: PROVIDED, That not more than twenty percent of the rate in a cost center may be shifted into that cost center and no shifting may be made into the property cost center.

(4) Within the cost centers of administration and operations and property, the contractor shall retain at least fifty percent, but not more than seventy-five percent, of any savings resulting from the respective audited allowable costs being lower than the respective reimbursement rates paid to the contractor during the report period multiplied by the number of authorized medical care client days in which said rates were in effect, except that no savings may be retained if reported costs in the property cost center and the administration and operations cost center exceed audited allowable costs by ten cents or more per patient day. The secretary, by rule and regulation, shall establish the basis for the specific percentages of savings to the contractors. Such rules and regulations may provide for differences in the percentages allowed for each cost center to individual facilities based on performance measures related to administrative efficiency.

(5) All allowances provided by RCW 74.46.530 shall be retained by the contractor. Any industrial insurance dividend or premium discount under RCW 51.16.035 shall be retained by the contractor to the extent that such dividend or premium discount is attributable to the contractor's private patients.

(6) In the event the contractor fails to make repayment in the time provided in subsection (2) of this section, the department shall either:

(a) Deduct the amount of refund due, plus ~~((assessment of))~~ any interest ~~((, as determined by the secretary))~~ accrued under RCW 43.20A.435, from payment amounts due the contractor; or

(b) In the instance the contract has been terminated, (i) deduct the amount of refund due, plus ~~((an assessment of))~~ interest ~~((, determined by the secretary))~~ assessed at the rate and in the manner provided in RCW 43.20A.435, from any payments due; or (ii) ~~((assess))~~ recover the amount due, plus any interest ~~((, as determined by the secretary, on the amount~~

due)) assessed under RCW 43.20A.435, from security posted with the department or by any other lawful means.

(7) Where the facility is pursuing timely-filed judicial or administrative remedies in good faith regarding settlement issues, the contractor need not refund nor shall the department withhold from the facility current payment amounts the department claims to be due from the facility but which are specifically disputed by the contractor. If the judicial or administrative remedy sought by the facility is not granted after all appeals are exhausted or mutually terminated, the facility shall make payment of such amounts due plus interest accrued from the date of filing of the appeal, as payable on judgments, within sixty days of the date such decision is made.

NEW SECTION. Sec. 10. (1) The department may, at the secretary's discretion, secure the repayment of any outstanding overpayment, plus interest, if any, through the filing of a lien against the vendor's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the department, or by doing both.

(a) Any lien shall be effective from the date of filing for record with the county auditor of the county in which the property is located and the lien claim shall have preference over the claims of all unsecured creditors.

(b) The department shall review and determine the acceptability of all other forms of security.

(c) Any bond must be issued by a company licensed as a surety in the state of Washington.

(d) This subsection does not apply to nursing homes licensed under chapter 18.51 RCW or portions of hospitals licensed under chapter 70.41 RCW and operating as a nursing home, if those facilities are subject to chapter 74.46 RCW.

(2) The department may recover any overpayment, plus interest, if any, by setoff or recoupment against subsequent payments to the vendor.

NEW SECTION. Sec. 11. Liens created under section 10 of this act shall bind the affected property for a period of ten years after the lien has been recorded or ten years after the resolution of all good faith disputes as to the overpayment, whichever is later. Any civil action by the department to enforce such lien must be timely commenced before the ten-year period expires or the lien shall be released. A civil action to enforce such lien shall not be timely commenced unless the summons and complaint are filed within the ten-year period in a court having jurisdiction and service of the summons and complaint is made upon all parties in the manner prescribed by appropriate civil court rules.

NEW SECTION. Sec. 12. The remedies under sections 10 and 11 of this act are nonexclusive and nothing contained in this chapter may be construed to impair or affect the right of the department to maintain a civil



action or to pursue any other remedies available to it under the laws of this state to recover such debt.

**NEW SECTION.** Sec. 13. A new section is added to chapter 74.09 RCW to read as follows:

(1) The department is authorized to recover the cost of medical care provided to a recipient who was sixty-five years or older, upon the recipient's death except:

(a) Where there is a surviving spouse; or

(b) Where there is a surviving child under 21 years of age or blind or disabled as defined in the state plan under Title XIX of the social security act; or

(c) To the extent of the first fifty thousand dollars of the estate value at the time of death, where there are surviving children other than as defined above, and not to exceed thirty-five percent of the remainder.

(2) The department may assert and enforce a claim against the estate of the deceased recipient for the debt in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The remedies in subsection (2) of this section are nonexclusive and upon the death of the recipient, the department shall have a lien for the debt in subsection (1) of this section. The lien attaches to the real property of which the deceased recipient was seized immediately before death. Upon subsequent filing of the notice thereof with the county auditor of the county in which the real property is located, the lien shall be deemed to relate back and be effective against such property as of the date of the recipient's death. Recovery under the lien shall be upon the sale or transfer of the subject property.

Sec. 14. Section 74.09.180, chapter 26, Laws of 1959 as last amended by section 14, chapter 171, Laws of 1979 ex. sess. and RCW 74.09.180 are each amended to read as follows:

The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: **PROVIDED, HOWEVER,** That the secretary of the department of social and health services may, in his discretion, furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department of social and health services shall thereby be subrogated to the recipient's (~~right of recovery therefor~~) rights against the recovery had from any tort feisor and/or his or her insurer and shall have a lien thereupon to the extent of the value of the assistance furnished by the department of social and health services: **PROVIDED FURTHER,** That to the end of securing reimbursement of any assistance furnished to such a recipient, the department of social and health services may, as a nonexclusive legal remedy, assert and enforce a lien upon any claim, right of action, settlement proceeds, and/or money, including any claim for benefits arising from an insurance program, to which such recipient is entitled (a) against

any tortfeasor and/or insurer of such tortfeasor, or (b) any contract of insurance, purchased by the recipient or any other person, providing coverage to such recipient for said injuries, any illness, dental costs, costs incident to birth, or any other coverage for purposes of or costs for which the department provides assistance or meets all or part of the cost of care to a vendor, to the extent of the assistance furnished by said department to the recipient. If a recovery shall be made and the subrogation or lien is satisfied either in full or in part as a result of an independent action initiated by or on behalf of a recipient to recover the personal injuries against any tortfeasor or insurer, then and in that event the amount repaid to the state of Washington as a result of said action, whether concluded by entry of a judgment or compromise and settlement, shall bear its proportionate share of attorney's fees and costs incurred by the injured recipient or his widow, children, or dependents, as the case may be, to the extent that such attorney's fees and costs are approved by the court in which the action is initiated, and upon notice to the department which shall have the right to be heard on the matter.

NEW SECTION. Sec. 15. A new section is added to chapter 43.20A RCW to read as follows:

Any action to enforce a vendor overpayment debt shall be commenced within six years from the date of the department's notice to the vendor.

NEW SECTION. Sec. 16. Sections 10, 11, and 12 of this act are added to chapter 43.20A RCW, but shall be added instead to chapter 43.20B RCW if that chapter is directed to be created in legislation enacted by the 1987 legislature. Sections amended in this act shall be recodified in accordance with any legislation enacted by the 1987 legislature directing such recodification.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 18. The enactment of this act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, that is in existence on the effective date of this act.

Passed the House April 23, 1987.

Passed the Senate April 17, 1987.

Approved by the Governor May 7, 1987.

Filed in Office of Secretary of State May 7, 1987.