

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Yellowtail, on December 11, 1993, at 7 a.m.

#### **ROLL CALL**

**Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** Senator Crippen  
Senator Brown  
Senator Harp

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Council  
Shari Briggeman, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: SB 39  
Executive Action: SB 39

#### **HEARING ON SENATE BILL 39**

**Opening Statement by Sponsor:** Senator Waterman, SD 22 said this bill would bring the state into compliance with the new federal laws that affect medicaid and allow us to preserve medicaid in Montana for the truly needy. She said state planning has recently allowed virtually any client in Montana to qualify for medicaid and that has contributed to our increasing pay. 63% of Montanans in nursing homes are on medicaid in Montana and the national average is between 50% and 55%. This bill would provide cost recovery and should save about \$13 million in the next biennium. She went through the bill giving the requirements that must be met to be on medicaid. She mentioned concerns with this bill in Finance and Claims, had an amendment drafted to take care

of some of these concerns and explained the amendments to the committee. (exhibit 1) Other suggested amendments were handed in, some already incorporated in exhibit 1. (exhibits 2,3,4)

**Proponents' Testimony:** Someone from Medicaid spoke in favor of SB 39 and said they were appreciative of all the work that was being done on this legislation. In conjunction with the Legislature they have made some difficult reductions in Medicaid. This is the way they see to preserve, to the extent we can, the scarce medicaid resources for the truly needy.

Jim Smith, Montana Association for Rehabilitation, said they support the bill. People who seek rehabilitation services do not have estates they can transfer, trusts they can move or real property and they desperately need a medicaid program that is solvent and able to help with their physical and medical needs.

Kathy McGowan, Montana Council of Mental Health Centers, said this bill has a lot to do with all of us. The voters made it very clear they are disgruntled with what they perceive as waste and fat in government. One of her first memories in eastern Montana was people grouching about who, in the nursing home, was receiving medicaid unnecessarily. In a small town it is obvious and everyone knows who that person is and the fact that the family did something perceived to be shady to get that person on the medicaid program. This is one bill in this session that is a bright spot and trying to help with a positive solution. As larger and larger numbers of dollars go into the nursing home the rest of the population is being squeezed up and the medicaid dollar is shrinking. There are many more needy in the population out there and we need to make a fair and equitable distribution of these dollars.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions From Committee Members and Responses:** Senator Bartlett said in skimming through section 7 which is a technical issue, it appears that the liens proposed in this bill would be recorded in the office of the Clerk and Recorder. To the best of her knowledge as we stand now, all other types of liens are filed in the Clerk and recorder's office. The difference between recorded and filed is a fine distinction that is not generally understood by people, but will create the Clerk's anxiety. She would suggest changing the wording so it is clear that the lien is filed rather than recorded. Senator Waterman said she was sure there would be no objection and the department is not opposed to adding in the bill that they would pay that fee. They would like to be able to recover it from the estate, but it is not something that will hang up the bill.

Senator Bartlett said she would like to let the department know there is a procedure already in place in all the counties for those type of filing fees when paid by state agencies, to be billed periodically to the state agency so they would not have to be sending a \$5 fee with each one.

Senator Halligan said Ms. McGowan referred to the institution for mental disease on page 10. He asked if the state would be paying medicaid for someone in a private institution. Mr. Gould said it is intended to refer to institutions that handle mental disease for persons over age 65, a state facility and not a private institution. This is in the department's coverage rules.

Senator Halligan said also on line 13, page 10 it says at the age of 55 or a lesser age allowed by law etc. He asked why the age of 55, and why is even an age in there. He was told that is a provision of federal law and they are limited by federal law to recovering benefits paid at age 55 or older unless it is a permanently institutionalized person in which federal law allows them to recover benefits at any time.

Senator Blaylock asked if the amendments on the white sheet are in the bill now. Senator Waterman said no, but are acceptable. She said the only other one she believed would be offered is the one that establishes that the department go in every six years and re-establish the lien. She said she would prefer that not be done since she could see no reason for it.

Senator Towe said the bill is supposed to fund a different program and asked Senator Waterman to explain what it is. Senator Waterman said the fiscal note shows about \$356,000 that is saved for this biennium. She said it is about \$156,000 the first year and about \$356,000 for the biennium. You save money in this bill by avoiding costs because people will not be entering the medicaid system, but will do some estate planning. There will also be some recovery from personal funds and the liens. She said it is to everyone's best interest if there are some less expensive services available for people who are presently going into the nursing homes because there are no alternatives. Nationally there have been some community based services developed and she worked with the department to put language in to HB 2 during the regular session that mandated that by '95 the department come back to us with a system for community based cost effective appropriate services for long term care. She said there is another bill this is linked with.

Senator Towe asked for the number of the other bill and Senator Waterman said it was SB 50 which will be heard in Finance and Claims Monday morning.

Senator Towe asked if the other bill is just planning and does not take effect this biennium and Senator Waterman said there is money in it to develop a limited waiver program. The appropriation in the bill will allow developmental services for

100 long term elderly and 20 people under the traumatic injury waiver.

Senator Towe asked how that program differs from what was discussed on the Senate floor yesterday on personal care for the medically needy. Senator Waterman said it is developed on a social model as opposed to a medical model. Personal care facilities are still a less intensive medical model. There are a number of people who, just because they are old, are not infirm. They need some assistance to be at home and now many are forced into a nursing home which is a medical model, and they do not need all the 24 hour care.

Senator Halligan said on page 16 on "payment certain from recipient comes to the department", it doesn't say who is doing that. If all that is left is a home that the department rightfully would file a lien against what else would be considered payment. Mr. Gould said under medicaid law and regulations, each nursing home resident is allowed to keep a small portion of their monthly income for personal needs. That rate is from \$30 to \$90 per month, depending on the eligibility of that particular person. They would purchase what was beyond what medicaid would buy. Often those funds build up in an account and the nursing home keeps a small amount of the cash fund and are allowed up to \$2,000 and those funds are often remaining after the person dies. This bill is directed at those funds. This section of the bill does not affect the home or other funds the other person might have that we do not know about.

Senator Halligan said on page 13, line 11 it says the department may not recover under 53-2-611 and asked what that was. Mr Gould explained two sections and said the one referred to liens by the department, medical assistance and these are limitations that are specified in the federal law and must be followed by the department. The federal law says if there is a surviving spouse we may not recover in that case, but can recover after that spouse dies, so if the recipient left property to the surviving spouse, we could go in after the surviving spouse died and recover the recipients property that had gone to the spouse.

Senator Halligan said he understood about the lien and all the medical assistance etc. but what about room and board, or is it just medical care. Mr. Gould said the term medical assistance is a term of SRS and includes any amount the medicaid program pays on behalf of that person. It is defined broadly and does recover everything medicaid pays for. He referred to page 9, line 25 and on to the next page it defines what can be recovered. He went over several sections in the bill and explained the expanded coverage of the bill.

Senator Towe said Senator Lynch mentioned something he was concerned about. He asked Senator Waterman if those things were addressed. Senator Waterman said yes, there is an amendment she

offered that included those concerns.

Senator Towe referred to page 11 said he was concerned about the person who dies and you want to file a claim on their estate. The way this is worded it allows you to make a claim against joint tenancy property as well as probate property. He asked Mr. Gould how to envision this working if the individual has \$10,000 worth of non-probate property and a \$30,000 home that is joint property. You have a choice as to which to go after. If there are some other creditors who want to file a claim is your claim given priority over other creditors and they may be prorated. You could go after the joint tenancy property and leave the creditors to have all the probated property. Would you be required to go after the other property to leave the probated property to others, is there a priority problem there or not. Mr. Gould said under prior federal law state medicaid agencies were permitted to recover from the estate of the deceased recipients and there was a decision in California which said the state of California could not extend that recovery to the estate in a broader sense. The new federal law passed in August, expands this for federal purposes and allows the state to recover property in probate as well as property diverted around the probate. This is a significant problem nation wide where people have used devices such as joint tenancy to avoid the estate and avoid recovery by medicaid. In the example you gave, the bill did not specifically address that problem. It simply says the department is required to claim from that person to the extent of that received by the recipient. If we had a probate situation and there was an estate plan in probate, it would be handled in the normal course of all probate claims as provided in the probate code and the priorities indicated in the probate court would apply to the department's claim. As with all other creditors' claims, there could be a requirement that property be sold to satisfy the claim.

Senator Bartlett said on page 22, lines 20 through 23, it indicates the lien remains effective without any further department action until the lien is dissolved. She did not see anything that provided notice would be given the Clerk and Recorder's office that the lien is resolved. Mr. Gould said she was correct, the bill does not so provide. He said they would be willing to add additional language to require some action by the department to remove that from the records.

Senator Bartlett said she believed that would greatly ease the situation for the title companies.

**Closing by Sponsor:** Senator Waterman said she believed this was an excellent bill and it had received a good hearing.

#### **EXECUTIVE ACTION ON SENATE BILL 39**

Chair Yellowtail said the consensus amendments, a re-write of section A, he believed was non-controversial. They are the

amendments that Senator Waterman reported to us.

**Motion/Vote:** Senator Halligan moved to accept the amendments to SB 39 that Senator Waterman reported to the committee. Motion passed unanimously.

**Motion/Vote:** Senator Halligan moved the Waterman floor amendments, exhibit 1 do pass. The motion passed unanimously.

**Motion:** Senator Bartlett moved the sense of the following amendments that rather than be recorded in the office of the Clerk and Recorder that the department's lien would be filed. That the department would strike the sentence "excluding the department from requiring payment of the fee for recording" and that upon dissolution of the lien by removal of the recipient from a facility, the department would file with the Clerk and Recorder notice of the dissolution of the lien. She said this was on pages 21, 22 and 23.

**Discussion:** Senator Towe asked if she was talking about the language on pages 21, 22 and the next sentence on 23. He asked if she was referring to both sentences. Senator Bartlett said in regard to those sentences, the only thing she was referring to was that the department would essentially release the lien in the Clerk and Recorder's office upon those circumstances.

Senator Towe said you are only referring to if a person moves back home, not discharged upon payment. Shouldn't that also be included. Senator Bartlett said she believed Mr. Gould implies that is already in there.

**Vote:** Senator Bartlett's motion to amend passed unanimously.

Senator Waterman explained (exhibit 2) which was a Senator Towe amendment by saying it has to do with how the notices are actually given to strengthen enforcement, to see that people get certified mail and they have tried everything. The rest has to do with the statute of limitations and they have not problems with them.

**Motion/Vote:** Senator Towe moved to amend SB 39. (exhibit 2) Motion passed.

**Motion:** Senator Towe moved to amend SB 39. (exhibit 4)

**Discussion:** Senator Towe said the reason for this amendment is that there is no other place in the law that he knew of that you can put a lien on some building or property and it stays forever and ever because of the statute of limitations. Judgement liens, which are probably the longest allowed, are 6 years and he has proposed in this amendment that the lien be renewed every 6 years.

Senator Waterman said they feel this is unique in that this is

the one lien that would stay on until a person dies or the spouse dies. As we see people living longer and being institutionalized longer, we believe this is an unnecessary piece of paper that has to be filed by the state government.

Senator Bartlett said she had a great regard for keeping records in the Court House clean. She would vote against this amendment and believed if this amendment failed it simply reinforces to the department their responsibility in keeping those records in their office in good shape and take actions necessary and appropriate to communicate changes to the County Court House as those changes occur.

**Vote:** Senator Towe's motion (exhibit 4) passed 5 yes, 3 no, roll call vote.

Ms. Lane said there was one final set of amendments prepared by Greg Gould. He prepared these since she had some questions about the bill.

**Motion/Vote:** Senator Towe moved the Gould amendments (exhibit 3). The motion passed unanimously.

**Motion/Vote:** Senator Towe moved SB 39 do pass as amended. The motion passed unanimously.

ADJOURNMENT

Adjournment: 8:35 a.m.

  
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SENATOR DOHERTY, Vice Chair

  
\_\_\_\_\_  
LINDA CASEY, WPC Supervisor

SD/11c



# ROLL CALL

12-11-93

SENATE COMMITTEE JUDICIARY DATE

NAME	PRESENT	ABSENT	EXCUSED
SENATOR YELLOWTAIL, Chair	✓		
SENATOR DOHERTY, V. C.	✓		
SENATOR BARTLETT	✓		
SENATOR BLAYLOCK	✓		
SENATOR BROWN			✓
SENATOR CRIPPEN			✓
SENATOR FRANKLIN	✓		
SENATOR GROSFIELD	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR RYE	✓		
SENATOR TOWE	✓		

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 10  
December 12, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 39 (second reading copy -- yellow), respectfully report that Senate Bill No. 39 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, page 2, line 13.

Following: "LIEN;"

Insert: "SPECIFYING PRIORITY OF CLAIMS;"

2. Page 3, line 13.

Following: "residents"

Insert: "or"

3. Page 9, line 20.

Following: "presented"

Strike: "to creditors"

4. Page 9, line 21.

Following: "notice"

Insert: "to creditors"

5. Page 9, line 23.

Following: "interest"

Strike: "from the date of the recipient's death"

6. Page 9, line 24.

Following: "31-1-106"

Insert: "from the date of presentation of the claim in the probate proceeding or from the date of demand for payment to a person who has received property of the recipient by distribution or survival"

7. Page 10, line 24.

Following: "conveyance"

Insert: "by the recipient"

8. Page 13, line 13.

Following: "or"

Insert: ", except as provided in subsection (4)(c), under"

9. Page 14, lines 5 through 7.

Strike: subsection (ii) in its entirety

Insert: "(ii) For purposes of any applicable statute of limitation, a department claim under subsection (4) (b) accrues upon the death of the recipient's surviving spouse."

10. Page 14, line 20.

Following: "section 7"

Insert: "(1) and (2)"

11. Page 14, line 23.

Following: line 22

Insert: "(d) Following the recipient's death and when there is no longer a recipient's child who is under 21 years of age, blind, or permanently and totally disabled, the department may recover from the recipient's child or the estate of the recipient's child the lesser of the total amount of recoverable medical assistance, as defined in 53-2-611, or the value of any of the recipient's property received by the child by survival or distribution."

Renumber: subsequent subsection

12. Page 16, line 12.

Following: "**certain**"

Insert: "funds"

13. Page 16, line 13.

Strike: "**recipient's funds**"

Insert: "recipient"

Following: "(1)"

Insert: "(a)"

14. Page 16, line 18 through page 17, line 5.

Following: "department" on line 18

Strike: remainder of line 18 through "section" on page 17, line 5

Following: "." on line 5

Insert: "

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) "

15. Page 17, line 9.

Following: "(2)"

Insert: "For purposes of this section, a nursing facility is

holding personal funds of a resident if the facility:

- (a) maintains possession of the funds in the facility; or
  - (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.
- (3) "

16. Page 18, line 14.

Following: "recipients"

Insert: "-- priority of claims"

17. Page 18, line 14.

Following: "(1)"

Strike: "The"

Insert: "Subject to 53-6-143(4)(c)(ii) and following notice and opportunity to be heard as provided under subsection (2) of this section, the"

18. Page 18, lines 20 and 21.

Following: "if" on line 20

Strike: remainder of line 20 through "met" on line 21

19. Page 18, line 22.

Strike: "The"

Insert: "the"

20. Page 18, line 24.

Strike: "."

Insert: ";

21. Page 18, line 25 through page 19, line 1.

Following: "(b)" on page 18, line 25

Strike: remainder of line 25 through page 19, line 1

22. Page 19, line 2.

Following: "home"

Insert: ", if the property upon which a lien is being imposed is a home, is not lawfully resided in by"

23. Page 19, line 10.

Strike: "."

Insert: "; and

(c) the recipient has been determined by the department, pursuant to subsection (3), to be permanently institutionalized.

(2) Prior to imposing a lien under subsection (1), the department shall provide the recipient:

- (a) 30 days' written notice of its determination under

subsection (1)(c) and of its intent to impose a lien; and  
(b) an opportunity for a hearing pursuant to the  
department's hearing procedures."

24. Page 19, line 11.

Strike: "(c) The department has determined"

Insert: "(3) A recipient is permanently institutionalized for  
purposes of subsection (1)(c) if the department determines"

25. Page 19, line 18.

Strike: "with no"

Insert: "without a"

26. Page 19, line 19.

Following: "plan."

Insert: "The recipient's institutionalization for a period of 6  
months or longer without a discharge plan does not give rise  
to the presumption if the facility was required by law to  
adopt a discharge plan but failed to do so."

Following: "or"

Insert: "a"

27. Page 20, lines 5 through 9.

Strike: subsection (d) in its entirety

28. Page 21, line 18.

Strike: "recording"

Insert: "filing"

29. Page 21, line 21.

Following: "actual"

Strike: "notice"

Insert: "knowledge"

30. Page 21, line 24.

Strike: "recorded"

Insert: "filed"

31. Page 22, lines 1 through 3.

Following: "located." on line 1

Strike: remainder of line 1 through "7-4-2631." on line 3

32. Page 22, line 4.

Strike: "Recording"

Insert: "Filing"

33. Page 22, line 7.

Strike: "recording"

Insert: "filing"

34. Page 22, line 15.

Strike: "recorded"

Insert: "filed"

35. Page 22, line 20.

Strike: "recording"

Insert: "filing"

36. Page 22, lines 20 and 21.

Following: "effective" on line 20

Strike: remainder of line 20 through "action" on line 21

Insert: "for a period of up to 6 years"

37. Page 22, line 22.

Following: "dissolved."

Insert: "The department may renew a lien for additional 6-year periods."

38. Page 22, line 23.

Following: "dissolves."

Insert: "When the lien dissolves, the department shall file a release of lien in the clerk and recorder's office."

39. Page 22, line 24.

Following: "(5)"

Strike: "Upon"

Insert: "Following"

40. Page 23, lines 19 and 20.

Strike: "recorded"

Insert: "filed"

41. Page 23, line 23.

Following: "recipient"

Strike: "has died, with"

Insert: "or, if applicable, the recipient's spouse has died and"

Following: "of the"

Strike: "recipient's"

42. Page 24, line 3.

Following: "paid"

Strike: ", "

Insert: " ; "

43. Page 24, line 5.

Following: "application"

Strike: ", "

Insert: "; the amount of any unreimbursed taxes, insurance costs,  
maintenance costs, or other costs paid under subsection  
(9);"

44. Page 24, line 12.

Following: "53-6-143"

Insert: "or this section"

45. Page 24, lines 16 through 18.

Following: "lienholder" on line 16

Strike: remainder of line 16 through "(5) (b)" on line 18

46. Page 24, line 20.

Following: "filed"

Strike: "as"

Insert: "within the time"

47. Page 24, lines 21 and 22.

Following: "provided"

Insert: "for"

Following: "(5) (d)" on line 21

Strike: remainder of line 21 through "application" on line 22

48. Page 24, line 23.

Following: "shall"

Strike: "mail a notice"

Insert: "provide notice as required by this subsection (b)"

49. Page 24, line 24.

Following: "must"

Insert: "contain a description of the property and must"

50. Page 25, line 3.

Following: "action"

Insert: "challenging issuance of the writ"

51. Page 25, lines 5 and 6.

Following: "date of" on line 5

Strike: "filing" on line 5 through "writ" on line 6

Insert: "mailing or service of notice or first publication of  
notice"

52. Page 25, line 7.

Strike: "filed"

53. Page 25, lines 7 and 8.

Following: "application." on line 7

Strike: remainder of line 7 through "mailed" on line 8

Insert: "The department may mail notice"

54. Page 25, line 11.

Following: "interest."

Insert: "Mailing as provided in this subsection (b) is sufficient notice to a person if the return receipt is returned to the department and indicates that the notice was received by or on behalf of the person. If the return receipt is not returned to the department indicating that the notice was received by or on behalf of the person, the department shall attempt with reasonable diligence to locate the person and to personally serve or mail notice to the person. If after the exercise of reasonable diligence the department is unable to locate the person, the department shall publish a notice to the person three times, once each week for 3 successive weeks, in a newspaper published in the county in which the property is located, if a newspaper is published in the county. If a newspaper is not published in the county, then publication must be in a newspaper having a general circulation in the county. In the alternative, the notice and application may be personally served upon the person.

(c) Following provision of notice as required under subsection (7)(b), the department shall file with the clerk of court an affidavit describing the manner in which notice has been provided to each person entitled to notice; the date of mailing, personal service, or first publication of the notice; and the date by which each person must file an action to challenge issuance of the writ of execution. The department shall attach to the affidavit the return receipt, the affidavit of personal service, or the affidavit of publication. If an action has not been filed within the time required by subsection (7)(e), the affidavit must state that an action has not been filed within the time required to challenge issuance of the writ and may request immediate issuance of the writ."

Renumber: subsequent subsections

55. Page 25, lines 20 and 21.

Following: "days of" on line 20

Strike: remainder of line 20 through "(5)" on line 21

Insert: "mailing or service of notice or first publication of notice as provided in subsection (7)(b) "



56. Page 26, line 3.

Following: "days of"

Strike: "filing of an"

Insert: "mailing or service of notice or first publication of notice, as provided in subsection (7)(b), that the department has filed an affidavit meeting the requirements of subsection (7)(c) and that the department has filed a sworn"

57. Page 26, line 16.

Strike: "related"

58. Page 26, line 18.

Following: "reason"

Insert: "or is unenforceable under the provisions of subsection (10)"

Following: "invalidity"

Insert: "or unenforceability of the lien"

59. Page 26, lines 20 through 22.

Following: "(8)" on line 20

Strike: remainder of line 20 through "on" on line 22

Insert: "The department may not file an application for issuance of a writ of execution to recover upon a lien imposed under 53-6-143 or this section more than 3 years after"

60. Page 27, line 2.

Following: line 1

Insert: "(9) (a) After the institutionalization or death of the recipient and after the institutionalization of the recipient's surviving spouse, if any, a person who paid real property taxes, homeowners' insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or recipient's spouse, with respect to property subject to a lien under 53-6-143 or this section, has a claim against the proceeds of the sale of the property for recovery of payments. The claim must be supported by written documentation that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and items purchased with each payment. A claim under this subsection (a) is prior to the department's lien imposed under 53-6-143 or this section.

(b) The amount of a claim under subsection (9)(a) must be reduced by:

(i) the amount of any rents and profits from the property during the period after the institutionalization or death of the recipient and the institutionalization of the recipient's surviving spouse, if any;

(ii) the value of any property that the person with a claim under subsection (11)(a) will receive by distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

(iii) the value of any property that the person will receive by distribution or survival from the recipient's deceased spouse, if the spouse survived the recipient.

(c) The department may, in its discretion, take any action it considers necessary to prevent waste or loss or to preserve the value of property subject to a lien under 53-6-143 or this section, including but not limited to the following:

(i) the payment of any unpaid taxes on the property;

(ii) the purchase or renewal of insurance policies on the property and the payment of those insurance premiums;

(iii) the ordering of and payment for necessary repairs and maintenance on the property; and

(iv) if the property is unoccupied, the rental or lease of the property and the application of:

(A) first, any receipts to unpaid property taxes, insurance, and maintenance and repair; and

(B) second, any remaining amount toward repayment of recoverable medical assistance.

(d) The department's reasonable costs and expenses to prevent waste or loss or to preserve the value of the property are secured by the lien under 53-6-143 or this section and may be recovered in addition to all other amounts secured by the lien." Renumber: subsequent subsections

61. Page 28, line 8.  
Following: "instruction."  
Insert: "(1)"

62. Page 28, line 13.  
Following: line 12  
Insert: "(2) Section 53-2-611 is intended to be renumbered and codified as a new section in Title 53, chapter 6, part 1, and the code commissioner is instructed to change any references in existing code and any references in legislation enacted by the November 1993 special session of the 53rd legislature to reflect the renumbering and recodification of 53-2-611."

63. Page 10, line 10.  
Strike: "(1)(c)"  
Insert: "(3)"

64. Page 24, line 1.

Strike: "(4)(c)"

Insert: "(6)(c)"

65. Page 24, line 21.

Page 25, line 4.

Page 26, line 3.

Strike: "(5)(d)"

Insert: "(7)(e)"

66. Page 25, line 13.

Page 25, line 18.

Page 27, line 6.

Strike: "(5)"

Insert: "(7)"

67. Page 26, line 4.

Strike: "(5)(a)"

Insert: "(7)(a)"

-END-

# ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

BILL NO. 39

DATE 12-11-93 TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
SENATOR DOHERTY, V.C.		
SENATOR BARTLETT		✓
SENATOR BLAYLOCK		✓
SENATOR BROWN		
SENATOR CRIPPEN		
SNATOR FRANKLIN		✓
SENATOR GROSFIELD	✓	
SENATOR HALLIGAN	✓	
SENATOR HARP		
SENATOR RYE	✓	
SENATOR TOWE	✓	
SENATOR YELLOWTAIL, Chair	✓	
	5	3

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
CHAIR

MOTION: Sen Towe Amend on 6 yrs to file

EXHIBIT 1  
12-11-93  
SB 39

SENATE COMMITTEE OF THE WHOLE AMENDMENT

December 10, 1993 1:28 pm

Mr. Chairman: I move to amend Senate Bill No. 39 (second reading copy -- yellow).

ADOPT

REJECT

Signed: Mignon Waterman  
Senator Mignon Waterman

That such amendments read:

1. Title, page 2, line 13.

Following: "LIEN;"

Insert: "SPECIFYING PRIORITY OF CLAIMS;"

2. Page 3, line 13.

Following: "residents"

Insert: "or"

3. Page 9, line 20.

Following: "presented"

Strike: "to creditors"

4. Page 9, line 21.

Following: "notice"

Insert: "to creditors"

5. Page 16, line 12.

Following: "certain"

Insert: "funds"

6. Page 16, line 13.

Strike: "recipient's funds"

Insert: "recipient"

Following: "(1)"

Insert: "(a)"

7. Page 16, line 18 through page 17, line 5.

Following: "department" on line 18

Strike: the remainder of line 18 through "section" on page 17,  
line 5

Following: "." on line 5

Insert: "

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the

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department as required by this section.  
(c) "

8. Page 17, line 9.

Following: "(2) "

Insert: "For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) "

9. Page 18, line 14.

Following: "recipients"

Insert: "-- priority of claims"

10. Page 21, line 21.

Following: "actual"

Strike: "notice"

Insert: "knowledge"

11. Page 24, line 3.

Following: "paid"

Strike: ", "

Insert: "; "

12. Page 24, line 5.

Following: "application"

Strike: ", "

Insert: "; the amount of any unreimbursed taxes, insurance costs, maintenance costs, or other costs paid under subsection (9); "

13. Page 25, line 7.

Strike: "filed"

14. Page 26, line 16.

Strike: "related"

15. Page 27, line 2.

Following: line 1

Insert: "(9) (a) After the institutionalization or death of the recipient and after the institutionalization of the recipient's surviving spouse, if any, a person who paid real property taxes, homeowners' insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or recipient's spouse, with respect to property subject to a lien under 53-6-143 or this

December 10, 1993

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section, has a claim against the proceeds of the sale of the property for recovery of payments. The claim must be supported by written documentation that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and items purchased with each payment. A claim under this subsection (a) is prior to the department's lien imposed under 53-6-143 or this section.

(b) The amount of a claim under subsection (9)(a) must be reduced by:

(i) the amount of any rents and profits from the property during the period after the institutionalization or death of the recipient and the institutionalization of the recipient's surviving spouse, if any;

(ii) the value of any property that the person with a claim under subsection (9)(a) will receive by distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

(iii) the value of any property that the person will receive by distribution or survival from the recipient's deceased spouse, if the spouse survived the recipient.

(c) The department may, in its discretion, take any action it considers necessary to prevent waste or loss or to preserve the value of property subject to a lien under 53-6-143 or this section, including but not limited to the following:

(i) the payment of any unpaid taxes on the property;

(ii) the purchase or renewal of insurance policies on the property and the payment of those insurance premiums;

(iii) the ordering of and payment for necessary repairs and maintenance on the property; and

(iv) if the property is unoccupied, the rental or lease of the property and the application of:

(A) first, any receipts to unpaid property taxes, insurance, and maintenance and repair; and

(B) second, any remaining amount toward repayment of recoverable medical assistance.

(d) The department's reasonable costs and expenses to prevent waste or loss or to preserve the value of the property are secured by the lien under 53-6-143 or this section and may be recovered in addition to all other amounts secured by the lien."

Renumber: subsequent subsections

-END-

*Lower  
amendment*

Amendment to Senate Bill No. 39  
(Re: Medicaid liens, estate recoveries, etc.)  
Second Reading Copy

SENATE JUDICIARY  
EXHIBIT NO. 2  
DATE 12-11-93  
BILL NO. B 39

1. Page 10, line 24.  
Following: "conveyance"  
Insert: "by the recipient"
2. Page 14, lines 5-7.  
Delete: all of subsection (ii)  
Insert: "(ii) For purposes of any applicable statute of limitation, a department claim under subsection (b) accrues upon the death of the recipient's surviving spouse."
3. Page 19, line 19.  
Following: "plan."  
Insert: "The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so."
4. Page 22, line 24.  
Following: "(5)"  
Delete: "Upon"  
Insert: "Following"
5. Page 23, line 23.  
Following: "the"  
Delete: "recipient has died , with"  
Insert: "recipient or, if applicable, the recipient's spouse, has died, and"
6. Page 24, line 12.  
Following: "53-6-143"  
Insert: "or this section"
7. Page 24, lines 16-18.  
Following: "lienholder"  
Delete: ", and a statement that all of these persons have been notified as required by subsection (5)(b)"
8. Page 24, line 20.  
Following: "filed"  
Delete: "as"  
Insert: "within the time"
9. Page 24, lines 21-22.  
Following: "subsection (5)(d)"  
Delete: "within 60 days of filing of the application"



EXHIBIT NO. 2  
DATE 12-11-93  
BILL NO. SB 39

10. Page 24, line 23.

Following: "shall"

Delete: "mail a notice"

Insert: "provide notice as required by this subsection"

11. Page 24, line 24.

Following: "must"

Insert: "contain a description of the property and must"

12. Page 25, line 5.

Following: "60 days of the date of"

Delete: "filing the application"

Insert: "mailing or service of notice or first publication of notice,"

13. Page 25, lines 7 and 8.

Following: "application."

Delete: "Mailing is considered sufficient if the notice is mailed"

Insert: "The department may mail notice"

14. Page 25, line 11.

Following: "interest."

Insert: "Mailing as provided in this subsection is sufficient notice as to a person if the return receipt is returned to the department and indicates that the notice was received by or on behalf of the person. If the return receipt is not returned to the department indicating that the notice was received by or on behalf of the person, the department must attempt with reasonable diligence to locate the person and to personally serve or mail notice to the person. If after the exercise of reasonable diligence the department is unable to locate the person, the department must publish a notice to the person three times, once each week for three successive weeks, in a newspaper published in the county in which the property is located, if a newspaper is published in the county, and if no newspaper is published in the county then in a newspaper having a general circulation in the county. In the alternative, the notice and application may be personally served upon the person."

15. Page 25, following line 11.

Insert: "(c) Following provision of notice as required under subsection (5)(b), the department must file with the clerk of court an affidavit describing the manner in which notice has been provided to each person entitled to notice, the date of mailing, personal service or first publication of the notice, and the date by which each person must file an action to challenge issuance of the writ of execution. The department must attach to the affidavit the return receipt, the affidavit of personal service or the affidavit of publication. If no action

has been filed within the time required by subsection (e), the affidavit must state that no action has been filed within the time required to challenge issuance of the writ and may request immediate issuance of the writ."

Renumber: subsequent subsections

16. Page 25, line 20.

Following: "within 60 days of"

Delete: "filing of the application under this subsection (5)"

Insert: "mailing or service of notice or first publication of notice as provided in subsection (5)(b)"

17. Page 26, line 3.

Following: "within 60 days of"

Delete: "filing of an"

Insert: "mailing or service of notice or first publication of notice as provided in subsection (5)(b), the department has filed an affidavit meeting the requirements of subsection (5)(c) and the department has filed a sworn"

18. Page 26, line 18.

Following: "reason"

Insert: "or is unenforceable under the provisions of subsection (8)"

19. Page 26, line 18.

Following: "invalidity"

Insert: "or unenforceability of the lien"

20. Page 26, lines 20-21.

Following: "(8)"

Delete: "For purposes of 70-19-302, the state's right or title to property described in a lien created under this section is considered to accrue on the latest of"

Insert: "The department may not file an application for issuance of a writ of execution to recover upon a lien under 53-6-143 or this section more than 3 years after"

-end-

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EXHIBIT NO. 2  
DATE 12-11-93  
BILL NO. SB 39

*Yours  
Amendments*

Amendment to Senate Bill 39  
(Re: Medicaid liens, estate recoveries, etc.)  
Introduced Bill

EXHIBIT NO. 3  
DATE 12-11-93  
BILL NO SB 39

1. Page 9, line 23.  
Following: "interest"  
Delete: "from the date of the recipient's death"
  2. Page 9, line 24.  
Following: "31-1-106"  
Insert: "from the date of presentation of the claim in the probate proceeding or the date of demand for payment to a person who has received property of the recipient by distribution or survival."
  3. Page 13, line 13.  
Following: "or"  
Insert: ", except as provided in subsection (4)(c),"
  4. Page 14, line 20.  
Following: "specified in"  
Delete: "[section 7]"  
Insert: "[section 7(1) through (1)(d)]"
  5. Page 14, following line 22.  
Insert: "(d) Following the recipient's death and when there is no longer a child of the recipient under age 21, blind or permanently and totally disabled, the department may recover from the recipient's child or the estate of the recipient's child the lesser of the total amount of recoverable medical assistance, as defined in 53-2-611, or the value of any of the recipient's property received by the child by survival or distribution."
- Renumber: subsequent subsections
6. Page 18, line 20.  
Following: "if"  
Insert: ", subject to the provisions of 53-6-143(4)(c),"
  7. Page 28, line 12.  
Following: "."  
Insert: "Section 53-2-611 is intended to be renumbered under Title 53, chapter 6, part 1."

-end-

EXHIBIT 4  
12-11-93  
SB 39

Amendments to Senate Bill No. 39  
Second Reading Copy (yellow)

Requested by Senator Towe  
For the Committee on Judiciary

Prepared by Valencia Lane  
December 10, 1993

1. Page 22, line 20 and 21.

Following: "effective" on line 20

Strike: remainder of line 20 through "action" on line 21

Insert: "for a period of up to 6 years"

2. Page 22, line 22.

Following: "dissolved."

Insert: "The department may renew a lien for additional 6-year  
periods."

SPONSOR REPLY 4  
12-11-93  
SB 39

DATE 12/11/93SENATE COMMITTEE ON SB 39 JUDICIARY

BILLS BEING HEARD TODAY: \_\_\_\_\_

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Check One

Name	Representing	Bill No.	Support	Oppose
Kathy McGowan	mc mhc	39	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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