

Chapter 41.05A RCW
OVERPAYMENTS OF ASSISTANCE AND COORDINATION OF BENEFITS

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**RCW 41.05A.005 Purpose—Collaboration with other agencies—
Construction.** The purpose of this chapter is to provide the health care authority with the powers, duties, and authority with respect to the collection of overpayments and the coordination of benefits that are currently provided to the department of social and health services in chapter 43.20B RCW. Providing the health care authority with these powers is necessary for the authority to administer medical services programs established under chapter 74.09 RCW currently administered by the department of social and health services programs but transferred to the authority under chapter 15, Laws of 2011 1st sp. sess., and programs transferred to the authority under chapter 201, Laws of 2018. The authority is authorized to collaborate with other state agencies

in carrying out its duties under this chapter and, to the extent appropriate, may enter into agreements with such other agencies. Nothing in this chapter may be construed as diminishing the powers, duties, and authority granted to the department of social and health services in chapter 43.20B RCW with respect to the programs that will remain under its jurisdiction following enactment of chapter 15, Laws of 2011 1st sp. sess. and chapter 201, Laws of 2018. [2018 c 201 § 7003; 2011 1st sp.s. c 15 § 88.]

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Assistance" means all programs administered by the authority.
- (2) "Authority" means the Washington state health care authority.
- (3) "Director" means the director of the Washington state health care authority.
- (4) "Overpayment" means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including amounts in dispute.
- (5) "Vendor" means a person or entity that provides goods or services to or for clientele of the authority and that controls operational decisions. [2011 1st sp.s. c 15 § 89.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.030 Fees for services—Reimbursement collection. The authority is authorized to charge fees for services provided unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the authority. Whenever the authority is authorized by law to collect total or partial reimbursement for the cost of its providing care of or exercising custody over any person, the authority shall collect the reimbursement to the extent practical. [2011 1st sp.s. c 15 § 90.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.040 Time limit for collection of overpayments or other debts—Write-offs of debts. (1) Except as otherwise provided by law, including subsection (2) of this section, there may be no

collection of overpayments and other debts due the authority after the expiration of six years from the date of notice of such overpayment or other debt unless the authority 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 ceases to be a debt due the authority 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 may be no collection of debts due the authority after the expiration of twenty years from the date a lien is recorded pursuant to RCW 41.05A.090.

(3) The authority, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the authority if it is no longer cost-effective to pursue. The authority shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2011 1st sp.s. c 15 § 91.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.050 Form of lien. The form of the lien in RCW 41.05A.070 must be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Health Care Authority, has rendered assistance to, a person who was injured on or about the day of in the county of state of, and the said authority hereby asserts a lien, to the extent provided in RCW 41.05A.070, for the amount of such assistance, upon any sum due and owing (name of injured person) from, alleged to have caused the injury, and/or his or her insurer and from any other person or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, HEALTH CARE AUTHORITY

By:..... (Title)

STATE OF WASHINGTON }
 COUNTY OF } ss.

I,, being first duly sworn, on oath state: That I am (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

.....
 Signed and sworn to or affirmed before me this day of

by
 (name of person making statement).
 (Seal or stamp)

.....
 Notary Public in and for the State
 of Washington

My appointment expires:

[2011 1st sp.s. c 15 § 92.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.060 Authorization to discharge or compromise lien.

(1) No settlement made by and between a recipient and either the tort feisor or insurer, or both, discharges or otherwise compromises the lien created in RCW 41.05A.070 without the express written consent of the director or the director's designee. Discretion to compromise such liens rests solely with the director or the director's designee.

(2) No settlement or judgment may be entered purporting to compromise the lien created by RCW 41.05A.070 without the express written consent of the director or the director's designee. [2011 1st sp.s. c 15 § 93.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.070 Filing of lien.

(1) To secure reimbursement of any assistance paid as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the authority is subrogated to the recipient's rights against a tort feisor or the tort feisor's insurer, or both.

(2) The authority has the right to file a lien upon any recovery by or on behalf of the recipient from such tort feisor or the tort feisor's insurer, or both, to the extent of the value of the assistance paid by the authority: PROVIDED, That such lien is not effective against recoveries subject to wrongful death when there are surviving dependents of the deceased. The lien becomes effective upon filing with the county auditor in the county where the assistance was authorized or where any action is brought against the tort feisor or insurer. The lien may also be filed in any other county or served upon the recipient in the same manner as a civil summons if, in the authority's discretion, such alternate filing or service is necessary to secure the authority's interest. The additional lien is effective upon filing or service.

(3) The lien of the authority may be against any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which the recipient might be entitled (a) against the tort feisor or insurer of the tort feisor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance is paid or provided by the authority.

(4) If recovery is made by the authority under this section and the subrogation is fully or partially satisfied through an action brought by or on behalf of the recipient, the amount paid to the authority must bear its proportionate share of attorneys' fees and costs.

(a) The determination of the proportionate share to be borne by the authority must be based upon:

(i) The fees and costs approved by the court in which the action was initiated; or

(ii) The written agreement between the attorney and client which establishes fees and costs when fees and costs are not addressed by the court.

(b) When fees and costs have been approved by a court, after notice to the authority, the authority has the right to be heard on the matter of attorneys' fees and costs or its proportionate share.

(c) When fees and costs have not been addressed by the court, the authority shall receive at the time of settlement a copy of the written agreement between the attorney and client which establishes fees and costs and may request and examine documentation of fees and costs associated with the case. The authority may bring an action in superior court to void a settlement if it believes the attorneys' calculation of its proportionate share of fees and costs is inconsistent with the written agreement between the attorney and client which establishes fees and costs or if the fees and costs associated with the case are exorbitant in relation to cases of a similar nature.

(5) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 94.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.080 Attorney representing recipient—Duties. (1) An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive shall:

(a) Notify the authority at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tort feisor or the tort feisor's insurer, or both; and

(b) Give the authority thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

(2) The proceeds from any recovery made pursuant to any action or claim described in RCW 41.05A.070 that is necessary to fully satisfy the authority's lien against recovery must be placed in a trust account or in the registry of the court until the authority's lien is satisfied. [2011 1st sp.s. c 15 § 95.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death. (1) The authority shall file liens, seek adjustment, or otherwise effect recovery for assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The authority 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 assistance, the authority 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 assistance consisting of services that the authority 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, must be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

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

(5) (a) The authority 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. The authority shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The authority is not authorized to pursue recovery under such circumstances.

(b) Recovery of assistance from a recipient's estate may 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 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 authority 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 may not end and must continue as provided in this subsection until the authority's lien has been satisfied.

(a) The value of the life estate subject to the lien is 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 is 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 authority 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 authority records either its lien or the request for notice of transfer or encumbrance as provided by RCW 41.05A.280.

(d) The authority 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 authority 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 persons with intellectual disabilities, or other medical institution; and

(ii) The authority 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 authority shall dissolve the lien.

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

(10) It is the responsibility of the authority 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 care subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the authority shall provide a written description of the community service options. [2011 1st sp.s. c 15 § 96.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.100 Lien against real and personal property—Lien priority—Recovery by deduction or withholding of payments—Civil action. (1) Overpayments of assistance become a lien against the real and personal property of the recipient from the time of filing by the authority with the county auditor of the county in which the recipient resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(2) Debts due the state for overpayments of assistance may be recovered by the state by deduction from the subsequent assistance payments to such persons, lien and foreclosure, or order to withhold and deliver, or may be recovered by civil action. [2011 1st sp.s. c 15 § 97.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.110 Notice of overpayment of assistance. (1) Any person who owes a debt to the state for an overpayment of assistance must be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of

notice to the debtor of the debt owed. Service of the notice must be in the manner prescribed for the service of a summons in a civil action. The notice must include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from assistance; a statement that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from assistance or the receipt of the notice of debt, whichever is later. This does not preclude the authority from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial assistance programs: PROVIDED, That subject to federal legal requirement, deductions may not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the authority or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of assistance has the right to an adjudicative proceeding pursuant to RCW 74.09.741. If no application is filed, the debt is subject to collection action as authorized under this chapter. If a timely application is filed, the execution of collection action on the debt is stayed pending the final adjudicative order or termination of the debtor from assistance, whichever occurs later. [2011 1st sp.s. c 15 § 98.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.120 Order to withhold and deliver. (1) After service of a notice of debt for an overpayment as provided for in RCW 41.05A.110, stating the debt accrued, the director may issue to any person, firm, corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the director has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor. The order to withhold and deliver must state the amount of the debt, and must state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal exemption laws applicable generally to debtors. The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of

therein. The director may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses any property which may be subject to the claim of the authority, such property must be withheld immediately upon receipt of the order to withhold and deliver and must, after the twenty-day period, upon demand, be delivered forthwith to the director. The director shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the director a good and sufficient bond, satisfactory to the director, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money must be delivered by remittance payable to the order of the director. Delivery to the director, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the director serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the director pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(2) The director shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, in the alternative, a copy of the order to withhold and deliver must be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order must be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the director's failure to serve on or mail to the debtor the copy. [2011 1st sp.s. c 15 § 99.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15: See notes following RCW 74.09.010.**

**RCW 41.05A.130 Liability for failure to answer or comply with
order to withhold and deliver or other violation. If any person,**

firm, corporation, association, political subdivision, or department of the state fails to answer an order to withhold and deliver within the time prescribed in RCW 41.05A.120, or fails or refuses to deliver property pursuant to the order, or after actual notice of filing of a lien as provided for in this chapter, pays over, releases, sells, transfers, or conveys real or personal property subject to such lien to or for the benefit of the debtor or any other person, or fails or refuses to surrender upon demand property distrained under RCW 41.05A.120, or fails or refuses to honor an assignment of wages presented by the director, such person, firm, corporation, association, political subdivision, or department of the state is liable to the authority in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorneys' fees. [2011 1st sp.s. c 15 § 100.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.140 Employer required to honor assignment of earnings. Any person, firm, corporation, association, political subdivision, or department employing a person owing a debt for overpayment of assistance received shall honor, according to its terms, a duly executed assignment of earnings presented to the employer by the director as a plan to satisfy or retire an overpayment debt. This requirement to honor the assignment of earnings is applicable whether the earnings are to be paid presently or in the future and continues in force and effect until released in writing by the director. Payment of moneys pursuant to an assignment of earnings presented to the employer by the director serves as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to the assignment of earnings. The director is released from liability for improper receipt of moneys under assignment of earnings upon return of any moneys so received. [2011 1st sp.s. c 15 § 101.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.150 Improper real property transfers. If an improper real property transfer is made as defined in RCW 74.08.331 through 74.08.338, the authority may request the attorney general to file suit to rescind the transaction except as to subsequent bona fide purchasers for value. If it is established by judicial proceedings that a fraudulent conveyance occurred, the value of any assistance which has been furnished may be recovered in any proceedings from the recipient or the recipient's estate. [2011 1st sp.s. c 15 § 102.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.160 Lien against real property. When the authority provides assistance to persons who possess excess real property under *RCW 74.04.005(11)(g), the authority may file a lien against or otherwise perfect its interest in such real property as a condition of granting such assistance, and the authority has the status of a secured creditor. [2011 1st sp.s. c 15 § 103.]

***Reviser's note:** RCW 74.04.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11)(g) to (13)(g).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.170 Overpayment to vendor. (1) When the authority determines that a vendor was overpaid by the authority for either goods or services, or both, provided to authority clients, except nursing homes under chapter 74.46 RCW, the authority shall give written notice to the vendor. The notice must include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.

(2) The notice may be served upon the vendor in the manner prescribed for the service of a summons in civil action or be mailed to the vendor at the last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The vendor has the right to an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW, and the rules of the authority. The vendor's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the authority's notice. The application must be served on and received by the authority within twenty-eight days of the vendor's receipt of the notice of overpayment. The vendor must serve the authority in a manner providing proof of receipt.

(4) Where an adjudicative proceeding has been requested, the presiding or reviewing office [officer] shall determine the amount, if any, of the overpayment received by the vendor.

(5) If the vendor fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice to be assessed against the vendor and subject to collection action by the authority.

(6) Failure to make an application for an adjudicative proceeding within twenty-eight days of the date of notice results in the establishment of a final debt against the vendor in the amount asserted by the authority and that amount is subject to collection action. The authority may also charge the vendor with any costs associated with the collection of any final overpayment or debt established against the vendor.

(7) The authority may enforce a final overpayment or debt through lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, or other collection action available to the authority to satisfy the debt due.

(8) Debts determined under this chapter are subject to collection action without further necessity of action by a presiding or reviewing

officer. The authority may collect the debt in accordance with RCW 41.05A.120, 41.05A.130, and 41.05A.180. In addition, a vendor lien may be subject to distraint and seizure and sale in the same manner as prescribed for support liens in RCW 74.20A.130.

(9) Chapter 66, Laws of 1998 applies to overpayments for goods or services provided on or after July 1, 1998.

(10) The authority may adopt rules consistent with this section. [2011 1st sp.s. c 15 § 104.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.180 Lien against real property of vendor or other form of security. (1) The authority may, at the director'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 authority, or by doing both.

(a) Any lien is 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 has preference over the claims of all unsecured creditors.

(b) The authority 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 authority may recover any overpayment, plus interest, if any, by setoff or recoupment against subsequent payments to the vendor. [2011 1st sp.s. c 15 § 105.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.190 Time periods for liens against vendors. Liens created under RCW 41.05A.180 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 authority to enforce such lien must be timely commenced before the ten-year period expires or the lien is released. A civil action to enforce such lien is not 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. [2011 1st sp.s. c 15 § 106.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

**RCW 41.05A.200 Time limit for action to enforce vendor
overpayment debt.** Any action to enforce a vendor overpayment debt
must be commenced within six years from the date of the authority's
notice to the vendor. [2011 1st sp.s. c 15 § 107.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.210 Remedies against vendors nonexclusive. The
remedies under RCW 41.05A.180 and 41.05A.190 are nonexclusive and
nothing contained in this chapter may be construed to impair or affect
the right of the authority to maintain a civil action or to pursue any
other remedies available to it under the laws of this state to recover
such debt. [2011 1st sp.s. c 15 § 108.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

RCW 41.05A.220 Interest on overpayments to vendors. (1) Except
as provided in subsection (4) of this section, vendors shall pay
interest on overpayments at the rate of one percent per month or
portion thereof. Where partial repayment of an overpayment is made,
interest accrues on the remaining balance. Interest must not accrue
when the overpayment occurred due to authority error.

(2) If the overpayment is discovered by the vendor prior to
discovery and notice by the authority, the interest begins accruing
ninety days after the vendor notifies the authority of such
overpayment.

(3) If the overpayment is discovered by the authority prior to
discovery and notice by the vendor, the interest begins accruing
thirty days after the date of notice by the authority to the vendor.

(4) This section does not apply to:

- (a) Interagency or intergovernmental transactions; and
- (b) Contracts for public works, goods and services procured for
the exclusive use of the authority, equipment, or travel. [2011 1st
sp.s. c 15 § 109.]

**Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15:** See notes following RCW 74.09.010.

**RCW 41.05A.230 Recovery of temporary total disability
compensation.** (1) To avoid a duplicate payment of benefits, a
recipient of assistance from the authority is deemed to have
subrogated the authority to the recipient's right to recover temporary
total disability compensation due to the recipient and the recipient's

dependents under Title 51 RCW, to the extent of such assistance or compensation, whichever is less. However, the amount to be repaid to the authority must bear its proportionate share of attorneys' fees and costs, if any, incurred under Title 51 RCW by the recipient or the recipient's dependents.

(2) The authority may assert and enforce a lien and notice to withhold and deliver to secure reimbursement. The authority shall identify in the lien and notice to withhold and deliver the recipient of assistance and temporary total disability compensation and the amount claimed by the authority. [2011 1st sp.s. c 15 § 110.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.240 Recovery of temporary total disability compensation—Service of lien and notice to withhold and deliver. The effective date of the lien and notice to withhold and deliver provided in RCW 41.05A.230 is the day that it is received by the department of labor and industries or a self-insurer as defined in chapter 51.08 RCW. Service of the lien and notice to withhold and deliver may be made personally, by regular mail with postage prepaid, or by electronic means. A statement of lien and notice to withhold and deliver must be mailed to the recipient at the recipient's last known address by certified mail, return receipt requested, no later than two business days after the authority mails, delivers, or transmits the lien and notice to withhold and deliver to the department of labor and industries or a self-insurer. [2011 1st sp.s. c 15 § 111.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.250 Duties of director of labor and industries. The director of labor and industries or the director's designee, or a self-insurer as defined in chapter 51.08 RCW, following receipt of the lien and notice to withhold and deliver, shall deliver to the director of the authority or the director's designee any temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver up to the amount claimed. The director of labor and industries or self-insurer shall withhold and deliver from funds currently in the director's or self-insurer's possession or from any funds that may at any time come into the director's or self-insurer's possession on account of temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver. [2011 1st sp.s. c 15 § 112.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.260 Temporary total disability compensation recipients—Adjudicative proceeding. (1) A recipient feeling

aggrieved by the action of the authority in recovering his or her temporary total disability compensation as provided in RCW 41.05A.230 through 41.05A.270 has the right to an adjudicative proceeding.

(2) A recipient seeking an adjudicative proceeding shall file an application with the director within twenty-eight days after the statement of lien and notice to withhold and deliver was mailed to the recipient. If the recipient files an application more than twenty-eight days after, but within one year of, the date the statement of lien and notice to withhold and deliver was mailed, the recipient is entitled to a hearing if the recipient shows good cause for the recipient's failure to file a timely application. The filing of a late application does not affect prior collection action pending the final adjudicative order. Until good cause for failure to file a timely application is decided, the authority may continue to collect under the lien and notice to withhold and deliver.

(3) The proceeding shall be governed by chapter 34.05 RCW, the administrative procedure act. [2011 1st sp.s. c 15 § 113.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.270 Application—Benefits under Title 51 RCW. RCW 41.05A.230 through 41.05A.260 and this section do not apply to persons whose eligibility for benefits under Title 51 RCW is based upon an injury or illness occurring prior to July 1, 1972. [2011 1st sp.s. c 15 § 114.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

RCW 41.05A.280 Recording of notice of transfer or encumbrance of real property. (1) When an individual receives 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 authority 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 authority shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

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

(3) The authority 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 assistance recipient and a 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 assistance records;

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

(c) Contains a mailing address for the authority 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 authority 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.

[2011 1st sp.s. c 15 § 115.]

**~~Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15: See notes following RCW 74.09.010.~~**