

SB 1029 -2 STAFF MEASURE SUMMARY

Senate Committee On Human Services

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Meeting Dates: 3/4, 4/3

WHAT THE MEASURE DOES:

The measure prohibits the Department of Human Services (ODHS) or the Oregon Health Authority (OHA) from recovering medical assistance payments from a recipient's estate if the recipient's child provided care for the recipient in their home and the recipient transferred ownership of the home to the child. The measure removes the voidability of transfers of real or personal property without adequate consideration in estate recovery actions.

Detailed Summary:

- Prohibits ODHS or OHA from recovering medical assistance payments from a recipient's estate or surviving spouse if, within certain time frames:
 - the recipient's child lived in the recipient's home and provided care to the recipient that eliminated the need for medical assistance; and
 - ownership of the home transferred to the child either during the recipient's life or as an inheritance.
- Removes voidability of transfers of real and personal property without adequate consideration for estate recovery claims related to recovery of medical assistance and Oregon Supplemental Income Program payments.
- Applies to estate recovery claims and civil proceedings that occur or after the measure's effective date.
- Takes effect on the 91st day following adjournment sine die.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 The amendment replaces the measure. The amendment prohibits the Department of Human Services (ODHS) or Oregon Health Authority (OHA) from recovering medical assistance payments from a recipient's estate or surviving spouse if the recipient's surviving child provided care for the recipient in their home and has inherited or received legal interest in the home.

Detailed Summary:

- Prohibits ODHS or OHA from recovering medical assistance payments from a recipient's estate or surviving spouse if a recipient's surviving child lived in the recipient's home to provide care that prevented the recipient from requiring institutional care and the surviving child received legal interest in the home or inherited it after the recipient's death.
- Creates an exception to the voidability of transfers of real and personal property based on the above conditions.
- Authorizes ODHS and OHA to adopt necessary rules for implementation.
- Directs OHA and ODHS to request necessary waivers from the federal government to authorize implementation and to notify Legislative Counsel upon receiving approval.
- Becomes operative on the date on which Legislative Counsel receives notice of federal approval.
- Authorizes OHA and ODHS to take necessary action ahead of operative date.
- Takes effect on 91st day following adjournment sine die.

REVENUE: No revenue impact

FISCAL: May have fiscal impact, but no statement yet issued

BACKGROUND:

Oregon's state medical assistance (Medicaid) program, the Oregon Health Plan, provides coverage for health care and long-term services and supports for approximately one-third of Oregonians, according to data from the [Oregon Health Authority](#). In addition to services and supports provided through Medicaid, the state operates the Oregon Supplemental Income Program (OSIP) and General Assistance (GA) programs for individuals with low incomes, health needs, disabilities, or other qualifying conditions and are in need of cash assistance. When a recipient of benefits from Medicaid, OSIP, or GA dies, the state is empowered to recover the amount of benefits paid to that recipient from their estate ([ORS 416.310 to 416.351](#); [ORS 411.708](#); [ORS 411.795](#)). This is called [estate recovery](#) and in some cases is required under federal law. According to the Department of Human Services, approximately 60% of the funds recovered are used to pay for services for other Oregonians, while the rest returns to the federal government. There are exceptions to the amount the state may recover—up to \$3,500 is left for burial expenses, and recovery is halted if doing so would pose an undue hardship, or if the recipient was the victim of a crime, has a surviving spouse, a child under age 21, or a child who is blind or disabled. Federal and state law also prohibit a recipient from transferring assets to other persons without “adequate consideration,” or receiving fair market value, and doing so may result in the transfer being voided and the individual’s Medicaid eligibility being revoked or delayed ([42 CFR § 416.1246](#); [ORS 411.620](#)). However, there are some exceptions, such as when an individual transfers ownership to their child who lives in the home to provide care for that individual for at least two years ([42 U.S.C. 1396p\(c\)\(2\)\(A\)\(iv\)](#)).