

House Bill 3392

Sponsored by COMMITTEE ON HUMAN SERVICES (at the request of United Seniors of Oregon, Parkinson's Resources of Oregon, Oregon State Council for Retired Citizens, Oregon Consumer League)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows spouse of individual in long term care facility to petition circuit court for order of community spouse monthly income allowance and community spouse resource allowance. Allows filing of petition without first exhausting administrative remedies. Provides that court order has preclusive effect in determination of eligibility for medical assistance for individual in long term care facility.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to assets available to an institutionalized spouse in the determination of eligibility for
3 medical assistance; creating new provisions; amending ORS 87.512 and 87.533; and declaring an
4 emergency.

5 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. (1) As used in this section:

6 (a) **"Community spouse" means the spouse of an institutionalized spouse.**

7 (b) **"Institutionalized spouse" means an individual who is:**

8 (A) **Residing in a long term care facility;**

9 (B) **Expected to remain in the long term care facility for a period of at least 30 consec-**
10 **utive days; and**

11 (C) **Married to an individual who is not residing in a long term care facility.**

12 (c) **"Long term care facility" means a facility licensed as a skilled nursing facility or an**
13 **intermediate care facility, as those terms are defined in ORS 442.015, or a residential care**
14 **facility or adult foster home licensed under ORS chapter 443.**

15 (2) **A community spouse may file a petition in the circuit court of the county where the**
16 **spouse resides for an order of support, against an institutionalized spouse, that includes a**
17 **community spouse monthly income allowance and a community spouse resource allowance.**

18 (3) **A community spouse is not required to exhaust administrative remedies before filing**
19 **a petition under this section.**

20 (4) **The court may not apply the income-first rule described in 42 U.S.C. 1396r-5(d)(6) in**
21 **the determination of support under this section.**

22 (5) **A court order under this section has a preclusive effect in any determination of the**
23 **institutionalized spouse's eligibility for medical assistance.**

SECTION 2. ORS 87.512 is amended to read:

24 87.512. The notice of lien required under ORS 87.507 shall be a written statement verified by the
25 oath of an officer of the long term care facility that asserts a claim for the lien and that contains:

26 (1) A true statement of demand, including an itemized statement of services provided and setting
27
28

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 forth the amount due and owing to the long term care facility as of the date of the notice, after
 2 deducting all credits and offsets[;].

3 (2) The name of the individual who received care[;].

4 (3) The name, address and telephone number of the long term care facility[;].

5 (4) A statement that the amount claimed is a true and bona fide existing debt as of the date of
 6 filing the notice of lien[;].

7 (5) A statement that the lien may cover contracted services provided by the long term care fa-
 8 cility subsequent to the services itemized under subsection (1) of this section and that interested
 9 persons may obtain information on the current amount due under the lien by contacting the long
 10 term care facility[;].

11 (6)(a) A statement that the long term care facility has given the individual or an authorized
 12 representative **and the individual's spouse** a written summary of the requirements and procedures
 13 for establishing eligibility for Medicaid, including:

14 (A) The right to an assessment **by the Department of Human Services** that determines the
 15 extent of [*spouses' nonexempt*] **the individual's available income and** resources at the time of
 16 institutionalization and attributes to the community spouse an equitable share of the **income and**
 17 **resources; and**

18 (B) **The right of the community spouse to petition for an order of support under section**
 19 **1 of this 2009 Act.** [*that can not be considered available for payment of costs for the medical care of*
 20 *the institutionalized spouse in the process of spending down to Medicaid eligibility levels.*]

21 (b) The written [*statement*] **summary** shall be given no fewer than 30 days and no more than
 22 60 days before the notice of lien is filed.

23 (c) The long term care facility may meet the [*requirement of*] **requirements of paragraph**
 24 **(a)(A) of this subsection** by providing written materials [*relating to*] **prepared by the department**
 25 **that explain** Medicaid eligibility for long term care services [*for persons with disabilities and elderly*
 26 *persons used by the Department of Human Services; and*].

27 (7) A description of the real property to be charged with the lien that complies with ORS 93.600.

28 **SECTION 3.** ORS 87.533 is amended to read:

29 87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

30 (1) Any assets or income allowed to the community spouse or dependent family member under
 31 42 U.S.C. 1396r-5(d), **section 1 of this 2009 Act** or any rule of the Department of Human Services.

32 (2) The priority given to the recovery of medical assistance payments under ORS 115.125 (1)(i)
 33 or other medical assistance claims under ORS 414.105 (2) and (3).

34 (3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance pay-
 35 ments.

36 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
 37 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
 38 **on its passage.**