NO. 102649-8

SUPREME COURT OF THE STATE OF WASHINGTON

THE ESTATE OF DAVID GEORGE LYNCH,

Appellant,

v.

WASHINGTON STATE HEALTH CARE AUTHORITY,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals decision at issue involves a straightforward application of the Administrative Procedure Act's (APA) standing requirements to a claim by a Medicaid beneficiary's estate. Contrary to Appellant's characterization, the Court of Appeals did not conclude that an estate can never maintain a petition for judicial review under the APA. Rather, it held only that, in this case, where the decedent sought to retain healthcare benefits for the purpose of obtaining healthcare, but never actually incurred those expenses before he died as required by law to reduce his Medicaid cost-of-care contribution, the estate lacks standing to obtain judicial review of a decision denying benefits. Review of this unpublished decision applying long-established APA standing requirements to the specific facts of this case is not warranted under RAP 13.4.

David Lynch brought an administrative proceeding and then a petition for judicial review under RCW 34.05. Mr. Lynch contested the validity of a Health Care Authority (HCA) rule,

WAC 182-513-1340(2)(b), which requires long-term care Medicaid recipients to pay certain healthcare benefits they receive from the Department of Veteran's Affairs (VA) toward the cost of their long-term care Medicaid services. Mr. Lynch alleged the rule was invalid because, he alleged, it prevented him from using VA healthcare benefits to pay for medically necessary healthcare the Medicaid program would not cover. The specific injury Mr. Lynch alleged throughout his administrative proceeding was a purported inability to obtain healthcare he claimed the Medicaid program would not cover. And the relief he sought was "to allow Mr. Lynch to use his [VA healthcare benefits] for the care and services he needs." Brief of Appellant, *Lynch v. HCA*, 2023 WL 2776571 at *48 (Wash. App. Div. II). Mr. Lynch died during the pendency of this proceeding, however, and the Estate substituted as the petitioner.

Because the Estate cannot use public healthcare funds to obtain healthcare for itself, and because Mr. Lynch incurred no healthcare debts the Estate may be liable to pay for using the

benefits at issue, the Estate cannot establish an injury-in-fact to maintain this proceeding. Thus, the Court of Appeals correctly determined the Estate lacks standing under RCW 34.05.530 to maintain Mr. Lynch's judicial review action in which he sought to retain VA healthcare benefits to obtain healthcare he alleged the Medicaid program would not cover. The Court of Appeal's decision at issue is consistent with the plain language of RCW 34.05.530, is unpublished, applicable only to the facts and circumstances of this case, and does not meet any of the factors in RAP 13.4 justifying review by this Court.

II. COUNTERSTATEMENT OF ISSUE

A. Whether an estate lacks standing under the Administrative Procedure Act to appeal a deceased Medicaid beneficiary's claim to retain VA healthcare benefits to pay for healthcare costs the beneficiary did not incur while alive, and where the estate does not fall within the zone of interests of Medicaid reimbursement laws.

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III. COUNTERSTATEMENT OF THE CASE

A. Medicaid Cost of Care Contribution and Reduction Rules

After a person is deemed eligible to receive Medicaid services, they may be required to pay toward the cost of those services. 42 C.F.R. § 435, Subpart H. This is referred to as a post-eligibility cost of care calculation. *Id.* When calculating a Medicaid recipient's cost of care, available third party resources are included in the initial amount they are required to pay. WAC 182-513-1350; WAC 182-515-1509. This includes Aid and Attendance (AA) and Unusual Medical Expense (UME) healthcare benefits a Medicaid recipient may receive from the VA, which are treated as third party resources during the post-eligibility cost of care calculation. WAC 182-513-1340(2)(b). These rules are intended to implement the federal policy that the Medicaid program is the "payer of last resort." *See New York State Dep't of Soc. Servs. v. Bowen*, 846 F.2d 129, 133 (2d Cir. 1988).

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After a Medicaid recipient's cost of care is initially calculated, it can be reduced for a number of expenses the recipient might have. *See, e.g.,* 42 C.F.R. §§ 435.725 - .735; WAC 182-513-1380, WAC 182-515-1509. One such reduction is for expenses they have incurred for medically necessary care that are not covered by the Medicaid program. 42 C.F.R. §§ 435.726 - .735; WAC 182-513-1350(6)(a)(ii); WAC 182-515-1509(4)(f). *See also*, 42 C.F.R. § 435.831(d) ("An expense is incurred on the date liability for the expense arises."). The requirement that a healthcare expense be incurred before it can be used to reduce a Medicaid recipient's cost of care contribution ensures a person cannot claim a healthcare expense to retain resources they could pay toward their Medicaid services, then pocket the money without actually spending it on healthcare.[1]

[1] *See Lynch v. HCA*, No. 56803-3-II (Nov. 14, 2023) at 3, 17 (discussing that Mr. Lynch received a backdated lump-sum amount of $8,130 in VA healthcare benefits that he used to pay down credit card debt, which was not incurred as a result of medical or dental care he received).

Once an expense is incurred, it can be applied to reduce a Medicaid recipient's cost-of-care contribution to as little as zero dollars, even beyond the amount of third party medical benefits they may be receiving. WAC 182-513-1350(6)(a)(ii).

B. David Lynch's Request for an Administrative Hearing

David Lynch received long-term care services through the COPES program, a home and community-based long-term care Medicaid service. Administrative Record (AR) 2. He also received UME and AA healthcare benefits from the VA, beginning in December 2019. AR 3. In accordance with WAC 182-513-1340(2)(b) and federal law, HCA informed Mr. Lynch he was required to pay those VA healthcare benefits toward the cost of his long-term care Medicaid services as third-party resources. *Id.* Mr. Lynch sought an administrative hearing contesting HCA's requirement that he pay his VA healthcare benefits toward the cost of his Medicaid services, alleging he needed the benefits to pay for weekend care and dental work that was not covered under the Medicaid program and that he was

prevented from obtaining that care by WAC 182-513-1340(2)(b). AR 4. In his request for an administrative proceeding, and throughout that proceeding, Mr. Lynch argued he was entitled to retain his VA healthcare benefits rather than pay them toward the cost of his long-term care Medicaid services because he needed them to pay for necessary medical care the Medicaid program would not cover. *See*, e.g. AR 25, AR 378. However, at no point before or during his administrative hearing did Mr. Lynch incur liability to pay for either weekend care or dental care. *Lynch v. HCA*, No. 56803-3-II (Nov. 14, 2023) at 2–3, 17–18; AR 3.

C. Procedural Background

HCA's Board of Appeals review officer upheld HCA's determination that Mr. Lynch's UME and AA benefits constituted third party resources under WAC 182-513-1340(2)(b). Mr. Lynch requested judicial review by the Thurston County Superior Court. Clerk's Papers (CP) at 4-41. He filed his petition for judicial review as a combined APA review and class

action suit alleging damages under several theories. *Id.* The superior court severed the APA and damages claims. CP at 63-65.

In the severed action, HCA removed the severed claims to federal court, and the United States District Court for the Western District of Washington granted HCA judgment on the pleadings on all of Mr. Lynch's federal damages claims, in part holding Mr. Lynch did not have a protected property interest in receipt of AA and UME benefits. *Lynch v. HCA*, 2022 WL293137 (W.D. Wash. Feb. 1, 2022) at *3. The Western District remanded the remaining state claims to Thurston County Superior Court in a proceeding separate from this rule challenge. *See Lynch v. HCA,* Thurston Co. Sup. Ct. No. 21-2-00175-34.

In addition, roughly a year after the superior court severed the cases, Mr. Lynch moved to directly certify this APA proceeding to the Court of Appeals under RCW 34.05.518, and the case was directly certified. CP at 63, 98-107, 121-22. Before

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an opening brief was filed, Mr. Lynch died. *Lynch v. HCA*, No. 56803-3-II at 1.

The Estate of David George Lynch was created, and moved to substitute as appellant in this appeal in February, 2023. *Id.* at 7. HCA objected, arguing the Estate does not have standing to pursue this challenge, and the Court of Appeals permitted the Estate's substitution, permitting HCA to re-raise its standing argument. *Id.*

D. The Court of Appeals Decision at Issue

On November 14, 2023, the Court of Appeals issued an unpublished decision determining the Estate lacked standing to maintain Mr. Lynch's petition for judicial review under the plain language of RCW 34.05.530 of the APA. *See generally id.* It held the Estate lacked standing because it could not meet either the injury-in-fact or zone of interests tests. *Id.*

In finding the Estate could not meet the APA's injury-in-fact test, the Court of Appeals determined that the injury Mr. Lynch sought to remedy throughout his administrative

proceeding was an inability to purchase medical and dental care he alleged the Medicaid program would not cover, and the relief he requested was to retain his AA and UME benefits for the purpose of obtaining that healthcare. *Id.* at 16–18. The Court of Appeals also determined that Mr. Lynch had not incurred any healthcare expenses associated with his VA benefits before his death. *Id.* Ultimately, the Court of Appeals determined that because the Estate could not use Mr. Lynch's VA benefits to obtain healthcare, and Mr. Lynch had not incurred any associated healthcare expenses before his death, the court could not provide any relief to the Estate that would redress the injury Mr. Lynch sought to remedy. *Id.*

In addition, the Court of Appeals noted the Estate could not meet RCW 34.05.530's zone of interests test. *Id.* at 18-19 n.12. In doing so, it acknowledged that "[b]ased on the language of the Medicaid statutory and regulatory scheme, it is clear that the legislature did not intend DSHS to contemplate the interests of an individual's estate and the preservation of that estate,

especially since DSHS may now recover funds from an estate for Medicaid provided services." *Id.* Accordingly, the Court of Appeals also determined the Estate could not meet RCW 34.05.530's zone of interests test. *Id.*

IV. ARGUMENT

The Court should not accept review because this fact-specific case does not meet any of the criteria for review. The Estate only argues review is warranted under RAP 13.4(b)(4), asserting the decision at issue "left undecided the important legal issue of whether HCA's Medicaid third-party resource rule violates established law . . ." and that it presents "a critical issue of first impression in Washington: whether a pending APA judicial review of an administrative agency's final decision and challenge to the validity of an agency rule is extinguished by the death of the aggrieved party . . ." Petition for Review (Petition) at 2, 5.

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However, the Court of Appeals did not consider the substantive Medicaid question the Estate raises because it held that the Estate does not have standing. Moreover, the Estate significantly expands the scope of the Court of Appeal's decision in connection with its standing determination. The decision at issue does not hold that a pending petition for judicial review under RCW 34.05 is automatically extinguished upon a decedent's death; it suggests just the opposite. Instead, the decision correctly holds that to obtain judicial review of an agency decision, a party seeking judicial review must establish standing under the plain language of RCW 34.05.530, and that in this case, the Estate did not. That a party seeking to obtain judicial review must meet the APA's procedural requirements to do so is well settled, and does not present an issue of substantial public interest warranting review by this Court.

The Court of Appeals correctly determined the Estate does not have standing under the plain language of RCW 34.05.530 to maintain Mr. Lynch's challenge to WAC 182-513-1340(2)(b) or

its application to Mr. Lynch because (A) estates do not automatically have standing to maintain an action under the APA just because a decedent would have, (B) the Estate cannot not meet the injury-in-fact test, and (C) the Estate cannot not meet the zone of interests test.

A. Estates Do Not Automatically Have Standing to Maintain an Action Under the Administrative Procedure Act Just Because a Decedent Would Have

In reviewing agency actions under the APA, appellate courts sit in the same position as a superior court. *Arishi v. Wash. State Univ.*, 196 Wn. App. 878, 895, 385 P.3d 251 (2016). Under the APA, courts act in a limited appellate capacity and the APA's procedural requirements must be met before a court's appellate jurisdiction is invoked. *Stewart v. Dep't of Emp. Sec.*, 191 Wn.2d 42, 52–53, 419 P.3d 838 (2018). "[T]he legislature has the authority to enact procedural rules for invoking the superior courts' appellate jurisdiction to review agency decisions in civil cases, while the superior courts have no authority to act in such cases unless their appellate jurisdiction is invoked as prescribed

by law." *Id.* "This limitation cannot be waived by any party, and a court lacking jurisdiction must enter an order of dismissal." *Id.* at 53 (internal quotations omitted).

To have standing to obtain judicial review under the APA, the Legislature requires a party be aggrieved or adversely affected. RCW 34.05.530. A party is aggrieved or adversely affected only if each of the following requirements is met:

> (1) The agency action has prejudiced or is likely to prejudice that person;
>
> (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
>
> (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

Sarepta Therapeutics, Inc. v. Health Care Auth., 19 Wn. App. 2d 538, 549, 497 P.3d 454 (2021) (review denied February 8, 2023); *Allan v. Univ. of Wash.*, 140 Wn.2d 323, 326-27, 997 P.2d 360 (2000). The first and third requirements of this standing test are referred to as the "injury-in-fact test," while the

second requirement is the "zone of interests test." *Sarepta,* 19 Wn. App. 2d at 550-51. The burden to prove standing is on the claimant. *See id.* at 549.

Estates do not automatically have standing to maintain any actions a decedent had standing to bring, rather they are limited to maintaining property actions that "pertain to the management and settlement of the estate" and their standing may be limited by statutory requirements. RCW 11.48.010, 090. *See, e.g.*, *In re Estate of Alsup*, 181 Wn. App. 856, 875-76, 327 P.3d 1266 (2014) (personal representative of estate did not have standing to challenge validity of ward's marriage after ward's death in part due to statutory standing requirements limiting persons who could challenge validity of marriage to "only a party to the defective marriage").

Mr. Lynch brought this case asserting HCA's rules were invalid because they prevented him from obtaining healthcare he alleged he needed, but had not incurred. *Lynch v. HCA*, No. 56803-3-II at 17–18; AR 25, 378. Whether Mr. Lynch should

have been permitted to retain his VA healthcare benefits to obtain healthcare, where no healthcare costs were incurred, does not pertain to the administration of the estate.

And, like the statute in *Alsup*, the APA establishes specific elements a "person" must meet to have standing to obtain judicial review or declaratory judgment and invoke a court's appellate jurisdiction. RCW 34.05.010(14) defines "[p]erson" as "any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character . . .". This definition necessarily includes an estate, and there is nothing in RCW 34.05.530 or any of the cases the Estate cites to suggest that standing under RCW 34.05.530 is automatically determined by a decedent that filed an action and not, as the plain language of RCW 34.05.530 states, the "person" seeking to obtain judicial review of agency action.

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In arguing it has standing, the Estate argues it "stepped into Mr. Lynch's shoes" and has standing based on Mr. Lynch's interests, not its own.[2] But none of the cases the Estate cites reach that conclusion or address the specific standing requirements the Legislature adopted in the Administrative Procedure Act. *See*, *e.g.*, *Lynch v. HCA*, No. 56803-3-II at 15–16. (Discussing *In re Estate of Hatfield*, 46 Wn. App. 247, 730 P.2d 696 (1986) and *Colburn v. Spokane City Club*, 20 Wn.2d 412, 147 P.2d 504 (1944)); *Hays Elliott Properties, LLC v. Horner*, 25 Wn. App. 2d 868, 873, 528 P.3d 827 (2023) (specifying personal representatives have authority to maintain suits that "pertain to the management and settlement of the estate. . ."); *Ostling v. City of Bainbridge Island*, 872 F. Supp. 2d 1117 (U.S. Dist. Ct. W.D. Wa 2012) (decedent's father, mother, and sister

[2] Despite its argument that the Estate sits in an identical position to Mr. Lynch, the Estate later argues that while it cannot obtain the relief Mr. Lynch was seeking—the ability to obtain healthcare—there is other economic relief it could obtain, thereby acknowledging that it does not share the same interest as Mr. Lynch did. *See, e.g.*, Petition at 21–24.

brought §1983 claim after death of individual after being shot by police officer). And, as the Estate points out, as this Court discussed in *Vovos v. Grant*, 87 Wn.2d 697, 700, 555 P.2d 1343 (1976), "[a]n interest in the subject matter of the litigation sufficient to confer standing **may** be established either in a personal or representative capacity." (emphasis added). An estate's standing to maintain an action is not automatic.

The Estate also raises several arguments suggesting it has standing because causes of action survive a decedent's death. Petition at 9–10. But that does not equate to an Estate automatically having standing to maintain the action or otherwise voids the APA's specific requirement that a person may only obtain judicial review where they meet the APA's statutory requirements. Further, there is no question here that the Estate cannot use the healthcare benefits in question to obtain healthcare, as Mr. Lynch argued he should have been able to throughout this case. If the Estate believes it has a new claim to Mr. Lynch's VA healthcare benefits absent any need for

healthcare or healthcare costs it can file a new cause of action, but that is not the cause of action Mr. Lynch brought or that the Estate seeks to maintain.

Finally, the Estate argues that other states recognize estates' ability to seek judicial review of Medicaid determinations. *Id.* at 11–12. However, again, none of these cases support the Estate's proposition that decedents' estates' standing under RCW 34.05.530 is determined by the decedent, nor are these cases in conflict with the decision at issue. *See, e.g. State v. Webb*, 167 Wn.2d 470, 476-78, 219 P.3d 695 (2009) (discussing heirs can maintain appeals challenging financial obligations imposed on deceased defendant in criminal cases where such financial obligations would result in unfair burden on heirs); *Fox v. City of Bellingham*, 197 Wn.2d 379, 388, 482 P.3d 897 (2021) (after conducting full standing analysis, determining brother who took part in preparing deceased sibling's funeral had standing to sue for tortious interference with a corpse); *Diversicare of Winfield, LLC v. Ala. Medicaid*

Agency, 2023 WL 2940338 (Ala. Civ. App. Apr. 14, 2023) (finding petition for judicial review of state Medicaid agency denial of request for rehearing filed by personal representative was untimely and dismissing case and containing no discussion of standing or personal representative authority); *Turner v. Md. Dep't of Health*, 226 A.3d 419, 434-36 (Md. App. 2020) (finding nursing facility did not have standing to prosecute appeal of Medicaid benefits because "the *only* person who may prosecute an action on the decedent's behalf is the personal representative," without addressing personal representative standing); *Freese v. Dep't of Soc. Servs.*, 176 Conn.App. 64, 80, 169 A.3d 237 (Conn. App. 2017) (noting that to file administrative appeal of denial of decedent's Medicaid benefits plaintiff must establish standing and plaintiffs who filed as next friends could not and remanding to determine whether substitution was appropriate and necessary to determine real matter in dispute); *Carespring Healthcare Management, LLC v. Dungey*, 2018 WL 1138428 (S.D. Ohio 2018) (nursing home did not have authority to file §1983 claim

to Medicaid benefits for deceased beneficiaries under Ohio's survival statute because they were not administrators of deceased estates, but not addressing standing); *In re Gorney Estate*, 314 Mich.App. 281, 298, 886 N.W.2d 894, (Mich. App. 2016) (after state sought Medicaid recovery from deceased beneficiaries' estates, estates could assert violation of their due process rights based on adequacy of notice of changes to estate recovery provisions afforded to deceased beneficiaries); *Joyner v. North Carolina Dep't of Health*, 214 N.C.APP 278, 293, 715 S.E.2d 498, 509 n.8 (N.C. App. 2011) (reversing and remanding trial court determination that Medicaid program improperly applied transfer penalty to decedent's long-term care Medicaid benefits and reversing decision that Medicaid program was required to reimburse decedent for cost incurred for care from the date of transfer penalty). Without question, an estate can seek or maintain judicial review of a decedent's administrative appeal, but that does not obviate an estate's need to establish standing under RCW 34.05.530.

An estate's standing to obtain judicial review is not automatically determined by a decedent's standing. According to the plain language of RCW 34.05.530, an estate, when substituting as the "person" seeking to obtain judicial review, must establish its own standing. The Court of Appeal's decision in this case did not conclude that an estate cannot maintain a petition for judicial review. Rather, it held that where a decedent sought to retain healthcare benefits for the purpose of obtaining healthcare, but had not incurred any associated healthcare expenses, the estate lacks standing under the plain language of RCW 34.05.530 to obtain judicial review because an estate cannot obtain healthcare and the estate in question incurred no associated healthcare debt. To the extent the Estate believes it has new causes of action it can bring a new suit, but this narrow, unpublished decision finding the Estate lacks standing to maintain a suit for healthcare it cannot receive and did not incur costs for does not warrant review by this Court.

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1. The Estate cannot meet the injury-in-fact test

The Court of Appeals also correctly determined the Estate lacked standing because it cannot meet the plain language of the APA's injury-in-fact test to remedy the injury Mr. Lynch complained of. *Lynch v. HCA*, No. 56803-3-II at 16–18. The relief Mr. Lynch sought during his administrative proceeding was to retain his VA healthcare benefits to obtain healthcare he alleged the Medicaid program would not cover.

Further, RCW 11.48 limits personal representatives to continuing actions for recovery of property and relevant to the administration of the estate, and neither a person or estate has a property interest in receiving public benefits that are intended to be used toward a living person's healthcare. Rather, public benefits recipients do not have a property interest in continued receipt of benefits. *See Levesque v. Sheehan*, 821 F. Supp. 779, 788-89 (D. Maine 1993); *Bowen v. Gilliard*, 483 U.S. 587, 605, 107 S. Ct. 3008 (1987). "It would be quite strange indeed if, by virtue of an offer to *provide* benefits to needy families . . .

Congress or the States were deemed to have *taken* some of those very family members' property [by not providing them]." *Bowen*, 483 U.S. at 605 (emphasis in original).

Under the injury-in-fact test, a petitioner must show that the agency decision caused a specific and perceptible harm; there must be an invasion of a legally protected interest. *Sarepta*, 19 Wn. App. 2d at 550-51. The party seeking review must "establish a concrete interest of her own that has been injured." *Lynch v. HCA*, 2023 WL2776572 (W.D. Wash. March 20, 2023) at *32 (citing *Allan*, 92 Wn. App. at 36). "Conjectural or hypothetical injuries are insufficient to confer standing." *Sarepta*, 19 Wn. App. 2d at 550. And, generally speaking, "[t]he interest shown cannot be simply the abstract interest of the general public in having others comply with the law." *Vovos*, 87 Wn.2d at 699. Finally, the petitioner must show that a favorable decision will likely—not speculatively—redress the injury. *Sarepta*, 19 Wn. App. 2d at 550.

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Because Mr. Lynch is deceased and the Estate cannot use his AA and UME benefits to obtain health care for itself, and the Estate owes no healthcare debt associated with Mr. Lynch's VA healthcare benefits, it is not injured by the final order or WAC 182-513-1340(2)(b).

In addition, to the extent the Estate now argues it has suffered some economic injury in the absence of a need for healthcare, that was not the injury Mr. Lynch complained of during his administrative proceeding. *Lynch v. HCA*, No. 56803-3-II at 3, 17–18. *See also, e.g.*, AR 25, 378. Issues not raised before the agency cannot be raised before the Court of Appeals for the first time on review. *See Ladyhelm Farm, LLC v. Wash. State Liquor & Cannabis Bd.*, 25 Wn. App. 2d 658, 665, 524 P.3d 700 (2023). And, further, in a related proceeding, a federal district court held that while he was alive Mr. Lynch did not have a protected property interest in HCA paying an increased amount toward the cost of his Medicaid services. *Lynch v. Health Care Authority*, 2022 WL 293137 at *3. The Court of Appeals reached

the same conclusion and correctly noted that because the benefits in question are not property the Estate can pursue, the Estate was not injured therefore could not meet the plain language to establish standing under RCW 34.05.530. *Lynch v. HCA*, No. 56803-3-II at 15 n.10.

While the Estate could substitute for Mr. Lynch and this action did not automatically abate upon Mr. Lynch's death, there is no injury to the Estate and no way for the Court to redress the original injury Mr. Lynch complained of because he is deceased, thus the Estate does not have standing to maintain the administrative action Mr. Lynch brought under the APA. The Court of Appeals correctly determined the Estate could not establish standing under the plain language of RCW 34.05.530. That a party must establish standing under RCW 34.05.530 to obtain judicial review of an agency action is well settled and does not present an issue of substantial public interest this Court should review.

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2. The Estate cannot meet the zone of interests test

The Court of Appeals also noted the Estate could not meet the zone of interests test because its interests were not among those the Legislature intended HCA to consider when promulgating the Medicaid program. *Lynch v. HCA*, No. 56803-3-II at 18 n.12. The zone of interests test requires that a "person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged." RCW 34.05.530(2).

As the Court of Appeals recognized, the Washington State Legislature clearly did not intend HCA to consider estates' financial interests in creating the Medicaid program. *Id.* Consistent with federal law, the Legislature directed HCA to "file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual" from estates. RCW 43.20B.080(1)-(3). The Legislature further directed:

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> (1) It is the intent of the legislature to ensure that needy individuals have access to basic long-term care without requiring them to sell their homes. In the face of rising medical costs and limited funding for social welfare programs, however, the state's medicaid and state-funded long-term care programs have placed an increasing financial burden on the state. By balancing the interests of individuals with immediate and future unmet medical care needs, surviving spouses and dependent children, adult nondependent children, more distant heirs, and the state, the estate recovery provisions of RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable method of easing the state's financial burden while ensuring the continued viability of the medicaid and state-funded long-term care programs.

RCW 43.20B.090(1).

Thus, not only did the Legislature not intend HCA to consider the economic interests of a deceased beneficiary's estate when promulgating or operating the Medicaid program, but the Legislature affirmatively requires HCA to recover funds from a deceased beneficiary's estate to recoup the costs of Medicaid services provided to the beneficiary. It would be an absurd outcome if an estate could seek payment from the Medicaid program absent any outstanding healthcare expenses the estate

owes, where the estate's assets are subject to recovery by the Medicaid program.

Because the Legislature did not intend HCA to consider an estate's interests when promulgating its long-term care Medicaid rules, and in fact requires the opposite, the Court of Appeals also correctly noted the Estate cannot meet the zone of interests test to show standing to obtain judicial review under the APA—especially under the new theory of economic loss to the estate it presents for the first time on appeal.

In light of the Legislature's clear directive to HCA, the Court of Appeal's decision noting the Legislature did not intend HCA to consider estate's financial interests when promulgating or operating the Medicaid program, does not present an issue of substantial public interest this Court should review.

The Estate's Petition asserts this case presents an issue of substantial public interest this Court should review, but significantly expands the scope of the decision at issue in making that argument. The Court of Appeal's decision at issue is

unpublished and holds that to obtain judicial review of an agency decision a party seeking judicial review must establish standing under the plain language of RCW 34.05.530, and that in this case, the Estate did not. That a party seeking to obtain judicial review must meet the APA's procedural requirements to do so is well settled law, and does not present an issue of substantial public interest warranting review by this Court.

V. CONCLUSION

The Estate's Petition does not meet any of the criteria warranting review under RAP 13.4. Accordingly, Respondent respectfully asks this Court to deny the Appellant's Petition for Review.

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This document contains 4,913 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 12th day of January, 2024.

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused to be served a copy of the foregoing document on all parties or their counsel of record via E-service through the Court's E-file Portal to:

Greg McBroom Greg@SmithMcBroom.com
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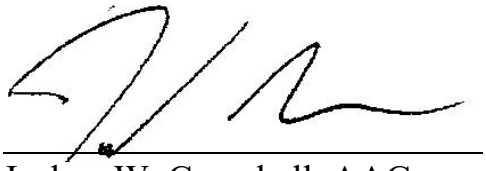
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 12th day of January, 2024 at Olympia, WA.



Joshua W. Campbell, AAG

ATTORNEY GENERAL'S OFFICE

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