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# QUESTIONS AND ANSWERS ON THE COPEs PROGRAM

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COLUMBIA LEGAL SERVICES

JULY 2010

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THIS PAMPHLET IS ACCURATE AS OF ITS DATE OF REVISION. THE RULES CHANGE FREQUENTLY.

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## 1. What is COPEs?

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COPEs is a program that pays for personal care and other services for people in their own homes. It also pays for care in adult family homes, adult residential care facilities, and assisted living facilities. It is designed to help people who, without COPEs, would need to be in nursing homes. The letters C-O-P-E-S stand for "Community Options Program Entry System."

The COPEs program is administered by DSHS - the Washington State Department of Social and Health Services. The financial eligibility rules for COPEs are very similar to the rules for the Medicaid program for nursing home care.

You can apply for COPEs at local Home & Community Services offices. (Home & Community Services is a division of DSHS.) You can find the nearest Home & Community Services office by calling 1-800-422-3263.

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## 2. How is COPEs eligibility determined?

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To get COPEs you must be financially eligible. The financial eligibility requirements are described below. Also you must need help, because of a physical or cognitive disability, with certain activities of daily living. Those activities are eating, bathing, transfer (for example, moving from a bed to a chair), bed mobility (positioning), locomotion

(walking or moving around), using the toilet and medication management.

To qualify for COPEs, a person must need extensive help with two or more of the listed activities of daily living, or at least some help with three or more. A person who needs supervision because of a cognitive impairment may qualify for COPEs if extensive help with one of the listed activities is needed.

Finally, DSHS must determine that you need the help described above and that your needs can be met adequately by services available under the COPEs program.

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## 3. How much does COPEs pay?

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What COPEs will pay depends on how many hours of services you need. The number of hours is set after an assessment by DSHS staff. The amount COPEs will pay also depends on how much of the cost of your care DSHS determines you must pay yourself, based on your income and certain allowable expenses.

COPEs can pay for personal-care services in your home in two ways. It can pay a private agency to provide the services or it can pay a person you choose to hire directly (referred to by the Department as an "individual provider"). An individual provider may be a relative but may not be your spouse. Individual providers are paid at a rate of between \$10.03 and \$11.07 per hour. The actual rate depends on the total number of hours worked as an individual provider since July 1, 2005.

If you receive personal-care services in your home, COPEs may also pay for other services, including home-delivered meals, home health aids, skilled nursing care, adult day care, and training to help you increase what you can do for yourself.

COPEs may also cover the cost of care in a group facility or home. Payment depends on the type of facility and its location. The maximum COPEs pays for an adult family home ordinarily ranges from \$1,411 to \$4,952 per month. For an assisted living facility, the COPEs payment ordinarily ranges from \$1,821 to \$5,113 per month. The actual amount COPEs will pay in either setting will depend on the county and the level of care needed, as assessed by the Department.

Under rare circumstances when more intensive care is needed than can be purchased for these rates, COPEs may pay a higher rate.

All COPEs recipients get a Medicaid card to cover their other medical expenses, including physician services, prescription drugs and home health services. In addition, they get case management services – help in planning and monitoring their care. Also, DSHS pays the Medicare premiums, co-payments and deductibles for COPEs program participants.

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#### **4. When does COPEs coverage begin?**

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COPEs coverage does not begin until DSHS approves a plan that describes both your needs and the COPEs services that will meet them. In addition, if you choose to get personal-care services in your home from an individual provider, COPEs coverage does not begin until DSHS has determined that the individual provider is capable of providing the needed services and until the provider has signed a contract. (Providers must satisfy

conditions established by DSHS and must pass a background check.)

The *medical* coverage you get with COPEs is effective as of the first day of the month in which your COPEs coverage begins.

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#### **5. What are the basic financial eligibility requirements for COPEs?**

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To get COPEs services, both your income and your resources must be within limits set by law. In counting your *income* for a month, DSHS looks at what you *received that month*. Income typically includes such things as Social Security, VA benefits and wages, in the month in which they are received.

In counting your *resources* for a month, DSHS looks at what you have on the first day of the month that you *already had* in the previous month. Resources typically include such things as real estate, funds in bank accounts (but not including this month's income) and stocks. Funds from a payment that counted as income last month will count as part of your resources this month if you still had them as of the first of this month..

##### **A. Income**

To be eligible for COPEs in 2010, your gross monthly income (with some fairly rare exclusions\*) must be no more than \$2,022 if you are single. If you are married, the Department looks first at the income that comes in your name. If that is not more than \$2,022, you may be eligible for COPEs no matter how much income your spouse has. If the income that comes in your name is more than \$2,022, you may still be eligible if the sum of your income and your spouse's income combined is less than \$4,044.

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| <p>*Income from some sources is excluded for purposes of determining COPEs eligibility. The sources are listed in Washington Administrative</p> |
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Code (WAC) 388-513-1340. The regulation is available in DSHS offices, and on the Internet at <http://apps.leg.wa.gov/wac/>

A separate program covers services in adult family homes and assisted living facilities for some people with monthly income above \$2,022. It is called the "Medically Needy Residential Waiver" or "MNRW" program. Another separate program covers in-home care, like the in-home care provided under the COPES program, for individuals with income above \$2,022. It is called the "Medically Needy In-home Waiver" or "MNIW" program.

(including co-payments required by the Medicare drug program); (4) an amount to pay medical bills for services not covered by Medicaid (usually services provided before you became eligible for Medicaid), if the bills are still owed and not covered by any insurance; (5) an amount to cover certain miscellaneous items, such as guardianship fees that satisfy certain requirements. Any remaining income must be used to pay for part of the cost of the services approved under the COPES program. The part of the cost you pay is called your "participation." COPES covers the rest.

If you are on COPES, you will be allowed to keep a specified amount of income. If you have more than the allowable amount, DSHS will require you to use the rest for certain specified purposes (explained later in this section).

If you are on COPES and live at home, you will be allowed to keep the following amount of countable income for your personal needs (which include home maintenance): if you are single, \$903 a month; if you are married and your spouse is *not* on COPES, \$674 a month; if you are married and your spouse is also on COPES, \$903 for each spouse (\$1,806 total).

If you are on COPES and live in an adult residential care facility, an assisted living facility or an adult family home, you can keep \$62.79 per month (or \$38.84 for certain residents on General Assistance). The next \$611.21 of your income must be paid to the facility for room and board. (\$62.79 + \$611.21 = \$674.)

The rest of your income (amounts above \$903 or \$674) will be used as follows: (1) an amount for your spouse if you have one, as explained in the answer to Question 6 below; (2) an amount for any dependent family members living with you; (3) an amount to pay health insurance premiums or co-payments

The special protections for income and resources of spouses who are not on COPES or Medicaid (discussed in the answers to Questions 6 and 7 below) do not apply to couples with one spouse served under the MNRW program or the MNIW program, instead of under COPES. Consequently, the MNIW (in-home) program will be of limited use to married individuals. Some alternative protection is available for spouses of participants in the MNRW program (for care in adult family homes and assisted living facilities). If the application for MNRW coverage is not made until the calendar month following the month in which a married person enters the facility, only the income and resources of the applicant, plus half of any community resources, will be considered available to the applicant for purposes of the application. The remaining income and resources are preserved for the spouse who is not receiving assistance.

Note: Your COPES (or MNRW or MNIW) eligibility and personal needs allowance will not be affected by items or services, including food, clothing or shelter, that are given to you or that you receive because someone else pays for them. So, for example, if someone pays your rent for you, the payment will not count as income to you. By contrast, if someone

gives you cash to pay your rent with, the cash received *will* count as income, and will affect your COPES eligibility and your personal needs allowance.

Also, in addition to your personal needs allowance, if you have earnings from work you will be able to keep \$65 of gross earnings plus \$1 out of each additional \$2 earned.

### B. Resources

The limit for resources (assets, property, savings) that a single person may have is \$2,000. Certain "exempt" resources are not counted in determining whether you fall within this limit. Exempt resources are described below in the answer to Question 8.

A spouse of a COPES recipient is allowed to keep substantially more resources. What resources a spouse can keep is explained in the answer to Question 7. Rules about the consequences of giving away your resources are described in the answer to Question 9.

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## 6. What *income* can we keep if my spouse goes on COPES?

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If your spouse goes on COPES and you are not on COPES or Medicaid, your spouse is allowed to keep \$674 per month and you are allowed certain additional income.

You (the spouse not on COPES) can always keep all income paid in your name, no matter how much. In addition, if the income paid in your name is less than \$1,822, you can keep as much of your spouse's income exceeding the \$674 allowed for him or her as is necessary to bring your income up to \$1,822 per month. And, if your housing costs (rent or mortgage, maintenance fee for a condominium or cooperative, taxes, insurance, and utilities) exceed \$547 per month, the \$1,822 can be increased up to \$2,739 by the amount of this

excess. (In calculating housing costs, your actual costs for rent, mortgage, maintenance fee for a condominium or cooperative, taxes, and insurance are used. For utilities, however, a standard figure of \$384 per month is used.)

If a COPES-recipient spouse is in an adult family home or other facility, then all but \$62.79 of the \$674 allocated to the recipient spouse must normally be paid to the facility for room and board. If this does not leave the couple with enough income to allow the spouse at home the amount he or she would otherwise get, as described in the last paragraph, there is a special problem. You can ask DSHS to make what is called "an exception to rule" to lower the amount paid to the facility, so that the money can be available to the spouse instead. (There is a dispute about whether denial of such a request would be allowed under federal law. If that problem affects you, you may wish to seek legal advice about it.)

### **Examples:**

*Your spouse is at home and on COPES. If \$2,400 is paid in your name and \$700 is paid in your spouse's name, you can keep \$2,400. Your spouse can keep \$674 of his or her income and would pay \$26 to the COPES provider.*

*If \$700 is paid in your name and \$2,400 is paid in your spouse's name, you can keep your \$700 plus at least \$1,122 of your spouse's income (\$1,822 - \$700 = \$1,122). And if your housing costs are \$800 per month, you can keep an **additional** \$253 of your spouse's income because the \$1,822 level is increased by the excess of your housing costs over \$547 (\$800 - \$547 = \$253).*

A spouse of a COPES recipient may be allowed to keep more of a COPES recipient's income if a superior court judge orders higher support (for example, in a legal separation proceeding) or if an administrative law judge decides that there are "exceptional

circumstances resulting in extreme financial duress.”

A COPES recipient may also be entitled to an additional allowance for the care of a dependent family member.

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**7. What *resources* can we have when my spouse applies for COPES?**

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When your spouse applies for COPES, the two of you can have any resources that are “exempt” – a home and a car, for example. Exempt resources are explained in the answer to Question 8 below.

In addition, you are allowed to have non-exempt resources up to a set value limit. (Non-exempt resources include such things as cash, most funds in bank accounts and investments.) The limit includes the \$2,000 that a single COPES recipient is permitted to have plus an additional amount established by what is called the “Community Spouse Resource Allowance” or “CSRA.”

The CSRA is at least \$48,639. This means that when your spouse applies for COPES, you and your spouse can have at least \$50,639 of non-exempt resources (\$48,639 allowed for you and \$2,000 allowed for your spouse). At the time of application, it does not matter which spouse owns what resource or whether the \$50,639 or any part of it is community or separate property. All resources of both spouses will be added together to determine eligibility.

Sometimes the Community Spouse Resource Allowance can be more than \$48,639. It can be more if one of the following exceptions apply:

(1) If your spouse is currently institutionalized (in a hospital or nursing home), and you can show that the combined resources of both spouses were more than

\$97,278 when the current period of institutionalization began, then you may be entitled to a CSRA of more than \$48,639. If this exception applies, the CSRA is increased to half of the combined resources that the couple had at the time the period of institutionalization began. The maximum amount that the CSRA can be increased to is \$109,560. To take advantage of this exception, you will have to be able to show what the combined resources were when the period of institutionalization began.

(2) You *may* be allowed to keep more non-exempt resources if the combined *income* of both spouses is not enough to give you what is allowed by the rules explained in the answer to Question 6 above (\$1,822 to \$2,739). To be allowed to keep more resources, a spouse who is not on COPES must request a decision from DSHS, at the time of application, that more resources are necessary to produce the permitted income level.

(3) If your spouse is currently institutionalized (in a hospital or nursing home) and the current period of institutionalization began before August 1, 2003, then your CSRA is \$109,560.

You can reduce excess resources that make your spouse ineligible for COPES in various ways. You can spend the excess resources on such things as medical care, on home repair, on the purchase of exempt resources, or on consumable goods or services, so long as you receive fair value for your money. Or you can buy an annuity that converts the excess resources to monthly income, *if the annuity satisfies the requirements of DSHS regulations*. To determine whether a particular annuity satisfies DSHS requirements and whether a particular financial plan makes sense in your particular case, you should consult a lawyer familiar with Medicaid law.

The explanation above responds to the question “What resources can I have when my spouse *applies* for COPES?” An entirely different rule applies once your spouse is *already on* COPES. After an application is approved, continuing eligibility of the spouse on COPES will not be affected by increases in the resources of the spouse who is not on COPES. In other words, if one spouse is already on COPES, the other spouse’s resources can increase above the limit that applied at the time of the eligibility determination. The increase will not affect the COPES eligibility of the spouse on COPES.

Although it does not matter which spouse owns the resources at the time of applying for COPES, any excess over \$2,000 must be transferred to the spouse not on COPES within a year after a COPES application is approved. After that, the spouse on COPES must not have more than \$2,000 worth of non-exempt resources in his or her name.

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## **8. What resources are not counted to determine Medicaid eligibility?**

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### **A. What are exempt resources?**

Some resources are considered exempt and are not counted toward the \$2,000 and \$48,639 to \$109,560 resource limits that were discussed in the previous section. Exempt resources can include your home, household goods and personal effects, some real estate sales contracts, a car, life insurance with a face value of \$1,500 or less, most burial plots and prepaid burial plans, and certain other property and items used for self-support. Some of these are discussed in more detail below.

Also, *non-exempt* resources that cannot be sold within 20 working days are temporarily disregarded while they are being sold.

### **B. When is a home exempt?**

A home (which may be a house and all surrounding land, a condominium or a mobile home) may be an exempt resource. The exemption applies if the COPES recipient lives in the home, or is temporarily absent but intends to return to it. It also applies as long as the recipient’s spouse or, in some cases, a dependent relative continues to live in the home.

The exemption does not apply to a home in which the COPES recipient has an equity interest of more than \$500,000 unless one of the following exceptions applies: (1) the recipient is receiving services based on an application for DSHS-administered long-term-care services filed before May 1, 2006; or (2) the recipient’s spouse or the recipient’s child who is under 21 or blind disabled resides in the home. (The disability criteria for this purpose are the same as those used for Social Security disability determinations.)

Even when a home is exempt, a married Medicaid applicant or recipient still may wish to transfer his or her interest in it to a spouse. Such a transfer may be made in order to prevent future recovery of Medicaid costs from a Medicaid recipient’s estate (discussed in the answer to Question 7 below), or in order to make it easier for the spouse to sell or otherwise dispose of the home. On the other hand, such a transfer is not always a good idea. It may, for example, have adverse tax or other consequences in some cases. It makes sense to consult with a lawyer familiar with Medicaid rules and estate planning before making such a transfer.

The proceeds from the sale of an exempt home are also exempt if, within three months of when they are received, they are used to purchase a new exempt home.

**C. When is a sales contract exempt?**

The seller's interest in any sales contract entered into before December 1, 1993 is an exempt resource unless it is transferred. A sales contract entered into after November 30, 1993 is exempt only if it is a contract for the sale of the seller's home and includes fair market terms. A sales contract entered into after May 2004 is exempt only if it is for the sale of the seller's principal residence at the time he or she began a period in a medical facility (including a nursing home) or on COPES and if it requires repayment of the principal within the seller's "anticipated life expectancy." The *payments* received under an exempt sales contract will be treated as *income*.

**D. When is a car exempt?**

One car is exempt, no matter how much it is worth, if it is used for transportation either for the COPES recipient or for a member of the recipient's household. If the recipient is married, only one car is exempt for the couple and the "used for transportation" requirement does not apply, unless the second spouse lives in a hospital or nursing home.

**E. When is life insurance exempt?**

The cash surrender value of life insurance may be claimed as exempt if the total *face* value (the amount payable at death) of the policy or policies is not more than \$1,500. For couples, each spouse may claim \$1,500. If the face value of an individual's life insurance is more than \$1,500, the entire *cash surrender* value (the amount the insurance company will pay if the policy is canceled) is counted as a non-exempt resource. (This means it will count as part of the \$2,000 or \$48,639 to \$109,560 resource limits that were discussed in the previous section.) Life insurance with no cash surrender value does not count as a resource. It has no effect on COPES eligibility.

**F. When are burial funds and burial spaces exempt?**

A burial fund of \$1,500 for an individual (and an additional \$1,500 for a spouse) may be claimed as exempt if it is set aside in a clearly designated account to cover burial or cremation expenses. If an individual has life insurance that is claimed as exempt, then the face value of the life insurance will count as part of the individual's burial fund. So, for example, if a COPES recipient has exempt life insurance with a face value of \$1,000, then only \$500 may be exempted in a designated account for burial expenses.

An *irrevocable trust* for burial expenses or a *pre-paid burial plan* may be claimed as exempt as long as it does not exceed reasonably anticipated burial expenses. The value of such a trust or plan will count against the exemption for burial funds or life insurance. *Burial spaces* for a COPES recipient and for immediate family members are exempt no matter how much they are worth.

**G. When are household goods and personal effects exempt?**

Household furniture and other household goods, as well as clothing, jewelry and personal care items are exempt regardless of value.

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**9. Can I transfer resources without affecting COPES eligibility?**

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**A. Rules for transfers of a home**

A *home* may be transferred without penalty to any of the individuals described below.

- *A spouse*
- *A brother or sister* who has an equity interest in the home and has lived there at least one year immediately before the date when their sibling's COPES coverage or institutionalization began

- A *child* who has lived in the home and cared for the parent for two years immediately before the date of the parent's current COPES coverage or institutionalization (If this requirement is met, it does not matter *when* the property is transferred to the child.)
- A *child* who is under 21, or blind or disabled (The disability criteria for this purpose are the same as those used for Social Security disability determinations.)

The person making the transfer does not need to live in the home at the time of the transfer to one of the people listed above.

**B. Rules for other transfers to a spouse or disabled child**

There is no penalty for transferring resources to your spouse or to your disabled child. (Once again, the disability criteria for this purpose are the same as those used for Social Security disability determinations.)

Remember that the resources of both spouses are added together in determining initial COPES eligibility. So, if a couple has more resources than are permitted at the time of application, a transfer from one spouse to the other will not solve that problem.

A transfer to a spouse or to a disabled child may be made without penalty either before or after an individual qualifies for COPES or Medicaid.

**C. Rules for other transfers to someone other than a spouse or disabled child**

**(1) Transfers without penalty**

- (a) There is no penalty if you sell your resources for their fair market value.
- (b) *Exempt* resources (described in the answer to Question 7), *other than the home or a sales contract*, may be given to anyone without penalty.

(c) There is no penalty for gifts made after April 2006 as long as the total amount of gifts made in any calendar month is \$227 or less. (Different rules apply if you made gifts before May 2006 *and* you applied for COPES or Medicaid for nursing home care before May 2009.)

(d) There is no penalty for gifts of any value made more than 60 months before applying for COPES or Medicaid for nursing home care.

(e) No matter when a transfer is made, there is no penalty if you can demonstrate that the transfer was not made to qualify for COPES or Medicaid for nursing home care.

**(2) Transfers resulting in penalties**

There may be a penalty if you transfer *non-exempt* resources, or sales contracts or a home (except to one of the people listed above), for less than fair market value within 60 months of applying for Medicaid. The penalty is a period of ineligibility for COPES or Medicaid for long-term-care services. The length of the period of ineligibility depends on the value of the resource given away and when it was given. There is no maximum length for a period of ineligibility.

**(3) Calculating periods of ineligibility**

The process of calculating periods of ineligibility is a little bit complicated. After reading the following explanation, if you are left with questions about the effects of gifts you have made or gifts you are considering, you should talk with a lawyer who is knowledgeable about Medicaid. (The calculation explanations below apply to COPES applications between October 1, 2009 and September 30, 2010. The numbers change each year in October.)

To determine a period of ineligibility for gifts made after April 2006, calculate as follows:

take the total of all gifts made after April 2006, and divide the total by 227. The number of days of ineligibility is the result of this division.

*The period of ineligibility does not begin to run until the first day of the month in which an applicant for Medicaid-funded long-term-care services is eligible in all other respects except for the period of ineligibility.* This means that the applicant must satisfy the income and resource eligibility requirements and must meet the level-of-care requirements for COPES or Medicaid for nursing home care. Also, to start the period of ineligibility running the Department requires that an individual make an application – in effect, seeking a determination by the Department that he or she is “otherwise eligible.” If the gift is made when an individual is already receiving COPES coverage, then the period of ineligibility normally begins on the first day of the month following a notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery (by the Department) of the transfer. There is one exception to this norm. The penalty period will begin later if another penalty period is already in progress. In that case the new penalty period starts after the current one is completed.

**Example:**

*If you made gifts totaling \$20,000 between May and August 2009 and were otherwise eligible and applied for COPES in October 2009, you would calculate the period of ineligibility by dividing 20,000 by 227 to produce 88 days of ineligibility resulting from those gifts. (20,000 ÷ 227 = 88.1, which rounds down to 88.) The period of ineligibility would begin on October 1, 2009, assuming that you were otherwise eligible on that day.*

Remember that a gift will not make an applicant resource eligible in the month of the gift if resources were too high on the first day of the month.

Generally, before you apply for COPES or Medicaid for nursing home care, the same restrictions apply to transfers by either you or your spouse. This means that if you give or your spouse gives away resources, either gift may result in a period of ineligibility for you. Once you are receiving COPES or Medicaid for nursing-home care, however, subsequent gifts made by your spouse will not affect your continuing eligibility.

**(4) Waiver of periods of ineligibility**

DSHS may waive a period of ineligibility if it finds that denial of benefits would cause undue hardship. Such a waiver may lead to imposition of a civil fine on the recipient of a gift that was made for the purpose of qualifying for Medicaid if the recipient of the gift “was aware, or should have been aware,” of the purpose.

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**10. Will COPES payments result in a lien or claim against my estate?**

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DSHS can normally recover from a COPES recipient’s estate what it paid for the recipient’s care after the recipient turned 55. Recovery will be delayed if, at the time of death, the COPES recipient has a surviving spouse or registered domestic partner or a surviving child who is under 21 or blind or disabled.

The DSHS estate-recovery claim only applies to property owned at death by a COPES recipient. *No claim can be made against property solely owned by a spouse or child.* This may be an important reason to consult a lawyer familiar with COPES and Medicaid

rules about permissible transfers of property. More information about estate recovery is available in the Columbia Legal Services pamphlet "Estate recovery for medical services paid for by the State."

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**11. What if I need help with the Medicaid application process?**

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Many people need help applying for COPES or Medicaid. Often there are family members or friends, or staff members of a hospital or nursing home or other agency, who are able to help. Help is also available from DSHS staff, especially for people who have physical or

mental impairments that make it hard to get through the application process on their own. If you need help in the application process from DSHS, you or someone else should tell a DSHS representative that you need help. DSHS rules require what are called "necessary supplemental accommodation services" when they are needed. These services include help filling out forms and help finding information or papers needed for your application.

COPES rules are complicated. Before taking steps you don't understand, you should get individualized legal advice.

COPES 7-10 (6-30-10)

Prepared by  
COLUMBIA LEGAL SERVICES