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# ESTATE RECOVERY FOR MEDICAL SERVICES PAID FOR BY THE STATE

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COLUMBIA LEGAL SERVICES

APRIL 2018

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## 1. What is estate recovery?

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Estate recovery allows the Washington State Department of Social & Health Services (DSHS) and the Washington State Health Care Authority (HCA) to recover the costs paid for by the State for long-term care and other medical services you received. The State has many programs that pay for medical services. Under some of these programs, and with important limitations, the State is permitted to recover (to get back) the cost of the services it paid for from the estate of the person who got the services after that person dies. This process is called “estate recovery.”

Estate recovery allows recovery from a recipient’s estate under limited circumstances. The law does not allow recovery during a recipient’s lifetime with one exception discussed in the answer to question 7 below. Also, it does not allow recovery during the lifetime of the recipient’s surviving spouse or registered domestic partner, or while there is a surviving child who is under 21 years old, or a blind or disabled child of any age.

The DSHS Office of Financial Recovery (OFR) is responsible for estate recovery.

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## 2. What is an estate?

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An estate includes anything a person owns or has a legal interest in at the time of death. These include:

- all real property (land or buildings)
- mobile homes
- vehicles
- bank accounts
- stocks or bonds,
- IRAs, 401(k), or 403(b) accounts, or
- any property that is or could be disposed of under a will.

For purposes of the estate recovery laws, an estate may also include certain other property interests an individual owned immediately before death. These include a joint interest or a life estate in a house, land, bank accounts, etc., that passed to someone else automatically upon death.

There is no estate recovery if the person who received medical services has no estate when the State’s authority to recover begins.

**Note:** Certain assets belonging to American Indians or Alaska Natives are exempt from estate recovery. So are assets protected by a qualified long-term care partnership policy issued after November 11, 2011. Governmental reparations payments may also be exempt from estate recovery. See [WAC 182-527-2746](#).

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## 3. What factors are involved in estate recovery?

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Figuring out whether state (not private and not Medicare) medical services are subject to estate recovery is complicated. The rules have changed many times.

Five factors are important:

- The age of the person who received services;
- When [dates] the person received services;
- What types of services the person received – were the services long-term care services or ordinary medical services;
- Were the services *Medicaid-funded* or *state-funded*; and
- What part of state government administered the services.

See the Appendix for a list of services subject to estate recovery and relevant dates.

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#### **4. Are Medicare Savings Programs subject to estate recovery?**

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Beginning January 1, 2010, recovery is not allowed for Medicare Savings Program (MSP) expenses (Medicare premiums and Medicare cost-sharing benefits). Medicare Savings Programs include QMB, SLMB, QI-1 (ESLMB), and QDWI.

For more information about MSPs, see our pamphlet entitled [Medicare Savings Programs: Help Paying for Medicare Costs](#) at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org)

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#### **5. I'm over 55 and enrolled in Apple Health for Adults. Does estate recovery apply to those benefits?**

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Maybe. Apple Health for Adults benefits are not subject to estate recovery for those over 55 unless you are receiving long-term care services. If you are over 55 and receive long-term care services, those services, along with hospital and prescription drug services, are subject to estate recovery. Note: Apple Health for Adults is coverage provided

under the Affordable Care Act for adults age 19-64.

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#### **6. Are there times when estate recovery may not take place even after the recipient's death?**

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Yes. The state cannot begin recovery efforts:

- during the life of a surviving spouse;
- while a surviving child is under age 21; or
- while there is a surviving blind or disabled child of any age.

The Medicaid recipient does not have to leave their estate to a spouse, child under 21, or blind or disabled child of any age for estate recovery to be avoided. So long as the Medicaid recipient is survived by a spouse, child under 21, or blind or disabled child, there can be no estate recovery.

The person or persons who inherited can do whatever they want with the inheritance. This includes selling it or doing anything else that can be done with one's own property. **WARNING:** Inheriting property or money can affect Medicaid or other public benefit program eligibility. If you receive Medicaid (called Apple Health) or other benefits, consult a lawyer knowledgeable about these programs.

There may be steps that should be taken, after the death of the Medicaid recipient, to transfer title to property from the estate or to otherwise protect distributed assets. Questions about such steps should be addressed to a lawyer who is knowledgeable about estate planning.

Certain property in the estates of American Indians or Alaska Natives is exempt from estate recovery. Information about those

exemptions is found in Washington Administrative Code, section 182-527-2746(6).

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### **7. Can the state file a lien against property during the lifetime of a person receiving medical assistance?**

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The State may file a pre-death lien (known as a TEFRA lien) against the home of someone who is on Medicaid and is a resident of :

- a nursing home;
- an intermediate care facility for the intellectually disabled; or
- a medical institution as defined in WAC 182-500-0050.

Before filing a lien, the State must determine that the resident cannot reasonably be expected to go home. The State must give the resident an opportunity to ask for a hearing to contest that determination.

The State may not file a pre-death TEFRA lien if any of the following family members of the resident are living in the home: a spouse, a registered domestic partner, a child who is under 21 or a blind or disabled child of any age, or a sibling with an equity interest in the home who has lawfully resided in it for at least a year before the resident's admission to the facility. A pre-death TEFRA lien may be filed if there is no spouse, registered domestic partner, child under 21 or blind or disabled child of any age, or a sibling with an equity interest in the home who has lawfully resided in it for at least a year before the resident's admission to the facility.

If a pre-death TEFRA lien is filed and the person later goes home, the lien must be removed. A pre-death TEFRA lien that has

been filed may not be enforced until the Medicaid recipient dies, unless the home is sold before then.

**Note:** A pre-death TEFRA lien cannot be filed against the property of an individual who received long-term care services (and related hospital or prescription drug services) as a MAGI Medicaid client.

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### **8. Can estate recovery ever be deferred?**

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The State may defer estate recovery (agree to delay recovery for a period of time) when it would cause an undue hardship to a survivor who is an heir of the deceased Medicaid recipient. The deferral is limited to the period for which the hardship exists. Undue hardship exists when:

- the survivor is a state-registered domestic partner; or
- the property is the heir's sole income-producing asset (like a farm) and their income is limited; or
- recovery would deprive the heir of shelter when the heir lacks the financial means to live elsewhere .

If an heir requests that the State defer recovery due to hardship, and the State denies the request, that decision may be appealed. The State's decision should explain how the heir can appeal.

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### **9. Can anything be done to avoid estate recovery?**

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Estate planning may reduce the effect of estate recovery laws. Since recovery is from the recipient's estate, a plan that reduces what the recipient owns while still alive will limit what is available for recovery after

death. However, certain transfers of property will result in penalties (specifically, in periods of ineligibility for certain kinds of medical assistance). So, actions to avoid estate recovery should be taken only after consultation with an attorney knowledgeable both about estate and tax planning and about medical assistance rules. Here are some examples of situations where estate recovery may be avoided:

- *Property owned solely by the surviving spouse.* Since transfers of assets between spouses are permitted without penalty, a person may avoid estate recovery from a particular asset by transferring any ownership share in that asset to a spouse.
- *Exempt resources.* A recipient may transfer *certain* exempt resources to anyone without penalty. (An exempt resource is one that is not counted when determining eligibility for medical assistance.) More information about the effects of transfers of assets is available in Columbia Legal Services pamphlets entitled "Questions & Answers on Medicaid for Nursing Home Residents," "Questions & Answers on the COPES Program," and "Questions and Answers on the Community First Choice Program" at [washingtonlawhelp.org](http://washingtonlawhelp.org).

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### **10. What happens to funds held by a nursing home or other residential facility?**

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When a recipient dies, any funds held by a nursing home, an adult family home, an

adult residential care facility or an assisted living facility must ordinarily be sent, within 30 days of death, to the state. The state may authorize release of funds to pay for burial costs, either before or after it receives the funds.

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### **11. How should the State be told that a recipient has died and that there is an estate?**

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The person responsible for the estate of a deceased recipient generally is required to send a notice to the state. So, in the case of estates in which a probate proceeding is filed in court, the personal representative must send the state a notice; and in the case of non-probated estates the notice agent must send the notice. For estates valued at under \$100,000 in which an affidavit procedure is used as an alternative to probate, an affidavit of successor must be sent to the state.

Legally required notices may be sent, by certified mail with return receipt requested, to the Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501. The telephone for the Office of Financial Recovery is 1 (800) 562-6114.

**References:** Revised Code of Washington, Sections 43.20B.080 & 090; Washington Administrative Code, Chapter 182-527.

Estate recovery rules can be complicated. Before taking steps you don't understand, you should get individualized legal advice.
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Prepared by <b>COLUMBIA LEGAL SERVICES</b>
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**Appendix A - Estate recovery rules for Medicaid-funded and state-funded services**

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**Medicaid-funded services:**

**Before July 26, 1987:** There is **no** estate recovery for Medicaid-funded services of any kind provided prior to July 26, 1987. [WAC 182-527-2740\(1\)\(a\)](#).

**Beginning July 26, 1987:** Recovery for **all** Medicaid-funded services subject to estate recovery provided **on or after** July 26, 1987 to persons who were age 65 or older at the time of the service. The person need not have gotten long-term care services. [WAC 182-527-2740\(1\)\(a\)](#).

**Beginning July 1, 1994:** Recovery for **all** Medicaid-funded services subject to estate recovery provided **after** July 1, 1994 to persons who were age 55 or older at the time of service. [WAC 182-527-2740\(1\)\(b\)](#).

**Important Note: There are limits on estate recovery for Medicaid-funded services. And, some Medicaid-funded services did not become subject to recovery until after July 1, 1994 or are not subject to recovery at the present time. The limits and important dates are described below.**

**July 26, 1987 through July 24, 1993:** The first \$50,000 of the estate, and 65% of any amount above \$50,000 are exempt from recovery for Medicaid-funded services subject to recovery provided between these dates. [WAC 182-527-2746](#) and [WAC 182-527-2740\(1\)\(a\)](#).

**July 25, 1993 – June 30, 1994:** Two thousand dollars' worth of personal property is

**exempted** from recovery for services provided between these dates.<sup>1</sup> [WAC 182-527-2746\(2\)](#).

**July 1, 1994 – June 30, 1995:** Medicaid-funded nursing home and home and community based services provided to persons age 55 and older are subject to estate recovery during this period. Hospital and prescription drug services provided to people 55 and older who received nursing home and/or home and community based services are also subject to recovery. [WAC 182-527-2742\(6\)](#).

**July 1, 1995 – May 31, 2004:** In addition to Medicaid-funded nursing home and home and community based services for those 55 and older, these additional services are now subject to estate recovery: adult day health, Medicaid personal care, and private duty nursing services. Hospital and prescription drug services provided to those 55 and older who received any of these services are also subject to recovery. [WAC 182-527-2742\(5\)](#).

**June 1, 2004 – December 31, 2009:**

All Medicaid-funded services, including Medicare premiums for people also receiving Medicaid, and premium payments made to Managed Care Organizations (MCOs) are subject to estate recovery during this period. [WAC 182-527-2742](#).

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<sup>1</sup> There is a typo in the boldpaced part of the rule. The date "July 24, 1993" should say "July 25, 1993."

**January 1, 2010 – December 31, 2013:**

All Medicaid-funded services, including Medicare premiums for people also receiving Medicaid, premium payments made to Managed Care Organizations (MCOs), and client's proportional share of the state's monthly contribution to the Centers for Medicare and Medicaid Services to defray the costs for outpatient prescription drug coverage provided to those eligible for Medicare Part D and Medicaid are subject to estate recovery during this period.  
[WAC 182-527-2742\(3\)](#).

**January 1, 2010 – present**

No estate recovery for MSP cost-sharing benefits (premiums, co-pays, coinsurance, deductibles) for people also eligible for a non-MSP Medicaid program.  
[WAC 182-527-2742\(9\)](#).

**January 1, 2014 – present:**

See [WAC 182-527-2742\(2\)](#). The rule lists eighteen services presently subject to estate recovery individually.

**July 1, 2017 – present. Some new long-term care services exempt**

Long-term services and supports authorized under the Medicaid transformation project are **exempt** from estate recovery. Exempted services include those provided under:

- Medicaid alternative care under WAC [182-513-1600](#);
  - Tailored supports for older adults under WAC [182-513-1610](#);
  - Supportive housing under WAC [388-106-1700](#) through [388-106-1765](#);
- or

- Supported employment under WAC [388-106-1800](#) through [388-106-1865](#).  
[WAC 182-527-2742\(10\)](#).

**State-only funded services:**

All state-only funded medical assistance is subject to recovery except as follows:

The four services below are not subject to estate recovery:

- Adult protective services;
- Offender reentry community safety program services;
- Supplemental security payments (SSP) authorized by the developmental disabilities administration (DDA); and
- Volunteer chore services.

[WAC 182-527-2742\(1\)](#).

**July 1, 1995 through the present:**

Beginning July 1, 1995, a person's estate is liable for all state-only funded long-term care services provided to DSHS Home and Community Services clients.

[WAC 182-527-2740\(2\)](#).

**June 1, 2004 through the present:**

Beginning June 1, 2004, a person's estate is liable for all state-only funded long-term care services provided by DSHS's Developmental Disabilities Administration.

[WAC 182-527-2740\(2\)\(b\)](#).