

Estate recovery for long-term care services paid for by the State

❖ You can find all the fact sheets we link to here at [WashingtonLawHelp.org](https://www.washingtonlawhelp.org).

Should I read this?

Yes, you should read this if you live in Washington State, and you receive or think you may one day soon receive long-term care services.

What will I learn?

You will learn what long-term care services are, what estate recovery is, what estate recovery might mean for your family or anyone living in your home when you die, and how you or those folks might be able to avoid estate recovery.

What are long-term care services?

They include care and services in a nursing facility, adult family home, assisted living community, and in your home.

What is estate recovery?

Washington State has several programs that pay for medical services, including Medicaid and other state programs. Here we will refer to all these programs as “the state.”

If the state pays for your long-term care services, then the state can sometimes collect (can “recover”) some of the things you own when you die (your “estate”) to get back some or all of what it paid for. Services paid for by Medicare or private insurance do not qualify for estate recovery.

What is an “estate”?

It includes anything you own at the time of your death. This can include your home (but only the part you own, if you own it with someone else), any other buildings or land you own, vehicles, bank accounts, and stocks or bonds.

What if I don't own anything when I die?

Then there is no estate recovery.

How do I know if estate recovery applies to me?

It's complicated. But several factors are important. They include your **age**, **when** you got long-term care service, and the **types** of services you got.

The **Appendix**, below, has a list of services subject to estate recovery.

Is there an exception for American Indians or Alaska Natives?

Yes. Certain properties belonging to American Indians and Alaska Natives are excused (called "exempt") from estate recovery if, at the time of death, you are enrolled in a federally recognized tribe and the property is on or near a reservation. Read [Estate recovery exemptions for Native Americans and Alaska Natives](#) to learn more.

Can the State collect while I'm still alive?

Maybe. The State could put a **lien** on your home while you are alive if you live in a nursing home and you are not expected to return home. A lien on the property means you must pay off the judgment before you sell the property.

But the State will not enforce the lien (for example, foreclose on your home) until you die. Also, the State must remove the lien if you **do** return home.

What if my family member is still living in my home when I die?

Even though the State can put a lien on your home, it will not **enforce** the lien (for example, foreclose on your home) while your spouse, registered domestic partner, child under age 18, or child with a disability of any age is living in the home. If one of these family members inherits the home, and the title to the home is put in their name, they can use it without restriction.

Your family member should talk with a lawyer about their rights. They should also contact the [Office of Financial Recovery \(OFR\)](#) to tell them they are living in the home. They can call the OFR at 1-800-562-6114 or visit their website at dshs.wa.gov/ffa/office-financial-recovery.

What if someone else is living in my home or using my home when I die?

The State might agree to delay (to “defer”) collection when it would cause an “undue hardship” to the person living in or using your home, including when any of these is true:

- The person living in your home was your domestic partner (not registered)
- The person gets income from your property, for example, farming or rent
- The person has limited income and would be homeless if they can’t live in your home

The person living in or using your home or property should talk with a lawyer about their rights. They should also contact the [Office of Financial Recovery \(OFR\)](#) to request a hardship. They can call the OFR at 1-800-562-6114 or visit their website at dshs.wa.gov/ffa/office-financial-recovery.

I’d like to make sure my relatives and friends inherit from me. Can I avoid estate recovery?

Be careful. If you give away money or your home to avoid estate recovery, you may not be able to get Medicaid for long-term care for some time. You should prioritize your health care over making gifts to friends and relatives.

There is an **important exception** to this. You can give (you can “transfer”) your home to your spouse and still get Medicaid for long-term care. You may also be able to transfer your home to your child in very few situations. Before transferring your home to a child, talk with someone familiar with Medicaid rules, like a lawyer or other professional, and read the rules at [WAC 182-513-1363\(4\)\(d\)](#).

-
- ❖ The DSHS [Office of Financial Recovery \(OFR\)](#) is responsible for estate recovery. You can contact the OFR at 360-664-5700 or 1-800-562-6114 or visit their website at dshs.wa.gov/ffa/office-financial-recovery.
-

Get legal help

- **Apply online:** nwjustice.org/apply-online
- **Facing Eviction?** Call 1-855-657-8387
- **Facing Foreclosure?** Call 1-800-606-4819
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 211 (or toll-free 1-877-211-9274) weekdays 8:00 am to 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am and 12:15 pm or apply online at nwjustice.org/apply-online.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR*Sr at 1-888-387-7111

Deaf, hard of hearing or speech impaired callers can call any of these numbers using the relay service of your choice.

Interpreters provided.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

© 2023 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution is granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)

Appendix – Which services are subject to estate recovery?

❖ You can read the state rule about this at [WAC 182-527-2742](#).

July 1987 - June 1994: Estate recovery applies if you were **age 65 and older** and got Medicaid services.

July 1994 - June 1995: Estate recovery applies if you were **age 55 and older** and got home and community-based services or nursing facility services. It also applies to any hospital and prescription drug services you received when you received those other services. For example, you might have been living in a nursing home, and had to go to the hospital for a while before returning to the nursing home.

July 1995 - May 2004: Estate recovery applies if you were **age 55 and older** and got any of these services:

- Adult day health services
- Home and community-based services
- Medicaid personal care services
- Nursing facility services
- Private duty nursing services

Estate recovery also applies to any hospital and prescription drug services you were provided while you were receiving any of the services listed above. For example, you may have had an insulin prescription while receiving private duty nursing services.

June 2004 - December 2009: Estate recovery applies if you were **age 55 and older** and got any of the following services:

- Medicaid services
- Medicare premiums for people also receiving Medicaid
- Medicare savings programs (MSPs) services for people also receiving Medicaid
- Premium payments to managed care organizations (MCOs)

January 2010 - December 2013: Estate recovery applies if you were **age 55 and older** and got any of the following services:

- Medicaid services
- Premium payments to managed care organizations (MCOs)
- The 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 a person who is eligible for Medicare Part D and Medicaid

January 2014 - Present: Estate recovery applies if you were **age 55 and older** and got any of these services:

- Basic plus waiver services
- Community first choice (CFC) services
- Community option program entry system (COPES) services
- Community protection waiver services
- Core waiver services
- Hospice services
- Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic
- Individual and family services
- Medicaid personal care services
- New Freedom consumer directed services
- Nursing facility services
- Personal care services funded under Title XIX or XXI
- Private duty nursing administered by the aging and long-term support administration (AL TSA) or the DDA
- Residential habilitation center services
- Residential support waiver services

- Roads to community living demonstration project services
- The portion of the managed care premium used to pay for AL TSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE)

Estate recovery also applies to any hospital and prescription drug services you were provided while you were receiving any of the services listed above.

July 1, 2017 - Exceptions: 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.