Estate recovery for medical services paid for by the state

- Read this only if you live in the state of Washington.
- You can find all the fact sheets we link to here at WashingtonLawHelp.org.

What is estate recovery?

If Washington state pays for your long-term care services, it can sometimes collect ("recover") some of the things you own when you die (your "estate") to get back some or all of what it paid for.

What is an “estate”?  

An estate 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.

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. Only services paid for by Medicaid or other
state programs (not Medicare or private insurance) qualify for estate recovery. See the Appendix, below, for a list of services subject to 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 services; and
- the types of services you got.

See the Appendix, below, for a list of services subject to estate recovery.

Are there exceptions for American Indians or Alaska Natives?

Yes. Certain properties belonging to American Indians and Alaska natives are exempt (excused) 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 Exemptions from Estate Recovery for Property Owned by 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, and they 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 any of these people are living in it:

- your spouse,
- your registered domestic partner,
• your child under age 18, or
• your child with a disability of any age.

Also, if one of these people inherits the home, and the title to the home is put in their name, they can use it without restriction.

Your spouse, domestic partner, minor child, or child with a disability 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 www.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 (“defer”) collection when it would cause an “undue hardship” to the person living in or using your home, including when:

• the person living in your home was your domestic partner (not registered);
• the person gets income from your property (for example, farming or rent); or
• 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 www.dshs.wa.gov/ffa/office-financial-recovery.

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

*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 a period of time. This means you may have to prioritize your health care over making gifts to friends and relatives.

An important exception to this rule is that you can give (“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. You should talk with
someone familiar with Medicaid rules, like a lawyer or other professional, and read the rules at WAC 182-513-1363(4)(d) before transferring your home to a child.

- You can find the estate recovery rules in the Washington Administrative Code (WAC) 182-527.

- 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 www.dshs.wa.gov/ffa/office-financial-recovery.

Get Legal Help

- **Apply online** with CLEAR*Online - nwjustice.org/apply-online

- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 2-1-1 (or toll-free 1-877-211-9274) weekdays 8:00 am - 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 - 12:15 pm or apply online at nwjustice.org/apply-online.

- **Facing Eviction**? Call 1-855-657-8387.

- **Facing Foreclosure**? Call 1-800-606-4819.

- **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.

CLEAR and 2-1-1 will provide interpreters.
Appendix – Which Services are Subject to Estate Recovery?

**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 the following services:
(a) Home and community-based services;
(b) Nursing facility services; and
(c) The hospital and prescription drug services provided to a client while the client was receiving services listed above.

**July 1995 - May 2004:** Estate Recovery applies if you were age 55 and older and got the following services:
(a) Adult day health services;
(b) Home and community-based services;
(c) Medicaid personal care services;
(d) Nursing facility services;
(e) Private duty nursing services; and
(f) The hospital and prescription drug services provided to a client while the client was receiving services listed above.

**June 2004 - December 2009:** Estate Recovery applies if you were age 55 and older and got the following services:
(a) Medicaid services;
(b) Medicare premiums for people also receiving Medicaid;
(c) Medicare savings programs (MSPs) services for people also receiving Medicaid; and
(d) Premium payments to managed care organizations (MCOs).

**January 2010 - December 2013:** Estate Recovery applies if you were age 55 and older and got the following services:
(a) Medicaid services;
(b) Premium payments to managed care organizations (MCOs); and
(c) 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 the following services:
(a) Basic plus waiver services;
(b) Community first choice (CFC) services;
(c) Community option program entry system (COPES) services;
(d) Community protection waiver services;
(e) Core waiver services;
(f) Hospice services;
(g) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic;
(h) Individual and family services;
(i) Medicaid personal care services;
(j) New Freedom consumer directed services;
(k) Nursing facility services;
(l) Personal care services funded under Title XIX or XXI;
(m) Private duty nursing administered by the aging and long-term support administration (ALTSA) or the DDA;
(n) Residential habilitation center services;
(o) Residential support waiver services;
(p) Roads to community living demonstration project services;
(q) The portion of the managed care premium used to pay for ALTSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and
(r) The hospital and prescription drug services provided to a client while the client was receiving 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:
(a) Medicaid alternative care under WAC 182-513-1600;
(b) Tailored supports for older adults under WAC 182-513-1610;
(c) Supportive housing under WAC 388-106-1700 through 388-106-1765; or
(d) Supported employment under WAC 388-106-1800 through 388-106-1865.