

## Fact Sheet:

# Estate Recovery

### **Summary of the Law on Estate Recovery**

*RCW 43.20B.080 allows recovery of Medicaid payments.*

*RCW 74.39A.170 allows recovery of state-only payments made for long-term care services.*

RCW 43.20B.080 allows for recovery of the state's medical assistance costs from the estates of individuals who were age 55 and over at the time of receipt of services. RCW 74.39A.170 allows recovery of long-term care costs that are paid with state only funds from the estate of individuals of all ages. Washington State law is consistent with federal requirements for estate recovery programs in 42 USC Sec. 1396p

Potential Medicaid clients are advised of estate recovery provisions by DSHS workers at the time of their application for Medicaid. This notice is required under RCW 43.20B.080(8) and RCW 74.39A.170(3).

Assets that have been properly transferred prior to a person's application for Medicaid are not subject to estate recovery. Limitations to asset transfers are spelled out in state and federal law. If assets that are subject to recovery are transferred at less than fair market value, the individual may become ineligible for Medicaid services.

The state does not place a lien on assets or try to recover against an estate until the death of the Medicaid recipient. The state will defer recovery until the death of a surviving spouse (if any) and/or while there is a surviving child who is under 21, blind or disabled.

Methods for recovery of overpayments are specified in RCW 43.20B. Individuals subject to estate recovery have a right to an administrative hearing under 74.08.080, conducted under 34.05 (APA)

### **Annual Recoveries**

The Department of Social and Health Services, Office of Financial Recovery is responsible for the estate recovery program. They collect approximately \$11.5 million per year from approximately 650 estates.

### **WAC changes**

New rules became effective June 1 2004 that made recovery provisions more consistent and added services that are subject to estate recovery.

Other significant changes to estate recovery provisions that were effective June 1, 2004 include:

- Identify additional Medicaid expenditures to be included in estate recovery. The rules now include all Medicaid services (federally funded services) plus premium payments to managed care organizations;

- Assets and resources of Native Americans/Alaska Natives that are exempt from estate recovery were identified.
- State-funded long-term care services for clients of Division of Developmental Disabilities were added to recoverable services.
- Additional Medicaid expenditures for Medicare savings programs and payment of Medicare premiums were added only for those clients who also receive Medicaid.
- Provision for interest charges after the establishment of the debt.

These changes were made in 388-527 WAC.

### Recent Legislation

The department recovers against the estate of a deceased person who has received Medicaid services in compliance with the provisions of Chapter 11 RCW Probate and Trust Law. In the mid-90s the legislature revised these laws to require that individuals who are settling the estate of a deceased person be required to notify DSHS of the proceedings. This allows DSHS to file liens or take other actions available to creditors to recover amounts owed.

Certain sections of Chapter 11 RCW to permit property to be transferred to heirs before DSHS is provided notice and an opportunity to make a claim for payment was inadvertently not included when these sections were updated in the mid-90s. This led to the inequitable situation where the heirs of some estates had to repay the debt to DSHS accrued by the estate but heirs of other estates did not. For example, if a person who received Medicaid services died with an intact will, the individual settling the estate was required to notify DSHS of that action. But the individual settling the estate of a person who received Medicaid services and died without a will was not required to notify DSHS of the settlement activities. The new rules require notification to DSHS in all circumstances.

This change to the rule is expected to result in additional recoveries in approximately 20 cases per year, resulting in an estimated \$500,000 increase in recoveries.

### Legislation adopted by 2005 legislature

The department may record requests for notice of transfers or encumbrances of real property owned by individuals who have received medical assistance subject to recovery.

Estate recovery will be allowed against a Medicaid recipient's life-estate or joint-tenancy interest.

The department may file a lien against the real property of a living resident of a nursing home or other medical institution if it determines, after notice and opportunity for a hearing, that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

Eliminated the homestead exemption on debts owed for estate

Expands the statute of limitation from 10 years to 20 years for Medicaid liens placed for collections of debts due the department

## ESTATE RECOVERY FACT SHEET

### Why am I getting this notice?

You are getting this notice because a law called "estate recovery" may affect you.

### What is the estate recovery law?

This law requires the state to recover certain Medicaid funded services or state funded services from *your estate* **after your death.** DSHS may file a lien or make a claim against any property included in your estate.

### What is an estate?

An estate includes any savings you have and other things you own or have a legal interest in at the time of your death, such as a house and land. It does not include property solely owned by your parents, spouse, or child.

### Which of my services are included in estate recovery?

**Estate recovery applies to Medicaid services you receive at age 55 or older.**

These include hospital costs, prescriptions, nursing home care, Medicaid Personal Care, and DDD waiver services such as residential, day program, and other support services.

**Effective June 1, 2004, estate recovery also applies to all state-funded long-term home and community services received at any age.**

### What if I have a wife or husband or child?

The state cannot begin recovery during the life of a surviving spouse, or while your child is under age 21, blind or disabled.

### Does the state ever make exceptions to this law?

The state may agree not to recover its costs from your estate if it would cause hardship for the person who would inherit the house, money, or property.

### Are there appeal rights to estate recovery?

Yes. DSHS will give notice and an opportunity for a hearing.

### What can I do to avoid estate recovery?

Estate planning may reduce the effect of estate recovery laws. Any actions to avoid estate recovery should be taken only after talking with an attorney. Otherwise, you may do something that will make you ineligible to receive Medicaid benefits.

### How can I find out more information?

Enclosed is information from Columbia Legal Services. If you have more questions, you may want to call the Coordinated Legal Education, Advice and Referral Line (CLEAR) toll free at 1-888-201-1014 or consult with an attorney who understands both estate planning and medical assistance rules.

### Statutory Authority

**RCW 43.20b and 388-527 WAC**