



## APPLE HEALTH (MEDICAID) MANUAL REVISION

<b>Revision #</b>	<b>082</b>
<b>Chapter / Section</b>	<b>Estate Recovery</b>
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### Summary of Revision

[Estate recovery | Washington State Health Care Authority](#)

### Clarifying Information

Estate Recovery and Liens Prior to Death for Recovery

*Estate Recovery*

The State of Washington's Estate Recovery Program was enacted July 26, 1987. In 1993, federal law mandated that all states enact Estate Recovery programs. State and federal law mandate the State of Washington's estate recovery program. Recovery of the cost of services and the age when recovery applies has changed several times since the program was enacted. The department recovers from estates according to the estate recovery law in effect at the time the services were received.

*Costs Subject to Estate Recovery*

- **Services provided from 7/26/87 through 6/30/94:**  
The cost of all Medicaid services provided for the individual's care after the individual turned 65, or 7/26/87 (whichever is later), through 6/30/94.

- **Services provided from 7/1/94 through 6/30/95:**  
Only the cost of the following Medicaid services:
  - Nursing facility services
  - COPES
  - Traumatic Brain Injury - TBI
  - Community Alternatives Program - CAP (DDA program)
  - Outward Bound Residential Alternatives - OBRA (DDA program)
  - Coordinated Community Aids Service Alternatives - CASA (HCA program)
  - Hospital and prescription drug services related to services listed above
- **Services provided from 7/1/95 through 5/31/04:**  
Only the cost of the following services:
  - Nursing facility services
  - COPES
  - Traumatic Brain Injury - TBI
  - Community Alternatives Program - CAP (DDA program)
  - Outward Bound Residential Alternatives - OBRA (DDA program)
  - Coordinated Community Aids Service Alternatives - CASA (MAA program)
  - Apple Health Personal Care
  - Adult Day Health
  - Private Duty Nursing administered by Aging and Long-term Supports Administration
  - State-funded long-term care services (administered by ALTSA) (Chore services, Adult Family Home, Adult Residential Care)
  - Hospital and prescription drug services related to services listed above
- **Services provided as of 6/1/04 through 12/31/13**
  - All Medicaid services, premium payments to managed care organizations, and Medicare cost-sharing services and Medicare premiums for individuals also receiving Apple Health. This includes long-term care services.
  - Estate recovery does not apply to individuals who only receive benefits from a Medicare Savings Program.
  - All state-funded long-term care services and related hospital and prescription drug services administered by ALTSA and DDA.
- **Services provided on or after 1/1/14**
  - Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);
    - (ii) Home and community-based services authorized by ALTSA or DDA, as follows:
      - 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 (ALTSA) 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 ALTSA authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and
  - The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- - **Age Recovery When Applies**
    - **Prior to 7/1/94:**  
Age 65
    - **From 7/1/94 to 6/30/95:**  
Age 55
    - **As of 7/1/95:**  
Age 55 for Medicaid long term care services  
At any age for state funded long term care services

### **Services Exempt from Recovery**

- Services received prior to 7/26/87, when the Estate Recovery Program was enacted
- Adult protective services provided to a frail elder or vulnerable adult and paid for only by state funds
- Medicare premiums and other services received under a Medicare Savings Program if the individual was eligible only for assistance under a Medicare Savings Program (such as QMB or SLMB) and not for any other Apple Health program.
- Guardianship and Conservatorship Assistance Program Services authorized by ALTSA.

### **Assets Not Subject to Recovery**

- Certain properties belonging to American Indians/Alaska natives.
- Government reparation payments specifically excluded by federal law as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

### **Recovery Process**

- The Office of Financial Recovery (OFR) administers Estate Recovery collections for the agency and the Department of Social and Health Services (DSHS).
- DSHS recovers from the estate of a deceased individual. "Estate" includes all real property (land or buildings) and all other property (mobile homes, vehicles, savings, other assets) the individual owned or had an interest in when the individual died. Estate may also include certain other property interests an individual had immediately before death. These include a joint interest or a life estate in a house or land.

A home transferred to a spouse or to a minor, blind or disabled child prior to the individual's death, is not considered part of the individual's estate.

- DSHS recovers from estates according to the estate recovery law in effect at the time the services were received.
- DSHS defers recovery:
  - While there is a surviving child who is under 21, or who is blind or disabled.
  - Until the death of a surviving spouse. When the surviving spouse dies, recovery action will be taken against property in which the deceased individual had an interest in at the time of death.
  - If the estate subject to adjustment or recovery is the sole income-producing asset of one or more qualified individuals and income is limited; or the department determines that recovery would cause an undue hardship for a qualified individual. Qualified individual means an heir or an unmarried individual who, immediately prior to the individual's death, was eighteen years of age or older, shared the same regular and permanent residence with the individual and with whom the individual had an exclusive relationship of mutual support, caring, and commitment. A request for a hardship waiver must be made in writing to the Office of Financial Recovery and each request is reviewed on its own merits. If the request is denied, the decision may be appealed through the Administrative Hearing process.
- DSHS will file a lien or make a claim against property that is included in the deceased individual's estate. Prior to filing a lien against real or titled property, the department gives notice and an opportunity for a hearing to the probate estate's personal representative, if any, or any other person known to have title to the affected property. Liens placed through the Estate Recovery process are valid for 20 years.

**Liens Establish Prior to Death for Recovery of Medical Services** DSHS has the authority to file a lien against the property of a medical assistance individual who is permanently institutionalized in a nursing facility or other medical institution prior to his or her death. The department will recover the costs of long-term care and medical services paid from the individual's estate. If the individual

is discharged from the medical institution and returns home, the department releases the lien. No lien will be filed if one or more of the following persons are lawfully residing in the home:

- The individual's spouse;
- The individual's child who is under twenty-one years of age or blind or disabled according to Social Security criteria;
- The individual's sibling who has an equity interest in the home and resided in the property for at least one year prior to the date of the individual's admission to the medical institution.

The department can recover the medical expenditures without regard to the age of the individual.

### **Worker Responsibilities**

The Department is required to notify all potential Apple Health applicants and Apple Health recipients about the Estate Recovery provisions. The required notification is included in the current DSHS Application for Benefits form and the individual's signature acknowledges receipt of the required notice. At eligibility review, staff need to provide Apple Health recipients with notice of their Rights & Responsibilities as this also includes language explaining Estate Recovery.

Workers are required to enter information regarding all assets and resources owned by the Apple Health individual to the ACES system including assets which are exempt for the purposes of eligibility. Policy changes following the 2005 Deficit Reduction Act (DRA) require all primary residence information and current market value be indicated in ACES since home equity is an eligibility factor for long term care services. An individual may be ineligible for some long term care services if the equity in their primary residence exceeds the limit set in WAC [182-513-1350](#).

For noninstitutional medical programs, home equity is not an eligibility factor. It is not necessary to get verification of the equity value of the primary residence. Workers may determine fair market value using any reasonable method such as local Assessor's office website, client statement, current market appraisal or other internet resources such as [Zillow](#) or [Redfin](#). A current mortgage statement may be used to establish encumbrances but is not required. HCS staff and CSD staff who process long term care programs such as HCS/DDD waivers or nursing home cases will need to request accurate verification of fair market value and encumbrances to support the Excess Home equity provisions of the DRA.

If staff discovers that an asset, or part of an asset, has been transferred out of the individual's name, the worker needs to review the case and determine the effect of the transfer on eligibility. Some transfers prevent the individual from being eligible to receive long term care services and require that the case be terminated, giving advance and adequate notice, and a period of ineligibility be established. OFR may discover transfers by individuals in their review of county records and will notify the financial worker.

Annuities and some trusts owned by Medicaid individuals need to list the State as the beneficiary of any assets remaining in the trust upon the death of the individual in order to qualify for Apple Health benefits. Information regarding Trusts is found in WAC [182-516-0100](#). Information on Annuities is found in WAC [182-516-0200](#).

Workers need to ensure that a complete copy of the terms of the trust or annuity is placed in the individual's record. OFR receives assignment through barcode when an annuity or trust is imaged and indexed into the electronic case record.

The Office of Financial Recovery phone number is 800-562-6114.