



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Health Care Authority, Washington Apple Health

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) July 1, 2015

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose:

Clarifying that Individual and Family Services (IFS), and Community First Choice (CFC) Option are subject to estate recovery, and removing Washington Medicaid integration partnership (WMIP) because it has been discontinued. The amendments to this rule reflect those changes and restructure the list of services subject to recovery.

Citation of existing rules affected by this order:

Repealed:
 Amended: 182-527-2742
 Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

The Department of Social and Health Services (DSHS) implemented the IFS waiver in June of 2015 and the CFC Option, effective July 1, 2015. The Washington State legislature directed DSHS to implement this program under SSB 6387 and ESHB 2746. IFS and CFC Option are long-term care services funded in part by federal dollars and under federal law are subject to recovery. The Health Care Authority (HCA) must implement emergency rules to comply with federal law and will amend WAC 182-527-2742 which controls DSHS's and HCA's ability to recoup for services subject to recovery.

Date adopted: June 30, 2015

NAME

Wendy Barcus

SIGNATURE

TITLE

HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 30, 2015

TIME: 3:42 PM

WSR 15-14-111

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

WAC 182-527-2742 Services subject to recovery. (~~The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state only funded long term care services (LTC), and subsection (3) of this section covers liability for all other state only funded services. An estate can be liable under any of these subsections.~~

~~(1) The client's estate is liable for:~~

~~(a) All medicaid services provided from July 26, 1987, through June 30, 1994;~~

~~(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:~~

~~(i) Nursing facility services;~~

~~(ii) Home and community based services; and~~

~~(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community based services;~~

~~(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:~~

~~(i) Nursing facility services;~~

~~(ii) Home and community based services;~~

~~(iii) Adult day health;~~

~~(iv) Medicaid personal care;~~

~~(v) Private duty nursing administered by the aging and long term support administration (AL TSA) of the department of social and health services (DSHS); and~~

~~(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection;~~

~~(d) The following services provided on and after June 1, 2004, through December 31, 2009:~~

~~(i) All medicaid services, including those services described in subsection (c) of this section;~~

~~(ii) Medicare savings programs services for individuals also receiving medicaid;~~

~~(iii) Medicare premiums only for individuals also receiving medicaid; and~~

~~(iv) Premium payments to managed care organizations;~~

~~(e) The following services provided on or after January 1, 2010, through December 31, 2013:~~

~~(i) All medicaid services except those described in (d)(ii) and (iii) of this subsection;~~

~~(ii) All institutional medicaid services described in (c) of this subsection;~~

~~(iii) Premium payments to managed care organizations; and~~

~~(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid; and~~

~~(f) The following services provided after December 31, 2013:~~

~~(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);~~

~~(ii) Home and community based services authorized by AL TSA or DDA, as follows:~~

~~(A) Community options program entry system (COPE S);~~

~~(B) New Freedom consumer directed services (NFCDS);~~

~~(C) Basic Plus waiver;~~

~~(D) CORE waiver;~~

~~(E) Community protection waiver;~~

~~(F) Children's intensive in home behavioral support (CIIBS) waiver;~~

~~(G) Medicaid personal care;~~

~~(H) Residential support waiver;~~

~~(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all inclusive care for the elderly (PACE) authorized by AL TSA;~~

~~(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by AL TSA or DDA;~~

~~(v) Roads to community living (RCL) demonstration project;~~

~~(vi) Personal care services funded under Title XIX or XXI;~~

~~(vii) Private duty nursing administered by AL TSA or DDA;~~

~~(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and~~

~~(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.~~

~~(2) The client's estate is liable for all state only funded LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:~~

~~(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and~~

~~(b) Clients of the DDA on and after June 1, 2004.~~

~~(3) The client's estate is liable for all state only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:~~

~~(a) State only funded adult protective services (APS);~~

~~(b) Supplemental security payment (SSP) authorized by DDA;~~

~~(c) Offender reentry community safety program (ORCSP); and~~

~~(d) Volunteer chore services.) The agency's payment for the following services is subject to recovery:~~

~~(1) State-only funded services, except:~~

~~(a) Adult protective services;~~

~~(b) Offender reentry community safety program services;~~

~~(c) Supplemental security payments authorized by the developmental disabilities administration (DDA); and~~

~~(d) Volunteer chore services.~~

~~(2) For dates of service after December 31, 2013:~~

~~(a) Basic Plus waiver services;~~

~~(b) Community first choice services;~~

~~(c) Community option program entry system services;~~

~~(d) Community protection waiver services;~~

~~(e) CORE waiver services;~~

~~(f) Hospice services;~~

- (g) Hospital and prescription drug services provided to a client while he or she receives services listed in this subsection;
- (h) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in an RHC;
- (i) Individual and family services;
- (j) Medicaid personal care services;
- (k) New Freedom consumer directed services;
- (l) Nursing facility services;
- (m) Personal care services funded under Title XIX or XXI;
- (n) Private duty nursing administered by aging and long-term support administration (ALTSA) or DDA;
- (o) Residential habilitation center services;
- (p) Residential support waiver services;
- (q) Roads to community living demonstration project services;
- (r) The portion of the managed care premium used to pay for ALTSA-authorized LTC services under the program of all-inclusive care for the elderly.
- (3) For dates of service beginning January 1, 2010, through December 31, 2013:
 - (a) Medicaid services;
 - (b) Premium payments to managed care organizations; 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.
- (4) For dates of service beginning June 1, 2004, through December 31, 2009:
 - (a) Medicaid services;
 - (b) Medicare premiums only for individuals also receiving medicaid;
 - (c) Medicare savings programs services for individuals also receiving medicaid; and
 - (d) Premium payments to managed care organizations.
- (5) For dates of service beginning July 1, 1995, through May 31, 2004:
 - (a) Adult day health services;
 - (b) Home and community-based services;
 - (c) Hospital and prescription drug services provided to a client while receiving any of the services in this subsection;
 - (d) Medicaid personal care services;
 - (e) Nursing facility services; and
 - (f) Private duty nursing services.
- (6) For dates of service beginning July 1, 1994, through June 30, 1995:
 - (a) Home and community-based services;
 - (b) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services; and
 - (c) Nursing facility services.
- (7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.
- (8) For dates of service through December 31, 2009. If a client was eligible for the medicare savings program (MSP), but not otherwise medicaid eligible, his or her estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.

(9) For dates of service on or after January 1, 2010. If a client was eligible for medicaid under chapter 182-517 WAC and the MSP, his or her estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.