



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 04, 2024

TIME: 3:21 PM

WSR 24-09-009

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 24-05-076 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 182-527-2742, Estate recovery – Service-related limitations

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 21, 2024	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance : https://us02web.zoom.us/webinar/register/WN_KZuT0n1uR3mMN22GogHn7Q If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of intended adoption: Not earlier than May 22, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: 360-586-9727

Other:

By (date) May 21, 2024, by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson

Phone: 360-725-1349

Fax: 360-586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: Johanna.larson@hca.wa.gov

Other:

By (date) May 10, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending WAC 182-527-2742 to add a new subsection (1)(e) to except from estate recovery state-only funded Guardianship and Conservatorship Assistance Program services.

Reasons supporting proposal: See Purpose

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Health Care Authority

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Brian Jensen	PO Box 42716, Olympia, WA 98504-2716	360-725-0815
Implementation:	Paige Lewis	PO Box 42722, Olympia, WA 98504-2722	360-725-0757
Enforcement:	Paige Lewis	PO Box 42722, Olympia, WA 98504-2722	360-725-0757

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: April 4, 2024	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

WAC 182-527-2742 Estate recovery—Service-related limitations.

For the purposes of this section, the term "agency" includes the agency's designee.

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 (SSP) authorized by the developmental disabilities administration (DDA); ~~((and))~~
 - (d) Volunteer chore services; and
 - (e) Guardianship and conservatorship assistance program services.
- (2) For dates of service on and after January 1, 2014:
 - (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 in this subsection.
- (3) For dates of service beginning January 1, 2010, through December 31, 2013:
 - (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.
- (4) For dates of service beginning June 1, 2004, through December 31, 2009:
 - (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 MCOs.
- (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) 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 in this subsection.
- (6) For dates of service beginning July 1, 1994, through June 30, 1995:
 - (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 in this subsection.
- (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 MSP, but not otherwise medicaid eligible, the client's estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.
- (9) For dates of service beginning January 1, 2010. If a client was eligible for medicaid and the MSP, the client's estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.
- (10) For dates of service beginning July 1, 2017, 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.