



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Health Care Authority, Washington Apple Health

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

Yes  No If Yes, explain:

**Purpose:** The agency amended chapter 182-527 WAC to more clearly distinguish between rules that apply to TEFRA liens (liens filed during a client's lifetime) and rules that apply to estate recovery. The agency added Individual Family Service (IFS) and Community First Choice (CFC) to WAC 182-527-2742 to clarify that they are subject to estate recovery, and removed Washington Medicaid Integration Partnership (WMIP) because it has been discontinued.

**Citation of existing rules affected by this order:**

Repealed: 182-527-2700, 182-527-2733, 182-527-2737, 182-527-2754, 182-527-2790, 182-527-2810, 182-527-2820, 182-527-2830, 182-527-2840, 182-527-2850, 182-527-2860, 182-527-2870

Amended: 182-527-2730, 182-527-2740, 182-527-2742, 182-527-2750

Suspended:

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 16-01-104 on December 16, 2015.

Describe any changes other than editing from proposed to adopted version: WAC 182-527-2753 (2)(d) was changed as follows:

(2) A request for an administrative hearing must:

(d) Within twenty-eight days of the date on the agency's notice, be

filed with ~~erved to~~ the office of financial recovery either:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: phone ( ) \_\_\_\_\_

Address: fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

**Date adopted:** February 11, 2016

**NAME (TYPE OR PRINT)**

Wendy Barcus

**SIGNATURE**

**TITLE**

HCA Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: February 12, 2016**

**TIME: 5:54 AM**

**WSR 16-05-054**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>4</u>	Amended	<u>4</u>	Repealed	<u>12</u>
-----	----------	---------	----------	----------	-----------

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>4</u>	Amended	<u>4</u>	Repealed	<u>12</u>

**WAC 182-527-2730 Definitions.** The following definitions apply to this chapter:

**"Contract health service delivery area (CHSDA)"** means the geographic area within which contract health services will be made available by the Indian health service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Secs. 136.21(d) and 136.22.

~~(( "Domestic partner" see WAC 182-500-0025. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership." ))~~

**"Estate"** means all property and any other assets that pass upon the client's death under the client's will or by intestate succession ~~((pursuant to))~~ under chapter 11.04 ~~((RCW or under chapter))~~ or 11.62 RCW. The value of the estate will be reduced by any valid liability against the ~~((decedent's property at the time of death))~~ client's property when the client died. An estate also includes:

(1) For a client who died after June 30, 1995, and before July 27, 1997, nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997, and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the ~~((recipient))~~ client immediately before death.

**"Heir"** means ~~((the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.~~

**"Joint tenancy"** means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship) a person entitled to inherit a deceased client's property under a valid will accepted by the court, or a person entitled to inherit under the Washington state intestacy statute, RCW 11.04.015.

**"Life estate"** means an ownership interest in a property only during the lifetime of the person ~~((+))~~ owning the life estate. ~~((In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.))~~

**"Lis pendens"** means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

**"Long-term care services (LTC)"** means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services (DSHS) for clients of the home and community services division of ~~((the department of social and health services (+))~~ DSHS ~~((+))~~ and the developmental disabilities administration of DSHS including, but not limited to, nursing facility care and home and community services.

~~(( "Medicaid" see WAC 182-500-0070.~~

~~"Medical assistance" see WAC 182-500-0070.~~

~~"Medicare savings programs" means the programs described in WAC 182-517-0300 that help a client pay some of the costs that medicare does not cover.)~~

~~"Property" (: Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:)) means everything a person owns, whether in whole or in part.~~

~~(1) "Personal property" means any ((property that is not classified as real, title, or trust property in the definitions provided here)) movable or intangible thing a person owns, whether in whole or in part;~~

~~(2) "Real property" means land and anything growing on, attached to, or ((erected thereon)) built on it, excluding anything that may be removed without injury to the land;~~

~~(3) (( "Title property" means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.~~

~~(4)) "Trust property" means any type of property ((interest titled in, or held by, a trustee for the benefit of another person or entity.~~

~~"State-only funded long-term care" means the long term care services that are financed with state funds only)) held in trust for the benefit of another.~~

~~"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid services (CMS)((7)) and the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of ((an individual)) a person who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(C)(iii) of the act.~~

~~"Recover" or "recovery" means the agency or the agency's designee's receipt of funds to satisfy the client's debt.~~

## NEW SECTION

**WAC 182-527-2734 Liens during a client's lifetime.** For the purposes of this section, the term "agency" includes the agency's designee.

**(1) When the agency may file.**

(a) The agency may file a lien against the property of a Washington apple health client during the client's lifetime if:

(i) The client resides in a skilled nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution under WAC 182-500-0050;

(ii) The agency has determined that the client cannot reasonably be expected to return home; and

(iii) None of the following people lawfully reside in the client's home:

(A) The client's spouse or state-registered domestic partner;

(B) The client's child who is age twenty or younger, or is blind or permanently disabled as defined in WAC 182-512-0050; or

(C) A client's sibling who has an equity interest in the home and who has been residing in the home for at least one year immediately before the client's admission to the medical institution.

(b) If the client returns home from the medical institution, the agency releases the lien.

(2) **Amount of the lien.** The agency may file a lien to recoup the cost of all non-MAGI-based and deemed eligible services under WAC 182-503-0510 it correctly purchased on the client's behalf, regardless of the client's age on the date of service.

(3) **Notice requirement.**

(a) Before the agency may file a lien under this section, it sends notice via first class mail to:

(i) The client's last known address;

(ii) The client's authorized representative, if any;

(iii) The address of the property subject to the lien; and

(iv) Any other person known to hold title to the property.

(b) The notice states:

(i) The client's name;

(ii) The agency's intent to file a lien against the client's property;

(iii) The county in which the property is located; and

(iv) How to request an administrative hearing.

(4) **Interest assessed on past-due debt.**

(a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.

(b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and:

(i) Thirty days have passed since the property was transferred; or

(ii) Nine months have passed since the lien was filed.

(c) The agency may waive interest if reasonable efforts to sell the property have failed.

(5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

## NEW SECTION

**WAC 182-527-2738 Estate recovery—General right to recover.** For the purposes of this section, the term "agency" includes the agency's designee.

(1) **When the agency may file.** After a Washington apple health client has died, the medicaid agency may file liens to recover the cost of services subject to recovery that were correctly paid on the client's behalf.

(2) **Notice requirement.**

(a) Before the agency may file a lien under this section, it sends notice via first class mail as follows:

(i) If the estate has a personal representative, the agency sends notification to:

(A) The personal representative; and

- (B) Any known title holder.
- (ii) If the estate has known heirs but no personal representative, the agency sends notification to:
  - (A) Any known heir; and
  - (B) Any known title holder.
- (iii) If the estate has no personal representative and no known heirs, the agency sends notification to:
  - (A) The address listed on the title; and
  - (B) Any known title holder.
- (b) The notice states:
  - (i) The agency's intent to file a lien against the deceased client's property;
  - (ii) The amount the agency seeks to recover;
  - (iii) The deceased client's name, identification number, date of birth, and date of death;
  - (iv) The county in which the property is located; and
  - (v) How to request an administrative hearing.
- (3) The agency may not recover from the client's estate so long as there remains:
  - (a) A surviving spouse; or
  - (b) A surviving child who:
    - (i) Is age twenty or younger; or
    - (ii) Is blind or disabled as defined in WAC 182-512-0050.
- (4) **Interest assessed on past-due debt.**
  - (a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.
  - (b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and nine months have passed since the lien was recorded or a creditor's claim was filed, whichever is sooner.
  - (c) The agency may waive interest if reasonable efforts to sell the property have failed.
- (5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

**WAC 182-527-2740 ((Age when recovery applies.)) Estate recovery ~~—Age-related limitations.~~ ((The client's age and the date when services were received 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 and subsection (2) covers liability for state only funded long term care services. An estate may be liable under both subsections.**

- ~~(1) For a client who on July 1, 1994 was:~~
  - ~~(a) Age sixty five or older, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age sixty five or after July 26, 1987, whichever is later;~~
  - ~~(b) Age fifty five through sixty four years of age, the client's estate is liable for medicaid services that were subject to recovery and provided on and after July 1, 1994; or~~

~~(c) Under age fifty five, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age fifty five.~~

~~(2) Regardless of the client's age when the services were provided, the client's estate is liable for state only funded long term care services provided to:~~

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

~~(b) Clients of the developmental disabilities administration of DSHS on and after June 1, 2004.) For the purposes of this section, the term "agency" includes the agency's designee.~~

~~(1) **Liability for medicaid services.**~~

~~(a) Beginning July 26, 1987, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's sixty-fifth birthday.~~

~~(b) Beginning July 1, 1994, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's fifty-fifth birthday.~~

~~(2) **Liability for state-only-funded long-term care services.**~~

~~(a) A client's estate is liable for all state-only-funded long-term care services provided by the home and community services division of the department of social and health services (DSHS) on or after July 1, 1995.~~

~~(b) A client's estate is liable for all state-only-funded long-term care services provided by the developmental disabilities administration of DSHS on or after June 1, 2004.~~

AMENDATORY SECTION (Amending WSR 14-20-091, filed 9/29/14, effective 10/30/14)

**WAC 182-527-2742 ((Services subject to recovery.)) Estate recovery—Service-related limitations.** ((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 (ALTSA) 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 ALTSA or DDA, as follows:~~  
~~(A) Community options program entry system (COPEs);~~  
~~(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 ALTSA;~~  
~~(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by ALTSA 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 ALTSA 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.) 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.

(2) For dates of service beginning 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 (AL TSA) 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 ALT-SA-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.

## NEW SECTION

### **WAC 182-527-2746 Estate recovery—Asset-related limitations.**

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

(1) **Before July 25, 1993.** For services received before July 25, 1993, that are subject to recovery, the agency may exempt:

(a) The first fifty thousand dollars of the estate's value at the time of the client's death; and

(b) Sixty-five percent of the remaining value of the estate.

(2) **July 24, 1993, through June 30, 1994.** For services that are subject to recovery that were received on or after July 25, 1993, through June 30, 1994, the agency exempts two thousand dollars' worth of personal property.

(3) **Life estate.**

(a) The agency may file a lien against a client's life estate interest in real property.

(b) The agency's lien against the property may not exceed the value of the client's life estate. Under this subsection, value means the fair market value of the property multiplied by the life estate factor that corresponds to the client's age on the client's last birthday. For a list of life estate factors, see the life estate and remainder interest tables maintained by the Social Security Administration.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(4) **Joint tenancy.**

(a) The agency may file a lien against property in which a client was a joint tenant when the client died.

(b) The agency's lien against the property may not exceed the value of the client's interest in the property. Under this subsection, value means the fair market value of the property divided by the number of joint tenants on the day the client died.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(5) **Qualified long-term care partnership.**

(a) Assets designated as protected by a qualified long-term care partnership (QLTCP) policy issued after November 30, 2011, may be disregarded for estate recovery purposes if:

(i) The insured person's estate is the recipient of the estate recovery exemption; or

(ii) The insured person holds title to property which is potentially subject to a predeath lien and that person asserts the property is protected under the QLTCP policy.

(b) A person must provide clear and convincing evidence to the office of financial recovery that the asset in question was designated as protected, including:

(i) Proof of a valid QLTCP policy;

(ii) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(iii) A current department of social and health services QLTCP asset designation form when the QLTCP policy paid out more than was previously designated.

(c) The insured person's estate must provide clear and convincing evidence proving an asset is protected before the final recovery settlement.

(6) **Rules specific to American Indians and Alaska natives.**

(a) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(i) The deceased client was enrolled in a federally recognized tribe; and

(ii) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(A) Within the most recent boundaries of a prior federal reservation; or

(B) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(b) Protection of trust and nontrust property under subsection (4) of this section is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and stepchildren, that their tribe would nonetheless recognize as family members, to a tribe or tribal organization and/or to one or more Indians.

(c) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(d) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(e) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

**WAC 182-527-2750 Estate recovery—Delay of recovery for undue hardship.** ~~((The medicaid agency or its designee delays recovery under this section when the agency or its designee determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.))~~ For the purposes of this section, the term "agency" includes the agency's designee.

(1) If an undue hardship exists at the time of the client's death, an heir may ask the agency to delay recovery.

(a) Undue hardship exists only when:

~~((a) The estate subject to adjustment or))~~ (i) The property subject to recovery is the sole income-producing asset of ((one or more heirs and income is limited;

~~(b))~~ an heir;

(ii) Recovery would deprive an heir of shelter and the heir ((lacks the financial means to obtain and maintain)) cannot afford alternative shelter; or

~~((c))~~ (iii) The client is survived by a state-registered domestic partner.

~~((2))~~ (b) Undue hardship does not exist ((when:

~~(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle; or~~

~~(b) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.~~

~~(3) When a delay in recovery is not granted, the agency or its designee provides notice to the person who requested the delay of recovery. The agency's or its designee's notice includes information on how to request an administrative hearing to contest the agency's or its designee's denial.~~

~~(4) When a delay of recovery is granted under subsection (1)(a) or (b) of this section, the agency or its designee may revoke the delay of recovery if the heir(s):~~

~~(a) Fails to supply timely information and resource declaration when requested by the agency or its designee;~~

~~(b) Sells, transfers, or encumbers title to the property;~~

~~(c) Fails to reside full time on the premises;~~

~~(d) Fails to pay property taxes and utilities when due;~~

~~(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the agency or its designee with documentation of the coverage status on an annual basis;~~

~~(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or~~

~~(g) Dies.~~

~~(5) When a delay of recovery is granted due to undue hardship, the agency or its designee has the option to:~~

~~(a) Apply a lien; and/or~~

~~(b) Accept a payment plan.~~

~~(6) A person may request an administrative hearing to contest the agency's or its designee's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.~~

~~(7) A request for an administrative hearing under this section must:~~

~~(a) Be in writing;~~

~~(b) State the basis for contesting the agency's or its designee's denial of the request for a delay of recovery due to an undue hardship;~~

~~(c) Include a copy of the agency's or its designee's denial;~~

~~(d) Be signed by the requester and include the requester's address and telephone number; and~~

~~(e) Be served, as described in WAC 182-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the agency or its designee sent the decision denying the request for a delay of recovery.~~

~~(8) Upon receiving a request for an administrative hearing, the agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.~~

~~(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs)) if the client or the heir created circumstances to avoid estate recovery.~~

(2) If the agency determines recovery would cause an undue hardship for an heir, the agency may delay recovery until the hardship no longer exists.

(3) If the agency denies an heir's request to delay recovery, the agency notifies the heir in writing. The notice includes instructions on how to request a hearing.

(4) If the agency grants a delay of recovery under this section, the heir must:

(a) Timely comply with any agency request for information or records;

(b) Not sell, transfer, or encumber the property;

(c) Reside on the property;

(d) Timely pay property taxes and utilities;

(e) Insure the property for its fair market value;

(f) Name the state of Washington as the primary payee on the property insurance policy;

(g) Provide the agency with a copy of the property insurance policy upon request;

(h) Continue to satisfy the requirements in subsection (1) of this section.

(5) If the heir dies, or violates any provision of subsection (4) of this section, the agency may begin recovery.

(6) If the agency denies the request, the heir may request an administrative hearing under WAC 182-527-2753.

#### NEW SECTION

**WAC 182-527-2753 Hearings.** For the purposes of this section, the term "agency" includes the agency's designee.

(1) An administrative hearing to contest action under this chapter determines only:

(a) In the case of a lien filed during the client's lifetime under WAC 182-527-2734:

(i) Whether the client can reasonably be expected to return home from the medical institution;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(iii) Whether the client received services subject to recovery.

(b) In the case of a lien filed after the client's death:

(i) The cost the agency correctly paid for services subject to recovery;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(iii) Whether the agency's denial of an heir's request for a delay of recovery for undue hardship under WAC 182-527-2750 was correct.

(2) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the agency's proposed action;

(c) Be signed by the requestor and include the client's name, the requestor's address and telephone number; and

(d) Within twenty-eight days of the date on the agency's notice, be filed with the office of financial recovery either:

(i) In person at the Office of Financial Recovery, 712 Pear St. S.E., Olympia, WA 98504-0001; or

(ii) By certified mail, return receipt requested, to Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501.

(3) Upon receiving a request for an administrative hearing, the office of administrative hearings notifies any known titleholder of the time and place of the administrative hearing.

(4) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs.

(5) Disputed assets must not be distributed while in litigation.

(6) Absent an administrative or court order to the contrary, the agency may file a lien twenty-eight calendar days after the date the agency mailed notice of its intent to file a lien.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-527-2700	Purpose.
WAC 182-527-2733	Estate liability.
WAC 182-527-2737	Deferring recovery.
WAC 182-527-2754	Assets not subject to recovery and other limits on recovery.
WAC 182-527-2790	Filing liens.
WAC 182-527-2810	Life estates and joint tenancy.
WAC 182-527-2820	Liens prior to death.
WAC 182-527-2830	Request for notice of transfer or encumbrance.
WAC 182-527-2840	Termination of request for notice of transfer or encumbrance.
WAC 182-527-2850	Notice of transfer or encumbrance.
WAC 182-527-2860	Interest assessed on past due debt.
WAC 182-527-2870	Serving notices on the office of financial recovery (OFR).