



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Health and Recovery Services Administration

- Preproposal Statement of Inquiry was filed as WSR 08-21-146 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject) The department is amending:

- WAC 388-527-2730 Definitions
- WAC 388-527-2737 Deferring recovery
- WAC 388-527-2750 Delay of recovery for undue hardship
- WAC 388-527-2820 Liens prior to death

Hearing location(s):

Blake Office Park East – Rose Room
 4500 – 10th Ave. SE
 Lacey, Washington 98503
 (One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **February 24, 2009** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia WA, 98504-5850
 Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
 E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: (360) 664-6185

by
5 p.m. on February 24, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by February 10, 2009
 TTY (360) 664-6178 or (360) 664-6094 or
 by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not sooner than February 25, 2009 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is adding language to these Estate Recovery rules which adds both rights and responsibilities for state registered domestic partners, recognizing the partnerships for DSHS medical programs, whether federally-matched or state-funded. There are no other changes to Estate Recovery in these revisions.

Reasons supporting proposal:

To comply with legislation passed in 2008 (Chapter 6, Laws of 2008, SSHB 3104) for state registered domestic partners who receive medical services through DSHS.

Statutory authority for adoption:
RCW 74.04.050, 74.04.057, and 74.08.090

Statute being implemented:
RCW 74.04.050, 74.04.057, and 74.08.090

- Is rule necessary because of a:**
- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
January 14, 2009

NAME (type or print)
Stephanie Schiller

SIGNATURE

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

**DATE: January 21, 2009
TIME: 11:27 AM**

WSR 09-03-109

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Wendy Boedigheimer	PO Box 45504, Olympia WA 98504-5504	(360) 725-1306
Implementation.... Mary Beth Ingram	PO Box 45534, Olympia WA 98504-5534	(360) 725-1327
Enforcement..... Shawn Hoage	PO Box 45862, Olympia WA 98504-5862	(360) 664-5483

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The department has analyzed the rules and determined that no new costs will be imposed on small businesses or non-profit organization.

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name: Mary Beth Ingram

Address: Health and Recovery Services Administration

PO Box 45534

Olympia WA 98504-5534

phone (360) 725-1327

fax (360) 586-9727

e-mail ingramb@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2730 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. Sec. 136.21(d) and 136.22.

"Domestic partner" means two adults who meet the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership by the Washington Secretary of State. 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 chapter 11.04 RCW or under chapter 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. 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 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.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) 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" means, for the purposes of this chapter only, the services administered directly or through

contract by the department of social and health services for clients of the home and community services division and division of developmental disabilities including, but not limited to, nursing facility care and home and community services.

"Medicaid" means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act.

"Medical assistance" means both medicaid and medical care services.

"Medicare Savings programs" means the programs described in WAC 388-517-0300 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:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) (~~"Qualified individual" means an heir or an unmarried individual who, immediately prior to the client's death, was eighteen years of age or older, shared the same regular and permanent residence with the client and with whom the client had an exclusive relationship of mutual support, caring, and commitment.~~

~~(3))~~ **"Real property"** means land and anything growing on, attached to, or erected thereon;

~~((4))~~ (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.

~~((5))~~ (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.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2737 Deferring recovery. (1) For a client who died after June 30, 1994, the department defers recovery from the estate until:

(a) The death of the surviving spouse, if any; and

(b) There is no surviving child who is:

(i) (~~Under twenty-one~~) Twenty years of age ~~((7))~~ or younger;

or

(ii) Blind or disabled as defined under ~~((chapter 388-511))~~ WAC 388-475-0050.

(2) The department may place a lien against property to evidence the department's right to recover after the deferral period specified in subsection (1) of this section.

WAC 388-527-2750 Delay of recovery for undue hardship. The department delays recovery under this section when the department determines that recovery would cause an undue hardship for ~~((a qualified individual(s)))~~ 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.

(1) Undue hardship exists when:

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

(b) Recovery would deprive ~~((a qualified individual))~~ an heir of shelter and the ~~((qualified individual))~~ heir lacks the financial means to obtain and maintain alternative shelter; or

(c) The client is survived by a domestic partner.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the ~~((qualified individual))~~ 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 ~~((qualified individual))~~ 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 department provides notice to the person who requested the delay of recovery. The department's notice includes information on how to request an administrative hearing to contest the department's denial.

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

(a) Fails to supply timely information and resource declaration when requested by the department;

(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 department 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 department 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 department'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 department's denial of the request for a delay of recovery due to an undue hardship;

(c) Include a copy of the department'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 388-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the department sent the decision denying the request for a delay of recovery.

(8) Upon receiving a request for an administrative hearing, the department 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 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2820 Liens prior to death. (1) Subject to the requirements of 42 USC Section 1396p and the conditions of this section, the department is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC 388-500-0005;

(b) The department determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse or domestic partner;

(ii) The client's child who is (~~under age twenty-one~~) twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the department dissolves the lien.

(3) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected

property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The department's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the department's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(7) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the client's property and other assets if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (3) of this section.