Estate Recovery Repaying the State for Medical and Long-Term Services and Supports

What is estate recovery?

- State law (chapters RCW 41.05A and 43.20B) requires your estate to repay the Department of Social and Health services (DSHS) and the Health Care Authority (HCA) for costs of some medical services and long-term services and supports (LTSS) you received.

What is an estate?

- All property and any other assets you own or have legal interest in at the time of your death that pass with or without a will. This includes property and assets such as:
  - Houses, land;
  - Bank accounts;
  - Stocks, bonds;
  - Personal property; and
  - Non-probate assets, life estates.

What isn't part of your estate?

- Property or other assets that you do not own or have a legal interest in at the time of your death. For example, property or other assets solely owned by your parents, spouse, state-registered domestic partner, or child.

What assets are exempt from estate recovery?

- Certain tribal assets.
  - WAC 182-527-2746 (6) describes rules that are specific to American Indians and Alaska Natives. The rule lists what resources and properties belonging to American Indians and Alaska Natives are excluded from estate recovery. It is published at https://app.leg.wa.gov/WAC/default.aspx?cite=182-527-2746.
  - The Northwest Justice Project has a bulletin on WashingtonLawHelp.org explaining this rule called "Native American and Alaska Native Property Owners: Exemptions from Estate Recovery": Estate recovery exemptions for Native Americans and Alaska Natives | Washington Law Help.
  - If you need assistance in getting a copy of this rule, please contact your DSHS case management.
  - If you have additional questions regarding American Indians and Alaska Natives estate recovery, contact the Office of Financial Recovery at 800-562-6114.
- Certain government reparation payments; and
- Assets protected by a qualified long-term care partnership policy.

What if you don't have any assets at the time of your death?

- There is no estate recovery.

What medical and LTSS costs are included in estate recovery?

- Federally funded LTSS costs DSHS or HCA pays after you are age 55.
- State funded costs DSHS or HCA pays at any age, except:
  - Adult protective services,
  - Supplemental security payments authorized by Developmental Disability Administration,
  - Offender reentry community safety program services,
  - Volunteer chore services, and
  - Guardianship and Conservatorship Assistance Program services.

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What medical and LTSS costs are not included in estate recovery?

- Costs HCA pays under a federal Medicare Savings Program.
- Medical costs HCA pays if you do not also receive LTSS.
- Tailored Support for Older Adults (TSOA) services.

When is estate recovery delayed?

- If your spouse survives you,
- If you have a surviving child under 21,
- If you have a surviving child who was blind or disabled at the time of your death, or
- During a period of undue hardship, if an heir asks for undue hardship delay and DSHS approves the request.

When may DSHS approve an undue hardship?

- Recovery deprives an heir of a place to live and they cannot afford other shelter,
- The estate is the sole income producing asset of an heir, or
- You are survived by a state-registered domestic partner.

What if you live in a medical facility and you are not reasonably expected to return home?

- Though it is not “Estate Recovery,” DSHS can place a pre-death lien on your home because of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 2005.
- The law allows DSHS to file a lien on your home prior to death.
- Only people who must pay towards their cost of care can have a pre-death lien placed on their home.
- If DSHS has a lien on your home and you sell it, DSHS will recover the costs of medical and LTSS from the proceeds.
- DSHS will not file a lien on your home if your spouse, state-registered domestic partner, child under age 21, or sibling lives there.
- DSHS will release the lien if you return home.

What if you want more information?

- Call the Coordinated Legal Education, Advice and Referral Line (CLEAR) toll free at 1-888-201-1014.
- Consult with an attorney who understands both estate planning and medical assistance rules.
- Read the “Estate Recovery for Medical Services Paid for by the State” at www.washingtonlawhelp.org.
- Read chapters RCW 41.05A and 43.20B and chapter 182-527 WAC: https://app.leg.wa.gov/WAC/default.aspx?cite=182-527.
- Contact the Office of Financial Recovery with estate recovery questions at 800-562-6114.