

RCW 41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death. (1) The authority shall file liens, seek adjustment, or otherwise effect recovery for assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The authority shall adopt a rule providing for prior notice and hearing rights to the record titleholder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received assistance, the authority shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for assistance consisting of services that the authority determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, must be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The authority shall apply the assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the authority for those benefits.

(5) (a) The authority shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship. The authority shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The authority is not authorized to pursue recovery under such circumstances.

(b) Recovery of assistance from a recipient's estate may not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The authority may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this subsection may not end and must continue as provided in this subsection until the authority's lien has been satisfied.

(a) The value of the life estate subject to the lien is the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The authority may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the authority records either its lien or the request for notice of transfer or encumbrance as provided by RCW 41.05A.280.

(d) The authority may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the authority is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities, or other medical institution; and

(ii) The authority has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the authority shall dissolve the lien.

(9) The authority is authorized to adopt rules to effect recovery under this section. The authority may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the authority to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered care subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the authority shall provide a written description of the community service options. [2011 1st sp.s. c 15 s 96.]

**~~Effective date—Findings—Intent—Report—Agency transfer—
References to head of health care authority—Draft legislation—2011
1st sp.s. c 15: See notes following RCW 74.09.010.~~**