Chapter 182-527 WAC
ESTATE RECOVERY AND PRE DEATH LIENS

WAC

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WAC 182-527-2700 Purpose. This chapter describes the requirements, limitations, and procedures that apply when the department recovers the cost of medical care from the estate of a deceased client and when the department files liens prior to the client's death.

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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. Sec. 136.21(d) and 136.22.

"Domestic partner" means an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who has 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 medicaid services funded under Title XIX or state-funded medical 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) **"Real property"** means land and anything growing on, attached to, or erected thereon;

(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.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid services (CMS), 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 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.

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WAC 182-527-2733 Estate liability. (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(a) A surviving spouse; or

(b) A surviving child who was either:

(i) Under twenty-one years of age; or

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

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.005 is not liable for the cost of adult protective services (APS) financed with state funds only.

(4) On or before December 31, 2009, the client's estate is not liable for amounts paid for medicare premiums and other cost-sharing expenses incurred on behalf of a client who is eligible only for the medicare savings programs (MSP), and not otherwise medicaid eligible.

(5) On or after January 1, 2010, the client's estate is not liable for amounts paid for medical assistance cost-sharing for benefits for clients who received coverage under a MSP only or for clients who receive coverage under a medicare savings program and medicaid as described in 42 U.S.C. 1396a (a)(10)(E).

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WAC 182-527-2737 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) Twenty years of age or younger; or

(ii) Blind or disabled at the time of the client's death, as defined under WAC 388-475-0050.

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WAC 182-527-2740 Age when recovery applies. 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) Home and community services' clients on and after July 1, 1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

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WAC 182-527-2742 Services subject to recovery. The department considers the medical services the client received and the dates when the services were provided to the client, in order to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this sec-

tion covers liability for medicaid services, subsection (2) covers liability for state-only funded long-term care services, and subsection (3) covers liability for all other state-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 disability services administration of the department; 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:

(i) All medicaid services except those defined under subsection (d)(ii) and (d)(iii) of this section;

(ii) All institutional medicaid services described in subsection (c) of this section;

(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.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Home and community services' clients on and after July 1, 1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

(3) The client's estate is liable for all state-funded services provided regardless of the age of the client at the time the services were provided.

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WAC 182-527-2750 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 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 heirs and income is limited;

(b) Recovery would deprive an heir of shelter and the 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 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 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 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.

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WAC 182-527-2754 Assets not subject to recovery and other limits on recovery. (1) Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received through July 24, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) For services received on and after July 25, 1993, all services recoverable under WAC 388-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsections (3) through (8) of this section.

(3) For a client who received services on and after July 25, 1993 through June 30, 1994, the following property, up to a combined fair market value of two thousand dollars, is not recovered from the estate of the client:

(a) Family heirlooms;

(b) Collectibles;

(c) Antiques;

(d) Papers;

(e) Jewelry;

(f) Photos; and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

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

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

(b) 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:

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

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

(5) Protection of trust and nontrust property under subsection (4) 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 step-children, that their culture would nonetheless protect as family members, to a tribe or tribal organization and/or to one or more Indians.

(6) 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.

(7) 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.

(8) 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.

(9) Assets designated as protected by a qualified long-term care partnership (QLTC) policy issued on or after December 1, 2011, may be disregarded for estate recovery purposes if:

(a) The insured individual's estate is the recipient of the estate recovery exemption; or

(b) The insured individual holds title to property which is potentially subject to a predeath lien and that individual asserts the property is protected under the long term care (LTC) partnership policy.

(10) An individual must provide clear and convincing evidence that the asset in question was designated as protected to the office of financial recovery including:

(a) Proof of a valid QLTC partnership policy; and

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

(c) A current DSHS LTCP asset designation form when the LTC partnership policy paid out more than was previously designated.

(11) The insured individual's estate must provide evidence proving an asset is protected prior to the final recovery settlement.

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WAC 182-527-2790 Filing liens. (1) The department may file liens to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) 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 probate estate's personal representative, if any;

(c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC 388-527-2730; and

(d) The decedent's last known address or the address listed on the title, if any.

(3) The notice in subsection (2) of this section includes:

(a) The decedent's name, identification number, date of birth, and date of death;

(b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the department seeks to recover;

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

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

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

(4) An administrative hearing only determines:

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

(b) Whether the decedent had legal title to the property; and

(c) Whether a lien is allowed under the provisions of Title 42 U.S.C. Section 1396p (a) and (b).

(5) 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.

(6) 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.

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

(8) An administrative hearing 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.

(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 decedent's property and other assets only 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 (2) of this section.

[12-19-070, recodified as WAC 182-527-2790, filed 9/17/12, effective 10/1/12. Statutory Authority: RCW 74.08.090 and 2008 Medicare Improvements for Patient and Providers Act (which amended Section 1917 (b)(1)(B)(ii) of the Social Security Act); Deficit Reduction Act of 2005 (incorporating language regarding LTC partnership agreements). 10-08-110, § 388-527-2790, filed 4/7/10, effective 5/8/10. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2790, filed 8/14/06, effective 9/14/06. Statutory Authority: RCW 43.17.240, 43.20B.80 [43.20B.080], 74.08.090, 74.34.090, Section 1917(b) of the Social Security Act and 2001 2nd sp.s. c 7, Part II. 04-10-060, § 388-527-2790, filed 4/30/04, effective 6/1/04. Statutory Authority: RCW 74.08.090. 01-02-076, § 388-527-2790, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 43.20B.080, 74.08.090 and 74.34.010. 99-11-076, § 388-527-2790, filed 5/18/99, effective 6/18/99. Statutory Authority: 1995 1st sp.s. c 18 and RCW 74.08.090. 95-19-001 and 95-24-037 (Orders 3893 and 3893A), § 388-527-2790, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95.]

WAC 182-527-2810 Life estates and joint tenancy. (1) The department 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 until the lien is satisfied. The department will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

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

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

(2) The department's methodology for calculating the value of the life estate is determined using fair market value

of the property. To determine the value of the life estate, the department multiplies the current fair market value of the property by the life estate factor in the life estate table. (The Centers for Medicare and Medicaid Services based table is found in the department's Eligibility A-Z Manual, Long Term Care, Appendix II and is available online at: http://www1.dshs.wa.gov/esa/eazmanual/.)

[12-19-070, recodified as WAC 182-527-2810, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2810, filed 8/14/06, effective 9/14/06.]

WAC 182-527-2820 Liens prior to death. (1) Subject to the requirements of 42 U.S.C. 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 at the time of the client's death is twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 U.S.C. 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) Disputed assets must not be distributed while in litigation.

(9) 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.

(10) 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 only if upheld by the final agency decision.

(11) 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.

[12-19-070, recodified as WAC 182-527-2820, filed 9/17/12, effective 10/1/12. Statutory Authority: RCW 74.08.090 and 2008 Medicare Improvements for Patient and Providers Act (which amended Section 1917 (b)(1)(B)(ii) of the Social Security Act); Deficit Reduction Act of 2005 (incorporating language regarding LTC partnership agreements). 10-08-110, § 388-527-2820, filed 4/7/10, effective 5/8/10. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and chapter 26.60 RCW. 09-07-038, § 388-527-2820, filed 3/10/09, effective 4/10/09. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2820, filed 8/14/06, effective 9/14/06.]

WAC 182-527-2830 Request for notice of transfer or encumbrance. (1) When a client receives medical assistance subject to recovery under this chapter and the client is the holder of record title to real property or the purchaser under a land sale contract, the department files a request for notice of transfer or encumbrance [DSHS form 18-664 Notice of Possible Debt] with the county auditor for recording in the deed and mortgage records.

(2) The request for notice of transfer or encumbrance [DSHS 18-664] complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

(3) The request for notice of transfer or encumbrance [18-664] described in subsection (1) of this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

(4) When filing a request for notice of transfer or encumbrance [DSHS 18-664] with the county auditor, the depart-

ment gives the opportunity to request an administrative hearing as follows:

(a) Any person known to have title to the property is served with a copy of the notice. The notice states:

(i) The department's intent to recover from the client's estate the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client;

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

(iii) The right of the person known to have title in the property to contest the department's decision to file the notice by applying for an administrative hearing with the office of financial recovery (OFR).

(b) An administrative hearing only determines:

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

(ii) Whether the client has legal title to the identified property.

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the department's notice;

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

(d) Be served on OFR as described in WAC 388-527-2870, within twenty-eight calendar days of the date the individual received the department's notice.

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

(7) An administrative hearing under this section is governed by chapters 388-05 RCW and 388-02 WAC, and this section. If a provision of this section conflicts with a provision in chapter 388-02 WAC, the provision of this section governs.

(8) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance [DSHS 18-664] when performing a title search on real property must disclose the presence of the request for notice or transfer or encumbrance of real property in any report preliminary to, or commitment to offer, a certificate of title insurance for the real property.

(9) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance [DSHS 18-663] as described in WAC 388-527-2850.

[12-19-070, recodified as WAC 182-527-2830, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2830, filed 8/14/06, effective 9/14/06.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 182-527-2840 Termination of request for notice of transfer or encumbrance. (1) The department files a termination of prior notice [DSHS 18-662] of transfer or encumbrance, with the county auditor for recording when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(2) The termination of prior notice [DSHS 18-662] request for notice of transfer or encumbrance complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

[12-19-070, recodified as WAC 182-527-2840, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2840, filed 8/14/06, effective 9/14/06.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 182-527-2850 Notice of transfer or encumbrance. (1) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664 Notice of Possible Debt], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance [DSHS 18-663] or a substantially similar notice as required by chapter 43.20B RCW.

(2) The department's notice of transfer or encumbrance [DSHS 18-663] is available online at http://www1.dshs.wa.gov/msa/forms/eforms.html or by writing to Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805.

(3) The notice of transfer or encumbrance [DSHS 18-663] must comply with the requirements for recording in RCW 36.18.010, and, at a minimum, contain the:

(a) Client's name and case identifier as listed on the department's request for notice of transfer or encumbrance;

(b) Recording date and recording reference as listed on the department's request for notice of transfer or encumbrance;

(c) Legal description of the real property as listed on the department's request for notice of transfer or encumbrance; and

(d) Type of instrument; and

(e) Recording date and recording reference.

(4) The notice of transfer or encumbrance [DSHS 18-663] or a similar notice and copy of the transfer or encumbrance related to the real property must be sent to the department as specified in WAC 388-527-2870.

[12-19-070, recodified as WAC 182-527-2850, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2850, filed 8/14/06, effective 9/14/06.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 182-527-2860 Interest assessed on past due debt. (1) The recovery debt becomes past due and accrues interest at a rate of one percent per month on recoverable estate assets beginning nine months after the earlier of:

(a) The filing of the department's creditor's claim in the probate of the deceased client's estate; or

(b) The recording of the department's lien against the property of the deceased client in the county where the property is located.

(2) The department may waive interest if:

(a) Insufficient cash, accounts, or stock exist to satisfy the department's claim and no sales of estate property has occurred despite its continuous listing or marketing for sale in a commercially reasonable manner for a reasonable fair market value; or

(b) Suit filed in the probate of the deceased client's estate resulted in the filing of a lis pendens or order prohibiting the personal representative from selling the estate property. However, this section does not apply to such suite contesting the department's assessment of interest or claim for reimbursement of medical assistance or state-only funded long-term care services debt.

[12-19-070, recodified as WAC 182-527-2860, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2860, filed 8/14/06, effective 9/14/06.]

WAC 182-527-2870 Serving notices on the office of financial recovery (OFR). Serving legal notice on the office of financial recovery (OFR) requires the notice to be served either:

(1) In person at the Blake Office Park, 4450 10th Ave S.E., Lacey, Washington; or

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

[12-19-070, recodified as WAC 182-527-2870, filed 9/17/12, effective 10/1/12. Statutory Authority: 2005 c 292, RCW 43.20B.080, 74.39A.170, 42 U.S.C. Section 1396p. 06-17-075, § 388-527-2870, filed 8/14/06, effective 9/14/06.]