

WSR 24-09-009

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed April 4, 2024, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-076.

Title of Rule and Other Identifying Information: WAC 182-527-2742
Estate recovery—Service-related limitations.

Hearing Location(s): On May 21, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_KZuT0nluR3mMN22GogHn7Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than May 22, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 21, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by May 10, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-527-2742 to add a new subsection (1)(e) to except from estate recovery state-only funded guardianship and conservatorship assistance program services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

April 4, 2024
Wendy Barcus
Rules Coordinator

OTS-5272.1

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-527-2742 Estate recovery—Service-related limitations.

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; and
 - (e) Guardianship and conservatorship assistance program services.
- (2) For dates of service on and after 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.

(10) For dates of service beginning July 1, 2017, long-term services and supports authorized under the medicaid transformation project are exempt from estate recovery. Exempted services include those provided under:

(a) Medicaid alternative care under WAC 182-513-1600;

(b) Tailored supports for older adults under WAC 182-513-1610;

(c) Supportive housing under WAC 388-106-1700 through 388-106-1765; or

(d) Supported employment under WAC 388-106-1800 through 388-106-1865.