

# **Estate recovery for long-term care services paid for by the State**

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If the state pays for your care and services in a nursing facility, adult family home, assisted living community, or your home (called long-term care services), then the state can sometimes collect some of the things you own when you die to get back what it paid for. Read this to learn more.

## **What are long-term care services?**

If you currently receive or think you may one day soon receive long-term care services, you should know what estate recovery is, what it might mean for your family or anyone living in your home when you die, and how you or those folks might be able to avoid estate recovery. “Long-term care services” include care and services in a nursing facility, adult family home, assisted living community, and in your home.

## **What is estate recovery?**

Washington State has several programs that pay for medical services, including Medicaid (<https://www.dshs.wa.gov/altsa/home-and-community->

services/medicaid) and other state programs. Here we will refer to all these programs as “the State.”

If the State pays for your long-term care services, then the State can sometimes collect (can “recover”) some of the things you own when you die (your “estate”) to get back some or all of what it paid for. Services paid for by Medicare (<https://www.medicare.gov/>) or private insurance do not qualify for estate recovery.

An “estate” refers to anything you own at the time of your death. This can include your home (but only the part you own, if you own it with someone else), any other buildings or land you own, vehicles, bank accounts, and stocks or bonds. If you don’t own anything when you die, then there is no estate recovery.

### **How do I know if estate recovery applies to me?**

It’s complicated. But several factors are important. They include your **age**, **when** you got long-term care service, and the **types** of services you got. Consult the list of services that are subject to estate recovery below.

There’s an exception (called an exemption) for certain properties belonging to American Indians and Alaska Natives if, at the time of death, you’re enrolled in a federally recognized tribe and the property is on or near a reservation.

### **Can the State collect while I’m still alive?**

**Maybe.** The State could put a **lien** on your home while you're alive if you live in a nursing home and you're not expected to return home. A **lien** on the property means you must pay off what you owe the State before you sell the property.

The State won't enforce the lien (for example, foreclose on your home) until you die. And the State must remove the lien if you **do** return home.

### **What if my family member is still living in my home when I die?**

Even though the State can put a lien on your home, it won't **enforce** the lien (for example, foreclose on your home) while your spouse, registered domestic partner, child under age 18, or child with a disability of any age is living in the home. If one of these family members inherits the home, and the title to the home is put in their name, they can use it without restriction.

Your family member should talk with a lawyer about their rights. They should also contact the Office of Financial Recovery (OFR) (<http://www.dshs.wa.gov/ffa/office-financial-recovery>) to tell them they're living in the home.

### **What if someone else is living in my home or using my home when I die?**

The State might agree to delay (to "defer") collection when it would cause an "undue hardship" to the person living in or using your home, including when any of these is true:

- The person living in your home was your domestic partner (not registered)

- The person gets income from your property, for example, farming or rent
- The person has limited income and would be homeless if they can't live in your home

The person living in or using your home or property should try to talk with a lawyer about their rights. They should also contact the Office of Financial Recovery (OFR) (<http://www.dshs.wa.gov/ffa/office-financial-recovery>) to request a hardship.

### **I'd like to make sure my relatives and friends inherit from me. Can I avoid estate recovery?**

**Be careful.** If you give away money or your home to avoid estate recovery, you may not be able to get Medicaid for long-term care for some time. You should prioritize your health care over making gifts to friends and relatives.

There's an **important exception** to this (<https://app.leg.wa.gov/wac/default.aspx?cite=182-513-1363>). You can give (you can "transfer") your home to your spouse and still get Medicaid for long-term care. You may also be able to transfer your home to your child in very few situations. Before transferring your home to a child, and try to talk with a lawyer or other professional who is familiar with Medicaid rules.

### **Which services are subject to estate recovery?**

You can read the state rule about this at **WAC 182-527-2742** (<https://app.leg.wa.gov/wac/default.aspx?cite=182-527-2742>).

**July 1987 - June 1994:** Estate recovery applies if you were **age 65 and older** and got Medicaid services.

**July 1994 - June 1995:** Estate recovery applies if you were **age 55 and older** and you got home and community-based services or nursing facility services. It also applies to any hospital and prescription drug services you received when you received those other services. For example, you might have been living in a nursing home, and had to go to the hospital for a while before returning to the nursing home.

**July 1995 - May 2004:** Estate recovery applies if you were **age 55 and older** and got any of these services:

- Adult day health services
- Home and community-based services
- Medicaid personal care services
- Nursing facility services
- Private duty nursing services

Estate recovery also applies to any hospital and prescription drug services you were provided while you were getting any of the services listed above. For example, you may have had an insulin prescription while getting private duty nursing services.

**June 2004 - December 2009:** Estate recovery applies if you were **age 55 and older** and got any of the following services:

- Medicaid services
- Medicare premiums for people also receiving Medicaid

- Medicare savings programs (MSPs) services for people also receiving Medicaid
- Premium payments to managed care organizations (MCOs)

**January 2010 - December 2013:** Estate recovery applies if you were **age 55 and older** and got any of the following services:

- Medicaid services
- Premium payments to managed care organizations (MCOs)
- 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

**January 2014 - Present:** Estate recovery applies if you were **age 55 and older** and got any of these services:

- Basic plus waiver services
- Community first choice (CFC) services
- Community option program entry system (COPES) services
- Community protection waiver services
- Core waiver services
- Hospice services
- Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic
- Individual and family services
- Medicaid personal care services
- New Freedom consumer directed services
- Nursing facility services

- Personal care services funded under Title XIX or XXI
- Private duty nursing administered by the aging and long-term support administration (ALTSA) or the DDA
- Residential habilitation center services
- Residential support waiver services
- Roads to community living demonstration project services
- The portion of the managed care premium used to pay for ALTSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE)

Estate recovery also applies to any hospital and prescription drug services you were provided while you were receiving any of the services listed above.

**July 1, 2017 - Exceptions:** long-term services and supports authorized under the Medicaid transformation project are exempt from estate recovery.

Exempted services include those provided under:

- Medicaid alternative care under WAC 182-513-1600;
- Tailored supports for older adults under WAC 182-513-1610;
- Supportive housing under WAC 388-106-1700 through 388-106-1765; or
- Supported employment under WAC 388-106-1800 through 388-106-1865.

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