

**RCW 43.20B.080 Recovery for paid medical assistance—Rules—**

**Disclosure of estate recovery costs, terms, and conditions.** (1) The department shall file liens, seek adjustment, or otherwise effect recovery for medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The department 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 medical assistance, the department 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 medical assistance consisting of nursing facility services, home and community-based services, other services that the department 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, shall be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

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

(5) (a) The department 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 department 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 department is not authorized to pursue recovery under such circumstances.

(b) Recovery of medical assistance from a recipient's estate shall 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 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. Such a lien enforced under this subsection shall not end and shall continue as provided in this subsection until the department's lien has been satisfied.

(a) The value of the life estate subject to the lien shall be 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 shall be 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 department 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 department records either its lien or the request for notice of transfer or encumbrance as provided by RCW 43.20B.750.

(d) The department 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 department 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 department 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 department shall dissolve the lien.

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

(10) It is the responsibility of the department 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 long-term care services 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 department shall provide a written description of the community service options. [2010 c 94 s 12; 2008 c 6 s 302; 2005 c 292 s 6; 1999 c 354 s 2; 1997 c 392 s 302; 1995 1st sp.s. c 18 s 67; 1994 c 21 s 3.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Conflict with federal requirements—1994 c 21:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 21 s 5.]

**Effective date—1994 c 21:** "This act shall take effect July 1, 1994." [1994 c 21 s 6.]

*Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.*