QUESTIONS AND ANSWERS ON THE COPES PROGRAM

SOLID GROUND – BENEFITS LEGAL ASSISTANCE JULY 2023

THIS PAMPHLET IS ACCURATE AS OF ITS DATE OF REVISION. THE RULES CHANGE FREQUENTLY.

1. What is COPES?

COPES is a Home and Community Based Services (HCBS) waiver program that pays for services for people in community settings. These services help people who would otherwise need to be in nursing homes. "COPES" stands for Community Options Program Entry System.

The services offered through the COPES program are administered by Home and Community Services (HCS), a division of the Washington State Department of Social and Health Services (DSHS) . DSHS determines whether you are eligible.
HCS has 2 other Home and Community Based Services (HCBS) Waivers called New Freedom in King and Pierce Counties and the Residential Support Waiver. The financial eligibility rules for these programs are the same as COPES. For an overview of all HCS long term services and supports see: Medicaid and Options for Long-Term Services for Adults found at https://www.dshs.wa.gov/sites/default/files/publications/documents/22-619.pdf
The Aging and Long Term Supports Administration website has information on all long term care services and information at https://www.dshs.wa.gov/altsa/long-term-care-services-information

Important Note About COPES: People on COPES are eligible for the Qualified Medicare Beneficiary (QMB) Medicare Savings Program. QMB pays your Medicare premiums, co-payments and deductibles. If you are on COPES, you are QMB-eligible even if your income would ordinarily be too high to qualify. See Medicare Savings Programs: Help Paying for Medicare Costs at Medicare Savings Programs on www.washingtonlawhelp.org for more information about QMB.

How to Apply:

Apply for COPES one of three ways: by filing an application online; submitting a paper application to a local DSHS Home and Community Services (HCS) office; or by calling your local HCS office.

The website for filing an online application is Washington Connection

https://www.washingtonconnection.org/home/

The website for downloading a paper application [form HCA 18-005, Washington Apple Health Application for Long-Term Care/Aged, Blind, Disabled Coverage] is

http://www.hca.wa.gov/medicaid/forms/Documents/18-005.pdf.

You may also pick up the application form at an HCS office. A paper application may be returned to PO Box 45826 Olympia WA 98504 or to your local HCS office. To find the right office, call 1-800-422-3263 or use the online tool to find the HCS office in your county https://www.dshs.wa.gov/altsa/resources

2. How is COPES eligibility determined?

To get COPES you must be financially eligible (see Questions 5-7). Also, you must need help, because of a physical or cognitive disability, with certain activities of daily living. Those activities are eating, bathing, transfer (e.g., moving from a bed to a chair), bed mobility (positioning), locomotion (walking or moving around), using the toilet, and medication management.

To qualify for COPES, you must need extensive help with two or more of the listed activities of daily living, or at least some help with three or more. A person who needs supervision because of a cognitive impairment may qualify for COPES if extensive help with one of the listed activities is needed. Finally, HCS must determine that you need the help described above and that your needs can be met adequately by services available through COPES.

Individuals under age 65 who are not on or eligible for Medicare may be eligible for health care, known as MAGI Medicaid, through the Health Benefit Exchange (http://wahbexchange.org/). MAGI Medicaid includes nursing facility coverage but does not include COPES coverage. The information and rules in this publication apply to MAGI Medicaid individuals that need COPES services. A disability determination is required for a MAGI individual needing COPES services and the individual must meet the income and resource requirements of the COPES program.

Note: The Washington State Health Care Authority (HCA) uses the term "Apple Health" to refer to all Medicaid and state medical programs, including long-term care programs. MAGI Medicaid refers to Medicaid medical for qualifying individuals under age 65 who are not on or eligible for Medicare. Classic Medicaid, also known as SSI-related Medicaid, is Medicaid medical for qualifying individuals age 65 and over. These are both Apple Health programs.

3. How much does COPES pay?

What COPES will pay for depends on the service(s) you are assessed to need help with and how much help you need with them. Almost everyone receiving services through COPES will also receive services through the Community First Choice (CFC) program. CFC pays for personal care (and some other services), while COPES may pay for other "wrap-around" services, including home-delivered meals, home health aides, skilled nursing care, adult day care, and training to help you increase what you can do for yourself.

Medicaid may also pay for care in a group facility or home. Payment depends on the type of facility and its location. The maximum COPES pays for an adult family home ordinarily ranges from about $3,368 to $7,002 per month. For an assisted living facility, the payment ordinarily ranges from about $2,940to $6,511 per month. The actual amount depends on the county and level of care needed. Under rare circumstances, when more intensive care is needed, Medicaid may pay a higher rate. A growing number of adult family homes and assisted living facilities are requiring residents to privately pay for a specified number of months, or years, before allowing a resident to convert to a Medicaid status. It is important to be aware of this practice when looking for a facility.

All COPES recipients get Medicaid coverage for other medical expenses, including physician services, prescription drugs and home health services. In addition, they get case management services—help in planning and monitoring their care.

4. When does COPES coverage begin?

COPES coverage does not begin until HCS approves a plan that describes your needs and the services that will meet them. The *medical* coverage you get with COPES is effective as of the first day of the month in which your COPES coverage begins.

5. How are income and resources defined for purposes of COPES?

To get COPES services, both your income and your resources must be within set limits. In counting your *income* for a month, DSHS looks at what you *received that month*. Income typically includes such things as Social Security, VA benefits, pension payments and wages, in the month they are received.

In counting your resources for a month, DSHS essentially takes a snapshot of your resources as of the first moment of the first day of the month. Whatever resources exist at that exact moment are the resources counted. Resources typically include such things as real estate, funds in bank accounts (but not including this month's income) and stocks. Funds from a payment that counted as income last month will count as resources this month if you still have them as of the first of this month. Not all resources count for purposes of determining resource eligibility.

The income and resource standards for Medicaid programs are adjusted yearly and can be found here

https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources

6. Am I "income eligible" for COPES?

An applicant is income eligible if the applicant's monthly income is no greater than $9,440 after reducing income by the amounts below.

- Income from certain sources (see WAC 182-513-1340)
- General disregard ($20)
- Earned income disregard (first $65 of earned income and one-half of any additional earned income)
- Health insurance premiums, other than Medicare (prorated monthly over a 12-month certification period); and
- Outstanding allowable medical bills

For married applicants, this applies only to the applicant's income and not to the income of the non-applicant spouse.

If you are income eligible for COPES, you will be allowed to keep a specified amount of income and will be required to use any additional amounts for certain purposes (see Questions 8-9).

7. Am I "resource eligible" for COPES?

The limit for resources (assets, property, and savings) that a single person may have is $2,000. Certain "exempt" resources are not counted in determining whether you fall within this limit. Exempt resources are described in Question 11.

A spouse of a COPES recipient is allowed to keep substantially more resources. What resources a spouse can keep is explained in the answer to Question 10. Rules about the consequences of giving away your resources are described in the answer to Question 12.

Note: A regulation, effective April 16, 2015, considers resources transferred to another individual or entity to pay for your long-term care as available to you, which will usually

make you ineligible because you have excess resources. (see Question 12).

8. What *income* can I keep if I go on COPES?

If you are on COPES, you will be allowed to keep a specified amount of income, called a "personal needs allowance." As described in detail below, if you have more than the allowable amount, you must use the rest for certain purposes, such as paying for care services.

If you are on COPES and live at home, you will be allowed to keep the following amount of countable income for your personal needs allowance (which includes home maintenance): if you are single, $2,742, a month; if you are married and your spouse is *not* on COPES, $914 a month; if you are married and your spouse is also on COPES, $2,742 for each spouse.

If you are on COPES and live in an adult residential care facility, assisted living facility or adult family home, you can keep a personal needs allowance of $100 per month (or $38.84 for certain residents on the state-funded Aged, Blind, Disabled (ABD) cash program). The next $ 814 must be paid to the facility for room and board. ($100 + $ 814= $914.)

The spouse of a COPES recipient may be allowed to keep some of the income of the COPES recipient, as explained in Question 9. This amount is called a "spousal income allowance."

However, a spousal allowance can only be allocated if your spouse is not in a medical institution and meets the income requirements for receiving the allowance, and if you have sufficient income remaining after other allowable deductions. Deductions from income are allowed in a hierarchy.

After allowing for the personal needs allowance (including room and board), deductions from income are allowed in the following order:

(1) An amount allowed for an earned income deduction (currently $65), and ½ of your remaining earned income (if you are working);
(2) an amount for guardianship fees and administrative costs;
(3) an amount for current and/or back child support garnished or withheld from the current month's income according to a child support order;
(4) an amount for your spouse, if you have one;
(5) an amount for dependent family members; and
(6) an amount for unpaid allowable medical expenses.

The total amount of the deductions for your personal needs allowance, earned income, and guardianship fees/costs cannot exceed $2,742. The number and amount of deductions actually allowed will depend on the individual's income and the amount of each deduction.

Any remaining income must be used to pay for part of the cost of the services you were approved for. This includes both the cost of COPES and CFC services. The part of the cost you pay is called your "participation." DSHS covers the rest. You are only responsible to pay participation up to the *actual* cost of the care services that are provided.

Example 1
You are approved for long term care services in your own home and your participation is $500. However, your CARE plan only calls for 30 hours of help at $10.00 per hour. In this example, you pay only $300 to your provider, not $500.

Example 2
You are approved for long term care services in an assisted living facility and your participation is $3,000. However, your assisted living facility state rate is $2,635 per month. In this example, you pay only $2,635 to your provider, not $3,000.

If the actual cost of services is lower than your participation amount, you should be careful that the difference does not raise your resources over the $2,000 limit on the first of the following month.

Your COPES eligibility and personal needs allowance usually will not be affected by items or services that are given to you or that you receive because someone else pays for them.

9. What *income* can we keep if my spouse goes on COPES?

If your spouse goes on COPES and you are not on COPES or Medicaid, your spouse is allowed to keep $914 per month and you are allowed certain additional income.

You (the spouse not on COPES) can always keep all income paid in your name, no matter how much. In addition, if the income paid in your name is less than $2,465 you can keep as much of your spouse's income exceeding the $914 as is necessary to bring your income up to $2,465 per month. And, if your housing costs (rent or mortgage, maintenance fee for a condominium or cooperative, property taxes, homeowner's insurance, and utilities) exceed $740 per month, the $2,465 can be increased up to $3,716 by the amount of this excess. (In calculating housing costs, your actual costs for rent, mortgage, maintenance fee for a condominium or cooperative, taxes, and insurance are used. For utilities, however, a standard figure of $462 per month is used.)

If your COPES-recipient spouse is in an adult family home or other residential facility, then all but $100 of the first $914 of his or her income must be paid to the facility for room and board. If this does not leave the couple with enough income to allow you (at home) the amount you would otherwise get, as described in the last paragraph, there is a special problem. You can ask HCS to make what is called "an exception to rule" to lower the amount of room & board paid to the facility, so that the money can be available to the spouse instead. (There is a dispute about whether denial of such a request would be allowed under federal law. If that problem affects you, you may wish to seek legal advice.)

Whether or not you can receive an allowance from your spouse's income will depend on the amount of your spouse's income; other deductions allowed, if any; and the amount of other deductions. Deductions from your income are allowed in a hierarchy order (see Section 8).

Examples

Your spouse is at home and on COPES.

- If $2,400 is paid in your name and $950 is paid in your spouse's name, you can keep $2,400. Your spouse can keep $914 of his or her income and would pay $36 to the COPES provider.

- If $914 is paid in your name and $2,400 is paid in your spouse's name, you can keep your $914 plus you may be able to keep at least $1,551 of your spouse's income ($2,465- $914= $1,551). And if your housing costs are $800 per month, you can keep an **additional** $60 of your spouse's income because the $2,465 level is increased by the excess of your

housing costs over $740 ($800 - $740 = $60). Whether or not you can receive an allowance from your spouse's income will depend on the amount of your spouse's income; other deductions allowed, if any; and the amount of other deductions. Deductions from your spouse's income are allowed in a hierarchy order (see Section 8).

A spouse of a COPES recipient may be allowed to keep more of a COPES recipient's income if a superior court judge orders higher support (for example, in a legal separation proceeding) or if an administrative law judge decides that there are "exceptional circumstances resulting in extreme financial duress."

A COPES recipient may also be entitled to an additional allowance for the care of a dependent family member.

10. What *resources* can we have when my spouse applies for COPES?

When your spouse applies for COPES, the two of you can have any resources that are "exempt" – a home and a car, for example. Exempt resources are explained in the answer to Question 11.

You can also have non-exempt resources up to a certain value. (Non-exempt resources include such things as cash, most funds in bank accounts, and investments.) The limit includes the $2,000 that a single COPES recipient is permitted to have plus an amount established by the "Community Spouse Resource Allowance" or "CSRA."

The CSRA is $68,301. When your spouse applies for COPES, you and your spouse can have $70,301 of non-exempt resources ($68,301 allowed for you and $2,000 allowed for your spouse) and possibly more. At the time of application, it does not matter which spouse owns what resource or whether the $68,301 or any part of it is community or separate property. All resources of both spouses will be added together to determine eligibility.

Sometimes the CSRA can be more than $68,301. It can be more if one of the following exceptions applies:

(1) If your spouse is currently institutionalized (in a hospital or nursing home), and you can show that the combined resources of both spouses were more than $136,602when their current period of institutionalization began, then you may be entitled to a CSRA of more than $68,301. If this applies, the CRSA is increased to half of the combined resources that the couple had at the time the period of institutionalization began. The maximum amount that the CSRA can be increased to is $148,620.

(2) You *may* be allowed to keep more non-exempt resources if the combined *income* of both spouses is not enough to give you what is allowed by the rules explained in the answer to Question 9 above ($2,465 to $3,716). To do this, a spouse who is not on COPES must request a decision from HCS, at the time of application, that more resources are necessary to produce the permitted income level.

(3) If your spouse is currently institutionalized (in a hospital or nursing home) and the current period of institutionalization began before August 1, 2003, then your CSRA is $148,620.

You can reduce excess resources that make your spouse ineligible for COPES in various ways. You can spend the excess resources on such things as medical care, on home repair, on the purchase of exempt resources, or on consumable goods or services, so long as you

receive fair value for your money. Or you can buy an annuity that converts the excess resources to monthly income, *if the annuity satisfies the requirements of Health Care Authority (HCA) regulations.* To determine whether a particular annuity satisfies HCA requirements and whether a particular financial plan makes sense in your particular case, you should consult a lawyer familiar with Medicaid law.

The explanation above responds to the question "What resources can I have when my spous*e applies* for COPES?" An entirely different rule applies once your spouse is *already on* COPES. After an application is approved, continuing eligibility of the spouse on COPES will not be affected by increases in the resources of the spouse who is not on COPES. In other words, if one spouse is already on COPES, the other spouse's resources can increase above the limit that applied at the time of the eligibility determination. The increase will not affect the COPES eligibility of the spouse on COPES.

At the time of application, it does not matter which spouse owns resources. But, within a year after a COPES application is approved, anything over $2,000 must be transferred to the non-COPES spouse. Then, the spouse on COPES must not have more than $2,000 worth of non-exempt resources in his or her name.

11. What resources are not counted to determine COPES eligibility?

A. What are exempt resources?

Some resources are considered exempt and are not counted toward the $2,000 and $68,301 to $148,620 resource limits that were discussed in the previous section. Exempt resources can include your home, household goods and personal effects, some real estate sales contracts, a car, life insurance with a face value of $1,500 or less, most burial plots and prepaid burial plans, and certain other property and items used for self-support. Some of these are discussed in more detail below.

Also, *non-exempt* resources that cannot be sold within 20 working days are temporarily disregarded while being sold.

B. When is a home exempt?

A home (which may be a house and surrounding land, a condominium or a mobile home) may be an exempt resource. The exemption applies if the COPES recipient lives in the home, or is temporarily absent but intends to return to it. It also applies as long as the recipient's spouse or, in some cases, a dependent relative continues to live in the home.

The exemption does not apply to a home in which the COPES recipient has an equity interest of more than $1,033,000 unless one of the following exceptions applies: (1) the recipient is receiving services based on an application for Medicaid long-term care services filed before May 1, 2006; or (2) the recipient's spouse or the recipient's child who is under 21 or blind or disabled resides in the home. (The disability criteria for this purpose are the same as those used for Social Security disability determinations.)

Even when a home is exempt, a married Medicaid applicant or recipient still may wish to transfer his or her interest in it to a spouse. Such a transfer may be made to prevent future recovery of Medicaid costs from a Medicaid recipient's estate (see Question 13), or to make it easier for the spouse to sell or otherwise dispose of the home. But, such a transfer is not always a good idea. It may, for example, have adverse tax or other consequences in some cases. Before making such a transfer, you should consult with a

lawyer familiar with Medicaid rules and estate planning.

The proceeds from the sale of an exempt home are also exempt if, within three months of when they are received, they are used to purchase a new exempt home.

C. When is a sales contract exempt?

The seller's interest in any sales contract entered into before December 1, 1993 is an exempt resource unless it is transferred. A sales contract entered into after November 30, 1993 is exempt only if it is a contract for the sale of the seller's home and includes fair market terms. A sales contract entered into after May 2004 is exempt only if it is for the sale of the seller's principal residence at the time he or she began a period in a medical facility (including a nursing home) or on COPES and if it requires repayment of the principal within the seller's "anticipated life expectancy." The *payments* received under an exempt sales contract will be treated as *income*.

D. When is a car exempt?

One car is exempt, no matter how much it is worth, if it is used for transportation for the COPES recipient or for a member of the recipient's household.

E. When is life insurance exempt?

The cash surrender value of life insurance may be claimed as exempt if the total *face* value (amount payable at death) is not more than $1,500. For couples, each spouse may claim $1,500. If the face value of an individual's life insurance is more than $1,500, the entire *cash surrender* value (the amount payable if the policy is canceled) is counted as a non-exempt resource. (It will count as part of the $2,000 or $68,301 to $130,380 resource limits discussed in the previous section.) Life insurance with no cash surrender value has no effect on COPES eligibility.

F. When are burial funds and burial spaces exempt?

A burial fund of $1,500 for an individual (and an additional $1,500 for a spouse) may be claimed as exempt if set aside in a clearly designated account to cover burial or cremation expenses. If an individual has life insurance that is claimed as exempt, then the face value of the life insurance will count as part of the individual's burial fund. So, for example, if a COPES recipient has exempt life insurance with a face value of $1,000, then only $500 may be exempted in a designated account for burial expenses.

An *irrevocable trust* for burial expenses or a *pre-paid burial plan* may be claimed as exempt as long as it does not exceed reasonably anticipated burial expenses. The value of such a trust or plan will count against the exemption for burial funds or life insurance.

Burial spaces for COPES recipients and immediate family members are exempt no matter how much they are worth.

G. When are household goods and personal effects exempt?

Household furniture and other household goods, as well as clothing, jewelry and personal care items are exempt regardless of value.

H. When is an entrance fee paid to a continuing care retirement community or life care community exempt?

An entrance fee paid by a long term care Medicaid applicant to a continuing care retirement community or life care community is still considered a resource available to the applicant to the extent that: (1) the applicant has the right to use the fee (including using it to pay for care); (2) the contract allows for the refund of any remaining entrance fee on

death or termination of the contract and leaving the community; and (3) the fee does not convey an ownership interest in the community.

I. When is the dollar value of insurance proceeds paid out under a long-term care policy considered exempt?

The dollar value of insurance proceeds paid out for long-term care expenses, under a Long-Term Care Partnership insurance policy, will be deemed exempt at the time of Medicaid application and will not be subject to Medicaid estate recovery at death (the exemption applies only to the value of insurance proceeds paid out under a qualified Long-Term Care Partnership insurance policy).

12. Can I transfer resources without affecting COPES eligibility?

A. Rules for transfers of a home

A *home* may be transferred without penalty to any of the individuals described below. (The person making the transfer does not need to live in the home at the time of the transfer.)

- A *spouse*
- A *brother* or *sister* who has an equity interest in the home and has lived there at least one year immediately before the date when their sibling's COPES coverage or institutionalization began.
- A *child* who has lived in the home and cared for the parent for two years immediately before the date of the parent's current COPES coverage or institutionalization. (If this requirement is met, it does not matter *when* the property is transferred to the child.) The care must have enabled the parent to remain in the home and it must be verifiable, and it must not have been paid for by Medicaid. A physician's statement of needed care is required.
- A *child* who is under 21, or blind or disabled. (The disability criteria for this purpose are the same as those used for Social Security disability determinations.)

B. Rules for other transfers to a spouse or disabled child

There is no penalty for transferring resources to a spouse or a disabled child. (Again, the disability criteria are the same as those used for Social Security disability determinations.)

Remember that the resources of both spouses are added together in determining initial COPES eligibility. So, if a couple has more resources than are permitted at the time of application, a transfer from one spouse to the other will not solve that problem.

A transfer to a spouse or to a disabled child may be made without penalty either before or after an individual qualifies for COPES or Medicaid.

C. Rules for other transfers to someone other than a spouse or disabled child

(1) Transfers without penalty

(a) There is no penalty if you sell your resources for their fair market value.

(b) *Exempt* resources (see Question 11), *other than the home or a sales contract*, may be given to anyone without penalty.

(c) There is no penalty for gifts made after April 2006 as long as the total amount in any calendar month is $367 or less. (Different rules apply if you made gifts before May 2006 *and* you applied for COPES or Medicaid for nursing home care before May 2009.)

(d) There is no penalty for gifts of any value made more than 60 months before applying for COPES or Medicaid for nursing homes.

(e) No matter when a transfer is made, there is no penalty if you can demonstrate that the transfer was not made to qualify for COPES or Medicaid for nursing home care, or made to avoid estate recovery.

(2) Transfers resulting in penalties

There may be a penalty if you transfer *non-exempt* resources, or sales contracts, or a home (except to one of the people listed above), for less than fair market value within **60** months of applying for Medicaid. The penalty is a period of ineligibility for COPES or Medicaid for long-term care services. The length of ineligibility depends on the value and timing of the transfer. There is no maximum length for a period of ineligibility.

(3) Calculating periods of ineligibility

The process of calculating periods of ineligibility is slightly complicated. After reading the following explanation, if you are left with questions about the effects of gifts you have made or are considering, you should talk with a lawyer who knows Medicaid rules.

Note: The explanations below apply to COPES applications made between October 1, 2022 and September 30, 2023. (The numbers change each October.)

To determine the period of ineligibility, take the total of all gifts made within 60 months before applying and divide the total by 367. The number of days of ineligibility is the result of this division. This divisor of 367 is the daily statewide average of private nursing facility rates (currently $367).

The period of ineligibility does not begin to run until an applicant for Medicaid-funded long-term care services is eligible in all other respects except for the period of ineligibility. This means that the applicant must satisfy the income and resource eligibility requirements and must meet the level-of-care requirements for COPES or Medicaid for nursing home care. Also, in order to start running the period of ineligibility, the Department requires that an individual make an application—in effect, seeking a determination by the Department that he or she is "otherwise eligible."

Example:

If you made gifts totaling $20,000 between May and August 2022 and applied for COPES in October 2022, you would calculate the period of ineligibility by dividing 20,000 by 367 to produce 54 days of ineligibility resulting from those gifts. (20,000 ÷ 367 = 54.495, which rounds down to 54). The period of ineligibility would begin on October 1, 2022, assuming that you were otherwise eligible for COPES on that day.

If the gift is made when an individual is already receiving COPES coverage, then the period of ineligibility normally begins on the first day of the month following a notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery by the agency of the transfer. There is one exception to this norm. The penalty period will begin later if another penalty period is already in progress. In that case the new penalty period starts after the current one is completed.

Generally, before you apply for COPES or Medicaid for nursing home care, the same restrictions apply to transfers by you or your spouse. If you or your spouse gives away resources, either gift may result in a period of ineligibility for you. Once you are receiving COPES or Medicaid for nursing-home care,

however, gifts made by your spouse will not affect your continuing eligibility.

(4) Transfers Affecting Resource Eligibility

A regulation, effective April 16, 2015, provides that the transfer of cash and other resources by an applicant or current recipient of long-term care services (or his or her spouse) to another person or entity to pay for the applicant's or recipient's long-term care services are considered resources available to the applicant or recipient, unless otherwise excluded. This will usually make you ineligible because you have excess resources. In that situation, the period of ineligibility will not begin to run.

(5) **Eligibility for Community First Choice**

If you are ineligible for COPES services due to a transfer of resources, you may still be eligible to receive personal care services through a program called Community First Choice (CFC), if you meet the income and resource standards for that program. See the pamphlet entitled *Questions and Answers on Community First Choice Program*, which is available on the website www.washingtonlawhelp.org.

(6) Waiver of periods of ineligibility

Home and Community Services may waive a period of ineligibility if it finds that denial of benefits would cause undue hardship. A hardship waiver may be granted in cases where there has been denial or termination of benefits based on transfer of assets or excess home equity. Such a waiver may lead to imposition of a civil fine on the recipient of a gift if the recipient "was aware, or should have been aware," that the gift was made for the purpose of qualifying for Medicaid.

A hardship waiver may be granted for transfers between couples who are married or for transfers between registered domestic partners.

13. Will COPES payments result in a lien or claim against my estate?

DSHS may be entitled to recover, from a Medicaid client's estate, the amount the State of Washington paid for the client's care. Whether or not Medicaid is entitled to recover depends on the type of services the client received and the dates when the services were provided to the client. See the Columbia Legal Services publication entitled Estate Recovery for Medical Services Paid for by the State, which is available on the website www.washingtonlawhelp.org.

Recovery will be delayed if, at the time of death, the COPES recipient has a surviving spouse, registered domestic partner, or surviving child who is under 21 or blind or disabled.

The DSHS estate-recovery claim only applies to property owned at death by a COPES recipient. *No claim can be made against property solely owned by a spouse or child.* This may be an important reason to consult a lawyer familiar with COPES and Medicaid rules about permissible transfers of property.

14. Can I get help with the application process?

Many people need help applying for COPES or Medicaid. Often there are family members or friends, or staff members of a hospital or nursing home or other agency, who are able to help. Help is also available from HCS staff, especially for people who have physical or mental impairments that make it hard to get through the application process on their own.

If you need help in the application process from HCS, you or someone else should tell the HCS representative that you need help.

DSHS rules require what are called "necessary supplemental accommodation services" when they are needed. These services include help filling out forms and help finding information or papers needed for your application.

Important Note: People on COPES can hire an Individual Provider (IP) to provide care. If you do, your decision about which IP to hire has to go through the state or a stand-in for the state called a Consumer Directed Employer or CDE. IPs have to pass background checks. If they can't pass, you can't hire them. Sometimes, the state or the CDE may decide not to let you hire the IP you want, even though the IP passed a background check. You get a hearing if the state says you can't have the IP you want, but you don't get a hearing if the CDE makes that decision. There is a question whether this is legal. If this happens to you, you can talk to a lawyer for free. Outside King County, call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm. In King County call 2-1-1 weekdays between 8:00 am - 6:00 pm. They will refer you to a legal aid provider. Seniors (age 60 and over) can also call CLEAR*SR at 1-888-387-7111, statewide.

COPES rules are complicated. Before taking steps you don't understand, you should get individualized legal advice. A helpful resource is the Washington Academy of Elder Law Attorneys website at www.waela.org.

COPES 07-2023

Solid Ground – Benefits Legal Assistance
1501 N. 45th St., Seattle, WA 98103