

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

## California's Medi-Cal Recovery Program for Those Who Die Before January 1, 2017

### Frequently Asked Questions

California's Medi-Cal applicants and beneficiaries are often confused about their rights regarding Medi-Cal and are particularly concerned that the state will "take" their homes after they die if they received Medi-Cal benefits. The following "Frequently Asked Questions" attempts to answer some of these concerns and to provide consumers with the information necessary to make informed choices about their estates when they are applying for Medi-Cal.

#### I. Can the State Take my Home If I Go on Medi-Cal?

The State of California does not take away anyone's home per se. Your home can, however, be subject to an estate claim after your death. For example, your home may be an exempt asset while you are alive, and not counted for Medi-Cal eligibility purposes. However, if the home is still in your name when you die, the State can make a claim against your estate for the amount of the Medi-Cal benefits paid or the value of the estate, whichever is less. *Thus, if your home or any part of it is still in your name when you die, it is part of your "estate" and can be subject to an estate claim.*

#### II. Can the State Put a Lien on My Home?

Consumers often confuse liens and estate claims. Both have been used by the State in attempts to reimburse the Medi-Cal program for payments made to beneficiaries. Liens are placed on living Medi-Cal beneficiaries' estates to "hold" the property until the person dies. Estate claims are claims made against the estate of the Medi-Cal beneficiary after he or she dies. As of January 1, 1996, California is not permitted to impose liens against the homes of nursing home residents or their surviving spouses, except in cases where the home is not exempt (i.e., the nursing home Medi-Cal applicant did not indicate an intention to return home) and the home is being sold. Under current law, these are the only liens that can be placed on the homes of living beneficiaries.

Most Medi-Cal applicants' homes are exempt because a spouse, child or sibling lives there or they do indicate an intention to return home on the Medi-Cal application, so even these liens are rare. After the beneficiary has died, the heirs or survivors may sign a "voluntary" lien for Medi-Cal recovery purposes, if they cannot otherwise avoid an estate claim against the property.

#### III. What Happens After I Die If I Received Medi-Cal?

After the Medi-Cal beneficiary's death, the State can make a claim against the estate of an individual who was 55 years of age or older at the time he or she received Medi-Cal benefits or who (at any age) received benefits in a nursing home, unless there is a surviving spouse, registered domestic partner, or a minor, blind or disabled child. Thus, if there are any assets left in the estate of the deceased beneficiary, Medi-Cal will seek to be reimbursed for benefits paid. *It is important to note that, even if you received Medi-Cal at home, any benefits paid while you were 55 years of age or older will be subject to Medi-Cal recovery.*

#### IV. How Much Can the State Recover?

California's definition of "estate" includes such assets as living trusts, joint tenancies, tenancies in common and life estates, although claims on the remainder interest in life estates are limited to those that were revocable. Many consumers place their property into living trusts, thinking that this will protect it from an

estate claim. It does not. The State can still make a claim against property held in a living trust, joint tenancy or tenancies in common, as long as the beneficiary's name is still on the property at the time of death.

However, the amount of recovery is limited to the amount of benefits paid or the value of the beneficiary's estate, whichever is less. For example, if the appraised value of your home is \$200,000 and you left it in joint tenancy with your three children, the State can only collect up to \$50,000, which is your part of the estate - even if the Medi-Cal benefits paid to you are more than \$50,000. The value of the estate is also reduced by any outstanding mortgages or debts on the home. For example, if the home had an outstanding mortgage of \$100,000, this reduces the value of the estate to \$100,000 (the appraised value of \$200,000, minus the mortgage). This, in turn, reduces the amount of the estate claim to \$25,000. (The value of the home (\$100,000) divided by the four joint tenants.) Deducting the amount of burial costs or estate settlement costs can also reduce the claim. Remember to keep receipts and submit them.

When the State files an estate claim, they are also required to send an itemized billing of benefits paid over the deceased's lifetime. It is important to review the billing to see if there are any errors. Payments made for personal care services under the In Home Supportive Services (IHSS) program, the cost of premiums, co-payments and deductibles paid on behalf of either Qualified Medicare Beneficiaries or Specified Low-Income Medicare Beneficiaries (QMB/SLMB) are exempt from recovery. Thus, if payments for these services are included in the itemized billing, the collection representative should delete this from the billing.

**Managed Care:** Estate claims can be much higher if the beneficiary is enrolled in managed care. When a managed care beneficiary dies, the estate will receive a claim for the total amount paid by Medi-Cal to the managed care plan, regardless of how much the actual services cost the managed care plan. Any share of cost paid to the nursing home, for example, is not deducted from the monthly amount paid to the managed care plan. If the deceased beneficiary was enrolled in a managed care plan, the itemized bill will only include a lump sum paid to the plan. The plan will have to be contacted to find out what providers were actually paid by the plan.

## **V. Are There Any Exceptions to an Estate Claim?**

**A. Surviving Spouse or Registered Domestic Partner:** The state is prohibited from recovery while a surviving spouse or registered domestic partner (RDP) of a deceased Medi-Cal beneficiary is alive. However, after the surviving spouse or RDP dies, recovery may be made against any property received by the spouse or RDP through distribution or survival, e.g., property left under a will or community property. However, if the home is transferred out of the nursing home resident's name while he or she is alive, no claim can be placed on the home. Spouses or RDPs should be careful to "transmute" or transfer the property, i.e., through a court order or by having the nursing home spouse sign a declaration relinquishing his/her interest in the property.

**B. Minor, Blind or Disabled Child:** If a minor child under the age of 21 or a blind or disabled child of any age survives the beneficiary, a claim is prohibited by federal and state laws. The surviving minor child or his/her representative only needs to send proof, such as a birth certificate or adoption papers, that they are the child of the decedent or, in the case of disabled child, documentation of disability or blindness, such as a Social Security or SSI award letter and a birth certificate showing they are the child of the deceased. If the surviving child does not have documentation of disability from the Social Security Administration, he/she can still file for a disability determination with the Department of Health Services. It is important to note that the surviving child does not have to live in the home (or even in the State, for that matter) in order for recovery to be barred.

**C. When There is Nothing Left in the Estate:** Since most deceased Medi-Cal beneficiaries leave nothing but their homes, it is most important to look at the deed to the property. Whose name was on the property at the date of death? If the beneficiary transferred the property outright prior to death, then send a copy of the deed, along with a letter explaining that the beneficiary left nothing in his/her estate and ask that the case be closed. If the beneficiary transferred the home outright while he or she was alive and reserved a life estate or an occupancy agreement, send a copy of the deed showing the property was transferred before the beneficiary died.

## VI. What Else Besides My Home Can the State Claim Against?

Under current law, “estate” is defined as any real or personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement. Anything left in the decedent’s bank accounts, for example, can be subject to recovery, after estate and burial expenses or other documented expenses are paid. The State can also recover from annuities purchased by a beneficiary on or after September 1, 2004, regardless of whether the remainder interest in the annuity is a lump sum or a stream of income. Call the CANHR office if you have specific questions regarding what assets are subject to recovery.

**Life Estates:** Under the new recovery rules, claims on irrevocable life estates are waived, but the state is placing claims on “revocable” life estates. For example, if you retain a life estate and, “*upon death the remainder to the children,*” this would not be considered a transfer and your home could be subject to recovery. If the gift deed transfers the home outright to the individual(s) and you retain a life estate, this would be considered irrevocable and would be immune from recovery.

The State *cannot* recover from IRAs, work-related pension funds or life insurance policies, unless they name the State as the beneficiary or they revert to the estate. This is rare, as most people name a beneficiary for pension funds and insurance policies.

**Do not name your living trust as the beneficiary** for life insurance policies or retirement accounts. If you do, it is like naming the estate as the beneficiary, since living trusts are subject to recovery, and the state will be able to recover from these assets. Always directly name the person or persons you would like to be the beneficiary of your life insurance or retirement accounts.

## VII. How Does the State Know When a Medi-Cal Beneficiary Dies?

**A. Notice of Death:** When a Medi-Cal beneficiary dies, the County Medi-Cal office notifies the Department of Health Services in Sacramento and benefits are terminated. However, for recovery purposes, the burden of notifying the State of the death is still on the beneficiary’s estate. California law, under Probate Code §215, requires that, when a deceased person has received or may have received health care benefits or was the surviving spouse of a person who received such benefits, the estate attorney, the beneficiary of the estate, the personal representative or the person in possession of the property is required to notify the Director of the Department (at the Sacramento office of DHS) no later than 90 days after the person’s death. A copy of the death certificate is required to be sent.

Although most consumers simply notify the county Medi-Cal office, this does not count as proper notice and it is important that you send the notice and death certificate to the correct address, if you want the matter to be addressed in a timely manner. The notice of death and the death certificate should be sent by registered or certified mail to: Director of Health Care Services, Estate Recovery Unit, MS-4720, P.O. BOX 997425, Sacramento, CA 95899-7425. That way, you have proof of mailing.

**B. Filing The Claim:** If the estate is subject to probate or trust administration, the State has four months in which to file a claim. If a claim is not filed within this time, it is forever barred. However, many estates are not subject to probate or trust administration. In these cases, although the State has indicated its policy is to respond within four months, there is no law requiring this. By law, in non-probated estates, the Department must file a claim within three years of receipt of the notice of death.

**C. Beware of Forms:** The Recovery Unit has sent out a number of questionnaires to consumers implying that they are under a legal obligation to complete and return them. The only legal obligation under law is to send a notice of death and a copy of the death certificate when a deceased Medi-Cal beneficiary or the spouse of a deceased beneficiary dies. If the State has sent an estate claim, then the questionnaire is a way for them to find out what property, if any, is left in the deceased beneficiary’s estate. If there was no property left in the deceased’s name, then completion of the form (or an attached letter) should be an easy matter. Enclose a copy of the deed to show the property was transferred during the life of the beneficiary. If the

estate is more complicated, then consumers should seek advice from their attorney, legal services or CANHR before completing and returning any questionnaires or forms.

## **VIII. How Does a Survivor Appeal an Estate Claim?**

**A. Hardship Waivers and Estate Hearings:** State regulations provide that the applicant (i.e., the dependent, heir or survivor of the decedent) may file for a hardship waiver within 60 days of notice of the claim. The hardship application is provided with the notice of the claim and the itemized billing, along with a copy of the regulations. Consumers are advised to complete the hardship application as completely as possible and to submit substantial documentation to support any hardship. A written decision regarding the hardship application must be sent to the applicant within 90 days of submission of the application (although the Department rarely responds within the legal timelines). Under the new regulations, only the applicant's "proportionate share" of the claim will be waived. So, if there is more than one heir, for example, all must file for hardship waivers, unless there is an exempt survivor, e.g., a spouse, a minor or a disabled child.

The applicant may challenge the Department's hardship waiver decision by requesting an estate hearing within 60 days of the date of the Department's hardship waiver decision. The estate hearing is an administrative law hearing and is required to be set within 60 days of the date of the request and must be conducted in the court of appeals district in which the applicant resides. *Always try to preserve your appeal rights by filing within the time limits and try to get legal representation at the Administrative Law Hearing.*

**B. Caregiver Exemption:** The new regulations state that the Department shall waive the applicant's proportionate share of the claim if he/she provided care to the decedent for two or more years that prevented or delayed the decedent's admission into a medical or long term care institution. The applicant does not have to be related to the beneficiary, but must be a dependent, heir or survivor. The applicant must have resided in the decedent's home while the care was provided and continue to reside there. The applicant must still complete the hardship waiver form and must also submit written medical documentation that shows that the applicant provided a level of care for at least two years that delayed the deceased beneficiary's entry into a medical facility. This includes a statement from the doctor or other medical provider attesting to the deceased's condition prior to entering the medical facility and what specific level and frequency of care the deceased received from the applicant. Declarations from medical providers, copies of pertinent medical records, etc. can be useful in documenting the extent of the caregiving provided.

**C. Judicial Review:** Estate hearing decisions can be appealed judicially by filing a writ of mandate with the appropriate court. The state may also refer the claim to the Office of the Attorney General if the claim is not paid and their collection efforts are unsuccessful.

**D. Legal Representation:** The hardship waiver and appeal processes can be complicated and many surviving beneficiaries of the estate cannot afford legal representation. Contact your local office of legal services if your case is complicated and you cannot afford legal representation. You can also contact the CANHR office for consultation or a referral to the appropriate legal services office.

## **IX. How Do I Avoid an Estate Claim?**

The best way to avoid an estate claim is to leave nothing in the estate. Most Medi-Cal beneficiaries leave nothing but a home. If the property is transferred out of the beneficiary's name during life, the state cannot place a claim. Any transfer of real property can have tax consequences that may outweigh a Medi-Cal estate claim. Currently, there are a number of legal options (irrevocable life estates, occupancy agreements, certain types of trusts) available to avoid probate, avoid tax consequences and avoid estate claims. Anyone considering a transfer of real property should consult an attorney experienced in the Medi-Cal rules and regulations.