

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.

# **For Individuals who Die On or After January 1, 2017: California's Medi-Cal Recovery Program**

## **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.

The following information is for those individuals who die **on or after January 1, 2017**, when new Medi-Cal recovery laws became effective.

### **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 and if it is subject to probate under California law, *it is part of your "estate"* and the State may make a claim against your estate for the amount of the Medi-Cal benefits paid or the value of the estate, whichever is less.

### **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 sometimes 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. California is not permitted to impose liens against the homes of nursing home residents, except in cases where the home is not exempt (i.e., the nursing home Medi-Cal applicant has been found (after notice and opportunity for a hearing) to be permanently institutionalized and is not expected to be discharged and return home) and/or 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, registered domestic partner, child (under the age of 21 or blind or disabled child of any age) or sibling lives there or the Medi-Cal beneficiary indicates an intention to return home on the Medi-Cal application, so 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. (See Section VIII – appeals)

### **III. From Whom Can the State Recover Medi-Cal Benefits?**

After the Medi-Cal beneficiary's death, the State can make a claim under the following circumstances:

- the beneficiary was **55 years of age or older** when he/she received Medi-Cal benefits for nursing facility services, certain home and community based services (see definition below) and related hospital and prescription drugs.
- beneficiaries who were **of any age**, who were "permanently institutionalized" in a nursing facility, intermediate care facility or other medical institution and for whom, after notice and opportunity for hearing, it was determined that they could not reasonably be expected to be discharged and return home.

#### **IV. What Health Care Services are Subject to Recovery?**

The State can no longer recover for basic health services such as doctor's visits, prescription drug costs or managed care reimbursements, unless the services are related to nursing home care or home and community based services.

The new recovery provisions limit recovery to only those services that federal law requires to be recovered. These include costs related to:

- Nursing home care
- Intermediate care for developmentally disabled (ICF/DD)
- Home and Community Based Services, including such waiver programs as Assisted Living Waiver, Multipurpose Senior Services Program, In Home Operations and Nursing Facility/Acute Hospital Waiver programs.
- Related hospital and prescription drug services provided to an individual while receiving nursing facility services and home or community-based services.

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.

#### **V. What Assets in the "Estate" are Subject to Recovery?**

Until recently, California could recover for the amount of benefits paid for the decedent or the value of *any* of the decedent's property received by the recipient by *distribution* (e.g., *through a will*) or *survival*, whichever is less. Please refer to the CANHR fact sheet, "For Individuals who Die Prior to 1/1/17: Medi-Cal Recovery FAQs" for more information.

***For those beneficiaries who die on or after January 1, 2017***, the definition of "estate" from which the State can recover is severely limited. Now California can only recover for the amount of benefits paid for the decedent or the value of any of the decedent's property received by the recipient by *distribution*, whichever is less. If you leave your estate in a will, for example, this would be by "distribution" and your estate could be subject to recovery.

The beneficiary's estate that can be subject to recovery now includes only real and personal property or other assets included within the individual's estate, as defined for the purposes of State probate law. Thus, if the property is not subject to probate in California, the State cannot recover it. California's state probate law excludes property held in living trusts, joint tenancies, life estates, and other types of probate-avoiding transactions.

The value of the estate is also reduced by any outstanding mortgages or debts on the home. For example, if a home with an appraised or market value of \$200,000 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). Deducting the amount of burial costs or estate settlement costs can also reduce the claim. Remember to keep receipts and submit them.

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. Always directly name the person or persons you would like to be the beneficiary of your life insurance or retirement accounts.

**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 of Medi-Cal benefits for *nursing home care or home and community based services* paid 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.

## VI. How Do I Find Out the Claim Amount?

Effective January 1, 2017, the Department is required to provide a current or former Medi-Cal beneficiary who may be subject to recovery (i.e., age 55+ or permanently institutionalized) or his/her authorized representative, a copy of the amount of Medi-Cal expenses that may be recoverable.

- A request can be made once a year via internet, by phone or mail
- A fee not to exceed \$5 will be charged
- The Department must provide the information within 90 days of receipt of the request.

The Department is required to post this information on its website, including the department's phone number and any addresses that consumers can use. The new claims detail request form, DHCS 4017, "Request for Medi-Cal Expenses Subject to Estate Recovery" is available at [http://www.dhcs.ca.gov/services/Documents/DHCS\\_4017.pdf](http://www.dhcs.ca.gov/services/Documents/DHCS_4017.pdf).

## VII. Are There Any Exceptions to an Estate Claim?

- A. Surviving Spouse or Registered Domestic Partner:** After January 1, 2017, if the Medi-Cal recipient is survived by a spouse or registered domestic partner, a claim is prohibited and forever barred. However, if the surviving spouse or registered domestic partner also received Medi-Cal services subject to recovery, his/her estate can be subject to an estate claim after his/her death.
- 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 and 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 Care Services (<http://www.dhcs.ca.gov/services/Pages/DisabilityDetermination.aspx>). 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. Homestead of Modest Value:** Although this is not an automatic exemption, it is a new hardship waiver factor for individuals who die on or after January 1, 2017. The new law requires: "in determining the existence of substantial hardship, in addition to other factors considered by the department consistent with federal law and guidance, the department *shall*, subject to federal approval, waive its claim when the estate subject to recovery is a homestead of modest value." (Emphasis added)

“Homestead of modest value” is defined as a home whose fair market value is 50 percent or less of the average price of homes in the county where the homestead is located, as of the date of the decedent’s death. It should be noted that “fair market value” would generally mean minus encumbrances.

Federal guidance requires that the State submit an amended State Plan amendment, and non-emergency regulations will likely be promulgated in the near future, although these are not required for implementation. This new hardship waiver is applicable to estates of those individuals who die on or after January 1, 2017.

**D. 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 home is left in a trust, and thus not subject to recovery, send a copy of the trust and request that any claim be waived.

## **VIII. 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.

The notice of death (just a brief note) and a copy of 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:** For individuals who die on or after January 1, 2017, the State can no longer claim unless the estate is subject to probate. Then 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. These timelines and laws are likely to change, since the State is prohibited from claiming against non-probated estates in the first place.

**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 (Probate Code §215). 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 or what property might be subject to recovery. If there was no property left in the decedent’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 or that it is not part of a probate estate, such as a living trust, joint tenancy, etc. 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. Nevertheless – *always* send in the notice of death and a copy of the death certificate as advised above to ensure that the statute of limitations is running.

## **IX. How Does an Heir/ Survivor Appeal an Estate Claim?**

**A. Hardship Waivers and Estate Hearings:** While final regulations have not yet been promulgated, current 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 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, registered domestic partner, 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.

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

The best way to avoid an estate claim is to either leave nothing in the estate or do adequate estate planning to ensure that your assets will not be subject to probate, e.g., a living trust, joint tenancy, a transfer with an irrevocable life estate, or even a transfer on death deed (although these might have their own problems.) Most Medi-Cal beneficiaries leave nothing but a home. If the property is transferred out of the beneficiary's name during life or transferred in one of the ways mentioned above, 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 available to avoid probate, avoid tax consequences and avoid estate claims. Anyone considering a transfer of real property should consult an attorney experienced in tax issues and the Medi-Cal rules and regulations.