

Your home and Medi-Cal

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.

When Your Home Is Exempt

Medi-Cal eligibility requires that an applicant (and his/her spouse) have a limited amount of assets. Your home is exempt from consideration as a resource when you or your spouse is on Medi-Cal under any of the following circumstances:

- If during any absence, including nursing home stays, the beneficiary intends to return home, and states so in writing. If the beneficiary is mentally incapacitated, a family member or someone acting on her or his behalf may so state this intent.
- If the beneficiary's spouse, child under age 21, or "dependent relative" continues to reside in the home.
- The residence is inhabited by the recipient's sibling or son or daughter who has resided there continuously for at least one year prior to the date the recipient entered the nursing home.
- There are legal obstacles preventing the sale and the applicant/beneficiary provides evidence of attempts to overcome such obstacles.
- The home is a multiple dwelling unit, one of which is the principal residence of the beneficiary.

Exempt During Life, but Estate Claim After Death

Note that while a home may be "exempt" for Medi-Cal eligibility purposes, it is not exempt from estate recovery. Any assets left in a Medi-Cal beneficiary's name at the time of death will be subject to an estate claim.

Estate Claims Explained

After the death of a Medi-Cal beneficiary, the State may make a claim against the estate of a beneficiary who was 55 years of age or older at the time he or she received Medi-Cal, or of any age, if the person received Medi-Cal in a nursing home, unless there is a surviving spouse, a minor child, or a blind or disabled child of any age.

Federal and state laws passed in 1993 expanded the definition of "estate" from which the state can seek recovery. California now may seek recovery from any real or personal property or any other assets in which the individual had any legal title to or interest in at the time of death.

This includes living trusts, joint tenancies, tenancies in common, life estates that are considered "revocable," and assets received by a surviving spouse by distribution or survival, e.g., assets left by a will or community property. Many consumers place their property into living trusts, thinking that this will protect it from an estate claim. However, property placed in a living trust can be

subject to recovery, and, unless the property has been transferred out of the beneficiary's name during life, there will likely be an estate recovery claim.

Right to a Hearing

If you receive an estate claim, you may be entitled to have the claim waived. California has established notice and hearing procedures for waiver of estate claims if recovery would work an undue hardship.

Estate claims can be complicated, and the State has made many errors in their implementation. If you receive notice of an estate claim, contact your attorney, legal services office, or CANHR at 1-800-474-1116.

How to Avoid an Estate Claim

The best way to avoid an estate claim is to have nothing in the Medi-Cal beneficiary's estate at the time of death. The State can only claim for the amount of Medi-Cal benefits paid or the value of the estate, whichever is less. The "estate" is composed of what is in the beneficiary's name at the time of death. Minimizing the estate at the time of death will minimize the amount of the claim.

The main asset in the estate is often the home. Protecting the home from recovery often entails transfer of title out of the beneficiary's name. However, there are a number of ways to transfer property and still retain some control over the property. Any such transfer should be discussed with a qualified estate planning attorney knowledgeable about Medi-Cal and the tax considerations related to real estate transfers.

Transfer of Interest in Your Home

We strongly suggest that you consult with an attorney experienced in Estate Planning for Long Term Care before any transfer is made. Real property transfers usually involve tax consequences, which may outweigh the benefits of the transfer.

Contrary to popular myth, there is no 30-month "waiting period" for transferring an exempt asset—even a home. In fact, under federal law, title to the principal residence may be transferred to the following persons at any time without affecting Medi-Cal eligibility:

- a spouse;
- a son or daughter under age 21 or who is blind or permanently disabled;
- a sibling who has equity in the home and who was residing there for at least one year immediately prior to the individual's admission to a nursing home;
- a son or daughter who was living there for at least two years immediately prior to the individual's admission to a nursing home and who provided care which enabled the parent to live at home;
- to anyone, so long as the home was exempt at the time of transfer.

Note: even if no one lives in the home, as long as the Medi-Cal applicant checks "yes" on the application concerning intent to return home, the home is exempt and can be transferred. If the home is transferred while the Medi-Cal beneficiary is alive, there is no estate claim on the home.

Transfer of the Home to a Spouse

The law allows transfer of a home to an at-home spouse without affecting Medi-Cal eligibility. This applies whether the transfer occurs prior to or after your spouse enters a nursing home.

If your spouse in the nursing home no longer has any interest in the home, anything you do with the house will not affect your spouse's Medi-Cal eligibility. You can move out of the home, rent it, or sell it, all without affecting your spouse's Medi-Cal eligibility.

However, there is an important timing issue here. For eligibility purposes, as an at-home spouse, you are only allowed to keep up to \$109,650 in non-exempt assets. If you sell the home before your spouse applies for Medi-Cal, the proceeds from the sale will count towards that limit, since cash is a non-exempt asset.

Thus, if you intend to sell the home, it is generally best to wait until after your spouse is on Medi-Cal and the home is in your name only. Once Medi-Cal eligibility is established, assets acquired by the at-home spouse are not counted.

For More Information:

CANHR publishes a layperson's guide to Medi-Cal eligibility for long term care. It is entitled, "If You Think You Need a Nursing Home... A Consumer's Guide to Financial Considerations and Medi-Cal Eligibility." The guide is \$10 and can be ordered by calling CANHR at 1-800-474-1116.

If you need an attorney, CANHR has a statewide, state bar-certified lawyer referral service. Referrals are provided for attorneys specializing in estate planning for long term care, including Medi-Cal, wills, trusts, and asset preservation. Call CANHR for more information.