

(1) Repeal Section 50960.

~~50960. Definitions.~~

~~(a) For purposes of this article only, "annuity" is defined as a policy or contract that is a private agreement or an investment contract or an insurance policy or contract which gives a person or entity the right to receive periodic payments of a fixed or variable sum, either for life or for a term of years, and which also may include a lump sum payment or periodic payments upon the death of the decedent.~~

~~(b) For purposes of this article only, "applicant" is defined as an heir, dependent, or survivor of the decedent seeking a waiver of his or her portion of the Department's estate claim.~~

~~(c) For purposes of this article only, "equity interest" is defined as the value of the property to which the decedent held legal title or interest at the time of death, less the amount owed in deeds of trust, mortgages and liens on record at the time of death.~~

~~(d) For purposes of this article only, "estate" is defined as follows:~~

~~(1) For individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, "estate" is defined as all real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to an heir, dependent, survivor, or assignee of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, or annuities purchased on or after September 1, 2004;~~

~~(2) For individuals who died prior to October 1, 1993, "estate" is defined according to the common law. For purposes of this article, estate includes property that passes from a decedent to his or her heirs by way of a revocable inter vivos trust.~~

~~(e) For purposes of this article only, "estate hearing" is defined as a hearing conducted in person, before the hearing office appointed by the Director, in which an applicant may seek a waiver of the claim because of undue hardship.~~

~~(f) For purposes of this article only, "heir" is defined as a person who survives the decedent and is designated to receive some or all of the decedent's property.~~

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(2) Repeal Section 50961.

~~50961. Estate Claims.~~

~~(a) The Department shall claim against the estate of a decedent, or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:~~

~~(1) The payments for the health care premiums and services provided;~~

~~or,~~

~~(2) The value of the decedent's interest in the property received.~~

~~(b) Payments for health care premiums and services provided to individuals:~~

~~(1) Age 65 or older, who died prior to July 11, 1994, shall include all services provided at age 65 and older;~~

~~(2) Age 65 and older, who died on or after July 11, 1994, shall include all payments for services provided at age 65 and older, added to any payments for services provided at age 55 to 64 that were paid on or after October 1, 1993;~~

~~(3) Age 55 to 64, who died on or after July 11, 1994, shall include only those services paid on or after October 1, 1993;~~

~~(c) The Department may not make a claim in any of the following circumstances:~~

~~(1) Where the decedent was under age 55 when the services were provided; or,~~

~~(2) During the lifetime of a surviving spouse.~~

~~(d) In instances where there is a surviving child who is under age 21 or where there is a surviving child who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), the Department shall make a claim only to that portion of the decedent's estate or property that does not pass to these individuals.~~

~~(e) The Department will not enforce any estate claim pending the resolution of an estate hearing.~~

~~(f) The Department will reduce its claim in accordance with section 50453.7(b) for insurance benefits received under the California Partnership for Long Term Care.~~

~~(g) The Department shall claim against annuities as part of a deceased Medi-Cal beneficiary's estate. The Department's claim shall be recovered from an annuity, annuity payments or distributions, receivable by the Medi-Cal beneficiary or the Medi-Cal beneficiary's estate, or by any person or entity by reason of distribution or survival, or designation by the Medi-Cal beneficiary, from the date the annuity payments or distributions are designated to be made. The Department's claim shall apply to the annuity, annuity payments or distributions, regardless of the funding source for the annuity.~~

NOTE: Authority cited: Sections 10725, 14043.75 and 14124.5, Welfare and Institutions Code.

Reference: Sections 1382c and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

Chapter 2.5. Third Party Liability

Article 1. Definitions

(3) Adopt Section 50960.2 to read:

50960.2. Annuity.

"Annuity" means a contract, which gives a person or entity the right to receive periodic payments of a fixed or variable sum, either for life or for a term of years, and which also may include a lump sum payment or periodic payments upon the death of the decedent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(4) Adopt Section 50960.4 to read:

50960.4. Applicant.

“Applicant” means a dependent, heir, or survivor of the decedent seeking a waiver of his or her portion of the Department’s estate claim due to substantial hardship.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(5) Adopt Section 50960.6 to read:

50960.6. Dependent.

“Dependent” means an immediate family or blood relative of the decedent who relied on the decedent for support and who is entitled to receive estate property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(6) Adopt Section 50960.9 to read:

50960.9. Equity Interest.

“Equity interest” means the fair market value of the property to which the decedent held legal title or interest at the time of death (to the extent of such interest), less the amount owed in deeds of trust, mortgages, and liens on record at the time of death.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(7) Adopt Section 50960.12 to read:

50960.12. Estate.

“Estate” means either:

(a) For individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, “estate” is defined as all real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, heir, survivor, or assignee of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, life insurance policy that names the estate as the beneficiary or reverts to the estate, or any retirement account that names the estate as the beneficiary or reverts to the estate;

(b) For individuals who died prior to October 1, 1993, “estate” is defined according to the common law. For purposes of this article, estate includes property that passes from a decedent to his or her heirs by way of a revocable inter vivos trust.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(8) Adopt Section 50960.15 to read:

50960.15. Estate Hearing.

“Estate hearing” means a hearing conducted in person, before the hearing office appointed by the Director, in which an applicant may seek a waiver of the claim because of substantial hardship.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(9) Adopt Section 50960.21 to read:

50960.21. Fair Market Value.

“Fair market value” means the price that goods or property would bring in an open market of willing buyers and sellers, with neither party being under pressure to buy or sell, at the time of the decedent’s death.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(10) Adopt Section 50960.23 to read:

50960.23. Heir.

“Heir” means a person who survives the decedent and is designated to receive some or all of the decedent's property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(11) Adopt Section 50960.26 to read:

50960.26. Irrevocable Transfer.

“Irrevocable transfer” means a grant of an interest in real property where the transferor does not retain the right to revoke the interest granted.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(12) Adopt Section 50960.29 to read:

50960.29. Life Estate.

“Life estate” means an interest in real property whose duration is limited to the life of the estate holder or some other designated person, that grants the life estate tenant the right of occupancy and may include the right to receive any income derived from the property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(13) Adopt Section 50960.32 to read:

50960.32. Revocable Transfer.

“Revocable transfer” means a grant of an interest in real property where the transferor retains the right to revoke the interest granted, including a grant of a remainder interest in real property where the remainder interest does not transfer until the death of the grantor.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(14) Adopt Section 50960.34 to read:

50960.34. Survivor.

“Survivor” means a person who becomes entitled to receive estate property by reason of having survived the decedent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(15) Adopt Section 50960.36 to read:

50960.36. Voluntary Post Death Lien.

“Voluntary post death lien” means an encumbrance that is voluntarily agreed to and placed on real property to secure the unpaid portion of the Department’s estate claim until the claim is paid in full.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

Article 2. Estate Recovery

(16) Adopt Section 50961 to read:

50961. Estate Claims.

(a) The Department shall claim against the estate of a decedent, or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:

(1) All payments made by the Medi-Cal program on behalf of the decedent; or,

(2) The decedent's equity interest in the property.

(b) All payments made by the Medi-Cal program on behalf of decedents:

(1) Age 65 and older, who died prior to July 11, 1994, shall include all payments made for services provided at age 65 and older;

(2) Age 65 and older, who died on or after July 11, 1994, shall include all payments made from age 65 and older, in addition to any payments made from age 55 to 64 that were paid on or after October 1, 1993;

(3) Age 55 to 64, who died on or after July 11, 1994, shall include only those payments made on or after October 1, 1993.

(c) The Department's claim shall include all payments made by the Medi-Cal program on behalf of the decedent, including nursing facility and other long term care services, home and community based services,

inpatient/outpatient services, durable medical equipment, related hospital and prescription drug services, health care and insurance premiums, and payments to managed care plans. The Department's claim shall not include payments made for personal care services provided under In-Home Support Services, or the cost of premiums, co-payments and deductibles paid on behalf of either Qualified Medicare Beneficiaries or Specified Low-Income Medicare Beneficiaries (QMB/SLMB).

(d) The Department shall not make a claim in any of the following circumstances:

(1) Where the decedent was under age 55 when the services were provided, unless the decedent was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution;

(2) During the lifetime of a surviving spouse;

(3) When there is a surviving child of the decedent who is under age 21;

(4) When there is a surviving child of the decedent who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c).

(e) The Department shall waive the proportionate share of its claim against any applicant who qualifies for a waiver due to a substantial hardship, as specified in Section 50963(a).

(f) The Department shall not enforce collection of the proportionate share of an estate claim for any applicant who is awaiting the resolution of a hardship waiver request or an estate hearing. However, the Department shall

enforce collection of its claim from the remaining dependent(s), heir(s), or survivor(s) for his or her proportionate share of the claim.

(g) The Department shall reduce its claim in accordance with section 50453.7(b) for insurance benefits received under the California Partnership for Long-Term Care.

(h) The Department shall claim against annuities as part of a decedent's estate. The Department's claim shall be recovered from the value of an annuity, annuity payments, or distributions receivable by any person or entity from the date the annuity payments or distributions are designated to be made. The Department's claim shall apply to the annuity, annuity payments, or distributions regardless of the funding source for the annuity.

(i) The Department shall claim against life estate interests as part of a decedent's estate. Where the decedent held a life estate interest only by irrevocably transferring the remainder interest in the real property on or after May 22, 2006, the life estate shall be valued according to the table specified in Section 3258.9(A) (Revision 64), Part 3 of the Centers for Medicare and Medicaid Services' State Medicaid Manual dated November 1994 and titled "Life Estate and Remainder Interest Table." Where the decedent held a life estate and made a revocable transfer of the remainder interest in the property at any time, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent. Where the decedent made a revocable transfer of a remainder interest in real property without retaining a life estate in the property, the Department's claim shall apply

to the fair market value of the remainder interest. The Department's claim shall not apply against the value of an irrevocable transfer by the decedent of the remainder interest in real property.

(j) A voluntary post death lien shall be proposed, in accordance with Section 50965, to secure the unpaid portion of the Department's claim until the claim is paid in full.

(k) The Department shall charge simple interest on the unpaid portion of its claim until the claim is fully satisfied, at the rate of seven percent per annum, from the date of claim or the date of distribution, whichever is later.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 1382(c) and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; and California Constitution, Article 15, Section 1.

(17) Amend Section 50962 to read:

50962. Notification.

(a) Within 90 days of the date of death of an individual who received or may have received Medi-Cal benefits, or was the surviving spouse of a person who received ~~that health care~~ Medi-Cal benefits, the attorney for the estate, or if there is no attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent, ~~must~~ shall give written notice by mail of the decedent's death to the Director of the Department of Health Services at his or her Sacramento office, or, Estate Recovery Unit , Mail Stop 4720, P.O. Box 997425, Sacramento, CA 95899-7425. ~~of the decedent's death.~~ The notice shall include a copy of the decedent's death certificate. Any other notice or submission of county vital records (i.e., death certificate) to the State Registrar of Vital Statistics or other governmental entities shall not satisfy this requirement.

(b) Date of notice of the decedent's death to the Director shall be deemed as the date that the notice is postmarked; or in the absence of a postmark, the date stamp posted by the Department upon receipt of the notice; or in the absence of a date stamp, the date on the original proof of mailing that references the decedent's name, from the person or entity giving notice to the Department.

(b) (c) The Department shall provide written notice informing the person handling the decedent's estate of the following: ~~right to seek a waiver of or to contest the Department's claim against the estate of the decedent.~~

(1) ~~The notice shall include the following:~~ the basis for the estate claim; the specific statutes and regulations supporting the claim; ~~an explanation of the right to seek a waiver of the Department's claim; or the right to contest the Department's claim; an explanation of the right to request an estate hearing if dissatisfied with the request for a waiver decision;~~ ~~as well as~~ the timeframes for requesting a waiver or estate hearing; and ~~a summary of the basis for the applicant to seek a waiver or estate hearing due to undue~~ substantial hardship.

(2) The Department shall attach to the notice a copy of the itemized Medi-Cal payments that constitute the basis for the claim.

(3) The Department shall provide an ~~application for waiver~~ Application for Hardship Waiver, form DHS 6195 (1/06), of its claim against the estate of the decedent at the same time it provides notice of its claim.

~~(c)~~ (d) The person handling the estate of the decedent shall notify all ~~heirs~~, dependents, heirs, or survivors, of the Department's claim and their right to seek a waiver of or to contest the Department's claim against the estate ~~of the decedent~~.

~~(d)~~ (e) An applicant has 60 days from the date stated on the Department's notice in which to submit an application for waiver due to substantial hardship.

NOTE: Authority cited: ~~Section 1396p(b), 42 USC;~~ and Sections 10725 and 14124.5, Welfare and Institutions Code.
Reference: Section 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; ~~and Sections 215, 1215, and 9202, and 19202, Probate Code;~~ and California Advocates for Nursing Home Reform v. Bontá (2003) 106 Cal. App. 4th 498.

(18) Amend Section 50963 to read:

50963. ~~Undue~~ Substantial Hardship Criteria.

(a) The Department shall ~~waive its claim, in whole or in part, an applicant's proportionate share of the claim if an~~ the applicant can demonstrate through submission of a written ~~application~~ completed Application for Hardship Waiver, form DHS 6195 (1/06), or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in ~~an undue~~ substantial hardship to the applicant. In determining the existence of ~~an undue~~ substantial hardship, the Department shall ~~consider factors including, but not limited to the following~~ waive an applicant's proportionate share of the claim if one or more of the following factors apply:

~~(1) When, without receipt of the proceeds of the estate, the applicant would become eligible for public assistance payments and/or medical assistance programs; or,~~

~~(2)~~ (1) When allowing the applicant to receive the inheritance from the estate would enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs; or,

~~(3)~~ (2) When the estate property is part of a an income-producing business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicants losing ~~their sole means of livelihood~~ his or her primary source of income; or,

(4) (3) When ~~any~~ an aged, blind, or disabled ~~individuals who have been continuously living~~ applicant has continuously lived in the decedent's home for ~~one year or more,~~ at least one year prior to the decedent's death and continues to reside there, ~~would have difficulty obtaining~~ and is unable to obtain financing ~~(such as a home equity loan) to repay the State; or,~~ The applicant shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40. The applicant shall provide the Department with a denial letter(s) from the financial institution; or,

(4) When the applicant provided care to the decedent for two or more years that prevented or delayed the decedent's admission to a medical or long-term care institution. The applicant must have resided in the decedent's home during the period care was provided and continue to reside in the decedent's home. The applicant must provide written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution; or,

(5) When the applicant transferred the property to the decedent for no consideration; or,

(6) When equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as, food, clothing, shelter or medical care.

(b) ~~An undue~~ A substantial hardship ~~does~~ shall not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery.

(c) To the extent that there currently is, or later becomes, any conflict between the preceding criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.

(d) The Department shall provide written notification to the applicant of its decision regarding the hardship waiver application within 90 days of the application's submission.

(e) If an application for hardship waiver is denied, the Department shall provide the applicant an application for with notice of the right, the address, and the timeframe to request an estate hearing, at the time it provides notice of its decision.

(f) ~~The person handling the estate of the decedent shall notify all heirs, dependents or survivors of their right to an estate hearing.~~ The Department shall issue its decision on an applicant's hardship waiver application prior to and independent of its consideration of a voluntary post death lien.

NOTE: Authority cited: ~~Section 1396p(b), 42 USC;~~ and Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 40, Probate Code; Section 14009.5, Welfare and Institutions Code; and State Medicaid Manual HCFA-Pub. 45-3, Transmittal No. 65 §3810; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.

(19) Amend Section 50964 to read:

50964. Estate Hearing.

(a) An applicant may challenge the Department's hardship waiver ~~application~~ decision by requesting an estate hearing. The request must be in by writing and mailed to the Director of the Department through his or her designee, the Office of Administrative Hearings and Appeals, within 60 days of the date of the Department's decision inscribed at the top of the Department's notice.

(1) The Department shall provide the applicant at least 30 days notice of the date, time and place of the hearing. The hearing shall be conducted within 60 days from the date of the request, and may be continued for good cause, such as illness, injury or incarceration of the applicant.

(2) For an in-state applicant the Department shall conduct the hearing within the California Court of Appeal district where the applicant resides. In the case of an out-of-state applicant, the hearing shall be conducted in Sacramento, California.

(3) At the estate hearing, the applicant and/or the applicant's representative shall have the opportunity to be heard, offer evidence, and present witnesses in support of the request for a waiver. All testimony shall be submitted under oath, affirmation, or penalty of perjury. The proceedings at the estate hearing shall be electronically recorded. The applicant and/or the applicant's representative shall be prepared to leave copies of all documents which support the applicant's request for a waiver with the hearing officer.

(b) The hearing shall be conducted in an impartial manner by a hearing officer appointed by the Director.

(c) A proposed decision, stating the applicable law, evidence and reasoning upon which the decision is based, shall be submitted to the Director no more than 30 days after the hearing record is closed. Within 30 days after the proposed decision is received by the Director, the Director may adopt the proposed decision, reject the proposed decision and have a decision prepared based upon the record, or refer the matter to the hearing officer to take additional evidence. If the Director takes no action within 30 days after receipt of the proposed decision, the decision shall be deemed adopted.

(d) Any errors or omissions in the information provided by the applicant that would affect the Department's decision may be a basis for denial of the request for hardship waiver.

(e) The decision shall be final upon adoption by the Director and no further administrative appeal shall occur. Copies of the decision shall be mailed by certified mail to the applicant or his or her designated representative, ~~of the applicant.~~

(f) Judicial review of the final decision of the Department may be had by filing a petition for a writ of administrative mandate in accordance with the provisions of Section 1094.5, et seq., Code of Civil Procedure.

NOTE: Authority cited: ~~Section 1396p(b), 42 USC;~~ and Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 1094.5, et seq., Code of Civil Procedure; Section 14009.5, Welfare and Institutions Code; and Section 69100, Government Code.

(20) Adopt Section 50965 to read:

50965. Voluntary Post Death Lien.

(a) The Department shall propose a voluntary post death lien on the real property of the estate, and other real property that the dependent(s), heir(s), or survivor(s) has an interest in, when one or more of the dependent(s), heir(s), or survivor(s) are:

(1) Living in and not willing to sell the real property, and

(2) Unable to pay the Department's claim in full, and

(3) Can demonstrate as provided in subsection (b) that he or she is unable to obtain financing.

(b) The Department shall offer to accept a voluntary post death lien as soon as it has been determined that the dependent(s), heir(s), or survivor(s) is unable to pay or to obtain financing to pay their proportionate share of the estate claim. The dependent(s), heir(s), or survivor(s) shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40, and shall provide the Department with a denial letter(s) from the financial institution.

(c) A voluntary post death lien shall be proposed independent of a decision on an applicant's request for a waiver due to a substantial hardship.

(d) In addition to the placement of a lien on the real property, the Department shall require that monthly payments be made to the Department of Health Services, Estate Recovery Unit, MS 4720, P.O. Box 997421, Sacramento,

CA 95899-7421. The monthly payments shall be in accordance with the dependent's, heir's, or survivor's financial ability to pay, and shall be adjusted as needed. Monthly payments shall continue until the lien amount owed to the Department by the lienee, plus interest, is paid in full. Payments shall not be required when a dependent's, heir's, or survivor's income is below the federal poverty level.

(e) The voluntary post death lien will accrue simple interest at the rate of seven percent per annum, and becomes due and payable, including all interest accrued, upon the first to occur of the following:

- (1) The death of the dependent(s), heir(s), or survivor(s); or,
- (2) The sale, refinance, transfer, or change in title to the real property; or,
- (3) Escrow funding; and/or
- (4) Default in payments.

(f) In the event of a transfer of an interest in, or title to, real property subject to the voluntary post death lien without payment of the lien, the lienee shall provide notification of the transfer, with the identity and address of the new titleholder(s), by mail to the Department at the address specified in subsection (g), within 30 days of the transfer. The lienee shall notify the new titleholder(s) of the voluntary post death lien prior to the transfer of title, and the obligation to satisfy the lien pursuant to this Section. The new titleholder(s) shall make arrangement for full satisfaction of the Department's lien with the Estate Recovery Unit.

(g) When the dependent(s), heir(s), or survivor(s) agree to a voluntary post death lien, the Department will prepare and mail the lien documents to the dependent(s), heir(s), or survivor(s) for notarized signature(s). The dependent(s), heir(s), or survivor(s) shall return the notarized documents to the Department of Health Services, Estate Recovery Unit, MS 4720, P.O. Box 997425, Sacramento, CA 95899-7425. Upon receipt of the lien documents, the Department shall forward the documents to the County Recorder's Office where the property is located for recording of the lien.

(h) The Department shall issue a release of lien to the County Recorder's Office after full payment of the lien with accrued interest is received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Section 1396p(b), 42 USC; Section 40, Probate Code; Section 14009.5, Welfare and Institutions Code; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; and California Constitution, Article 15, Section 1.