

## Title 22. California Code of Regulations

### Medi-Cal Estate Recovery.

#### 50960 Definitions.

(a) For purposes of this article only, "applicant" is defined as a person seeking a waiver or reduction from the Department's estate claim, and who is a dependent, heir, or survivor of the decedent.

(b) 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 individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, survivor, heir or assignee of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement;

(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 which passes from a decedent to his or her heirs by way of a revocable inter vivos trust.

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

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

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

Reference: Section 14009.5, Welfare and Institutions Code; *Citizens Action League v. Kizer* (9th Cir. 1989) 887 F. 2d 1003, 1006; and *Belshé v. Hope* 33 Cal. App. 4th 161.

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 and 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.

(3) Where there is a surviving child who is under age 21; or,

(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 an 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.

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

Reference: Section 1382c, 42 USC; Section 14009.5, Welfare and Institutions Code

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, 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 give notice to the Director of the Department of Health Services of the decedent's death. The notice shall include a copy of the decedent's death certificate.

(b) The Department shall provide written notice informing the person handling the decedent's estate of the 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 or 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 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 of its claim against the estate of the decedent at the same time it provides notice of its claim.

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

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

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

Reference: Section 14009.5, Welfare and Institutions Code; Sections 215 and 9202, Probate Code.

50963 Undue Hardship Criteria.

(a) The Department shall waive its claim, in whole or in part, if an applicant can demonstrate through submission of a written application or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in an undue hardship to the applicant. In determining the existence of an undue hardship, the Department shall consider factors including, but not limited to the following:

(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) 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) When the estate property is part of a business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicants losing their sole means of livelihood; or,

(4) When any aged, blind, or disabled individuals who have been continuously living in the decedent's home for one year or more, and continue to reside there, would have difficulty obtaining financing (such as a home equity loan) to repay the State; 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 hardship does 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 an application for 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.

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

Reference: Section 14009.5, Welfare and Institutions Code; State Medicaid Manual HCFA-Pub. 45-3, Transmittal No. 65 §3810.

50964 Estate Hearing

(a) An applicant may challenge the Department's hardship waiver application decision by requesting an estate hearing by writing to the Director of the Department of Health Services 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 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.

Authority : Section 1396p(b), 42 USC; Sections 10725 and 14124.5, Welfare and Institutions Code.  
Reference: Section 1094.5, et seq., Code of Civil Procedure; Section 14009.5, Welfare and Institutions Code; and Section 69100, Government Code.

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