

The New Medi-Cal Recovery Laws

Effective January 1, 2017



CANHR

Long Term Care Justice and Advocacy

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Introduction

This booklet has been revised to provide guidance on the new Medi-Cal Recovery laws that are effective for those individuals **who die on or after January 1, 2017**. For individuals who die prior to January 1, 2017, the current recovery rules will apply. This booklet outlines applicable rules for both the current law, and the new law.

If you have additional questions after reading this guide, please contact the CANHR office at (800) 474-1116 to speak with an advocate.



What is Medi-Cal?

Medi-Cal is California's version of the Medicaid program that is funded jointly by the state and federal governments. It is designed to provide free or low-cost medical assistance for low-income or low-resource individuals. There are many different Medi-Cal programs, and eligibility may depend on factors such as age, disability, income or assets.

Covered California is California's version of the Affordable Care Act's health insurance exchange. It is not a Medi-Cal program. Any tax credits or subsidies received through Covered California are not subject to Medi-Cal recovery.

What is Medi-Cal Recovery?

When a Medi-Cal recipient dies, the state can seek repayment for the cost of certain services received that were paid for by Medi-Cal.

What is Current Law?

For the past 20+ years, California law has allowed claims on the estates of those who received any Medi-Cal benefits when they were 55 years of age or older, regardless of the medical services received or whether recipients were in a nursing home.

After the Medi-Cal recipient dies, the state will send the heirs or survivors an "estate recovery claim" asking for payment for the amount of Medi-Cal benefits paid on behalf of the deceased individual.

The state does not put a lien on the home and the state does not take away your home. The state will, however, try to collect, and, if you cannot get the claim waived and still cannot afford to pay, the state will negotiate a “voluntary lien.”



Medi-Cal Recovery Reforms

Thanks to SB 33 (Hernandez) and SB 833 that incorporated the Medi-Cal recovery reform provisions, Medi-Cal recovery has been severely restricted for those who die on or after January 1, 2017. The new recovery bill:

- Prohibits claims on the estates of surviving spouses and registered domestic partners;
- Limits recovery for those 55 years of age or older to nursing home and Home and Community Based Services (See list on page 6);
- Limits recovery to only those assets subject to California probate (See page 7);
- Restricts the amount of interest that the state can charge on liens;

- Requires the state to waive the claim as a substantial hardship when the estate subject to recovery is a homestead of modest value, i.e., 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; and
- Requires the state to provide a current or former beneficiary or their authorized representative a copy of the amount of Medi-Cal expenses that may be recoverable.

Which Medi-Cal Beneficiaries Will be Subject to Recovery?

For those individuals who die on or after January 1, 2017, Medi-Cal recovery is limited to:

- Beneficiaries who were 55 or older when they received Medi-Cal benefits for nursing facility services, certain home and community based services (see following list) and related hospital and prescription drugs.
- Beneficiaries who were under age 55, if they 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 cannot reasonably be expected to be discharged and return home.

Medi-Cal Services Subject to Recovery After January 1, 2017

For those individuals who die on or after January 1, 2017, the state can no longer recover for most 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 limits recovery to only those services required to be recovered under federal law. These include costs related to:

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

Estate Recovery Exemptions

Surviving spouse/Registered Domestic Partner: Under the laws prior to January 1, 2017, the state could not recover until after the surviving spouse or registered domestic partner died. Then the state could recover from whatever was in the Medi-Cal beneficiary's estate that was left to the surviving spouse, partner or heirs by distribution or survival, i.e., community property, joint tenancy, or property left under a will.

After January 1, 2017, if the Medi-Cal recipient is survived by a spouse or a 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.

Surviving Minor/Disabled Children: If the Medi-Cal recipient is survived by a minor child (under age 21), the state cannot recover, and a claim is forever barred. If the Medi-Cal recipient is survived by a disabled child of any age, the state cannot recover, and a claim is forever barred. The child does not need to be living with the Medi-Cal recipient, or be an heir to the estate. This is current law and was not changed by the new statutes.

Estate Recovery Limited to Probate Estate

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. Under the old law, this means that the only way to avoid

recovery is to have nothing left in the Medi-Cal recipient's name at the time of death. For those who die on or after January 1, 2017, recovery is limited to those estates that are subject to probate under California law. For example, assets transferred via living trusts, joint tenancies, survivorship and life estates will no longer be subject to recovery. Manufactured homes and mobile homes will also be excluded from estate recovery claims, since they are not subject to probate in California. A will, however, depending on the value of the estate, is usually subject to probate in California.

Example 1:

Mindy died after January 1, 2017. She had a home (total value of \$200,000), and left it to her daughter in her will. Medi-Cal paid \$50,000 for Mindy's medical services. The state can recover \$50,000. However, if Mindy had left the home in a living trust, joint tenancy, or any transfer that avoided probate, there would be no recovery.

Example 2:

Mindy left her home in the Mindy Moore Family Trust. Since this is a living trust and not subject to probate in California, there is no recovery.

What Property is Exempt From an Estate Recovery Claim?

For individuals who die on or after January 1, 2017, the following property is exempt from an estate recovery claim:

- Property transferred prior to death – no longer in the beneficiary’s name.
- Property not subject to probate, e.g., living trusts, joint tenancies, survivorship, life estates, mobile homes, and other manufactured homes.
- Homestead of modest value: a home whose fair market value is 50% 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. (Note: this is a new hardship waiver, and if the waiver applicant can prove this is a “homestead of modest value,” the state is required to waive the claim. Policies and procedures on how to determine the value have not yet been developed, but these should be in place by 1/1/2017.)
- Life insurance: You name one or more beneficiaries on your life insurance policy.*
- Retirement accounts: You name a beneficiary on your retirement account(s).*

* Unless the estate is the named beneficiary or it reverts to the estate.



For life insurance and retirement accounts, always check to make sure you have named one or more living beneficiaries.

How Can I Protect My Home?

- Execute a Durable Power of Attorney with gifting and real estate transfer clauses.
- Leave nothing in your estate when you die.

For those who die after January 1, 2017:

- Unless you are survived by an exempt individual, do estate planning to ensure that your estate will not be subject to probate.
- If receiving nursing home or certain Home and Community Based Services, consider transfers. A Medi-Cal recipient can transfer any exempt property to anyone prior to death without impacting eligibility for Medi-Cal.



Because Medi-Cal laws will be changing significantly on January 1, 2017, and there will be a number of low-risk estate planning mechanisms to avoid recovery, **it is important to consider tax consequences and the risk of losing your home prematurely before any outright property transfer.**

How Do I Find Out the Amount of the Estate Recovery Claim?

One of the most frequent complaints from Medi-Cal beneficiaries has been the inability to find out how much in benefits have been paid on their behalf. As of January 1, 2017, a Medi-Cal

beneficiary who may be subject to recovery, or their authorized representative, can submit a request to find out the amount of the Medi-Cal claim, for a fee of \$5, once per year. If the beneficiary is enrolled in a managed care plan, the payments to the plan may be included in a lump sum format and not itemized by the services received. The new claim request forms and instructions will be available by January 1, 2017 on the Recovery Branch website at: http://www.dhcs.ca.gov/services/Documents/DHCS_4017.pdf.

What Happens After a Medi-Cal Recipient Dies?

It is the legal responsibility of the estate (spouse, estate attorney, executor, heir, or person in possession of the property) to notify the Medi-Cal Recovery Unit within 90 days of the person's death. Notifying the local Medi-Cal or Social Security office does not count as proper notice.



The Recovery Unit in Sacramento must be notified.

Mail "Notice of Death" - just a short note - with the copy of the death certificate to:



**Director of Health Care Services
Estate Recovery Unit, MS-4720
P.O Box 997425
Sacramento, CA 95899-7425**

Tip: *Get proof of mailing – e.g., certified or registered mail.*

WARNING: A Medi-Cal Recovery questionnaire is usually sent to the heirs or survivors after the Medi-Cal recipient has died. This form requests information about assets left in the estate. **Legally, there is no obligation to complete this form. You are only required to send a notice of death (a short note) and a copy of the death certificate.** If there was property left in the estate that will be subject to probate, the estate representative may want to call CANHR, legal services, or seek the advice of an attorney before completing the form.

Reviewing the Estate Recovery Claim

1. Check whether the heirs meet any of the exemptions on page 7, “Estate Recovery Exemptions.”
2. Check whether any of the remaining property in the estate is exempt from an estate recovery claim on page 9, “What Property is Exempt From an Estate Recovery Claim?”
3. Review the itemization. Check for discrepancies on the claim from specific providers such as a pharmacy; contact the providing pharmacy to dispute the bill.



4. Review the claim to ensure the following items are not listed, as they are not recoverable:

- In-Home Supportive Services (IHSS) - except certain Personal Care Services provided under one of the 1915(c) waiver programs.
- Cost of premiums, co-payments and deductibles paid on behalf of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), Qualifying Individuals, Qualified Disabled and Working Individuals, QMB Plus, and SLMB Plus who are categorized as groups of dual eligibles as defined by Section 2602(f) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

If any of these are on the claim, contact the Recovery Collection Unit representative to correct the error.

5. The claim may be reduced by deducting funeral expenses, estate settlement costs, and attorney's fees.

If I Do Not Meet Any of the Exemptions, How Will I Pay?

If the heirs or survivors or the estate does not meet any of the above exemptions, they should check to see if they qualify for a hardship waiver – such as the caregiver or homestead of modest value criteria. If the heirs meet the criteria, the claim must be waived.

Tip: Call CANHR at 1-800-474-1116 for more information about hardship waivers.

If you do not meet any exemptions and are not eligible for a hardship waiver, the claim must be paid.

Do not ignore the claim. If the claim is ignored, the state will send the claim to the Attorney General's office, which will file a lawsuit.

If the hardship is denied, you should work with the Recovery Unit to pay the claim. The state will work with the applicant's ability to pay in one of the following ways:

1. The heirs can take out a low interest loan or equity loan on the property.
2. If no exemption or hardship waiver is available, the heirs can request a voluntary lien. In addition to the placement of the lien, the department will require monthly payments, based on the heir's ability to pay. In the past, these "voluntary" liens accrued interest at 7% annually. As of January 1, 2017, interest on these liens is capped at the annual Surplus Money Investment Fund interest, (http://www.sco.ca.gov/ard_yield_rates.html) which is approximately 0.543%, or simple interest of 7%, whichever is lower.



Remember: The new laws are effective for those individuals who die on or after January 1, 2017. If your loved one died prior to that date and their estate may be subject to recovery, contact a legal services provider or CANHR for information on how to deal with an estate recovery claim if you receive one and, for others, how to avoid a claim in the first place.

This booklet is available in
English, Spanish, Chinese and Vietnamese.

You may download a free copy at
www.canhr.org

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