

## **Title 22, CALIFORNIA CODE OF REGULATIONS**

### **Chapter 2.5. Third Party Liability**

#### **Article 2. Estate Recovery**

##### **§ 50963. Substantial Hardship Criteria.**

(a) The Department shall waive an applicant's proportionate share of the claim if the applicant can demonstrate through submission of a written, completed Application for Hardship Waiver, form DHCS 6195 (8/07), or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in substantial hardship to the applicant. In determining the existence of substantial hardship, the Department shall waive an applicant's proportionate share of the claim if one or more of the following factors apply:

(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,

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

(3) When an aged, blind, or disabled applicant has continuously lived in the decedent's home for at least one year prior to the decedent's death and continues to reside there, and is unable to obtain financing to repay the State. 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) A substantial hardship 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 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 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 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1396p(b), 42 USC; Section 40, Probate Code; and Section 14009.5, Welfare and Institutions Code; State Medicaid Manual HCFA-Pub. 45-3, Transmittal No. 65 §3810; and California Advocates for Nursing Home Reform v. Bonta (2003) 106 Cal. App. 4th 498.