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Department of Health Care Services



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GOVERNOR

September 21, 2016

Medi-Cal Eligibility Division Information Letter No.: I 16-16

TO: All County Welfare Directors
All County Medi-Cal Program Specialists/Liaisons

SUBJECT: Important Changes and Limitations Regarding Medi-Cal Estate
Recovery for Medi-Cal Members Who Die on or After
January 1, 2017
(Reference: All County Welfare Director's Letter No. 02-35)

The purpose of this letter is to inform counties of the changes to the Department of Health Care Services' (DHCS) Medi-Cal Estate Recovery (ER) program pursuant to Senate Bill (SB) 833 (Chapter 30, Statutes of 2016). The amendments made by Section 22 of SB 833 to Welfare and Institutions (W&I) Code, Section 14009.5 apply to Medi-Cal members who die on or after January 1, 2017.

Background

The Medi-Cal Estate Recovery program was established in June 1981, with the enactment of W&I Code, Section 14009.5. In 2002, DHCS issued All County Welfare Director Letter (ACWDL) 02-35 to provide County Welfare Departments with information about the Medi-Cal ER program. While portions of ACWDL 02-35 have been superseded by SB 833, it will remain in effect for Medi-Cal members who die on or before December 31, 2016.

SB 833

The following is a summary of changes made by SB 833 to the Medi-Cal ER program:

Estate Recovery Claims – Recoverable Services:

For Medi-Cal members who die on or after January 1, 2017, SB 833 limits Medi-Cal recovery to nursing facility services, home and community-based services, and related hospital and prescription drug services when the Medi-Cal member was receiving nursing facility services and/or home and community-based services.

Definition of Estate:

For Medi-Cal members who die on or after January 1, 2017, SB 833 limits recovery to real property, personal property, and other assets in the decedent's probate estate against which DHCS is required by federal law to assert a claim.

Additional Hardship Waiver Criteria:

For Medi-Cal members who die on or after January 1, 2017, SB 833 created an additional hardship waiver criterion by which DHCS shall waive its claim against the estate of the Medi-Cal member, in whole or in part, if DHCS determines that enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the decedent against whose estate the claim exists. In addition to the other factors currently considered by the DHCS in determining whether a substantial hardship exists, DHCS shall, subject to federal approval, waive its claim when the estate subject to recovery is a "Homestead of Modest Value."

A "Homestead of Modest Value" is defined as 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 as of the date of the decedent's death.

Surviving Spouse or Domestic Partner Exemption:

For Medi-Cal members who die on or after January 1, 2017, DHCS is prohibited from recovering from the estate of a deceased Medi-Cal member who is survived by a spouse or registered domestic partner.

Interest Changes for Voluntary Post Death Liens:

For Medi-Cal members who die on or after January 1, 2017, if DHCS proposes and accepts a voluntary post death lien, the voluntary post death lien shall accrue interest at the rate equal to the annual average rate earned on investments in the Surplus Money Investment Fund in the calendar year preceding the year in which the decedent died or simple interest at 7 percent per annum, whichever is lower.

Access to Estimated Recoverable Medi-Cal Expenses:

Upon request, DHCS must provide a Medi-Cal member who is either over the age of 55 or a permanent inpatient of a nursing or long term care facility with a copy of the amount of Medi-Cal expenses that may be recoverable upon the member's death. Medi-Cal members can request this information once per calendar year for a fee of five dollars. The process to request this information will be available on the Medi-Cal ER program's website at http://www.dhcs.ca.gov/services/Pages/TPLRD_ER_cont.aspx.

Other Information

DHCS has begun the process to amend Medi-Cal ER regulations as necessary to implement SB 833. DHCS will notify stakeholders when the proposed regulatory amendments are available for public input.

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Additionally, as part of the SB 833 implementation process, DHCS will be submitting a State Plan Amendment to the Centers for Medicare and Medicaid Services.

DHCS ER staff is currently working with the Medi-Cal Eligibility Division to update informational materials.

If there are additional questions, please contact Loretta Haycock, Section Chief, Recovery Branch, at (916) 650-6484.

Original Signed By

Sandra Williams, Chief
Medi-Cal Eligibility Division