

DEPARTMENT OF HEALTH SERVICES

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August 13, 1996



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

Letter No.: 96-44

SUBJECT: MEDI-CAL ESTATE RECOVERY

In October 1993, federal law was enacted [OBRA '93 (Social Security Act Section 1917(b))] mandating states to establish estate recovery programs. Although California has had an estate recovery program since 1981; subsequent state legislation amending Welfare and Institutions Code Section 14009.5 implemented many of the additional federal mandates. Currently, all Medi-Cal services are subject to the estate recovery program, including the In-Home Supportive Services Program. The purpose of this letter is to notify counties of the current policy of the Department of Health Services' (Department) estate recovery program.

There are three major components of the estate recovery program. They are:

1. Estate Claims

Claims are filed against the estate of a deceased Medi-Cal beneficiary for the amount of services received after the beneficiary became 55 years of age. The previous age for making these claims has been reduced by state law from 65 to 55 years of age in compliance with federal law. However, the Department may not file a claim during the lifetime of a surviving spouse; against the share of the assets passing to a deceased beneficiary's child who is under age 21, a son or daughter who is blind, or a son or daughter who is permanently and totally disabled, regardless of age.

When the surviving spouse of a deceased Medi-Cal beneficiary dies, Medi-Cal may bill the estate of the surviving spouse for either the amount paid by Medi-Cal for medical assistance to the predeceased spouse or the value of the assets received by the surviving spouse, whichever is less.

In November 1994, an information mailer was sent to Medi-Cal beneficiaries advising them of Medi-Cal's entitlement to reimbursement from responsible third parties. This mailer covered the subject of recovery from the beneficiary's estate for the cost of services provided and notified beneficiaries of the change from age 65 to age 55. The mailer provided an address and telephone number for the beneficiary to request further information.

Currently, the Estate Recovery Unit is working on a notice to be sent twice a year to the Medi-Cal population, reminding them that Medi-Cal may make a claim against their estates. The mailer language has been approved by the Department's legal office and is essentially the

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same information contained in previous mailings. The primary change is the reduction in age from 65 to 55. The notice has been expanded to include the address that should be used for sending a notice of death to the Department. The Estate Recovery Unit will notify the Eligibility Branch at the time of the mailing, in order that they may give notice to the counties.

The Estate Recovery Unit has incorporated changes to the Medi-Cal pamphlet, the MC219, and the Medi-Cal Eligibility Manual reflecting the change from age 65 to age 55.

In addition, Estate Recovery is drafting language to be added to the MC239, Discontinuance Notice-Deceased Persons. The purpose of the language will be to advise the person handling the affairs of the deceased beneficiary that the Department requires a separate notice of the death, accompanied by a copy of the death certificate. The address for the notice of death will be included.

2. Hardship Waivers

If any person affected by the Department's claim can establish that an undue hardship exists due to the enforcement of the claim, the Department will waive or reduce its claim accordingly. An applicant may submit an Application for Hardship Waiver. An application is included with every estate recovery claim.

All of the information regarding how to apply for a waiver, as well as the time frames involved for requesting a waiver, are included at the time the claim is presented. If the application for waiver is denied, the applicant then has appeal rights through an estate hearing. The procedure for obtaining a hardship waiver and the criteria for the Department to grant a waiver are described in Medi-Cal regulations (Title 22, California Code of Regulations (CCR), Section 50960, et seq.).

3. Liens

Senate Bill (SB) 412 was enacted October 4, 1995. The effect of SB 412 is the repeal of Welfare and Institutions (W&I) Code, Section 14006.7, eliminating the provision allowing the Department to place a lien on the former principal residence when the beneficiary was in long-term care for six months or longer without a discharge plan. SB 412 also repealed W&I Code, Section 14009.5(c), which contained the authority to place a lien on the decedent's interest in the real property of a surviving spouse.

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There is no change to the current requirement in Title 22, CCR, Section 50428, that the county eligibility workers must notify the State whenever a recipient is institutionalized, and has a principal residence that is exempt on the basis of Title 22, CCR, Section 50425(c)(7), and declares they do not intend to return home. The form to be used for this notification is DHS 7014, Property Lien Referral.

A statutory lien placed by the Department on the real property of a Medi-Cal beneficiary is only done in response to a Property Lien Referral. Reimbursement upon death is done through the presentation/filing of a claim demand. If the Department is aware that probate proceedings have been initiated, a Creditor's Claim is filed with the court. The Probate Code requires that a copy of this claim be mailed to the attorney of record for the probate. If the Department has no knowledge of a probate being filed, a claim demand is presented to the person(s) indicated as handling the decedent's estate. This is not a recorded lien. The only way these claims become liens against real property is by voluntary actions of the heir(s) as an alternate method of payment, or through court judgment.

Although none of the program changes described are expected to require any additional efforts for the county welfare departments, this information is provided so that eligibility workers can answer questions from beneficiaries.

For any further questions about this subject, county welfare departments should contact Mr. Ted Labhard, Chief of the Estate Recovery Unit, at (916) 322-0092, and Medi-Cal beneficiaries should call (916) 323-4836.

Sincerely,

ORIGINAL SIGNED BY

FRANK S. MARTUCCI, CHIEF
Medi-Cal Eligibility Branch