

AMENDED IN SENATE MARCH 26, 2014

SENATE BILL

No. 1124

Introduced by Senator Hernandez

February 19, 2014

An act to amend Section ~~1367.23~~ of the ~~Health and Safety Code~~, relating to ~~health care service plans~~ 14009.5 of the ~~Welfare and Institutions Code~~, relating to ~~Medi-Cal~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 1124, as amended, Hernandez. ~~Health care service plans. Medi-Cal: estate recovery.~~

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing law, with certain exceptions, requires the department to claim against the estate of a decedent, or against any recipient of the property of that decedent by distribution or survival, an amount equal to the payments for Medi-Cal services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less. Existing law provides for certain exemptions that restrict the department from filing a claim against a decedent's property, including when there is a surviving spouse during his or her lifetime. Existing law requires the department, however, to make a claim upon the death of the surviving spouse, as prescribed. Existing law, which has been held invalid by existing case law, provides that the exemptions shall only apply to the proportionate share of the decedent's

state or property that passes to those recipients, by survival or distribution, who qualify for the exemptions.

This bill would instead provide that the department shall make these claims only in specified circumstances and would define health care services for these purposes. The bill would additionally provide that health care services that federal law or guidance authorizes the state to eliminate from recovery shall also be exempted. The bill would delete the proportionate share provision and would delete the requirement that the department make a claim upon the death of the surviving spouse. The bill would provide that in meeting these requirements the department shall only collect amounts identified as being spent by either the department or a Medi-Cal managed care plan for health care services actually received by the decedent, or the per member per month payment, whichever is less in that month. The bill would also require the department to provide a current or former beneficiary, or his or her authorized representative, upon request and free of charge, with the total amount of Medi-Cal expenses that have been paid on his or her behalf that would be recoverable under these provisions, as specified.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law requires that every group health care service plan contract, issued, amended, or renewed, include a provision requiring the health care service plan to notify the group contractholders in writing of the cancellation of the plan contract and shall include in their contract with group contractholders a provision requiring the group contractholder to mail promptly to each subscriber a legible, true copy of any notice of cancellation of the plan contract that may be received from the plan and to provide promptly to the plan proof of that mailing and the date of that mailing.~~

~~This bill would authorize those contract provisions to allow those mailings to be made by email.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 14009.5 of the Welfare and Institutions*
- 2 *Code is amended to read:*

1 14009.5. (a) Notwithstanding any other provision of this
2 chapter, the department shall claim against the estate of the
3 decedent, or against any recipient of the property of that decedent
4 by distribution or survival an amount equal to the payments for
5 the health care services received or the value of the property
6 received by any recipient from the decedent by distribution or
7 survival, whichever is ~~less~~. *less, only in either of the following*
8 *circumstances:*

9 ~~(b) The department may not claim in any of the following~~
10 ~~circumstances:~~

11 ~~(1) The decedent was under 55 when services were received,~~
12 ~~except in the case of an individual who had been an inpatient in a~~
13 ~~nursing facility.~~

14 ~~(2) Where there is any of the following:~~

15 ~~(1) Notwithstanding paragraph (2), against the real property~~
16 ~~of a decedent who was an inpatient in a nursing facility in~~
17 ~~accordance with Section 1396p(b)(1)(A) of Title 42 of the United~~
18 ~~States Code.~~

19 ~~(2) (A) The decedent was 55 years of age or older when the~~
20 ~~individual received health care services.~~

21 ~~(B) The department shall not claim under this paragraph when~~
22 ~~there is any of the following:~~

23 ~~(A)~~

24 ~~(i) A surviving spouse during his or her lifetime. However, upon~~
25 ~~the death of a surviving spouse, the department shall make a claim~~
26 ~~against the estate of the surviving spouse, or against any recipient~~
27 ~~of property from the surviving spouse obtained by distribution or~~
28 ~~survival, for either the amount paid for the medical assistance~~
29 ~~given to the decedent or the value of any of the decedent's property~~
30 ~~received by the surviving spouse through distribution or survival,~~
31 ~~whichever is less. Any statute of limitations that purports to limit~~
32 ~~the ability to recover for medical assistance granted under this~~
33 ~~chapter shall not apply to any claim made for reimbursement.~~

34 ~~(B)~~

35 ~~(ii) A surviving child who is under age 21.~~

36 ~~(C)~~

37 ~~(iii) A surviving child who is blind or permanently and totally~~
38 ~~disabled, within the meaning of Section 1614 of the federal Social~~
39 ~~Security Act (42 U.S.C.A. U.S.C. Sec. 1382c).~~

1 ~~(3) Any exemption described in paragraph (2) that restricts the~~
2 ~~department from filing a claim against a decedent's property shall~~
3 ~~apply only to the proportionate share of the decedent's estate or~~
4 ~~property that passes to those recipients, by survival or distribution,~~
5 ~~who qualify for an exemption under paragraph (2).~~

6 *(iv) Any health care services that federal law or guidance*
7 *authorizes the state to eliminate from recovery. The department*
8 *shall adopt emergency regulations as necessary to implement this*
9 *clause in accordance with Chapter 3.5 (commencing with Section*
10 *11340) of Part 1 of Division 3 of Title 2 of the Government Code.*
11 *If emergency regulations are adopted pursuant to this clause, the*
12 *department shall proceed under subdivision (e) of Section 11346.1*
13 *of the Government Code for adoption of final regulations. If the*
14 *process has not been completed within 180 days, the department*
15 *shall readopt the emergency regulations in accordance with Section*
16 *11346.1 of the Government Code, but no more than two times. The*
17 *initial adoption and any readoptions of emergency regulations*
18 *shall be deemed to be an emergency and necessary for immediate*
19 *preservation of the public peace, health and safety, or general*
20 *welfare, for purposes of Sections 11346.1 and 11349.6 of the*
21 *Government Code, and the department is hereby exempted for that*
22 *purpose from the requirements of subdivision (b) of Section*
23 *11346.1 of the Government Code.*

24 ~~(e)~~

25 *(b) (1) The department shall waive its claim, in whole or in*
26 *part, if it determines that enforcement of the claim would result in*
27 *substantial hardship to other dependents, heirs, or survivors of the*
28 *individual against whose estate the claim exists.*

29 *(2) The department shall notify individuals of the waiver*
30 *provision and the opportunity for a hearing to establish that a*
31 *waiver should be granted.*

32 *(c) In meeting the requirement in subdivision (a), the department*
33 *shall only collect amounts identified as being spent by either the*
34 *department or a Medi-Cal managed care plan for health care*
35 *services actually received by the decedent, or the per member per*
36 *month payment, whichever is less in that month.*

37 *(d) (1) The department shall provide a current or former*
38 *beneficiary, or his or her authorized representative designated*
39 *under Section 14014.5, upon request and free of charge, with the*

1 total amount of Medi-Cal expenses that have paid on behalf of
2 that beneficiary that would be recoverable under this section.

3 (2) The department shall permit a beneficiary to request the
4 information described in paragraph (1) via the Internet, by
5 telephone, by mail, in person, or through other commonly available
6 electronic means.

7 (3) The department shall conspicuously post on its Internet Web
8 site, a description of the methods by which a request under this
9 subdivision may be made, including, but not limited to, the
10 department's telephone number and any addresses that may be
11 used for this purpose. The department shall also include this
12 information in its pamphlet for the Medi-Cal Estate Recovery
13 Program and any other notices the department distributes to
14 beneficiaries regarding estate recovery.

15 ~~(d)~~

16 (e) The following definitions shall govern the construction of
17 this section:

18 (1) "Decedent" means a beneficiary who has received health
19 care under this chapter or Chapter 8 (commencing with Section
20 14200) and who has died leaving property to others either through
21 distribution or survival.

22 (2) "Dependents" includes, but is not limited to, immediate
23 family or blood relatives of the decedent.

24 (3) "Health care services" means only those services required
25 to be recovered under Section 1396p(b)(1)(B)(i) of Title 42 of the
26 United States Code and shall not include services provided to the
27 decedent through the In-Home Supportive Services program.

28 (f) The amendments made to this section by the act that added
29 this subdivision apply only to individuals who die on or after
30 January 1, 2015.

31 ~~SECTION 1. Section 1367.23 of the Health and Safety Code~~
32 ~~is amended to read:~~

33 ~~1367.23. (a) Every group health care service plan contract,~~
34 ~~which is issued, amended, or renewed, shall include a provision~~
35 ~~requiring the health care service plan to notify the group~~
36 ~~contractholders in writing of the cancellation of the plan contract~~
37 ~~and shall include in their contract with group contractholders a~~
38 ~~provision requiring the group contractholder to mail promptly or~~
39 ~~email to each subscriber a legible, true copy of any notice of~~
40 ~~cancellation of the plan contract which may be received from the~~

1 ~~plan and to provide promptly to the plan proof of that mailing or~~
2 ~~emailing and the date of that mailing or emailing.~~
3 ~~(b) The notice of cancellation from the group contract holder~~
4 ~~to the subscriber required by subdivision (a) shall include~~
5 ~~information regarding the conversion rights of persons covered~~
6 ~~under the plan contract upon termination of the plan contract. This~~
7 ~~information shall be in clear and easily understandable language.~~