

AMENDED IN SENATE MARCH 17, 2015

AMENDED IN SENATE MARCH 11, 2015

SENATE BILL

No. 33

Introduced by Senator Hernandez

December 1, 2014

An act to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Hernandez. 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 federal law requires the state to seek adjustment or recovery from an individual's estate for specified medical assistance, including nursing facility services, home and community-based services, and related hospital and prescription drug services, if the individual was 55 years of age or older when he or she received the medical assistance. Existing federal law allows the state, at its own option, to seek recovery for any items or services covered under the state's Medicaid plan.

Existing state 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 requires the department to waive its claim, in whole or in part, if it determines that enforcement of the claim would result in a substantial hardship, as specified.* 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 estate or property that passes to those recipients, by survival or distribution, who qualify for the exemptions.

This bill would instead require the department to make these claims only in specified circumstances for those health care services that the state is required to recover under federal law, and would define health care services for these purposes. The bill would limit any claims against the estate of a decedent to only the real and personal property or other assets the state is required to seek recovery from under federal law. 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 require the department to waive its claim when the estate subject to recovery is a homestead of modest value, as defined.* 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. The bill would apply the changes made by these provisions only to individuals who die on or after January 1, 2016.

Vote: majority. Appropriation: no. Fiscal committee: 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:
- 3 14009.5. (a) Notwithstanding any other provision of this
- 4 chapter, the department shall claim against the estate of the
- 5 decedent, or against any recipient of the property of that decedent
- 6 by distribution an amount equal to the payments for the health care
- 7 services received or the value of the property received by any

1 recipient from the decedent by distribution, whichever is less, only
2 in either of the following circumstances:

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

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

8 (B) The department shall not claim under this paragraph when
9 there is any of the following:

10 (i) A surviving spouse.

11 (ii) A surviving child who is under 21 years of age.

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

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

19 (2) *In determining the existence of substantial hardship, in*
20 *addition to other factors considered by the department consistent*
21 *with federal law and guidance, the department shall waive its*
22 *claim when the estate subject to recovery is a homestead of modest*
23 *value.*

24 ~~(2)~~

25 (3) The department shall notify individuals of the waiver
26 provision and the opportunity for a hearing to establish that a
27 waiver should be granted.

28 (c) (1) The department shall provide a current or former
29 beneficiary, or his or her authorized representative designated
30 under Section 14014.5, upon request and free of charge, with the
31 total amount of Medi-Cal expenses that have been paid on behalf
32 of that beneficiary that would be recoverable under this section.

33 (2) The department shall permit a beneficiary to request the
34 information described in paragraph (1) through the Internet, by
35 telephone, by mail, in person, or through other commonly available
36 electronic means.

37 (3) The department shall conspicuously post on its Internet Web
38 site, a description of the methods by which a request under this
39 subdivision may be made, including, but not limited to, the
40 department's telephone number and any addresses that may be

1 used for this purpose. The department shall also include this
2 information in its pamphlet for the Medi-Cal Estate Recovery
3 Program and any other notices the department distributes to
4 beneficiaries regarding estate recovery.

5 (4) Upon receiving a request for the information described in
6 paragraph (1), the department shall provide the information
7 requested within 30 days after receipt of the request.

8 (d) The following definitions shall govern the construction of
9 this section:

10 (1) “Decedent” means a beneficiary who has received health
11 care under this chapter or Chapter 8 (commencing with Section
12 14200) and who has died leaving property to others either through
13 distribution or survival.

14 (2) “Dependents” includes, but is not limited to, immediate
15 family or blood relatives of the decedent.

16 (3) “Estate” means all real and personal property and other
17 assets that are required to be subject to a claim for recovery
18 pursuant to Section 1396p(b)(4)(A) of Title 42 of the United States
19 Code. “Estate” shall not include any other real and personal
20 property or other assets in which the individual had any legal title
21 or interest at the time of death, to the extent of that interest,
22 including any assets conveyed to a survivor, heir, or assign of the
23 decedent through joint tenancy, tenancy in common, survivorship,
24 life estate, living trust, or other arrangement, consistent with
25 Section 1396p(b)(4)(B) of Title 42 of the United States Code.

26 (4) “Health care services” means only those services required
27 to be recovered under Section 1396p(b)(1)(B)(i) of Title 42 of the
28 United States Code.

29 (5) “*Homestead of modest value*” means a home whose fair
30 market value is 50 percent or less of the average price of homes
31 in the county where the homestead is located, as of the date of the
32 decedent’s death.

33 (e) The amendments made to this section by the act that added
34 this subdivision shall apply only to individuals who die on or after
35 January 1, 2016.