

AMENDED IN ASSEMBLY AUGUST 28, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE APRIL 6, 2015

AMENDED IN SENATE MARCH 17, 2015

AMENDED IN SENATE MARCH 11, 2015

SENATE BILL

No. 33

Introduced by Senator Hernandez
(Coauthor: Senator Pavley)

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 limit the amount of interest that is entitled to accrue on a voluntary postdeath lien, as specified. The bill would also require the department to provide a current or former beneficiary, or his or her authorized representative, upon request, 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. (a) The Legislature finds and declares all of the
2 following:

3 (1) Existing federal law (42 U.S.C. Sec. 1396p) requires state
4 Medicaid programs to seek reimbursement from the estates of
5 deceased Medicaid beneficiaries, or from any recipient of the
6 decedent's property by distribution or survival, for Medicaid paid
7 services received on or after 55 years of age, unless specific
8 exemptions or other limitations apply.

9 (2) Federal law requires states to collect for long-term services
10 and supports for individuals 55 years of age or older, and gives
11 states the option to collect for other health care services.

12 (3) Federal law permits states to collect from the surviving
13 spouse of a Medi-Cal beneficiary, but does not require collection
14 upon the passing of a spouse of a deceased Medi-Cal beneficiary.

15 (4) Federal law defines "estate" for purposes of estate recovery
16 to include all real and personal property and other assets included
17 within the individual's estate, as defined for purposes of state
18 probate law, and permits states to have a broader definition of
19 estate.

20 (5) The State Medicaid Manual allows states to establish an
21 undue hardship exemption from estate recovery for a homestead
22 of "modest value," defined as a home valued at 50 percent or less
23 of the average price of homes in the county where the homestead
24 is located as of the date of the beneficiary's death.

25 (6) Estate recovery is unfair to low-income individuals who
26 need Medi-Cal for basic health care coverage, is a deterrent to
27 signing individuals up for Medi-Cal, and is counter to both state
28 and federal efforts to enroll individuals into health care coverage.

29 (7) By recovering for health care services beyond what is
30 required by federal law, California forces low-income individuals
31 55 years of age or older to choose between signing up for basic
32 health care services and passing on their home and other limited
33 assets they possess to their children.

34 (8) California's estate recovery program undermines the idea
35 of Medi-Cal as a health care entitlement program by essentially
36 turning Medi-Cal coverage for basic medical services into a loan
37 program, with collection taking place at death.

1 (9) Estate recovery unfairly places part of the burden of
2 financing the cost of health care in Medi-Cal on the estates of
3 deceased Medi-Cal beneficiaries with limited assets.

4 (10) Estate recovery is inequitable as other social and health
5 care programs, such as tax-subsidized coverage through the
6 California Health Benefit Exchange, commonly referred to as
7 Covered California, and the broadly financed federal Medicare
8 program, do not have estate recovery.

9 (11) California does not adequately inform individuals on how
10 to obtain information on the amounts that will be collected from
11 their estate, and charges individuals \$25 to find out how much
12 Medi-Cal has spent on their behalf.

13 (b) It is the intent of the Legislature, with the enactment of this
14 act, to do all of the following:

15 (1) Limit Medi-Cal estate recovery to only those services
16 required to be collected for under federal law.

17 (2) Limit the definition of “estate” to include only the real and
18 personal property and other assets required to be included within
19 the definition of “estate” under federal law.

20 (3) Require the State Department of Health Care Services to
21 implement the option in the State Medicaid Manual to waive its
22 claim, as a substantial hardship, when the estate, subject to
23 recovery, is a homestead of modest value.

24 (4) Prohibit recovery from the surviving spouse of a deceased
25 Medi-Cal beneficiary.

26 (5) Ensure that Medi-Cal beneficiaries can easily and timely
27 receive information about how much their estate will owe Medi-Cal
28 when they die.

29 SEC. 2. Section 14009.5 of the Welfare and Institutions Code
30 is amended to read:

31 14009.5. (a) Notwithstanding any other provision of this
32 chapter, the department shall claim against the estate of the
33 decedent, or against any recipient of the property of that decedent
34 by distribution an amount equal to the payments for the health care
35 services received or the value of the property received by any
36 recipient from the decedent by distribution, whichever is less, only
37 in either of the following circumstances:

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

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

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

5 (i) A surviving spouse.

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

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

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

14 (2) In determining the existence of substantial hardship, in
15 addition to other factors considered by the department consistent
16 with federal law and guidance, the department shall waive its claim
17 when the estate subject to recovery is a homestead of modest value.

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

21 (c) If the department proposes and accepts a voluntary postdeath
22 lien, the voluntary postdeath lien shall accrue interest at the rate
23 equal to the ~~monthly average received~~ *annual average rate earned*
24 on investments in the Surplus Money Investment Fund *in the*
25 *calendar year preceding the year in which the decedent died* or
26 simple interest at 7 percent per annum, whichever is lower.

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

32 (2) A current or former beneficiary, or his or her authorized
33 representative designated under Section 14014.5, shall receive,
34 upon request, a copy of the information requested pursuant to this
35 subdivision once per calendar year for a reasonable fee not to
36 exceed five dollars (\$5) if the current or former beneficiary meets
37 either of the following descriptions:

38 (A) An individual who is 55 years of age or older when the
39 individual received health care services.

1 (B) A permanently institutionalized individual who is an
2 inpatient in a nursing facility, intermediate care facility for the
3 intellectually disabled, or other medical institution.

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

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

16 (5) Upon receiving a request for the information described in
17 paragraph (1), the department shall provide the information
18 requested within 90 days after receipt of the request.

19 (e) The following definitions shall govern the construction of
20 this section:

21 (1) "Decedent" means a beneficiary who has received health
22 care under this chapter or Chapter 8 (commencing with Section
23 14200) and who has died leaving property to others ~~either through~~
24 ~~distribution or survival.~~ *distribution.*

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

27 (3) "Estate" means all real and personal property and other
28 assets that are required to be subject to a claim for recovery
29 pursuant to Section 1396p(b)(4)(A) of Title 42 of the United States
30 Code. "Estate" shall not include any other real and personal
31 property or other assets in which the individual had any legal title
32 or interest at the time of death, to the extent of that interest,
33 consistent with Section 1396p(b)(4)(B) of Title 42 of the United
34 States Code.

35 (4) "Health care services" means only those services required
36 to be recovered under Section 1396p(b)(1)(B)(i) of Title 42 of the
37 United States Code.

38 (5) "Homestead of modest value" means a home whose fair
39 market value is 50 percent or less of the average price of homes

- 1 in the county where the homestead is located, as of the date of the
- 2 decedent's death.
- 3 (f) The amendments made to this section by the act that added
- 4 this subdivision shall apply only to individuals who die on or after
- 5 January 1, 2016.

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