

Introduced by Senator AndersonFebruary 17, 2016

An act to amend Section 3605 of the Probate Code, and to amend Section 14009.5 of the Welfare and Institutions Code, relating to public social service.

LEGISLATIVE COUNSEL'S DIGEST

SB 1117, as introduced, Anderson. Public Social Service: special needs trusts.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law provides that assets in specified trusts shall not be considered for the purposes of determining an individual's eligibility for, or amount of, benefits under Medicaid but provides that the state shall receive all amounts remaining in those trusts upon the death of the trust beneficiary. Existing state law provides that while a special needs trust, as specified, is in existence, the statute of limitations otherwise applicable to claims of the State Department of Health Care Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county is tolled and that the trust property is subject to those claims at the death of the special needs trust beneficiary or on termination of the trust.

This bill would exempt from the claims of those entities the trust property of a deceased beneficiary if there is a surviving child who is a sibling of the deceased beneficiary, that surviving child is also the beneficiary of a special needs trust, and the trust of the deceased

beneficiary provides for the transfer of the property in the trust of the deceased beneficiary to the special needs trust of the surviving sibling.

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 3605 of the Probate Code is amended to
2 read:

3 3605. (a) This section applies only to a special needs trust
4 established under Section 3604 on or after January 1, 1993.

5 (b) While the special needs trust is in existence, the statute of
6 limitations otherwise applicable to claims of the State Department
7 of Health Care Services, the State Department of State Hospitals,
8 the State Department of Developmental Services, and any county
9 or city and county in this state is tolled. Notwithstanding any
10 provision in the trust instrument, at the death of the special needs
11 trust beneficiary or on termination of the trust, the trust property
12 is subject to claims of the State Department of Health Care
13 Services, the State Department of State Hospitals, the State
14 Department of Developmental Services, and any county or city
15 and county in this state to the extent authorized by law as if the
16 trust property is owned by the beneficiary or is part of the
17 beneficiary's estate.

18 (c) At the death of the special needs trust beneficiary or on
19 termination of the trust, the trustee shall give notice of the
20 beneficiary's death or the trust termination, in the manner provided
21 in Section 1215, to all of the following:

22 (1) The State Department of Health Care Services, the State
23 Department of State Hospitals, and the State Department of
24 Developmental Services, addressed to the director of that
25 department at the Sacramento office of the director.

26 (2) Any county or city and county in this state that has made a
27 written request to the trustee for notice, addressed to that county
28 or city and county at the address specified in the request.

29 (d) Failure to give the notice required by subdivision (c) prevents
30 the running of the statute of limitations against the claim of the
31 department, county, or city and county not given the notice.

32 (e) The department, county, or city and county has four months
33 after notice is given in which to make a claim with the trustee. If

1 the trustee rejects the claim, the department, county, or city and
2 county making the claim may petition the court for an order under
3 Chapter 3 (commencing with Section 17200) of Part 5 of Division
4 9, directing the trustee to pay the claim. A claim made under this
5 subdivision shall be paid as a preferred claim prior to any other
6 distribution. If trust property is insufficient to pay all claims under
7 this subdivision, the trustee shall petition the court for instructions
8 and the claims shall be paid from trust property as the court deems
9 just.

10 (f) If trust property is distributed before expiration of four
11 months after notice is given without payment of the claim, the
12 department, county, or city and county has a claim against the
13 distributees to the full extent of the claim, or each distributee's
14 share of trust property, whichever is less. The claim against
15 distributees includes interest at a rate equal to that earned in the
16 Pooled Money Investment Account, Article 4.5 (commencing with
17 Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of
18 the Government Code, from the date of distribution or the date of
19 filing the claim, whichever is later, plus other accruing costs as in
20 the case of enforcement of a money judgment.

21 *(g) Notwithstanding subdivisions (a) to (f), inclusive, the trust*
22 *property of the deceased beneficiary of a special needs trust is not*
23 *subject to the claims of the state and local entities described in*
24 *subdivision (b) if there is a surviving child who is a sibling of a*
25 *deceased beneficiary, that surviving child is also the beneficiary*
26 *of a special needs trust, and the trust of the deceased beneficiary*
27 *provides for the transfer of the property in the trust of the deceased*
28 *beneficiary to the special needs trust of the surviving sibling.*

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 or survival an amount equal to the payments for
35 the health care services received or the value of the property
36 received by any recipient from the decedent by distribution or
37 survival, whichever is less.

38 (b) The department may not claim in any of the following
39 circumstances:

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

4 (2) ~~Where~~ *If* there is any of the following:

5 (A) A surviving spouse during his or her lifetime. However,
6 upon the death of a surviving spouse, the department shall make
7 a claim against the estate of the surviving spouse, or against any
8 recipient of property from the surviving spouse obtained by
9 distribution or survival, for either the amount paid for the medical
10 assistance given to the decedent or the value of any of the
11 decedent's property received by the surviving spouse through
12 distribution or survival, whichever is less. Any statute of limitations
13 that purports to limit the ability to recover for medical assistance
14 granted under this chapter shall not apply to any claim made for
15 reimbursement.

16 (B) A surviving child who is under age 21.

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

20 *(D) A surviving child who is the beneficiary of a special needs*
21 *trust, and who is a sibling of a deceased beneficiary of a special*
22 *needs trust, if the special needs trust of the deceased beneficiary*
23 *provides for the transfer of the property in the trust of the deceased*
24 *beneficiary to the special needs trust of the surviving sibling.*

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

30 (c) (1) The department shall waive its claim, in whole or in
31 part, if it determines that enforcement of the claim would result in
32 substantial hardship to other dependents, heirs, or survivors of the
33 individual against whose estate the claim exists.

34 (2) The department shall notify individuals of the waiver
35 provision and the opportunity for a hearing to establish that a
36 waiver should be granted.

37 (d) The following definitions shall govern the construction of
38 this section:

39 (1) "Decedent" means a beneficiary who has received health
40 care under this chapter or Chapter 8 (commencing with Section

- 1 14200) and who has died leaving property to others either through
- 2 distribution or survival.
- 3 (2) “Dependents” includes, but is not limited to, immediate
- 4 family or blood relatives of the decedent.

O