

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Beyond the Rumors: Medi-Cal Estate Recovery

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Justice in Aging is a national non-profit organization that fights senior poverty through law. We secure health and economic security for older adults of limited income and resources by preserving their access to the courts, advocating for laws that protect their rights, and training advocates around the country to serve the growing number of older Americans living in poverty.

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Topics

- What is estate recovery
- Who is subject to estate recovery and who isn't
- How does estate recovery work
- What protections are available and to whom
- How to address consumer fears about estate recovery
- What changes are on the horizon

What is estate recovery?

Estate Recovery: State action to reclaim certain Medi-Cal costs from the estates of beneficiaries after their death.

- Federal law *requires* some estate recovery and *permits* other.
- Estate recovery is not new. Goal: protect Medicaid and ensure its future.
- Renewed public attention with the introduction of MAGI Medicaid.

How does estate recovery work?

Estate recovery for “traditional” Medi-Cal (aged/blind/disabled)

If 55 and older, all Medi-Cal costs except IHSS

If institutionalized *and not expecting to return home*:
All Medi-Cal costs even if under 55. Lien on home

- ➡ These beneficiaries usually have Medicare. Medi-Cal is covering primarily long-term services and supports.
- ➡ Some are in fee-for-service Medi-Cal but increasingly more are required to join managed care.

Estate recovery for “MAGI” Medi-Cal (ACA expansion)

If 55 and older, all Medi-Cal costs except IHSS

If under 55: No estate recovery, even if institutionalized. No liens.

- ➡ These beneficiaries do not have Medicare. Medi-Cal is covering all their medical services.
- ➡ Everyone in MAGI Medi-Cal is in managed care.

What are Medi-Cal costs

In fee-for-service Medi-Cal-- costs are what the state pays providers (skilled nursing, home health, adult day, DME, etc.)

In Medi-Cal managed care-- costs are what the state pays the managed care plan each month, *regardless of how many services the beneficiary actually uses.*

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When does the state collect?

- Upon the death of the beneficiary
- If a surviving spouse, upon the death of the spouse
- If a surviving minor or disabled child, never!
- If a surviving caregiver/heir lives in the home and took care of the beneficiary for 2 yrs, never for that heir
- Hardship exemptions

How much does Medi-Cal actually collect?

- \$59 million v. \$56 billion in Medi-Cal spending
- Average collection: \$15,000
- Number of cases closed 3,996

Most people with Medi-Cal die with very little.

Examples

Mr. Geary

- Enrolled in MAGI Medi-Cal from age 50 until his death at age 60.
- California paid \$3,000/yr to managed care plan to cover Mr. Geary.
- At death, Mr. Geary owned a \$200,000 apartment and had \$10,000 in savings.
- Survived by his son, Franklin, who is heir and executor.

Mr. Geary-Estate recovery

- How much? Amount state paid from age 55 to 60.
 $\$3000 \times 5 = \$15,000$.
- When? Upon death because Franklin does not qualify for any exceptions or hardship.
- Does Franklin have to sell the house? No. The estate can pay from other assets. If the estate does not have all the money to pay, Franklin can consent to the state placing a lien on the property.

Mrs. O'Farrell

- Enrolled in fee-for-service “traditional” Medi-Cal at age 75 when she needed nursing home care. Died at 85.
- Medi-Cal paid \$600,000 in nursing home and other expenses.
- Estate consists of a \$500,000 home with a \$300,000 mortgage owned as community property with her husband, Scott, and \$2,000 in the bank.

Mrs. O'Farrell-Estate recovery

- How much? Maximum is \$102,000. Her half of the house value after mortgage is deducted, minus burial and estate expenses.
- When? Upon Scott's death.
- Can Scott sell the house? Yes, Medi-Cal does not put restraints on how Scott handles his assets while he is alive.

Mr. Buchanan

- Enrolled in fee-for-service “traditional” Medi-Cal at age 80. Dies at 85 without a will.
- Lives at home with daughter, Octavia, who cares for him. He owns a \$200,000 home outright. No other assets.
- Medi-Cal costs for Mr. Buchanan over 5 years consist of \$150,000, of which \$60,000 is IHSS.
- The house passes equally to his three children: Octavia, Webster and Jackson. Jackson is struggling financially and on Medi-Cal himself.

Mr. Buchanan-Estate recovery

- How much? Maximum is \$90,000 minus burial and estate expenses. IHSS costs cannot be counted.
- Octavia applies for an exemption as a caregiver. Her \$30,000 is waived.
- Jackson applies for a hardship exemption. His \$30,000 is waived.
- Webster owes \$30,000.

Dealing with consumer fears

- Value of Medi-Cal now re speculative risk down the road.
- Exemptions and limitations protect many.
- Planning with good advice can soften impact and often eliminate estate recovery entirely.
- Rules may change.
- Medi-Cal is still incredibly valuable!

Your ideas???

Rules may change

- S.B. 33—maybe this year
 - Would narrow estate recovery to that required by federal law.
 - Only long term care costs
 - No recovery from surviving spouse
 - More transparency
- Possible changes in federal rules

Resources

California Department of Healthcare Services: Medi-Cal Estate Recovery Program, Information Pamphlet
[http://www.dhcs.ca.gov/services/Documents/Estate%20Recovery%20Pamphlet%20\(Eng\)%203-08.pdf](http://www.dhcs.ca.gov/services/Documents/Estate%20Recovery%20Pamphlet%20(Eng)%203-08.pdf)

California HealthCare Foundation: Estate Recovery Under Medi-Cal
<http://www.chcf.org/publications/2014/05/estate-recovery-medical>

California Advocates for Nursing Home Reform:

Medi-Cal Recovery: What You Need to Know & How to Avoid It
http://www.canhr.org/publications/PDFs/Medi-Cal_Recovery.pdf

Medi-Cal Estate Recovery, Frequently Asked Questions
http://www.canhr.org/factsheets/medi-cal_fs/html/fs_medcal_recovery_FAQ.htm

Your Home and Medi-Cal http://www.canhr.org/factsheets/medi-cal_fs/html/fs_medcal_your_home.htm

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Thank You!

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