Medi-Cal Recovery

What You Need To Know & How To Avoid It







CANHR

Long Term Care Justice and Advocacy

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What is Medi-Cal?

Medi-Cal is California's free or low-cost medical assistance program for low-income people.

What is Medi-Cal Recovery?

When a Medi-Cal recipient dies, the state can seek repayment for the cost of services received, including insurance premiums paid and payments made to managed care plans. State and Federal laws allow the states to seek repayment for benefits paid upon the death of individuals who received Medi-Cal:

- who were 55 or older when they received Medi-Cal benefits.
- at any age, if they were inpatients in a nursing facility, intermediate care facility or other medical institution.

After the Medi-Cal recipient dies, the state will send the heirs or survivors an "estate recovery claim" asking for payment for the amount of Medi-Cal benefits paid on behalf of the deceased individual.

"The state does not put a lien on the home and the state does not take away your home. The state will, however, try to collect..."

If there is anything left in the deceased individual's estate, then the state will try to claim those funds.

The state does not put a lien on the home and the state does not take away your home. The state will, however, try to collect, and, if you cannot get the claim waived and still cannot afford to pay, the state will negotiate a "voluntary lien."

Covered California and Medi-Cal Expansion

Covered California is California's version of the Affordable Care Act's health insurance exchange. It is not a Medi-Cal program. Any tax credits or subsides received through this program are not subject to Medi-Cal recovery.

If a person's income is too low for Covered California, the person will be enrolled in the **Medi-Cal Expansion Program**, which provides medical care at no cost. Persons enrolled in the Medi-Cal Expansion Program will be provided medical care through a managed care plan.

What is Managed Care?

Managed care is a type of health insurance designed to save money by contracting with a network of providers and medical facilities at a reduced cost.

The managed care plan is a third-party insurance provider that is paid a certain rate by the state each month to cover your care, regardless of what care you need.

Example:

Jane is enrolled in the Medi-Cal expansion program and is in a managed care plan. The state pays $500 a month to the plan for Jane's benefits. In November, Jane never used any medical services. In December, Jane had open-heart surgery. Because of the capitated rate, the state paid $500 in the month of November and $500 in December, even though Jane's surgery might have cost $100,000+. Over the course of the year, the state pays $6,000 for Jane's health care regardless of the services she receives that year. If Jane was under 55 years of age, there would be no recovery. If she was 55 or older, the state would send an estate claim when Jane dies.

What If I Choose Not to Enroll in a Health Care Plan?

If you do not purchase or enroll in a health insurance plan, **you can be penalized**. Although the penalty is low in the first year, it increases each year that you are without coverage. Additionally, you will be putting your estate and your family at risk of losing everything due to health care costs if you should suffer a catastrophic health event.

Jane, in the previous example, would end up owing **at least $100,000 in health care costs** for her surgery if she didn't have health care coverage.

> *"... you would be putting your estate and family at risk of losing everything to health care costs if you should suffer a catastrophic health event."*

How Does Managed Care Affect Recovery?

When a managed care enrollee dies, the estate will receive a claim for the total amount paid by Medi-Cal to the managed care plan, regardless of how much the actual services cost the managed care plan.

! **Estate claims for enrollees in managed care plans may not be equal to the amount of services received.**

Example:

Jane had Medicare and enrolled in Medi-Cal "just in case." Jane was very healthy and only visited the doctor twice in the last 10 years. Medi-Cal paid the plan $500 a month for each month she was enrolled in the plan. After 10 years Medi-Cal paid $60,000 for Jane's health insurance. When she passed away there was a Medi-Cal estate recovery claim for $60,000.

Will Paying a Monthly Share of Cost Reduce the Estate Recovery Claim When I Die?

The short answer is "No."

When the managed care enrollee dies, the estate will receive an estate recovery claim for the full amount paid to the managed care plan.

Example:

The state pays $5,000 a month for John's nursing home care and John's share of cost each month to the nursing home is $3,500. When John dies 10 years later, the estate claim will be for the $5,000 a month times 10 years for a total of $600,000. The $420,000 he paid towards his care over those 10 years will not be deducted from the claim.

When Can the State Recover?

The state cannot recover until after the Medi-Cal recipient dies. If the Medi-Cal recipient is survived by a spouse, a claim is prohibited until the surviving spouse dies.

If the Medi-Cal recipient is survived by a minor child (under age 21), the state cannot recover, and a claim is forever barred.

If the Medi-Cal recipient is survived by a disabled child of any age, the state cannot recover, and a claim is forever barred. The child does not need to be living with the Medi-Cal recipient, or be an heir to the estate.

What Can the State Recover?

The state can make a claim against your estate for the amount of the Medi-Cal benefits paid or the value of the estate, whichever is less.

The best way to avoid recovery is to have nothing left in the Medi-Cal recipient's name at the time of death.

Example 1:

When Todd died, he had nothing left in his estate. Medi-Cal paid $50,000 in medical services. Because there was nothing left in the estate, the state could not recover anything.

"The best way to avoid recovery is to have nothing left in the Medi-Cal recipient's name at the time of death.

Example 2:

When Mindy died, she left a home, car and bank account (total value of $202,000). Medi-Cal paid $50,000 for Mindy's medical services. The most the state can recover is $50,000.

What Property is Exempt From an Estate Recovery Claim?

The following property is exempt from an estate recovery claim:

- Property transferred prior to death.
- Irrevocable life estates: The property was transferred, but you reserved a life estate.
- Occupancy agreement: The property was transferred, but you reserved an occupancy agreement.
- Life insurance*: You named one or more beneficiaries on your life insurance policy.
- Retirement accounts*: You named a beneficiary on your retirement account(s).

* Unless the estate is the named beneficiary or it reverts to the estate.

For life insurance and retirement accounts, always check to make sure you have named a beneficiary and beware of putting these into living trusts.

How Can I Protect My Home?

- Leave nothing in your estate when you die.
- Execute a Durable Power of Attorney with gifting and real estate transfer clauses.
- Do planning, depending on your age and health.
- If already living with grown, responsible children, consider a transfer with a life estate.
- If receiving nursing home or long term care services, consider transfers.
- If a spouse enters a nursing home or needs long term supports and services (LTSS), consider transferring the home to the well spouse – then no recovery after the Medi-Cal spouse dies.

A Medi-Cal recipient can transfer an exempt property prior to death. **It is important to consider tax consequences and the risk of losing your home prematurely before any property transfer.**

How Do I Find Out the Amount of the Estate Recovery Claim?

A Claims detail report shows how much is owed. Download the form online at http://www.dhcs.ca.gov. DHCS 6236 (for individuals) or 6237 (for agent). Although beneficiaries can obtain information on how much in Medi-Cal benefits were paid, the State cannot collect or file a claim until after the recipient has died.

What Happens After a Medi-Cal Recipient Dies?

It is the legal responsibility of the estate (spouse, estate attorney, executor, heir, or person in possession of the property) to notify the Medi-Cal Recovery Unit within 90 days of the person's death. Notifying the local Medi-Cal or Social Security office does not count as proper notice.

! **The Recovery Unit in Sacramento must be notified.**

Mail "Notice of Death" with the copy of the death certificate to:

Director of Health Care Services
Estate Recovery Unit, MS-4720
P.O Box 997425
Sacramento, CA 95899-7425

Tip: *Get proof of mailing - ie. certified or registered mail.*

WARNING: A Medi-Cal Recovery questionnaire is usually sent to the heirs or survivors after the Medi-Cal recipient has died. This form requests information about assets left in the estate. **Legally, there is no obligation to complete this form. You are only required to send a notice of death and a copy of the death certificate**. If there was property left in the estate, the estate representative may want to call CANHR, legal services, or seek the advice of an attorney before completing the form.

Reviewing the Estate Recovery Claim

1. Check whether the heirs meet any of the exemptions on page 5, "When Can The State Recover?"

2. Check whether any of the remaining property in the estate is exempt from an estate recovery claim on page 7, "What Property is Exempt From an Estate Recovery Claim?"

3. Review the itemization. Check for discrepancies on the claim from specific providers such as a pharmacy; contact the providing pharmacy to dispute the bill.

4. Review the claim to ensure the following items are not listed, as they are not recoverable:

   - In-Home Supportive Services (IHSS).
   - The cost of Medicare premiums, co-payments and deductibles paid on behalf of Qualified Medicare Beneficiaries (QMB).
   - The cost of Medicare premiums, co-payments and deductibles paid on behalf of Specified Low-Income Medicare Beneficiaries (SLMB).

   If any of these are on the claim, contact the Recovery Collection Unit representative to correct the error.

5. The claim may be reduced by deducting funeral expenses, estate settlement costs, and attorney's fees.

If I Do Not Meet Any of the Exemptions, How Will I Pay?

If the heirs or survivors do not meet any of the above exemptions, they should check to see if they qualify for a hardship waiver. If the heirs meet the criteria, the claim may be waived.

Tip: *Call CANHR at 1-800-474-1116 for more information about hardship waivers.*

If the hardship is denied, they must work with the Recovery Unit to pay the claim. The state will work with the applicant's ability to pay in one of the following ways:

1. The heirs can take out a low interest loan or equity loan on the property.

2. The heirs can request a voluntary lien. In addition to the placement of the lien, the department will require monthly payments, based on the heir's ability to pay and the lien will accrue interest at 7% annually.

Paying the Estate Recovery Claim

If you do not meet any exemptions and are not eligible for a hardship waiver, the claim must be paid.

Do not ignore the claim. If the claim is ignored, the state will send the claim to the Attorney General's office.

Remember: Contact a legal services provider or CANHR for information on how to avoid a claim or how to deal with an estate recovery claim if you receive one.

This booklet is available in
English, Spanish and Chinese.

You may download a free copy at
www.canhr.org

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