

***CCI, Nursing Homes &
Medi-Cal Recovery
What it Means for Residents***



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CANHR

www.canhr.org

CANHR Services

- Website: www.canhr.org
- Consumer Hotline: (800) 474-1116
- Pre-Placement Counseling
 - www.nursinghomeguide.org
 - www.residentialcareguide.org
- Medi-Cal Information/Counseling
- Resident Rights Issues
- Elder Abuse Issues
- Lawyer Referral Service
- Legislative and Administrative Advocacy
- Litigation

CCI & Nursing Home Issues

- Cal MediConnect = Dual Demonstration Project/Coordinated Care Initiative
- Medicare/Medi-Cal dual eligibles
- Combine care into single benefit package (acute, primary, institutional, HCBS)
- Administered by MMPs – Medicare/Medicaid Plans = managed care
- Active or passive enrollment

Passive Enrollment

- Calculation that determines which providers were highest used or highest prescribers for person in past 12 months
- **Example:** NF resident has been in facility for past 12 months, match resident with plan that contracts with facility

Impact on Current NF Residents

- Already in a facility – long term care resident prior to enrollment – can stay for duration of the project
- **IF**
 - NF is licensed by state
 - Meets “acceptable” quality standards
 - NF and MMP agree to Medi-Cal or plan rates whichever is greater

Questions:

- What is the definition of “long term”?
- What are “acceptable standards”?
- What if NF refuses to agree to contracted Medi-Cal rate?
- Excuse to discharge Medi-Cal residents for non-payment and free up a bed?

Enrollment Issues for current NF residents

- Who will assist residents in choosing a plan if NF can't assist?
- How do residents know what plans NF participates in?
- “Unrepresented” residents – who will assist them in choosing a plan?
- If passively enrolled in non-participating plan = eviction for non-payment
- Beneficiaries may disenroll and choose participating plan if available

Cal MediConnect: Issues for Prospective Residents

- **Rates:** NFs receive facility-specific Medi-Cal rates. Nothing to keep plans from contracting with lowest paid and lowest performing NFs. (quality standards are determined by the plan)
- **Contracting:** Some plans will contract with all NFs in a county. Others only contract with some. How do consumers find out which plans contract with which NFs? (HICAP CHART)
- **If \$ is an issue:** What is the incentive to send beneficiaries to higher quality facilities? – maybe costly readmissions to acute care?

Cal MediConnect Issues

Ancillary services in nursing homes

- **Ancillary services** = therapy, supplies, lab, x-rays, etc. – currently billed separately
- Under new program – Plans will decide, will require pre-authorization and will have an economic incentive to only use providers in their network
- **Result** = reduction in services to NF residents

Outreach by NFs

- Can't direct consumers to a plan – **BUT** – need to educate NF staff
- NFs – should have a plan in place when notices are received
- Hold care plan meetings and go through choices with resident and family
- Otherwise – resident may be defaulted into a plan with no contract with facility and no contract with beneficiary's outside Dr. or providers

Outreach by Community Organizations

- Need to develop a chart for each county – which MMP contracts with which NFs
- Which providers that consumers use are included in the plan
- Need to be able to assist consumers to make informed choices
- If consumer chooses wrong plan or is defaulted into wrong plan = disaster

Potential Problems with CCI/Cal MediConnect

- Intent maybe to provide “coordinated care”
– but goal is to save money
- Could result in even worse care for dual eligibles
- Delayed admissions to NFs
- Reduction in therapy and other ancillary services
- Continuity of care provisions leave most decisions up to the plan

Potential Problems with CCI /Cal MediConnect

- Appeal rights: no change for now, but later will have to appeal to plan
- Very complex rules for consumers to understand - how to retain current providers?
- Too much MMP discretion as to whether a service or a provider will be included
- Forcing seniors to turn their care over to managed care – MMPs will chose the care & the providers

CCI/Cal MediConnect Resources

- Continuity of care website:
<http://dhcs.ca.gov/keepmycare>
- Office of the Ombudsman: 1-888-452-8609
- Department of Managed Health Care (DMHC) Help Center (Not DHCS) 1-888-466-2219
- **Cal MediConnect Ombudsman:**
 - (855) 501-3077 help navigating plans

What is Medi-Cal Recovery?

- Federal Law (42 U.S.C. §1396p) requires states to recover from:
- Those who are inpatients in NF, ICF-MR or other medical institution and not expected to return home
- 55+ years of age: received NF services, HCBS & related hospital and prescription drug services

OR

- At option of state, can recover for any items and services under the state plan
- (California exercised that option and recovers for everything Medi-Cal paid for.)

Nursing home & Home and community based services

- **Include (1915(c) waivers**
 - In patient Nursing home care
 - MSSP- Multipurpose Senior Services
 - Assisted Living Waiver Program
 - CBAS (formerly Adult Day Health)
 - In Home Operations
 - Nursing Facility/Acute - at home
 - HIV/AIDS
 - Pediatric Palliative Care
 - Developmentally Disabled in the community
 - SF Community Living Support Benefit

What Is Medi-Cal Recovery?

California can recover from your estate after you die if:

- You were over 55 years of age when you received (any) Medi-Cal benefits or
- Medi-Cal paid while you were in a nursing home, ICF-MR or other medical institution at any age

Welfare & Institutions Code §14009.5

- Claim against estate of decedent or against recipient of property by distribution or survival
- Amount of benefits paid or value of estate, whichever is less
- **No claim if:**
 - Under 55 when benefits received unless in NF
 - Surviving spouse - can't encumber with claim - DeMille
 - Surviving minor child
 - Surviving disabled child - Dalzin

What Type of Health Care Coverage in Medi-Cal Managed Care

- **Managed Care:** A third party insurance provider who is paid a certain rate each month to cover your care – regardless of what care you need

Example:

Mary is enrolled in Medi-Cal, and is entered into a managed care program that is paid \$500 a month by the state to provide Mary's medical care. Mary is healthy and needs few services, but the plan is still paid \$500 per month.

When Can the State Recover?

- If Mary was under 55 when she received Medi-Cal, and never received nursing home or long term care services – no Medi-Cal recovery.

Example:

Mary is 30 years old and enrolls in the Medi-Cal program. She goes off Medi-Cal at age 46 because her job now provides health care coverage. She never received long term care services.

No recovery – since Mary was under 55 when she received benefits

CCI/Cal MediConnect: Can the State Recover?

- If Mary was over 55 years of age when she received Medi-Cal, then, after she dies, the state can file an estate claim to collect everything they paid to the managed care plan.
- If the plan was paid \$2,000/month, and Mary was on Medi-Cal for 5 years, there could be a \$120,000 estate claim after she dies.

When Can the State Recover?

The State cannot recover:

- Until after you die
- If you are survived by a spouse – until the spouse dies
- If you are survived by a minor child
- If you are survived by a disabled child of any age – does not have to live with you

What Can the State Recover?

- Amount of the claim or value of the estate whichever is less:

Example:

Donald received \$120,000 worth of Medi-Cal Benefits and his estate received an estate claim of \$120,000 after he dies for the benefits paid. He left nothing in his estate.

No recovery, since there is nothing left in his estate in his name.

What Can the State Recover?

- Amount of the claim or value of the estate whichever is less:
- **Example:**
Donald leaves a house worth \$250,000 and the estate claim is \$50,000. The state can only claim up to \$50,000 from his estate.

What is the Value of My Estate?

- Amount of the claim or value of the estate whichever is less
- Fair Market value at time of decedent's death
- Name(s) on the property at time of death
- Joint tenancy – your % of the property
- Living Trust (be careful what you put in)
- Annuities purchased on or after 9/1/2004
are subject to recovery

What Property is Exempt from a Claim?

- Property transferred prior to death
- Irrevocable Life Estates
- Occupancy Agreements= right to occupy for life
- Life Insurance*
- Retirement Accounts *
- *Unless the estate is the named beneficiary or it reverts to the estate. Always check the beneficiary and beware putting these into living trusts)

Amount of Claim

- Check itemization
- IHSS payments exempt (But if payments made to managed care, then will no longer be exempt)
- SLMB and QMB Medicare premiums, co-payments and deductibles exempt
- Deduct outstanding mortgages, burial costs, estate settlement costs, etc. from the amount of the claim

What about my home?

- Primary asset usually home and home is exempt asset
- State **does not put a lien** on your home – unless in a nursing home and you indicate you do not have an intent to return home
- Always put “yes” – intend to return home
- Can transfer an exempt asset at any time

What About My Home?

- Can transfer an exempt home prior to death by:
 - Gift deed with life estate
 - Gift deed with occupancy agreement
 - Outright transfer
 - Joint tenancy – can only recover your %
 - Irrevocable trust

What about my Home?

- **Beware** of tax consequences and/or losing your home prematurely
- **Problems** with transfers of home
 - Joint tenancy=can still claim your % of home
 - Outright transfers – taxes and can lose home
 - Irrevocable trusts- can't access the equity
 - Living trusts – not immune from recovery

How Can I Avoid Recovery?

- 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

How Can I Avoid Recovery?

- If receiving nursing home or long term care services, consider transfers
- If spouse enters a nursing home or needs LTSS, consider transferring the home to the well spouse – then no recovery after the Medi-Cal spouse dies
- Check to see if there is an exempt child or if a hardship exists.
- Prepare your heirs/survivors on what to do

Notice of Death to DHCS

- After a Medi-Cal beneficiary dies, heirs/ survivors must send a notice and copy of death certificate to DHCS
- DHCS Recovery Unit will send a questionnaire – do not complete until you consult with legal services or CANHR
- DHCS will send a notice of an estate claim



State of California—Health and Human Services Agency
Department of Health Care Services

Third Party Liability and Recovery Division
Recovery Branch, MS 4720
P.O. Box 997425
Sacramento, CA 95899-7425
(916) 650-0590 Fax (916) 440-5650



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Governor

MEDI-CAL ESTATE RECOVERY QUESTIONNAIRE

ATTENTION: Person responsible for the estate of:

Notice of death must be provided to the Department of Health Care Services pursuant to California law (Probate Code sections 215, 9202, and 19202). For fastest processing, complete this form online at dhcs.ca.gov/ER or return in the envelope provided.

Please complete this questionnaire to the best of your knowledge. Include a copy of the decedent's death certificate. We will contact you if we have any additional questions.

1. Provide the information for the attorney, person or trustee handling the estate:

Name: _____ Telephone No: _____

Address: _____

Email address: _____ Relationship: _____

Number of heirs to the estate: _____

2. Check any of the following that apply:

Decedent's spouse or registered domestic partner is still living.

Decedent is survived by a child under the age of 21, as of the date of death.

Decedent is survived by a child of any age who is blind or disabled.

3. Is or will the estate be probated? Yes ___ No ___

If yes, enter the probate number: _____ County of filing: _____

4. Is there a trust? Yes ___ No ___ If yes, will it be administered in court? Yes ___ No ___

5. Did the decedent own any of the following?*

House

Stocks/bonds

Mobile Home

Bank account/cash

Annuities

Retirement accounts

Auto/Boat

Other _____

Land

Insurance policies

Jewelry

No assets

*Total estimated value of assets: _____

Print Name: _____ Telephone No: _____

(Person completing this form)

Signature: _____ Date: _____

DHCS 6251 (Rev 01-14)

Staff Use Only

RECIPIENT:

SDX:

REF:

RUN:



TOBY DOUGLAS
Director

Estado de California—Entidad de Salud y Servicios Humanos
Departamento de Servicios de Atención
De la Salud

Third Party Liability and Recovery Division
Recovery Branch, MS 4720
P.O. Box 997425
Sacramento, CA 95899-7425
(916) 650-0590 Fax (916) 440-5650



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CUESTIONARIO DE MEDI-CAL SOBRE PATRIMONIO SUCESORIO

ATENCION: Persona responsable del patrimonio sucesorio (herencia) de:

Notificación de fallecimiento tiene que ser entregada al Departamento de Servicios de Atención de la Salud conforme a la ley de California (Secciones 215, 9202, y 19202 del Código de Sucesiones). Para procesar mas rapido, complete el cuestionario en la pagina de internet: dhcs.ca.gov/ER, o devuelva en el sobre previsto.

Favor de completar el cuestionario a su mayor entendimiento. Incluya una copia del certificado de muerte del fallecido. Si tenemos más preguntas, estaremos en contacto con usted.

1. Información de contacto del abogado o persona encargada del patrimonio sucesorio:

Nombre: _____ Numero telefónico: (____) _____
Dirección: _____
Correo electrónico: _____ Relación: _____ # de Herederos: _____

2. Marque las que apliquen de las siguientes:

- Cónyuge o pareja registrada del difunto sigue con vida.
 El difunto es sobrevivido por un hijo/a que es menor de 21 años.
 El difunto es sobrevivido por un hijo/a ciego/a o incapacitado/a de cualquier edad.

3. Ha sido o será legalizado el patrimonio sucesorio: Sí No

Si marco "Sí": Numero de la sucesion testamentaria: _____ Condado: _____

4. Hay un fideicomiso: Sí No Si marco "Sí", sera administrada en corte: Sí No

5. Marque todas las selecciones que fueron propiedad del difunto:

6. Casa Pensiones Casa móvil Cuenta bancaria
 Anualidades Acciones/bonos Auto/Barco Otros bienes _____
 Terreno Pólizas de seguro Joyas No tuvo bienes

*Valor estimado de todos los bienes: _____

Nombre: _____ Numero telefónico: _____
(Persona completando forma)

Firma: _____ Fecha: _____

DHCS 6251 SP (Rev 01-14)

Staff Use Only
RECIPIENT:
REF:

SDX:
RU

EXEMPTIONS FROM RECOVERY

- Spouse (while alive)
- If receipt by distribution or survival, then after death of surviving spouse - but not if property transferred
- Minor (under age 21) - if minor at time of death
- BLIND OR DISABLED CHILD of any age
 - Does not have to be an heir
 - Does not have to be living in the property
 - Verification of SSI or SSA **as of date of claim**
 - Plus, birth certificate or adoption papers

HARDSHIP CRITERIA

The Department **shall waive** an applicant's *proportionate* share of the claim if a hardship exists:

1. **PUBLIC BENEFITS**
2. **BUSINESS**
3. **AGED, BLIND OR DISABLED LIVING IN THE HOME**
4. **CAREGIVER**
5. **NO CONSIDERATION**
6. **EQUITY NEEDED**

Contact CANHR or Legal Services if you plan to file for a hardship!

Hardship Requests

- 60 days from date on notice of claim to file for hardship application request
- Complete hardship waiver form (DHCS 6195) and documentation requested
- DHCS shall issue decision within 90 days of application's submission
- **Problems:** IRAs, retirement accounts, insurance policies should not be listed if beneficiary named!

How to find out the amount of the claim

- Claims detail report: how much is owed
DHCS 6236 (for individual) or 6237 (for agent)
- Can download this form online
- Although living beneficiaries can obtain information on how much in Medi-Cal benefits were paid, the State cannot collect or file an estate claim until after the beneficiary has died.

SB 1124 (Hernandez)

- Limits recovery for those 55+ to what is required by federal law – e.g. NF, HCBS and related charges
- Restricts recovery for those under 55 who were residents of nursing homes to real property - (as required by federal law)
- Eliminates recovery at death of surviving spouse
- Prohibits recovery for IHSS services
- Restricts recovery amount to benefits paid for services actually received or capitated monthly rate, whichever is less
- Requires DHCS to provide claims detail information free of charge to Medi-Cal beneficiaries or their reps

Senate Appropriations: letters of support

Senator Kevin De Leon, Chair, FAX: (916) 324-0384

If You have questions about Medi-Cal Recovery

www.canhr.org and go to
Medi-Cal for Long Term Care

Call (800) 474-1116 and speak to an Advocate

California Advocates for Nursing Home Reform
650 Harrison Street, 2nd Floor
San Francisco, CA 94107