STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: California

1. The State uses the following process for determining that individual who is residing in an institution cannot reasonably be expected to be discharged from the medical institution and return home:

The beneficiary or his or her representative declare that the beneficiary residing in an institution cannot reasonably be expected to be discharged and return home. The beneficiary has been given a 30-day notice of the Department of Health Services' intent to impose a lien and has an opportunity for a hearing in accordance with state established hearing procedures. The notice to the beneficiary must include an explanation of the proposed lien and the effect on an individual's ownership interest.

2. The following criteria are used for establishing that an individual permanently residing in an institution's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

A son or daughter of the individual residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution. (A statement from a licensed health care provider(s) clearly indicating that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution will satisfy this provision.)

3. The State defines the terms below as follows:

- estate- For individuals who die on or after January 1, 2017, "estate" is defined as all real and personal property and other assets in the individual's probate estate that are required to be subject to a claim for recovery pursuant to Section 1396p(d)(4)(a) of Title 42 of the United States Code. For individuals who die on or after October 1, 1993 and prior to January 1, 2017, and for payments made on or after October 1, 1993, "estate" is defined as a real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, heir, survivor, or assignee of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, life insurance policy that names the estate as the beneficiary or reverts to the estate, or any retirement account that names the estate as the beneficiary or reverts to the estate.

- individual's home - An individual's principal domicile.

- equity interest in the home - The fair market value of the property to which the decedent held legal title or interest at the time of death (to the extent of such interest), less the amount owed in deeds of trust, mortgages, and liens on record at the time of death.

- residing in the home for at least one or two years on a continuous basis - To live in the beneficiary's principal domicile, for an extended or prolonged period and without interruption or cessation, for one year in the case of a sibling and two years for a son or daughter.

- discharge from the medical institution and return home - To leave a medical facility and return to the individual's principal residence.

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- lawfully residing - To live in a place for an extended or permanent period of time with the authorization of the owner(s), and within the bounds of law or public policy.

4. The state defines substantial hardship as follows: A. An applicant can demonstrate through submission of a written application or, if applicable, at an estate hearing, that enforcement of the of the Department's claim would result in a substantial hardship to the applicant based on the factors listed below. B. A substantial hardship does not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery. C. To the extent that there currently is, or later becomes any conflict between the following criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.

   The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause a substantial hardship.

   In determining the existence of a substantial hardship, the Department shall waive an applicant's proportionate share of the claim if one of more of the following factors apply:

   - When allowing the applicant to receive the inheritance from the estate would enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs; or,
   - When an aged, blind, or disabled applicant has continuously lived in the decedent's home for at least one year prior to the decedent's death and continues to reside there, and is unable to obtain financing to repay the State. The applicant shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40. The applicant shall provide the Department with a denial letter(s) from the financial institution; or,
   - When the applicant provided care to the decedent for two or more years that prevented or delayed the decedent's admission to a medical or long-term care institution. The applicant must have resided in the decedent's home during the period care was provided and continue to reside in the decedent's home. The applicant must provide written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution; or,
   - When the applicant transferred the property to the decedent for no consideration; or,
   - When equity in the real property is needed by the applicant to make the property habitable; or,
   - When equity in the real property is needed to acquire the necessities of life, such as food, clothing, shelter or medical care.

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Additionally, the Department shall waive its collection on an estate property, if one or more of the following factors applies:

- When the estate property is part of an income-producing business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicant losing his or her primary source of income; or,

- When the estate is a homestead of modest value and the deceased individual against whose estate the claim exists, died on or after January 1, 2017. A homestead of modest value is defined as a home whose fair market value is 50 percent or less of the median price of homes in the county where the homestead is located, as of the date of the decedent's death. If a decedent owns multiple homes, this waiver shall only be granted for the decedent's principal residence.

The Department will waive its claim in its entirety:

- When the decedent is survived by a registered domestic partner.

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The Department shall provide written notification to the applicant of its decision regarding the hardship waiver application within 90 days of the applicant's submission. If an application for hardship waiver is denied, the Department shall provide the applicant with notice of the right, the address, and the timeframe to request an estate hearing, at the time it provides notice of its decision. The Department shall issue its decision on an applicant's hardship waiver application prior to and independent of its consideration of a voluntary post death lien.

If it is determined that enforcement of the State's claim would result in a substantial hardship to one or more of the dependents, heirs, or survivors of the individual against whose estate the claim exists, the Department shall waive the proportionate share of its claim against any applicant who qualifies for a waiver due to a substantial hardship, as specified in Section 50963(a). The Department shall not enforce collection of the proportionate share of an estate claim for any applicant who is awaiting the resolution of a hardship waiver request or an estate hearing. However, the Department shall enforce collection of its claim from the remaining dependent(s), heir(s), or survivor(s) for his or her proportionate share of the claim.

5. The State defines cost-effective as follows (include methodology/thresholds used to determine cost effectiveness):

   Because of the volume of cases and limited availability of resources, the Department has determined that it is not cost-effective to pursue continued collection or litigation after a claim/lien is filed if the potential net collection amount is under $5,000. However, when the administrative costs to process a case and continue recovery are very low, usually with cases handled by public administrators/guardians and formal probates, the Department may file and pursue continued collection or litigation for any amount. Additionally, in certain circumstances when the debtor has excessive allowable expenses or obligations or when the heir(s) lives out of state and is not responsive to collection efforts, etc., the Department may determine that it is not cost-effective to litigate or otherwise pursue recoveries, even though the net assets are over the normal $5,000 threshold.

6. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

   A. Advance Notice Procedure

      Beneficiaries are notified of the Medi-Cal Estate Recovery program, during their initial application process and during annual redetermination, via the Rights and Responsibilities form (MC219), Statement of Facts (MC210), or other forms, which they read and sign. Our program also sends beneficiaries notices annually, informing them of the program, including any updates or changes in laws/procedures affecting estate recoveries. In addition, the Department publishes a Medi-Cal Pamphlet and places the form on the Department's webpage which explains the circumstances Medi-Cal may bill the estate of a deceased beneficiary. Heirs, or their representatives, are notified any time the Department intends to claim against a deceased beneficiary's estate or place a lien against a beneficiary residing in an institution's real property (if beneficiary or personal representative has indicated no intent to return home), are informed of our legal authority to do so, and are given the opportunity to apply for a hardship waiver or otherwise appeal our decision.

B. Collection Procedures

The Department may be notified of a Medi-Cal beneficiary's death in several different ways. California Probate Code Sections 215, 9202, and 19202 require the estate attorney or personal representative of a deceased Medi-Cal beneficiary to notify the Department within 90 days of the date of death. Notice must be provided in writing to the Director of the Department of Health Services at his or her Sacramento office, or, Estate Recovery Unit, Mail Stop 4720, P.O. Box 997425, Sacramento, CA 95899-7425 or submit notice electronically through the Department's website at dhcs.ca.gov/ER. The Department also receives referrals of the death of a person who may have been receiving Medi-Cal benefits from various other private and public sources. The Department also completes a monthly data search of the Medi-Cal Eligibility System to check the eligibility status codes on each Medi-Cal beneficiary's file. If the eligibility status shows that the beneficiary was terminated by reason of death, a system generated questionnaire may be sent to the estate, at the last known address.

When notice of a Medi-Cal client's death is received by the Department, research is necessary to verify the Medi-Cal eligibility periods, the beneficiary's assets at the time of death, and that the case meets the criteria of law to pursue recovery. Cases which pass this screening are established on the program's Automated Collection Management System (ACMS), claim details are requested and an itemized list of payments to providers, health plans, etc., is prepared. This itemization is used to file a claim in formal probate with the county court and/or with the person responsible for the decedent's estate.

Once a case is established, and accounts receivable (AR) entered into the ACMS, cases are monitored quarterly. Status requests may be sent to the responsible party(ies) and case notes track the progress of the claim. Payments received are deposited daily and the ACMS AR adjusted (making sure that the correct amount was paid). Failure of payments to be made, claims honored, attorneys (or other responsible party) cooperating in closing probate, etc., may result in collection action against the heir(s), attorney, or other responsible persons, by litigating in small claims court, or referring to the Attorney General's Office for filing a complaint with the courts.

C. Collection Procedures -Voluntary Post Death Liens

Voluntary post death liens may be utilized to secure and satisfy the Department's claim when one or more of the dependents, heirs, or survivors of the deceased Medi-Cal client are living in and not willing to sell the real property, are unable to pay the State's claim in full, and can demonstrate that they are unable to obtain financing to pay off the claim. A voluntary post death lien is only utilized as a means to secure the Department's claim and is voluntary in nature.

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If a hardship waiver has been requested, a decision will be issued on the waiver request prior to and independent of the Department introducing a voluntary post death lien.

Once it has been determined that one or more of the dependent(s), heir(s), or survivor(s) are unable to pay or obtain financing to pay their proportionate share of the estate claim, the Department may offer to accept a voluntary post death lien. The dependent(s), heir(s), or survivor(s) must provide the Department with a letter(s) from a financial institution defined in Probate Code Section 40, which denies financing for an amount not to exceed the dependent(s), heir(s), or survivor(s) proportionate share of the claim.

The Department may request monthly payments, based on the dependent(s), heir(s), or survivor(s) financial ability to pay, in addition to the placement of a lien on the estate property. These payments would be based on the dependent(s), heir(s), or survivor(s) financial ability to pay, and be adjusted as needed. Monthly payments would continue until the lien amount owed to the Department by the lienee, plus interest, is paid in full.

For estate claims where the individual dies prior to January 1, 2017 the lien will accrue simple interest at the rate of seven percent per annum. For estate claims where the individual dies on or after January 1, 2017, the lien will accrue at the rate equal to the annual average rate earned on investments in the Surplus Money Investment Fund in the calendar year preceding the year in which the decedent died, or simple interest at 7 percent per annum, whichever is lower. Liens becomes due and payable, including all interest accrued, upon: 1) the death of the dependent(s), heir(s), or survivor(s): or 2) the sale, refinance, transfer, or change in title to the real property; or 3) escrow funding: and/or 4) default in payments.

In the event of a transfer of an interest in, or title to, real property subject to the voluntary post death lien without payment of the lien, the lienee shall provide notification of the transfer, with the identity and address of the new titleholder(s), by mail to the Department, within 30 days of the transfer. The lienee shall notify the new titleholder(s) of the voluntary post death lien prior to the transfer of title, and the obligation to satisfy the lien. The new titleholder must make arrangements for full satisfaction of the Department's lien with the Estate Recovery Program.

When the dependent(s), heir(s), or survivor(s) agree to a voluntary post death lien, the Department will prepare and mail the lien documents to the dependent(s), heir(s), or survivor(s) for notarized signature(s). Once the lien documents are returned to the Department, the Department forwards the documents on to the County Recorder's Office where the property is located for recording of the lien. The Department will issue a release of lien to the County Recorder's Office after full payment of the lien with accrued interest is received.

D. Collection Procedures - Imposing liens Against the Real Property of Beneficiaries who are Residing in an Institution

At the time of their initial application for Medi-Cal benefits and during their annual redetermination process, individuals who are residing in an institution who own real property are asked if they intend to return home to live in that real property at any time in the future. If the beneficiary or personal representative indicates no intent to return home (and if there is no spouse or dependent relative residing in the home), the County Department of Social Services may send a Notice of Action (NOA) to the beneficiary residing in an institution. The NOA informs beneficiaries that if the property is listed for sale (and Medi-Cal eligibility is established or continues), a lien will be recorded against the property to cover the cost of medical care received under the Medi-Cal program. The notice also advises the clients of their right to request further county review and/or a state hearing, within 30 days of the date of the notice, in order to present additional information/evidence for consideration. No action is taken during this 30-day period or pending further review and/or a hearing.

If, after the 30 days has elapsed, the Department will research the referral from the county to determine if the case meets the criteria of law to impose a lien against the property. That is, there is no surviving spouse, child under age 21, blind or disabled child, or a sibling with an interest in the home, living in the home. Cases that pass this screening are established on the program's ACMS, claims details are requested, and an itemized list of payments made thus far to providers, health plans, etc., is prepared to determine the preliminary amount of the lien. The Department then sends a lien to the appropriate county recorder's office and a copy to the beneficiary. The transmittal letter, which accompanies the beneficiary's copy of the lien, gives the preliminary amount of the lien, informs that the lien amount may increase monthly (as services are paid), and provides the name of the person to contact if an escrow is ready to close or a sale is finalized for the final balance due.

Once a case is established and an accounts receivable is entered onto ACMS, cases are monitored quarterly. Status requests may be sent to the beneficiary and case notes track the progress of the pending sale/lien. If at any time prior to the sale of the property, the Medi-Cal beneficiary is discharged from the medical institution and resumes use of the property as principal residence, the lien is removed. If and when the property is sold, the amount of the lien will be recovered from the proceeds of the sale.

E. Procedures for Waiver of a Claim Based Upon Substantial Hardship

California law and regulations require the Department to waive a dependent(s), heir(s), or survivor(s) (applicant) proportionate share of its claim against the estate of a deceased Medi-Cal beneficiary, when the Department determines that enforcement of the Department's claim would result in a substantial hardship to the applicant. The Department provides written notice informing the person handling the decedent's estate of the right to seek a waiver of or to contest the Department's claim. The notice and attachments include the basis for the estate claim; the specific statutes and regulations supporting the claim; the right to seek a waiver of the Department's claim; the right to contest the Department's claim; the right to request an estate hearing if dissatisfied with the waiver decision; the timeframes for requesting a waiver or estate hearing; and the basis for the applicant to seek a waiver or estate hearing due to substantial hardship. The Department shall attach to the notice a copy of the itemized Medi-Cal payments that constitute the basis for the claim. In addition, the Department shall provide an Application for Hardship Waiver, form DHCS 6195. The person handling the estate of the decedent shall notify all dependents, heirs, or survivors of the Department's claim and their right to seek a waiver of or to contest the Department's claim against the estate. An applicant has 60 days from the date stated on the Department's notice in which to submit an application for waiver due to substantial hardship.

The actual criteria used in determining substantial hardship are listed in (4) above. An applicant may challenge the Department's hardship waiver decision by submitting a written request for an estate hearing to the Director of the department through his or her designee, the Office of Administrative Hearings and Appeals, within 60 days of the date of the Department's decision

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as specified at the top of the Department's notice. The Department shall provide the applicant at least 30 days notice of the date, time, and place of the hearing. The hearing shall be conducted within 60 days from the date of the request, and may be continued for good cause, such as illness, injury, or incarceration of the applicant.

For an applicant who lives in the State, the Department shall conduct the hearing within the California Court of Appeal district where the applicant resides. In the case of an applicant who lives out of the State, the hearing shall be conducted in Sacramento, California. Upon the motion of either party, the hearing officer may determine in the interests of fairness and expediency that a hearing authorized by this section be conducted telephonically. If an applicant requests that the hearing be conducted in person, the state will provide the opportunity for an in person hearing. The Department is in compliance with provisions of 42 CFR Part 431, Subpart E that are applicable to estate hearings.

At the estate hearing, the applicant and/or applicant's representative shall have the opportunity to be heard, offer evidence, and present witnesses in support of the request for a waiver. All testimony shall be submitted under oath, affirmation, or penalty of perjury. The proceedings at the estate hearing shall be electronically recorded. The applicant and/or the applicant's representative shall submit, on, before, or after the date of the hearing, until the record is closed, copies of all documents which support the applicant's request for a waiver to the hearing officer.

The hearing shall be conducted in an impartial manner by a hearing officer appointed by the Department's Director. A proposed decision, stating the applicable law, evidence, and reasoning upon which the decision is based, shall be submitted to the Director no more than 30 days after the hearing record is closed. Any errors or omissions in the information provided by the applicant that would affect the Department's decision may be a basis for denial of the request for a hardship waiver.

Within 30 days after the proposed decision is received by the Director, the Director may adopt the proposed decision, reject the proposed decision and have a decision prepared based upon the record, or refer the matter to the hearing officer to take additional evidence. If the Director takes no action within 30 days after receipt of the proposed decision, the decision shall be deemed adopted. The decision shall be final upon adoption by the Director and no further administrative appeal shall occur. Copies of this decision shall be mailed by certified mail to the applicant or his or her designated representative.

Judicial review of the final decision of the Department may be made by filing a petition for a writ of administrative mandate in accordance with the provisions of Section 1094.5, et seq., Code of Civil Procedure.