

TITLE 22, CALIFORNIA CODE OF REGULATIONS
Chapter 2.5. Third Party Liability
Article 2. Estate Recovery

50961. Estate Claims.

- (a) The Department shall claim against the estate of a decedent or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:
- (1) All payments made by the Medi-Cal program on behalf of the decedent, except for those payments specified under subsection (c) that are not included in the claim; or,
 - (2) The decedent's equity interest in the property at the time of death (to the extent of such interest).
- (b) All payments made by the Medi-Cal program on behalf of decedents:
- (1) Age 65 and older, who died prior to July 11, 1994, shall include all payments made for services provided at age 65 and older;
 - (2) Age 65 and older, who died on or after July 11, 1994, shall include all payments made from age 65 and older, in addition to any payments made from age 55 to 64 that were paid on or after October 1, 1993;
 - (3) Age 55 to 64, who died on or after July 11, 1994, shall include only those payments made on or after October 1, 1993.
- (c) The Department's claim shall include all payments made by the Medi-Cal program on behalf of the decedent, including nursing facility and other long-term care services, home and community based services, inpatient/outpatient services, durable medical equipment, related hospital and prescription drug services, health care and insurance premiums, and payments to managed care plans. The Department's claim shall not include payments made for personal care services provided under In-Home Supportive Services, or the cost of premiums, co-payments and deductibles paid on behalf of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), Qualifying Individuals, Qualified Disabled and Working Individuals, QMB Plus, and SLMB Plus who are categorized as groups of dual eligible as defined by Section 2602(f) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).
- (d) An exemption from the Department's claim exists in any of the following circumstances:
- (1) Where the decedent was under age 55 when the Medi-Cal services, as specified in subsection (c), were received, except if the individual is/was an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution, and both of the following conditions are met:
 - (A) The provisions under Title 22, California Code of Regulations, Section 50428 apply to the individual; and
 - (B) The individual spends for costs of medical care all but a minimal amount of

his/her income required for personal needs.

- (2) During the lifetime of a surviving spouse, after the documentation specified in paragraphs (A) and (B), below, is submitted to, and approved by, the Department at the address specified in Section 50966(a). However, upon the death of the surviving spouse, the Department shall assert its claim against the estate of the surviving spouse, in accordance with subsections (a), (b) and (c) of this section.

(A) Proof that the surviving spouse was married to the decedent at the time of death; and

(B) Proof of identity of the surviving spouse including name, social security number, and date of birth.

- (3) During the lifetime of a surviving person, as specified in subsections (b) and (c) of Section 50963, who qualifies for a waiver due to a substantial hardship. However, upon the death of the surviving person, the Department shall assert its claim against the estate of the surviving person, in accordance with subsections (a), (b) and (c) of this section.

- (4) When, as of the date of decedent's death, there is a surviving child of the decedent who is under age 21, and who can provide the Department with the documentary evidence specified in Section 50966(a)(2), to the address specified in Section 50966(a);

- (5) When, as of the date of the Department's notice of claim, there is a surviving child of the decedent who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), and who qualifies for a claim exemption under Section 50966.

(e) 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).

(f) The Department shall not enforce collection of the proportionate share of its 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.

(g) The Department shall reduce its claim in accordance with Section 50453.7(b) for insurance benefits received under the California Partnership for Long-Term Care.

(h) The Department shall claim against annuities as part of a decedent's estate. The Department's claim shall be recovered from the value of an annuity, annuity payments, or distributions receivable by any person or entity from the date the annuity payments or distributions are designated to be made. The Department's claim shall apply to the annuity, annuity payments, or distributions regardless of the funding source for the annuity.

(i) Where the decedent made an irrevocable transfer of a remainder interest in property with a retained life estate, the Department's claim shall not apply against the life estate or the

remainder interest. Where the decedent held a life estate and made a revocable transfer of the remainder interest in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent. Where the decedent made a revocable transfer of a remainder interest in property and made an irrevocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the remainder interest. Where the decedent made a revocable transfer of a remainder interest in property and made a revocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent.

(j) The Department's claim shall not apply against property interests that the decedent irrevocably transferred before death.

(k) A voluntary post death lien shall be proposed, in accordance with Section 50965, to secure the unpaid portion of the Department's claim until the claim is paid in full.

(l) Except for claims governed by Probate Code Sections 9203 and 19203, the Department shall charge simple interest, at the rate of seven percent per annum, on the unpaid portion of its claim until the claim is fully satisfied.

(1) Where there has been no claim exemption sought pursuant to Section 50961(d) or a substantial hardship waiver requested in accordance with Section 50963, simple interest shall begin to accrue on the date of notice of claim or the date of distribution, whichever is later.

(2) Where a claim exemption has been sought pursuant to Section 50961(d) or a substantial hardship waiver has been requested in accordance with Section 50963, simple interest shall begin to accrue on the 15th day following the date of the final determination of the claim exemption or substantial hardship waiver request.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 1382c, 1396p(a) and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; Sections 9203 and 19203, Probate Code; Sections 297, 297.5, 299.2 and 308, Family Code; Sections 1916-1 and 3287, Civil Code; California Constitution, Article I, Sections 1 and 7 and Article XV, Section 1; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; *Shewry v. Begil* (2005) 128 Cal. App. 4th 639; *In re Marriage Cases* (2008) 43 Cal. 4th 757; *Perry v. Brown* (9th Cir. 2013) 725 F.3d 1140; Section 2602(f) of the Patient Protection and Affordable Care Act of 2010, (Pub. L. No. 111-148); Section 115, Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. No. 110-275); *Hollingsworth v. Perry* (2013) 570 U.S. 12-144; and *United States v. Windsor* (2013) 570 U.S. 12-307.

50966. Claim Exemption.

(a) The Department shall withdraw its claim against the estate of a deceased Medi-Cal beneficiary when the surviving child or his or her representative provides the following documentary evidence to the Department of Health Care Services, Estate Recovery Section

Mail Stop 4720, PO Box 997425, Sacramento, CA 95899-7425, which demonstrates the surviving child was blind or disabled as of the date of the Department's notice of claim:

- (1) Documented proof of blindness or disability in the form of a copy of an award letter from the Federal Social Security Administration (SSA) or any correspondence from the SSA that provides verification of the surviving child's blindness or disability and that the blindness or disability existed on the date of the Department's notice of claim. This documentation is not required if the surviving child is enrolled in Medi-Cal with a blindness or disability aid code. If the surviving child is over age 65, is not in possession of the award letter, and his or her SSA/Supplemental Security Income disability benefits were converted to an aged category, the Department will accept a verification of benefits, awarded prior to age 65, from the SSA as proof that the benefits were based on blindness or disability criteria; and
- (2) Documented proof that he or she is a surviving child of the decedent, such as a copy of a birth certificate or adoption papers.

(b) The Department will suspend collection activity on its claim for 60 days from notification, by telephone at the number on the Department's notice of claim or in writing to the Department, that the required documentary evidence as specified in subsection (a) will be provided. If, after 60 days, the Department does not receive the documentary evidence, collection activity will resume until such evidence is received.

(c) When documentary evidence of blindness or disability does not already exist, the surviving child or his or her representative may submit a request for a disability determination to the Department by telephone at the number on the notice of claim, or in writing at the address specified in subsection (a). Such a request must be submitted within 60 days from the date of the Department's notice of claim.

(d) Upon receipt of a disability determination request, the Department shall suspend collection activity on its claim. The Department shall mail a letter with the forms listed in subsection (d)(1) through (3) inclusive, to the surviving child or his or her representative, explaining that the forms, and the documented proof specified in subsection (a)(2), must be completed and mailed to the Department within 30 days from the date of the letter. For the purposes of the forms required under this subsection the term "applicant" means a surviving child seeking an exemption of the Department's claim.

- (1) Applicant's Supplemental Statement of Facts for Medi-Cal, MC 223 (05/07); and
- (2) Authorization for Release of Information, MC 220 14 pt (04/08); and
- (3) Appointment of Representative—Estate Recovery, DHCS 6249 (3-08), (complete only if applicable).

(e) If within 30 days the Department does not receive the completed forms and documented proof, pursuant to subsection (d), a second letter shall be mailed to the surviving child or his or her representative granting an additional 30 days from the date of the second letter. Failure to submit the completed forms and documented proof within the additional timeframe will result in the resumption of collection activity.

(f) The California Department of Social Services (DSS) shall make the disability determination on behalf of the Department when the surviving child's earned income does not exceed the federal Substantial Gainful Activity (SGA) limit. The Department shall forward the completed forms in subsection (d) to the DSS when earned income on the Applicant's Supplemental Statement of Facts for Medi-Cal, MC 223 (05/07) does not exceed the SGA limit. The DSS shall mail its decision to the Department. When earned income exceeds the SGA limit, the Department shall notify the surviving child or his or her representative that the disability determination cannot be made and collection activity shall resume.

(g) The Department shall notify the surviving child or his or her representative by mail of the disability determination made by the DSS. The disability determination is not subject to review through an administrative hearing.

- (1) If the DSS determines that the surviving child qualifies as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), the Department's claim shall be deemed withdrawn as of the determination date.
- (2) If the DSS determines that the surviving child does not qualify as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), collection activity shall resume.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 421, 1382c and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; and *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498.