

## MediCal: Estate Recovery after Jan. 1, 2017

Medi-Cal is California's version of the federal Medicaid program that is jointly funded by federal and state governments. It offers free or low-cost medical assistance for low-income or low resource individuals.

**Benefits after age 55:** Most elder clients are aware of Medi-Cal benefits, particularly in the context of paying for a stay in a nursing home or skilled care facility. It has been required for the past 20 or so years that the state may seek recovery of the benefits paid to individuals when they were 55 or older and/or those recipients of nursing home benefits. Recovery occurs after the recipient dies by means of an estate recovery claim from the Department of Health Care Services.

**Recovery** has been a significant threat to family wealth, whether small or large, causing individuals to incur the expense of planning to avoid recovery against the recipient's estate to the extent possible. Often, families have invested in estate planning, especially using living trusts, which needs to be altered drastically or eliminated to preserve as much as possible for the next generation.

**New Legislation:** This all changes as of January 1, 2017 as a result of two Senate Bills enacted this year that have reformed the Medicaid recovery scheme nationwide. This new legislation:

- Prohibits claims on the estates of surviving spouses and registered domestic partners;
- Limits recovery for those 55 years of age or older to nursing home and home and community-based services;
- Limits recovery to only those assets subject to California probate;
- Restricts the amount of interest that the state can charge on liens;
- Requires the state to waive the claim as a substantial hardship when the estate subject to recovery is a homestead of modest value, i.e., a home whose fair market value is 50 percent or less of the average price of homes in the county where the homestead is located; and

- Requires the state to provide a current or former beneficiary or their authorized representative a copy of the amount of Medi-Cal expenses that may be recoverable.

**Recovery limits:** The law also limits recovery to specific services and excludes recovery for basic costs such as doctor visits, prescription drugs in most cases. Recoverable costs now include only:

- Nursing home care
- Intermediate care for developmentally disabled (ICF/DD)
- Home and Community Based Services, including Assisted Living Waiver, Multipurpose Senior Services Program, Waiver Personal Care Services provided under California's In Home Operations, and Nursing Facility/Acute Hospital waiver programs; and
- Related hospital and prescription drug services provided to an individual while receiving nursing facility services or home and community-based services.

**Probate assets only:** The most significant provisions for families are (1) the elimination of claims on the estate of the surviving spouse or partner, and (2) the limitation on recoveries to only those assets that are subject to probate.

**Trusts:** This means that families using a living trust plan need not undo that plan in anticipation of an estate recovery when one spouse has received or will receive Medi-Cal health care benefits. If you have a living trust or are considering one: keep in mind that the exclusion applies only to the assets that will not be probated; those assets owned by the trust.

**Review and update:** Therefore, it is critical to review your trust and asset titles to be sure they are properly titled in the name of your trust. That will remove an enormous worry that your family will lose all or part of their inheritance to the state when a parent is a Medi-Cal recipient.