



## Estate Recovery Under Medi-Cal

**M**edi-Cal estate recovery refers to state action to reclaim certain Medi-Cal costs from the estates of beneficiaries after their death. This program, which has been in place for decades, has received renewed attention from policymakers because of reports that some individuals newly eligible for Medi-Cal as expanded under the Affordable Care Act (ACA) may not enroll for fear that their house and assets could later be seized. The purpose of this issue brief is to describe Medi-Cal estate recovery and to clarify who could be subject to it and under what circumstances.

### Background

Since 1993, federal law has required states to seek recovery of certain Medicaid costs from the estates of beneficiaries. Medi-Cal, California's Medicaid program, has been *required* to attempt to recoup the cost of:

- ▶ Services provided to beneficiaries of any age who are permanently institutionalized;<sup>1</sup> and
- ▶ Long-term services and supports (LTSS) — institutional care and related hospital and prescription drug costs, as well as home- and community-based services provided to beneficiaries age 55 and older.<sup>2</sup>

States also have the *option* to take a more expansive approach and seek recovery of costs for other covered services, not just LTSS, provided to beneficiaries age 55 and older.<sup>3</sup> California has chosen this option and seeks recovery of Medi-Cal costs for all covered services provided to beneficiaries age 55 and over, with the exception of personal care services provided through the state's In-Home Supportive Services (IHSS) program.<sup>4</sup>

California has elected to use property liens to protect its claim in cases where the beneficiary was permanently institutionalized and not expected to return home. Medi-Cal places a lien against the beneficiary's property while the beneficiary is still alive so it can seek recovery when the individual passes away or when the property is sold.

### Traditional Medi-Cal and Expansion Medi-Cal Affected Differently

Passage of the ACA raised questions about whether and how Medicaid recovery rules would be applied to the newly eligible population.

Prior to the ACA, to qualify for Medicaid, applicants were required to fit into one of several categories, such as pregnant women or seniors and persons with disabilities.<sup>5</sup> (In this publication, we refer to these eligibility categories as "traditional Medi-Cal.")

To extend Medicaid to low-income adults without children, the ACA added a new eligibility category based solely on income. This expansion Medi-Cal category, or Modified Adjusted Gross Income (MAGI) Medi-Cal, includes adults under age 65 with incomes at or below 138% of the federal poverty level who do not qualify through the traditional eligibility categories.<sup>6</sup>

Federal guidance released in February 2014 clarifies that estate recovery rules apply differently to individuals in traditional Medi-Cal categories and those in the expansion Medi-Cal category.<sup>7</sup> For the expansion Medi-Cal population, federal law *restricts recovery to those beneficiaries age 55 and older and prohibits the use of liens regardless of beneficiary age*. For the traditional Medi-Cal eligibility groups, the federal rules previously in place continue to apply.

The tables below provide an overview of how estate recovery and liens could affect the two Medi-Cal eligibility groups.

Estate Recovery	Expansion Medi-Cal	Traditional Medi-Cal
Under age 55	Never	Yes, for all Medi-Cal costs if beneficiary institutionalized and not expected to return home
Age 55 and older	All Medi-Cal costs except personal care services provided under the In-Home Supportive Services program (IHSS)	Yes, for all Medi-Cal costs except personal care services provided under IHSS

Liens	Expansion Medi-Cal	Traditional Medi-Cal
Home liens during the life of the beneficiary	Never	Yes, for all Medi-Cal costs if beneficiary institutionalized and not expected to return home

### Another Wrinkle: Managed Care

Most Medi-Cal beneficiaries now receive care through Medi-Cal managed care, with the state paying a capitated payment to a health plan and the plan, in turn, paying providers for covered services. For Medi-Cal managed care enrollees who are subject to estate recovery — whether in the traditional or expansion Medi-Cal categories — California calculates recovery amounts based on the capitation payments that the state makes to those plans. In most cases, the actual costs of services that the individual uses are not part of the calculation. Thus, a person who rarely visits a doctor and a person with multiple hospitalizations and complex care needs would each be liable for the capitation amount for all months of Medi-Cal enrollment (because that is the amount the state has paid to cover the Medi-Cal services).

### Jointly Owned Assets

Ms. Smith received Medi-Cal-funded nursing home care for which California spent \$70,000. When she dies, the only asset in her estate is a one-third interest in property worth \$150,000. The state's recovery is limited to \$50,000.

### Limitations and Protections

Medi-Cal estate recovery for both the expansion and traditional Medi-Cal categories is subject to important limitations mandated by the federal government and California. Collection is limited to the lesser of the costs claimed by the state or the value of the estate. Collection only applies to those portions of jointly owned assets that are held by the Medi-Cal beneficiary. (See box, above.) There are additional protections for surviving spouses and hardship exemptions, including:

- ▶ If a spouse survives the beneficiary, estate recovery is postponed until the death of the spouse.
- ▶ If a minor child or disabled adult child survives the beneficiary, there is no estate recovery ever, even if the child does not reside in the home.
- ▶ Hardship exemptions are available in a range of cases, including for caregivers or people with disabilities living in the beneficiary's home, as well as for certain low-income individuals and other situations.
- ▶ There are special provisions limiting estate recovery for American Indian/Alaskan Native populations.

### Estate Recovery in Context

Medi-Cal estate recovery is a relatively small program. Following are details for FY 2012-13.

Amount recovered:	\$59 Million
Total Medi-Cal spending:	\$56 Billion
Recovery as % of spending:	0.1 %
Number of cases closed:	3,996
Average recovery amount:	\$15,000
Recovery unit operating cost:	\$5.5 Million

Source: Calif. Senate Comm. on Health, S.B. 1124 Bill Analysis. Figures rounded. Recovery amounts include state General Fund and federal portions.

### Fiscal Impact

Although an often-stated goal of estate recovery policy is to offset federal and state costs in perennially cash-strapped Medicaid programs, the fiscal impact has been limited. (See box).<sup>8</sup> Medicaid beneficiaries typically have very few assets to leave. In fact, Medicaid eligibility rules have historically limited the value of assets adults can have and still be eligible for Medicaid.<sup>9</sup> The exemptions described above further limit the extent of recovery. For fiscal year 2012-2013, the amount California recovered represented 0.1% of that year's Medi-Cal spending. This does not include the cost of operating the estate recovery unit, which was approximately \$5.5 million. Of this, the state costs were \$1.4 million, with the federal government covering the rest.

Because Medicaid is a jointly funded federal and state program, the federal government shares in the recovery. For the traditional Medi-Cal population, California and the federal government split

equally the total amount recovered, meaning the state General Fund portion for fiscal year 2012-2013 was \$30 million. For the expansion Medi-Cal population, all recovery funds will be returned to the federal government through 2016, as the costs for providing services to this population are fully federally funded through 2016.<sup>10</sup>

### Looking Ahead

Due to concerns that fears of estate recovery are hindering expansion Medicaid enrollment, state and federal policymakers are reviewing the rules for Medicaid estate recovery.

At the federal level, the requirement that, for individuals 55 and older, states must attempt to recover LTSS costs is unlikely to change soon.<sup>11</sup> However, the federal Centers for Medicare & Medicaid Services (CMS) has signaled its desire to eliminate the current flexibility that allows states to recoup *all* Medicaid

expenses, not just those for LTSS, for this population. In the meantime, the agency is encouraging states like California (that collect non-LTSS costs) to consider collecting only LTSS costs for the newly eligible population. Two states, Washington and Oregon, already have announced they will do so.<sup>12</sup>

In California, Senate Bill 1124, introduced in March 2014, proposes to limit estate recovery for both expansion Medi-Cal and traditional Medi-Cal to LTSS costs. The measure also would require that California collect the lesser of the managed care capitation payment or actual costs of services received by the beneficiary, and would prohibit any recovery from the estate of a surviving spouse, even after the surviving spouse's death. State budget analysis predicts that, if the bill were enacted, the amount recovered through estate recoveries would be reduced by 51% to approximately \$30 million (based on fiscal year 2012-2013).<sup>13</sup>

### Medi-Cal Estate Recovery: Current Law for Expansion Medi-Cal

**Mr. Lee** enrolls in Medi-Cal at age 30 and remains in the program until he is 40 when his income increases beyond Medi-Cal limits. Medi-Cal incurs \$20,000 in expenses for Mr. Lee. When he dies at age 79, his estate owes nothing to Medi-Cal because no Medi-Cal expenses were incurred after he turned 55.

**Mr. Sanchez** was enrolled in expansion Medi-Cal for five years (starting at age 60) with total payments by the state of \$6,000. The value of his estate at the time of his death was \$3,000. His estate is liable for up to \$3,000, less funeral and estate expenses.

**Ms. Marshall** was enrolled in expansion Medi-Cal for two years before she died at age 62. In each year, the state made capitated managed care payments of \$3,000. Her estate may be liable for up to \$6,000. Ms. Marshall is survived by her husband so nothing is owed at the time of his wife's death. However, when he dies, his estate could be liable for up to the \$6,000 previously paid by the state for his wife's Medi-Cal coverage.

*Note that amounts in examples are solely for illustration*

## Additional Resources

Department of Health Care Services

[www.dhcs.ca.gov/formsandpubs/Documents/DHCS9059\\_ER\\_Broch\\_EN.pdf](http://www.dhcs.ca.gov/formsandpubs/Documents/DHCS9059_ER_Broch_EN.pdf)

CANHR (California Advocates for Nursing Home Reform)

[www.canhr.org/factsheets/medi-cal\\_fs/PDFs/FS\\_MedCal\\_recovery\\_FAQ.pdf](http://www.canhr.org/factsheets/medi-cal_fs/PDFs/FS_MedCal_recovery_FAQ.pdf)

National Health Law Program

[www.healthlaw.org/publications/browse-all-publications/health-advocate-april-2014#.U1boDCXn85g](http://www.healthlaw.org/publications/browse-all-publications/health-advocate-april-2014#.U1boDCXn85g)

## Endnotes

1. The federal requirement to recover costs from the estates of permanently institutionalized beneficiaries applies only to states that choose to impose liens on the property of such individuals. 42 U.S.C. §1396p (a). Because California chooses to impose liens, it is subject to this federal requirement.
2. 42 U.S.C. §1396p.
3. Federal law has prohibited seeking recovery of costs from beneficiaries under age 55, unless they are institutionalized.
4. Cal. Welf. & Inst. Code; § 14009.5; Cal. Code Regs, tit. 22 §§ 50960-50964; CA State Plan Amendment, available at [www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/CA/CA-10-009-Att.pdf](http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/CA/CA-10-009-Att.pdf). For more on IHSS, see [www.cdss.ca.gov/agedblinddisabled/pg1296.htm](http://www.cdss.ca.gov/agedblinddisabled/pg1296.htm).
5. Prior to the ACA, the Medicaid eligibility categories were: children, pregnant women, parents and other caretaker relatives in families with children deprived of parental support, seniors and people with disabilities.
6. MAGI refers to Modified Adjusted Gross Income, the ACA-created method used to determine financial eligibility for Medicaid.
7. [www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-001.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-001.pdf)
8. For a review of the history of estate recovery, see HHS, Medicaid Estate Recovery (Apr. 2005), available at <http://aspe.hhs.gov/daltcp/reports/estaterec.htm#note3>.
9. Eligibility requirements for the new Medi-Cal expansion do not include asset limits. What portion of this very low-income population will have significant assets is not yet known.
10. Beginning in 2017, the federal match for this population begins to phase down, decreasing to 90% starting in 2020.
11. This is a statutory requirement.
12. [www.oregon.gov/oha/healthplan/OHPSuppDocs/Estate%20Recovery%20and%20the%20Oregon%20Health%20Plan.pdf](http://www.oregon.gov/oha/healthplan/OHPSuppDocs/Estate%20Recovery%20and%20the%20Oregon%20Health%20Plan.pdf) and [www.hca.wa.gov/Releases/HCA%20news%20release%20-%20State%20Medicaid%20recoveries%2012-16-13.pdf](http://www.hca.wa.gov/Releases/HCA%20news%20release%20-%20State%20Medicaid%20recoveries%2012-16-13.pdf).
13. The bill text and amendments are available at [www.legislature.ca.gov/port-bilinfo.html](http://www.legislature.ca.gov/port-bilinfo.html). California Senate Committee on Health, S.B. 1124 bill analysis, available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB1124&search\\_keywords](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1124&search_keywords). Estimated reduction in recovered funds assumes estate recovery collections correlate to the total Medi-Cal expenditures for beneficiaries age 55 and over.

## Author

National Senior Citizens Law Center

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