

California State Senate

STATE CAPITOL
ROOM 4085
SACRAMENTO, CA 95814
TEL (916) 651-4024
FAX (916) 445-0485

DISTRICT OFFICE
100 S VINCENT AVENUE
SUITE 401
WEST COVINA, CA 91790
TEL (626) 430-2499
FAX (626) 445-2494

SENATOR
ED HERNANDEZ, O.D.
TWENTY-FOURTH SENATE DISTRICT



COMMITTEES
SENATE HEALTH COMMITTEE
CHAIR
BUSINESS, PROFESSIONS AND
ECONOMIC DEVELOPMENT
GOVERNANCE AND FINANCE
GOVERNMENTAL
ORGANIZATION

SB 1124 (Hernandez) Medi-Cal - Estate Recovery

Summary

SB 1124 would limit estate recovery in the Medi-Cal program by requiring collection for only those health care services required to be collected under federal law. In addition, SB 1124 would make it easier for Medi-Cal beneficiaries to obtain information on amounts spent by Medi-Cal on the beneficiary's behalf that are subject to estate recovery.

Background

Federal Medicaid law requires states to recover from the estates of deceased former Medi-Cal beneficiaries for the costs of providing nursing facility services, home and community-based services, and related hospital and prescription drug services for individuals when a Medi-Cal beneficiary was age 55 or older, and individuals of any age who were permanently institutionalized. For individuals age 55 and older, federal law also permits states to recover for any other services covered under Medi-Cal. California has elected the federal option to recover from the estates of deceased Medi-Cal beneficiaries for nearly all medical services covered under Medi-Cal for individuals age 55 and older. California is one of a minority of states that collect more than what is required under federal Medicaid law. Oregon and Washington recently discontinued collection beyond amounts required by federal law due to the negative impact estate recovery rules were having on enrollment. Estate recovery occurs upon the death of the Medi-Cal beneficiary, or upon the death of the beneficiary's surviving spouse, unless the decedent's children are under age 21 or disabled. In limited situations, the decedent's dependents, heirs or survivors may be eligible for a hardship exemption.

Medi-Cal estate recovery is a deterrent to signing people up for Medi-Cal, and is counter to state and federal efforts to enroll people into health coverage. By recovering for health care services beyond those required by federal law, California forces low-income individuals age 55 and older to choose between signing up for basic health care services and passing on their home and other limited assets they possess to their children. California's estate recovery program undermines the idea of Medi-Cal as a health care entitlement program by essentially turning Medi-Cal coverage for basic medical services into a loan program, with collection taking place at death. This unfairly places part of the burden of financing the cost of health care in Medi-Cal on the estates of deceased Medi-Cal beneficiaries with limited assets.

Estate recovery also discourages enrolling in Medi-Cal when healthy, and maintaining continuous Medi-Cal coverage. This is because Medi-Cal estate recovery collection amounts are based on the state payments made to Medi-Cal managed care plans, irrespective of the health care services the Medi-Cal beneficiary actually received from the health plan. By encouraging beneficiaries to forgo enrollment until they have a need for expensive care, estate recovery may lead to higher program costs in the long

run. Estate recovery is also inequitable as it primarily applies to individuals age 55 and over, and does not apply to tax-subsidized coverage in Covered California or to the broadly financed federal Medicare program.

In addition, California does not adequately inform individuals on how to obtain information on the amounts that will be collected from their estate when they die. What states recover from the estates of former Medicaid recipients is returned to the federal government based on the portion that represents the federal share of the money spent on an individual's Medicaid-covered services (with the exception of the expansion population, Medi-Cal is generally funded by 50 percent federal funds/50 percent state funds, which means the state retains half of what is collected and returns the other half to the federal government). The new Medi-Cal expansion will be 100 percent federally funded for the first three years, and almost fully federally funded thereafter, so estate recovery for these individuals effectively makes the state a collection agency for the federal government, as all funds collected by the state are required to be returned to the federal government.

Proposal

SB 1124 will take a number of steps to limit estate recovery in California. It would:

- Limit recovery for those age 55 and over to only the health care services required to be recovered under federal law (California collects for health care services generally and not just nursing facility and home and community-based services and related hospital and prescription drug costs, as required under federal law);
- Eliminate from estate recovery any health care services that federal law or guidance authorizes the state to eliminate from recovery (if federal law or guidance allows California to eliminate collection for other services or for certain populations, DHCS would be required to adopt the federal option through an emergency regulation);
- Restrict estate recovery to amounts spent by DHCS or a Medi-Cal managed care plan for health care services actually received, or the monthly payment to the Medi-Cal managed care plan, whichever is less in that month (DHCS collects the amount paid to the Medi-Cal managed care plan for managed care enrollees, irrespective of the services an individual received from the plan);
- Eliminate recovery against the estate of a surviving spouse of a deceased Medi-Cal beneficiary (DHCS is prohibited from recovery while a surviving spouse of a deceased Medi-Cal beneficiary is alive. However, after the surviving spouse dies, recovery may be made against any property received by the spouse through distribution or survival, e.g., property left under a will or community property);
- Require DHCS to provide to Medi-Cal beneficiaries, free-of-charge, the total amount of Medi-Cal expenses paid on behalf of the beneficiary that are subject to estate recovery, and would require DHCS to include information on its website on how to request this information (information on how to obtain an estimate is not easily available on DHCS' web site, and DHCS currently charges \$25 for a claims detail report, and data on premiums paid by the state to Medi-Cal managed care plans may not be readily available from DHCS).

SB 1124 is jointly sponsored by the California Advocates for Nursing Home Reform and the Western Center on Law & Poverty. SB 1124 is scheduled to be heard in the Senate Health Committee on April 9, 2014. For questions regarding SB 1124, please contact Scott Bain in the Senate Health Committee at (916) 651-4111 or at scott.bain@sen.ca.gov.