

Your Home and Medi-Cal

When Your Home Is Exempt

Medi-Cal eligibility requires that an applicant (and his/her spouse) have a limited amount of assets. Your home is exempt from consideration as a resource when you or your spouse is on Medi-Cal under any of the following circumstances:

- If during any absence, including nursing home stays, the beneficiary intends to return home, and states so in writing. If the beneficiary is mentally incapacitated, a family member or someone acting on her or his behalf may so state this intent.
- If the beneficiary's spouse, child under age 21, or "dependent relative" continues to reside in the home.
- The residence is inhabited by the recipient's sibling or son or daughter who has resided there continuously for at least one year prior to the date the recipient entered the nursing home.
- There are legal obstacles preventing the sale and the applicant/beneficiary provides evidence of attempts to overcome such obstacles.
- The home is a multiple dwelling unit, one of which is the principal residence of the beneficiary.

Exempt During Life, but Estate Claim After Death

Note that while a home may be "exempt" for Medi-Cal eligibility purposes, it may not be exempt from estate recovery. If the home is subject to probate when you die (if it's left in a will rather than a trust, for example), the state may be entitled to make a claim against your estate to recoup the amount of certain Medi-Cal benefits paid.

Estate Claims Explained

For individuals who die before January 1, 2017, the old Medi-Cal Recovery laws will apply. If the home was still in the name of the Medi-Cal beneficiary at death, the State may make a claim against the estate of a beneficiary who was 55 years of age or older at the time he or she received Medi-Cal, or of any age, if the person received Medi-Cal in a nursing home, unless there is a surviving spouse, a minor child, or a blind or disabled child of any age.

For individuals who die on or after January 1, 2017, Medi-Cal Recovery claims have been severely restricted. The new recovery law:

- 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 probate under California law;
- 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 the Medi-Cal expenses that may be recoverable.

Furthermore, the state can no longer recover for most basic health services such as doctor's visits, prescription drug costs or managed care reimbursements – unless the services are related to *nursing home care* or *Home and Community Based Services*. **Home and Community Based Services** include the Assisted Living Waiver, Multipurpose Senior Services Program, In Home Operations Waiver, and Nursing Facility/Acute Hospital waiver programs.

Right to a Hearing

If you receive an estate claim, you may be entitled to have the claim waived. California has established notice and hearing procedures for waiver of estate claims if recovery would work an undue hardship. Estate claims can be complicated, and the State has made many errors in their implementation. If you receive notice of an estate claim, contact your attorney, legal services office, or CANHR at 1-800-474-1116.

How to Avoid an Estate Claim

After January 1, 2017, only those receiving nursing home or home and community based services will have their estates subject to recovery. So, if you are receiving such services, estate planning is highly recommended to ensure that your estate will not be subject to probate and thus, subject to recovery. A number of low-risk estate planning mechanisms will now be available to avoid recovery, such as living trusts, joint tenancies, etc. A Medi-Cal recipient can also transfer any exempt property, including the exempt home, to anyone prior to death without impacting eligibility for Medi-Cal.

Transfer of Interest in Your Home

If you decide to transfer your home, we strongly suggest that you consult with an attorney experienced in Estate Planning for Long Term Care before any transfer is made. Real property transfers usually involve tax consequences, which may outweigh the benefits of the transfer.

Contrary to popular myth, there is no 30-month “waiting period” for transferring an exempt asset—even a home. In fact, under federal law, title to the principal residence may be transferred to the following persons at any time without affecting Medi-Cal eligibility:

- a spouse;
- a son or daughter under age 21 or who is blind or permanently disabled;
- a sibling who has equity in the home and who was residing there for at least one year immediately prior to the individual's admission to a nursing home;
- a son or daughter who was living there for at least two years immediately prior to the individual's admission to a nursing home and who provided care which enabled the parent to live at home;
- to anyone, so long as the home was exempt at the time of transfer.

Note: even if no one lives in the home, as long as the Medi-Cal applicant checks "yes" on the application concerning intent to return home, the home is exempt and can be transferred. If the home is transferred while the Medi-Cal beneficiary is alive, there is no estate claim on the home.

Transfer of the Home to a Spouse

The law allows transfer of a home to an at-home spouse without affecting Medi-Cal eligibility. This applies whether the transfer occurs prior to or after your spouse enters a nursing home.

If your spouse in the nursing home no longer has any interest in the home, anything you do with the house will not affect your spouse's Medi-Cal eligibility. You can move out of the home, rent it, or sell it, all without affecting your spouse's Medi-Cal eligibility.

However, there is an important timing issue here. For eligibility purposes, as an at-home spouse, you are only allowed to keep up to \$128,640 in non-exempt assets (for 2020). If you sell the home before your spouse applies for Medi-Cal, the proceeds from the sale will count towards that limit, since cash is a non-exempt asset.

Thus, if you intend to sell the home, it is generally best to wait until after your spouse is on Medi-Cal and the home is in your name only. Once Medi-Cal eligibility is established, assets acquired by the at-home spouse are not counted.

Selling Your Home – Treatment of the Proceeds from the Sale

Under California regulations at 22 CCR §50426, the proceeds from the sale of real property retained by an applicant or beneficiary who does not own a suitable principal residence or who wishes to sell the current principal residence and purchase a new principal residence shall be exempt for a period of six months from the date of receipt of the proceeds so long as the proceeds from the sale of the real property are intended to be used to purchase a principal residence. The proceeds may also be applied to the costs of moving, necessary furnishings for the new residence and repair or alteration to the principal residence. If a portion of the proceeds is diverted to some other purpose, the status of the remainder is not affected provided such remainder is being retained to apply toward the purchase of a principal residence.

For SSI purposes, the rules are more restrictive. SSA POMS Manual Section SI 01130.11 states that, when an individual sells an excluded home, the proceeds of the sale are excluded resources if the individual: 1)

plans to use them to buy another excluded home, and 2) does so within 3 full calendar months of receiving them.

For More Information:

CANHR publishes a layperson's guide to Medi-Cal eligibility for long term care. It is entitled, "If You Think You Need a Nursing Home... A Consumer's Guide to Financial Considerations and Medi-Cal Eligibility." The guide is \$10 and can be ordered by calling CANHR at 1-800-474-1116 or downloaded for free at www.canhr.org.

If you need an attorney, CANHR has a statewide, state bar-certified lawyer referral service. Referrals are provided for attorneys specializing in estate planning for long term care, including Medi-Cal, wills, trusts, and asset preservation. Call CANHR for more information.