

**SB 833 Implementation in California effective January 1, 2017**

Federal Law	Current California Law	SB 833 Provisions
<p><b>Beneficiaries subject to recovery:</b></p> <p><b>U.S.C. 1396p(b)(1)(A):</b> In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.</p> <p><b>(a)(1)(B):</b> In the case of real property of an <b>individual of any age</b>, who is an inpatient in a nursing facility, ICF/MR or other medical institution and who a) must spend all but a minimal amount for share of costs and b) after notice and opportunity for hearing) the State has determined cannot reasonably be expected to be discharged and return home. <b>(see also State Medicaid Manual section 3810(A) (1))</b></p> <p><b>U.S.C. §1396p(b)(1)(B):</b> In the case of an individual who was <b>55 years of age or older</b> when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of--</p> <ul style="list-style-type: none"> <li>(i) nursing facility services, home and community based services, and related hospital and prescription drug services, or</li> <li>(ii) at the option of the State, any items or services under the State plan.</li> </ul>	<p><b>Beneficiaries subject to recovery:</b></p> <p>California chose the option to collect for <u>all</u> health care services under the State plan.</p> <p><b>Health &amp; Safety Code 14009.5:</b></p> <p><b>(a)</b> Notwithstanding any other provision of this chapter, the department shall claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments <i>for the health care services received</i> or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.</p> <p><b>(b)</b> The department may not claim in any of the following circumstances:</p> <p>(1) The decedent was under 55 when services were received, except in the case of an individual who had been an inpatient in a nursing facility.</p>	<p><b>Beneficiaries subject to recovery:</b></p> <p><b>Section 14009.5 was amended</b> to limit recovery to those services required to be collected under federal law.</p> <p>The Department can claim:</p> <p>1) Against the real property of a beneficiary of any age who meets the criteria in 42 U.S.C. (a)(1)(B) and who was or is an inpatient in a nursing facility in accordance with (B)(1)(a). <b>(see column one federal law)</b></p> <p>2) When the decedent was 55 years of age or older when the individual received health care services.</p> <p><b>14009.5 (f)(4)</b> defines health care services:</p> <p>(4) “Health care services” means only those services required to be recovered under Section 1396(b)(1)(B)(i) of Title 42 of the United States Code. – i.e., only nursing facility or home and community based services.</p>

<p><b>Health Care Services Subject to Recovery</b></p> <p><b>State Medicaid Manual section 3810(A) (2):</b></p> <ul style="list-style-type: none"> <li>• <i>nursing facility services includes skilled nursing facility and intermediate care facility for the mentally retarded services;</i></li> <li>• <i>home and community based services as defined in §§1915(c) &amp; (d), 1929 and 1930 of the Act;</i></li> <li>• <i>related hospital and prescription drug services are any hospital or prescription services provided to an individual while receiving nursing facility services and home and community based services.</i></li> </ul>	<p><b>Health Care Services Subject to Recovery</b></p> <p><b>22 CCR §50961- Estate Claims</b> – current regs only exempt payments for:</p> <ol style="list-style-type: none"> <li>1. personal care services provided under the IHSS program;</li> <li>2. 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 eligibles as defined by Section 2602(f) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).</li> </ol>	<p><b>Health Care Services Subject to Recovery</b></p> <p><b>New 14009.5:</b>  “Health care services” means only those services required to be recovered under Section 1396(b)(1)(B)(i) of Title 42 of the United States Code – i.e., nursing facility services, home and community based services, and related hospital and prescription drug services.</p> <p>Home and Community Based Services:</p> <p>1915(c) waivers include</p> <ul style="list-style-type: none"> <li>▪ Developmentally Disabled waiver</li> <li>▪ HIV/AIDS Waiver</li> <li>▪ Pediatric Palliative Care Waiver</li> <li>▪ Assisted Living Waiver</li> <li>▪ Multipurpose Senior Services Program</li> <li>• In Home Operations Waiver</li> <li>▪ Nursing Facility/Acute Hospital Waiver</li> <li>• San Francisco Community-Living Support Benefit Waiver</li> </ul> <p>(Pending CMS approval – The Self-Determination Program – special waiver for DD population)</p> <p>1915(d) waivers include – none in CA</p> <p>1929 waivers include – none in CA</p> <p>1930 waivers – none in CA</p>
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<p><b>Recovery For IHSS services</b></p> <p><i>home and community based services as defined in §§1915(c) &amp; (d), 1929 and 1930 of the Act;</i></p>	<p><b>Recovery for IHHS Services</b></p> <p>Under current 22 CCR §50961(c), personal care services provided under In Home Supportive Services are exempt from a recovery claim.</p>	<p><b>Recovery for IHSS Services</b></p> <p>The Department has suggested that they can claim for <i>all</i> IHSS services, rather than just those personal care services provided under the Section 1915(c) waiver programs. However, their State Plan Amendment indicates “<i>For individuals who die on or after January 1, 2017, the State will recover only for the services required by the State Medicaid Manual, Section 3810(A)(2) (Continued)</i>”, which at least for now, are limited to 1915(c) waivers in California and does not include personal care services under IHSS.</p>
<p><b>Recovery from surviving spouses/registered domestic partners</b></p> <p>No federal mandate to recover from either, but federal law restricts recovery to after the death of the surviving spouse.</p>	<p><b>Recovery from surviving spouses/registered domestic partners</b></p> <p>Current law (H&amp;S code 14009.5) requires the state to claim against the estate of the surviving spouse or against any recipient of property from the surviving spouse by <u>distribution or survival</u> for the amount of benefits paid for the decedent or the value of any of the decedent’s property received by the surviving spouse by distribution or survival, whichever is less.</p> <p>Surviving same sex spouses and registered domestic partners are exempt only via hardship.</p>	<p><b>Recovery from surviving spouses/registered domestic partners</b></p> <p><b>Revised 14009.5:</b> Prohibits recovery when there is a surviving spouse or surviving registered domestic partner.</p> <p><u>Deletes property received by survival:</u> Limits recovery to claims against the decedent’s estate or against recipients of property of the decedent by distribution (i.e., via will) for the amount of benefits paid for the decedent or the value of any of the decedent’s property received by the recipient by distribution , whichever is less.</p> <p><b>Effective date:</b> Applies to surviving spouses and registered domestic partners on or after January 1, 2017 regardless of when the Medi-Cal spouse/partner died.</p>

<p><b>Recovery for Managed Care Services</b></p> <ul style="list-style-type: none"> <li>□ <b>State Medicaid Manual, Section 3810 (A)(6):</b>  <b>“If you have elected in your State plan amendment to recover from some services covered under the State plan, but not all services, then you must recover from the individual’s estate that portion of the capitation payment that is attributable to the recoverable services, based on the most appropriate actuarial analysis determined by the state.”</b></li> </ul>	<p><b>Current California regulations (22 CCR §50961 (c) – estate claim includes “all payments to managed care plans.”</b></p>	<p><b>New SB 833 and new State Plan – will only recover from “some services – but not all”</b></p> <p>Federal guidance restricts recovery from managed care and the state will have to determine a formula for which services provided by managed care are recoverable.</p>
<p><b>Interest on estate claims:</b></p> <p>See State Medicaid Manual – 3810 (D) – Collection Procedures:</p> <p>“...you may establish a reasonable payment schedule subject to reasonable interest.</p>	<p><b>Interest on estate claims</b></p> <p><b>Current Recovery Regulations</b></p> <p><b>(22 CCR §50961):</b> allows the state to charge 7% interest a) when probate or trust property is distributed before the time allowed for the state to file a claim; b) when no hardship request is filed and there is no other claim exemption; c) when the applicant loses the hardship request; and 50965(e) – when the applicant signs a “voluntary” post death lien.</p>	<p><b>Interest on estate claims:</b></p> <p><b>New SB 833 Provisions:</b> voluntary post death lien shall accrue interest at the rate equal to the annual average rate earned on investments in the Surplus Money Investment Fund, (currently at 0.588%) in the calendar year preceding the year in which the decedent died or simple interest at 7 percent per annum, whichever is lower.</p>

<p><b>Homestead of Modest Value</b></p> <p><i>Federal law and guidance permits the states to include a homestead of modest value as a substantial hardship criteria, including this language in the guidance in Transmittal 75, Medicaid eligibility Manual §3810 (C)(1):</i></p> <p>In defining a homestead of modest value, the methodology the State uses to set a threshold level for the market value of a “homestead of modest value” cannot be set so high as to negate the intent of the estate recovery program. For purposes of this provision, a homestead of “modest value” can be defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary’s death. Describe your methodology for determining a home of modest value in your State plan.</p>	<p><b>Homestead of Modest Value</b></p> <p>Current California law does not include a homestead of modest value as a factor in determining undue hardship.</p>	<p><b>Homestead of Modest Value</b></p> <p><b>SB 833 – new provisions</b></p> <p><b>Section 14009.5 (c)(2):</b> In determining the existence of substantial hardship, in addition to other factors considered by the department consistent with federal law and guidance, the department <i>shall</i>, subject to federal approval, waive its claim when the estate subject to recovery is a homestead of modest value. (emphasis added)</p> <p><b>Section 14009.5(f)(5):</b> “Homestead of modest value means 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, as of the date of the decedent’s death</p> <p>Federal guidance requires that the state submit an amended State Plan amendment and non-emergency regulations will likely be promulgated in the near future, although these are not required for implementation.</p> <p>It should be noted that “fair market value” would generally mean minus encumbrances.</p> <p>Non-emergency regulations will have to be promulgated and filed with the Secretary of State before any new provisions are implemented.</p>
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<p><b>Definition of “Estate”</b></p> <p>U.S.C. Section 1396p(b)(4)  (A): “estate” with respect to a deceased individual ... (A) shall include all real and personal property or other assets included within the individual’s estate, as defined for the purposes of State probate law; and</p> <p>(B) <b>may include</b>, at the option of the State, any other real or personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest) including such assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.</p> <p><b>Question – Annuities</b></p> <p>Can the state still recover from annuities when annuities pass by survivorship?</p> <p><b>Transmittal 75 - State Medicaid Manual §3810 (B)(4):</b> “You may collect against an annuity that was the property of the deceased Medicaid beneficiary if you use State probate law to define estate, and the law includes annuities.”</p>	<p><b>Definition of “Estate”</b></p> <p>California chose option to include all real or personal property, regardless of whether the assets were subject to probate.</p> <p><b>22 CCR §50960.12</b></p> <p>“Estate” is defined as all real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest) including such assets conveyed to a survivor, heir or assignee of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, life insurance policy that names the estate as the beneficiary or reverts to the estate, or any retirement account that names the estate as the beneficiary or reverts to the estate.</p> <p><b>California</b> - annuities purchased on or after September 1, 2004 are subject to recovery (22 CCR 50960.12)</p>	<p><b>Definition of “Estate”</b></p> <p><b>New 14009.5 (f)(3):</b></p> <p>“Estate” means all real and personal property and other assets in the individual’s probate estate that are required to be subject to a claim for recovery pursuant Section 1396p(b)(4)(A) of the United States Code.</p> <p>Thus, living trusts, joint tenancies, life estates, Transfer on death deeds, etc. are not subject to probate, thus not subject to recovery.</p> <p><b>New Law</b> – uses state probate law to define estate and the law does not include annuities as long as the annuity is not part of a probate estate.</p>
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**Note:** This side-by-side explains the major statutory provisions included in SB 833 to implement the new Medi-Cal Recovery provisions

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