

**OFFICE OF LEGISLATIVE COUNSEL
DRAFT BILL**

RN: 1006394

This request was prepared for you in accordance with instructions provided to us by Miriam Ingenito.

LCB Deputy Contact: Ms. Cameron Rhudy at 341-8267.

The boxes checked below, if any, apply to this request:

- Cover letter:** This request is accompanied by a cover letter, to bring to your attention legal or practical issues that may be raised by this bill, if introduced.
- Appropriation bill:** This bill, if introduced, will constitute an appropriation bill that the California Constitution prohibits the Legislature from sending to the Governor before the Budget Bill is finally enacted, unless it is recommended by the Governor as an emergency bill (see subd. (c), Sec. 12, Art. IV, Cal. Const.).
- Unbacked bill:** The attached bill draft has **not** been backed for introduction. When a Member has decided to introduce this bill draft, the draft should be returned to the Office of Legislative Counsel as soon as possible so that it can be prepared for introduction by that Member.
- Spot bill:** This bill, if introduced, may not be qualified for referral to a committee, if it is deemed a bill that makes no substantive change in or addition to existing law, or that would not otherwise affect the ongoing operations of state or local government (see, for example, Assembly Rule 51.5).
- Reintroduced bill:** This bill, if introduced, may violate the rule that, except as specified, a Member may not author a bill during a session that would have substantially the same effect as a bill he or she previously introduced during that session (Joint Rule 54(c)).

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Medi-Cal: special needs trusts.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income persons are provided with health care services.

Existing law provides for the disposition of certain funds held for the benefit of a minor or a person with a disability, as specified. Existing law provides that these funds may be ordered by a court to be paid to a special needs trust, established as specified, for the benefit of a minor or person with a disability that substantially impairs that person's ability to provide for his or her own care or custody and who is likely to have special needs that will not be met without the trust, if the money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet those special needs. Existing law requires the terms of the trust established for the benefit of the minor or person with a disability to be court approved and satisfy specified



requirements. Existing law also provides that property held under a special needs trust be subject to claims of the State Department of Health Care Services, the State Department of Mental Health, the State Department of Developmental Services, and a county or city and county in this state, under specified circumstances.

This bill would provide that if a claim is submitted by the State Department of Health Care Services for reimbursement of Medi-Cal expenditures, the department shall be entitled to receive, prior to any other distribution, all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the trust beneficiary. This bill would provide for similar provisions with respect to pooled special needs trusts.

Existing law, with certain exceptions, requires the department to claim against the estate of a decedent, or against any recipient of the property of that decedent by distribution or survival, an amount equal to the payments for Medi-Cal services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.

Existing law provides that the department may not make a claim when the decedent was under 55 years of age when services were received, except as specified, and when there exists a surviving spouse, but only during the lifetime of that spouse, a surviving child who is under 21 years of age, or a surviving child who is blind or permanently and totally disabled, as specified.

This bill would prohibit the above-described deferral and exemptions from applying to reimbursement of claims asserted against special needs trusts pursuant to



the provisions that provide that property held under a special needs trust be subject to claims of the State Department of Health Care Services and any other applicable law.

Existing law provides that the above-described deferral and exemptions that restrict the department from filing a claim against a decedent's property, except for the exemption for when the decedent was under 55 years of age when services were received, shall apply only to the proportionate share of the decedent's estate or property that passes to those recipients, by survival or distribution, who qualify for an exemption.

This bill would delete the above-described provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



An act to amend Section 3605 of the Probate Code, and to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.



100639480158BILL

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3605 of the Probate Code is amended to read:

3605. (a) This section applies only to a special needs trust established under Section 3604 on or after January 1, 1993.

(b) (1) While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the State Department of Health Care Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state is tolled. Notwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the State Department of Health Care Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state to the extent authorized by law ~~as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.~~

(2) (A) If a claim is submitted by the State Department of Health Care Services for reimbursement of Medi-Cal expenditures, the State Department of Health Care Services shall be entitled to receive, prior to any other distribution, all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the trust beneficiary. In the event of a pooled special needs trust created pursuant to Section 1396p(d)(4)(C) of Title 42 of the United States Code, and to the extent that amounts remaining in the trust beneficiary's account are not retained by the trust, the trust shall pay to the State Department of Health Care Services from the



remaining amounts in the account, prior to any other distribution, an amount equal to the total medical assistance paid on behalf of the trust beneficiary.

(B) Claims submitted by the State Department of Health Care Services for reimbursement from a special needs trust shall be governed by this section, Section 1396p(d)(4)(A)-(C) of Title 42 of the United States Code, and any other applicable law. These claims shall not be governed by any provision of state or federal law pertaining to estate recovery. To the extent that Shewry v. Arnold (2004) 125 Cal.App.4th 186 is inconsistent with the provisions of this section, it is expressly superseded.

(c) At the death of the special needs trust beneficiary or on termination of the trust, the trustee shall give notice of the beneficiary's death or the trust termination, in the manner provided in Section 1215, to all of the following:

(1) The State Department of Health Care Services, the State Department of Mental Health, and the State Department of Developmental Services, addressed to the director of that department at the Sacramento office of the director.

(2) Any county or city and county in this state that has made a written request to the trustee for notice, addressed to that county or city and county at the address specified in the request.

(d) Failure to give the notice required by subdivision (c) prevents the running of the statute of limitations against the claim of the department, county, or city and county not given the notice.

(e) The department, county, or city and county has four months after notice is given in which to make a claim with the trustee. If the trustee rejects the claim, the



department, county, or city and county making the claim may petition the court for an order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, directing the trustee to pay the claim. A claim made under this subdivision shall be paid as a preferred claim prior to any other distribution. If trust property is insufficient to pay all claims under this subdivision, the trustee shall petition the court for instructions and the claims shall be paid from trust property as the court deems just.

(f) If trust property is distributed before expiration of four months after notice is given without payment of the claim, the department, county, or city and county has a claim against the distributees to the full extent of the claim, or each distributee's share of trust property, whichever is less. The claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

SEC. 2. Section 14009.5 of the Welfare and Institutions Code is amended to read:

14009.5. (a) 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 for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.

(b) (1) The department may not claim in any of the following circumstances:



(1)

(A) The decedent was under 55 years of age when services were received, except in the case of an individual who had been an inpatient in a nursing facility.

(2)

(B) Where there is any of the following:

(A)

(i) A surviving spouse during his or her lifetime. However, upon the death of a surviving spouse, the department shall make a claim against the estate of the surviving spouse, or against any recipient of property from the surviving spouse obtained by distribution or survival, for either the amount paid for the medical assistance given to the decedent or the value of any of the decedent's property received by the surviving spouse through distribution or survival, whichever is less. Any statute of limitations that purports to limit the ability to recover for medical assistance granted under this chapter shall not apply to any claim made for reimbursement.

(B)

(ii) A surviving child who is under ~~age~~ 21 years of age.

(C)

(iii) A surviving child who is blind or permanently and totally disabled, within the meaning of Section 1614 of the federal Social Security Act (~~42 U.S.C.A.~~ U.S.C. Sec. 1382c).

~~(3) Any exemption described in paragraph (2) that restricts the department from filing a claim against a decedent's property shall apply only to the proportionate share~~



~~of the decedent's estate or property that passes to those recipients, by survival or distribution, who qualify for an exemption under paragraph (2).~~

(2) Neither the deferral nor any of the exemptions contained in paragraph (1) shall apply to reimbursement of claims asserted against special needs trusts pursuant to Section 3605 of the Probate Code, Section 1396(d)(4)(A)-(C) of Title 42 of the United States Code, or any other applicable law.

(c) (1) The department shall waive its claim, in whole or in part, if it determines that enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists.

(2) The department shall notify individuals of the waiver provision and the opportunity for a hearing to establish that a waiver should be granted.

(d) The following definitions shall govern the construction of this section:

(1) "Decedent" means a beneficiary who has received health care under this chapter or Chapter 8 (commencing with Section 14200) and who has died leaving property to others either through distribution or survival.

(2) "Dependents" includes, but is not limited to, immediate family or blood relatives of the decedent.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make changes necessary for implementation of the Budget Act of 2010, it is necessary that this act take effect immediately.

