

§ 50951. Right to State Hearing.

(a) Applicants or beneficiaries shall have the right to a State hearing if dissatisfied with any action or inaction of the county department, the Department of Health Services or any person or organization acting in behalf of the county or the Department relating to Medi-Cal eligibility or benefits. There is no right to a state hearing where the sole issue is the application of a State or federal law and both of the following conditions are met:

(1) The applicant or beneficiary does not question that the State or federal law has been correctly applied.

(2) The State or federal law requires a reduction in Medi-Cal entitlement for some or all beneficiaries.

(b) The right to a state hearing shall be governed by the provisions of Sections 10950 through 10965, Welfare and Institutions Code.

§ 50953. State Hearing Procedures.

(a) Fair hearings under the provision of the statute specified in Section 50951 (b) shall be conducted in accordance with the regulations and procedures of the Department of Social Services (DSS), unless otherwise specified in these regulations. Department of Health Services regulations shall prevail over DSS regulations in the circumstances of a State hearing related to termination or reduction of medical services in accordance with Sections 51014.1 and 51014.2.

(b) Prehearing procedures and representation at the hearing shall be the responsibility of the:

(1) County for those State hearings in which the issue involves county action or inaction.

(2) Department for those State hearings in which the issue involves Department action or inaction.

(3) Both the county and the Department when the issue involves action or inaction by both the county and the Department.

(c) The Director may develop an agreement with another agency to perform the State hearings. The Department shall retain sole authority for decision-making on Medi-Cal issues.

(1) Each proposed decision involving Medi-Cal issues shall be submitted to the Department for action. Substantive review for the conformity of the proposed decision to the Department's regulations and policies shall be the sole responsibility of the Director. The Director shall take action on the proposed decision within 30 days following actual receipt by the Department.

(2) All requests for rehearing or reconsideration of cases involving Medi-Cal shall be acted upon by the Director. The Director shall grant or deny the request no earlier than 5 nor later than 15 working days after the request is actually received by the Department.

If action is not taken by the Director within this period, the request for rehearing shall be deemed denied.

§ 50955. Fair Hearing -Assistance in Filing.

The county department shall assist the applicant or beneficiary in filing a request for a fair hearing, if the applicant or beneficiary requests such assistance.

§ 50960. Definitions.

§ 50960.2. Annuity.

“Annuity” means a contract, which gives a person or entity the right to receive periodic payments of a fixed or variable sum, either for life or for a term of years, and which also may include a lump sum payment or periodic payments upon the death of the decedent.

§ 50960.4. Applicant.

“Applicant” means a dependent, heir, or survivor of the decedent seeking a waiver of his or her portion of the Department's estate claim due to substantial hardship.

§ 50960.6. Dependent.

“Dependent” means an immediate family or blood relative of the decedent who relied on the decedent for support and who is entitled to receive estate property.

§ 50960.9. Equity Interest.

“Equity interest” means the fair market value of the property to which the decedent held legal title or interest at the time of death (to the extent of such interest), less the amount owed in deeds of trust, mortgages, and liens on record at the time of death.

§ 50960.12. Estate.

“Estate” means either:

(a) For individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, “estate” is defined as all real and personal property and other assets in which the decedent had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, heir, survivor, or assignee of the decedent 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;

(b) For individuals who died prior to October 1, 1993, “estate” is defined according to the common law. For purposes of this article, estate includes property that passes from a decedent to his or her heirs by way of a revocable inter vivos trust.

§ 50960.15. Estate Hearing.

“Estate hearing” means a hearing conducted in person, before the hearing office appointed by the Director, in which an applicant may seek a waiver of the claim because of substantial hardship.

§ 50960.21. Fair Market Value.

“Fair market value” means the price that goods or property would bring in an open market of willing buyers and sellers, with neither party being under pressure to buy or sell, at the time of the decedent's death.

§ 50960.23. Heir.

“Heir” means a person who survives the decedent and is designated to receive some or all of the decedent's property.

§ 50960.26. Irrevocable Transfer.

“Irrevocable transfer” means a grant of an interest in real property where the transferor does not retain the right to revoke the interest granted.

§ 50960.29. Life Estate.

“Life estate” means an interest in real property whose duration is limited to the life of the estate holder or some other designated person, that grants the life estate tenant the right of occupancy and may include the right to receive any income derived from the property.

§ 50960.32. Revocable Transfer.

“Revocable transfer” means a grant of an interest in real property where the transferor retains the right to revoke the interest granted, including a grant of a remainder interest in real property where the remainder interest does not transfer until the death of the grantor.

§ 50960.34. Survivor.

“Survivor” means a person who becomes entitled to receive estate property by reason of having survived the decedent.

§ 50960.36. Voluntary Post Death Lien.

“Voluntary post death lien” means an encumbrance that is voluntarily agreed to and placed on real property to secure the unpaid portion of the Department's estate claim until the claim is paid in full.

§ 50961. Estate Claims.

(a) The Department shall claim against the estate of a decedent, or against any recipient of the decedent's property by distribution or survival, an amount equal to the lesser of:

(1) All payments made by the Medi-Cal program on behalf of the decedent, except for those payments specified under subsection (c) that are not included in the claim; or,

(2) The decedent's equity interest in the property at the time of death (to the extent of such interest).

(b) All payments made by the Medi-Cal program on behalf of decedents:

(1) Age 65 and older, who died prior to July 11, 1994, shall include all payments made for services provided at age 65 and older;

(2) Age 65 and older, who died on or after July 11, 1994, shall include all payments made from age 65 and older, in addition to any payments made from age 55 to 64 that were paid on or after October 1, 1993;

(3) Age 55 to 64, who died on or after July 11, 1994, shall include only those payments made on or after October 1, 1993.

(c) The Department's claim shall include all payments made by the Medi-Cal program on behalf of the decedent, including nursing facility and other long-term care services, home and community based services, inpatient/outpatient services, durable medical equipment, related hospital and prescription drug services, health care and insurance premiums, and payments to managed care plans. The Department's claim shall not include payments made for personal care services provided under In-Home Support Services, or the cost of premiums, co-payments and deductibles paid on behalf of either Qualified Medicare Beneficiaries or Specified Low-Income Medicare Beneficiaries (QMB/SLMB).

(d) The Department shall provide an exemption of the claim in any of the following circumstances:

(1) Where the decedent was under age 55 when the services were provided, unless the decedent was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution;

(2) During the lifetime of a surviving spouse;

(3) When, as of the date of decedent's death, there is a surviving child of the decedent who is under age 21, and who can provide the Department with the documentary evidence specified in Section 50966(a)(2), to the address specified in Section 50966(a);

(4) When, as of the date of the Department's notice of claim, there is a surviving child of the decedent who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), and who qualifies for a claim exemption under Section 50966.

(e) The Department shall waive the proportionate share of its claim against any applicant who qualifies for a waiver due to a substantial hardship, as specified in Section 50963(a).

(f) The Department shall not enforce collection of the proportionate share of an estate claim for any applicant who is awaiting the resolution of a hardship waiver request or an estate hearing. However, the Department shall enforce collection of its claim from the

remaining dependent(s), heir(s), or survivor(s) for his or her proportionate share of the claim.

(g) The Department shall reduce its claim in accordance with Section 50453.7(b) for insurance benefits received under the California Partnership for Long-Term Care.

(h) The Department shall claim against annuities as part of a decedent's estate. The Department's claim shall be recovered from the value of an annuity, annuity payments, or distributions receivable by any person or entity from the date the annuity payments or distributions are designated to be made. The Department's claim shall apply to the annuity, annuity payments, or distributions regardless of the funding source for the annuity.

(i) Where the decedent made an irrevocable transfer of a remainder interest in property with a retained life estate, the Department's claim shall not apply against the life estate or the remainder interest. Where the decedent held a life estate and made a revocable transfer of the remainder interest in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent. Where the decedent made a revocable transfer of a remainder interest in property and made an irrevocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the remainder interest. Where the decedent made a revocable transfer of a remainder interest in property and made a revocable grant of a life estate in the property, the Department's claim shall apply to the fair market value of the property as if title to the property had remained solely with the decedent.

(j) The Department's claim shall not apply against property interests that the decedent irrevocably transferred before death.

(k) A voluntary post death lien shall be proposed, in accordance with Section 50965, to secure the unpaid portion of the Department's claim until the claim is paid in full.

(l) Except for claims governed by Probate Code Sections 9203 and 19203, the Department shall charge simple interest, at the rate of seven percent per annum, on the unpaid portion of its claim until the claim is fully satisfied.

(1) Where there has been no claim exemption sought pursuant to Section 50961(d) or a substantial hardship waiver requested in accordance with Section 50963, simple interest shall begin to accrue on the date of notice of claim or the date of distribution, whichever is later.

(2) Where a claim exemption has been sought pursuant to Section 50961(d) or a substantial hardship waiver has been requested in accordance with Section 50963, simple interest shall begin to accrue on the 15th day following the date of the final determination of the claim exemption or substantial hardship waiver request.

#### § 50962. Notification.

(a) Within 90 days of the date of death of an individual who received or may have received Medi-Cal benefits, or was the surviving spouse of a person who received Medi-Cal benefits, the attorney for the estate, or if there is no attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent, shall

give written notice by mail of the decedent's death to the Director of the Department of Health Care Services at his or her Sacramento office, or, Estate Recovery Section, Mail Stop 4720, P.O. Box 997425, Sacramento, CA 95899-7425. The notice shall include a copy of the decedent's death certificate. Any other notice or submission of county vital records (i.e., death certificate) to the State Registrar of Vital Statistics or other governmental entities shall not satisfy this requirement.

(b) Date of notice of the decedent's death to the Director shall be deemed as the date that the notice is postmarked; or in the absence of a postmark, the date stamp posted by the Department upon receipt of the notice; or in the absence of a date stamp, the date on the original proof of mailing that references the decedent's name, from the person or entity giving notice to the Department.

(c) The Department shall provide written notice to the person handling the decedent's estate, which includes the following:

(1) The basis for the estate claim; the specific statutes and regulations supporting the claim; the basis for an exemption from the claim; the right to seek a waiver of the Department's claim; the right to contest the Department's claim; the right to request an estate hearing if dissatisfied with the waiver decision; the timeframes for requesting a waiver or estate hearing; and the basis for the applicant to seek a waiver or estate hearing due to substantial hardship; and

(2) A copy of the itemized Medi-Cal payments that constitute the basis for the claim; and

(3) An Application for Hardship Waiver, form DHCS 6195 (8/07).

(d) The person handling the estate of the decedent shall notify all dependents, heirs, or survivors of the Department's claim and their right to seek a waiver of or to contest the Department's claim against the estate. The person handling the estate shall also notify any surviving child of the decedent, or his or her representative, of the right to seek an exemption from the Department's claim.

(e) An applicant has 60 days from the date stated on the Department's notice of claim in which to submit an application for waiver due to substantial hardship.

#### § 50963. Substantial Hardship Criteria.

(a) The Department shall waive an applicant's proportionate share of the claim if the applicant can demonstrate through submission of a written, completed Application for Hardship Waiver, form DHCS 6195 (8/07), or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in substantial hardship to the applicant. In determining the existence of substantial hardship, the Department shall waive an applicant's proportionate share of the claim if one or more of the following factors apply:

(1) When allowing the applicant to receive the inheritance from the estate would enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs; or,

(2) When the estate property is part of an income-producing business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicant losing his or her primary source of income; or,

(3) When an aged, blind, or disabled applicant has continuously lived in the decedent's home for at least one year prior to the decedent's death and continues to reside there, and is unable to obtain financing to repay the State. The applicant shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40. The applicant shall provide the Department with a denial letter(s) from the financial institution; or,

(4) When the applicant provided care to the decedent for two or more years that prevented or delayed the decedent's admission to a medical or long-term care institution. The applicant must have resided in the decedent's home during the period care was provided and continue to reside in the decedent's home. The applicant must provide written medical substantiation from a licensed health care provider(s), which clearly indicates that the level and duration of care provided prevented or delayed the decedent from being placed in a medical or long-term care institution; or,

(5) When the applicant transferred the property to the decedent for no consideration; or,

(6) When equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter or medical care.

(b) A substantial hardship shall not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery.

(c) To the extent that there currently is, or later becomes, any conflict between the preceding criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.

(d) The Department shall provide written notification to the applicant of its decision regarding the hardship waiver application within 90 days of the application's submission.

(e) If an application for hardship waiver is denied, the Department shall provide the applicant with notice of the right, the address, and the timeframe to request an estate hearing, at the time it provides notice of its decision.

(f) The Department shall issue its decision on an applicant's hardship waiver application prior to and independent of its consideration of a voluntary post death lien.

#### § 50964. Estate Hearing.

(a) An applicant may challenge the Department's hardship waiver decision by requesting an estate hearing. The request must be in writing and mailed to the Director of the Department through his or her designee, the Office of Administrative Hearings and Appeals, within 60 days of the date of the Department's decision inscribed at the top of the Department's notice.

(1) The Department shall provide the applicant at least 30 days notice of the date, time and place of the hearing. The hearing shall be conducted within 60 days from the date of the request, and may be continued for good cause, such as illness, injury or incarceration of the applicant.

(2) For an in-state applicant the Department shall conduct the hearing within the California Court of Appeal district where the applicant resides. In the case of an out-of-state applicant, the hearing shall be conducted in Sacramento, California.

(3) At the estate hearing, the applicant and/or the applicant's representative shall have the opportunity to be heard, offer evidence, and present witnesses in support of the request for a waiver. All testimony shall be submitted under oath, affirmation, or penalty of perjury. The proceedings at the estate hearing shall be electronically recorded. The applicant and/or the applicant's representative shall be prepared to leave copies of all documents which support the applicant's request for a waiver with the hearing officer.

(b) The hearing shall be conducted in an impartial manner by a hearing officer appointed by the Director.

(c) A proposed decision, stating the applicable law, evidence and reasoning upon which the decision is based, shall be submitted to the Director no more than 30 days after the hearing record is closed. Within 30 days after the proposed decision is received by the Director, the Director may adopt the proposed decision, reject the proposed decision and have a decision prepared based upon the record, or refer the matter to the hearing officer to take additional evidence. If the Director takes no action within 30 days after receipt of the proposed decision, the decision shall be deemed adopted.

(d) Any errors or omissions in the information provided by the applicant that would affect the Department's decision may be a basis for denial of the request for hardship waiver.

(e) The decision shall be final upon adoption by the Director and no further administrative appeal shall occur. Copies of the decision shall be mailed by certified mail to the applicant or his or her designated representative.

(f) Judicial review of the final decision of the Department may be had by filing a petition for a writ of administrative mandate in accordance with the provisions of Section 1094.5, et seq., Code of Civil Procedure.

#### § 50965. Voluntary Post Death Lien.

(a) The Department shall propose a voluntary post death lien on the real property of the estate, and other real property that the dependent(s), heir(s), or survivor(s) has an interest in, when one or more of the dependent(s), heir(s), or survivor(s) are:

(1) Living in and not willing to sell the real property, and

(2) Unable to pay the Department's claim in full, and

(3) Can demonstrate as provided in subsection (b) that he or she is unable to obtain financing.



(b) The Department shall offer to accept a voluntary post death lien as soon as it has been determined that the dependent(s), heir(s), or survivor(s) is unable to pay or to obtain financing to pay their proportionate share of the estate claim. The dependent(s), heir(s), or survivor(s) shall apply to obtain financing, for an amount not to exceed his or her proportionate share of the claim, from a financial institution as defined in Probate Code Section 40, and shall provide the Department with a denial letter(s) from the financial institution.

(c) A voluntary post death lien shall be proposed independent of a decision on an applicant's request for a waiver due to a substantial hardship.

(d) In addition to the placement of a lien on the real property, the Department shall require that monthly payments be made to the Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997421, Sacramento, CA 95899-7421. The monthly payments shall be in accordance with the dependent's, heir's, or survivor's financial ability to pay, and shall be adjusted as needed. Monthly payments shall continue until the lien amount owed to the Department by the lienee, plus interest, is paid in full. Payments shall not be required when a dependent's, heir's, or survivor's income is below the federal poverty level.

(e) The voluntary post death lien will accrue simple interest at the rate of seven percent per annum, and becomes due and payable, including all interest accrued, upon the first to occur of the following:

- (1) The death of the dependent(s), heir(s), or survivor(s); or,
- (2) The sale, refinance, transfer, or change in title to the real property; or,
- (3) Escrow funding; and/or
- (4) Default in payments.

(f) In the event of a transfer of an interest in, or title to, real property subject to the voluntary post death lien without payment of the lien, the lienee shall provide notification of the transfer, with the identity and address of the new titleholder(s), by mail to the Department at the address specified in subsection (g), within 30 days of the transfer. The lienee shall notify the new titleholder(s) of the voluntary post death lien prior to the transfer of title, and the obligation to satisfy the lien pursuant to this Section. The new titleholder(s) shall make arrangement for full satisfaction of the Department's lien with the Estate Recovery Section.

(g) When the dependent(s), heir(s), or survivor(s) agree to a voluntary post death lien, the Department will prepare and mail the lien documents to the dependent(s), heir(s), or survivor(s) for notarized signature(s). The dependent(s), heir(s), or survivor(s) shall return the notarized documents to the Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997425, Sacramento, CA 95899-7425. Upon receipt of the lien documents, the Department shall forward the documents to the County Recorder's Office where the property is located for recording of the lien.

(h) The Department shall issue a release of lien to the County Recorder's Office after full payment of the lien with accrued interest is received.

Chapter 2.5. Third Party Liability  
Article 2. Estate Recovery (Refs & Annos)