***Why Everyone Should Care about the New 2017 Medi-Cal Recovery Laws***

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***By Alma Soongi Beck, J.D., LL.M. Taxation,*** *Certified Specialist, Estate Planning, Trust and Probate Law, State Bar of California*



Medi-Cal, more formally known as California Medicaid, is a program funded by the state and federal governments which is designed to provide free or low-cost medical assistance for low-income or low-resource individuals. "Medi-Cal Recovery" is the process where the state seeks repayment of what was spent on a Medi-Cal recipient after that recipient has passes away.

The issue of Medi-Cal Recovery concerns families of all class backgrounds due to the high cost of long-term skilled nursing which can range from $10,000 to $15,000 per month in the San Francisco Bay Area. Upon the death of the Medi-Cal recipient, Medi-Cal Recovery claims can force sale of the family home, leaving an already struggling family with even more financial instability.

Until 2017, a Medi-Cal recipient could only avoid Medi-Cal Recovery by making lifetime gifts of property and assets directly to family members or into irrevocable trusts. While effective if done properly, both options involve a lack of control of the assets and can expose the assets to creditors of the family members receiving the property.

One of the most remarkable changes is the limitation of Medi-Cal Recovery is the new limitations on recovery only to those assets subject to the full court-supervised California probate process (commonly referred in short-hand as "probate"). For instance, Medi-Cal recipients who pass away January 1, 2017 or later can avoid claims by Medi-Cal simply by transferring assets to a revocable trust before passing away, or by any other method that avoids court-supervised probate, such as joint tenancy or beneficiary designation.

The new 2017 Medi-Cal Recovery law also:

- Prohibits claims on estates of surviving spouses and California state-registered domestic partners;
- Limits recovery for those 55 years or older to nursing home and "Home and Community Based Services" such as Assisted Living Waiver programs, Multipurpose Senior Services Program,

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Waiver Personal Care Services provided under In Home Operations, and Nursing Facility/Acute Hospital waiver programs;

- Limits recovery to only those assets subject to the full court-supervised California probate process (as described above);
- 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," defined as 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 Medi-Cal recipient or their authorized representative with a copy of the amount of Medi-Cal expenses that may be recoverable after the recipient's death.

For more detailed information, the California Advocates for Nursing Home Reform (CANHR) based in San Francisco, California has published a downloadable pamphlet on the new 2017 Medi-Cal Recovery rules which can be found here: http://www.canhr.org/publications/PDFs/Medi-Cal_Recovery.pdf.

For estate planning, attorneys and clients should still make sure their documents include the same types of long-term care planning protections as before: (1) In Durable Power of Attorney, the power to create trusts, both revocable and irrevocable, and the power to make lifetime gifts; and (2) in Revocable Living Trust, powers to make lifetime gifts for the benefit of the Grantor. While the need for special planning to avoid Medi-Cal Recovery may be greatly reduced by the new laws, Medi-Cal planning for purposes of qualifying for Medi-Cal have changed very little, and such planning might still be needed during a period the elder may not have the capacity to plan for himself or herself.

As always, as with all new laws or changed circumstances that affect your estate planning, please reach out to your estate planning attorney to discuss your specific situation, and to discuss whether amendments or updates might be needed.

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