

**Presentation for the South Bay Estate Planning Council
November 9, 2023**

“THE TIMES. . .THEY ARE a’CHANGIN’ . . .”

**by
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California Assembly Bill 133, signed by Governor Gavin Newsom on July 27, 2021 mandated the creation of the nation’s first statewide bidirectional date exchange framework, provided for investment in some new behavioral initiatives, and expanded Medi-Cal eligibility.

AB 133 ushers in the most sweeping changes to the Medi-Cal program in over 35 years.

These changes to the Medi-Cal program will be rolled out in two phases:

- 1) July 1, 2022-December 31, 2023
- 2) January 1, 2024 forward

HOW DO WE PLAN NOW?

From the present to December 31, 2023:

- MAGI Medi-Cal eligibility is based on income, not resources
- LTC Medi-Cal eligibility is based on resources, not income
- Community Medi-Cal eligibility is based on both income and resources

Redetermination will be based on existing asset information and will disregard any increases in resources and will accept the self attestations of Medi-Cal beneficiaries (MEDIL 23-19)

Asset limit: Exempt assets + \$130,000 for an individual and an additional \$65,000 for each dependent; Community Spouse Resource Allowance: \$148,620

Income: Community Medi-Cal: \$1677/individual; \$2269/couple

LTC Medi-Cal or Home and Community Based Waiver Medi-Cal:

Single: All income minus personal needs allowance of \$35 and Medicare supplemental insurance or other medical insurance premiums

Married: MMMNA (Monthly Minimum Maintenance Needs Allowance) \$3716

Look back period: 30 months

Average Private Pay Rate (APPR): \$11576

Estate Recovery: Barred if surviving spouse or a surviving disabled child
 Only from a probate estate
 Hardship waivers

Main Strategies: Converting Assets
 Transferring Assets-Stacked Gifting
 Expanding Assets-3100 Petitions/Fair hearings

From January 1, 2024 forward:

Assets: All asset counting is completely eliminated
 No property reserve
 No distinguishing between exempt and countable assets
 No longer a need for community spouse resource allowance

Income: All gross income will be counted (with some allowable deductions)
 Probably will still be a MMMNA for the community spouse but not yet verified

Transfer Penalties: Unknown, but if assets don't count, why would transferring assets matter?

Estate Recovery: Same

Main Strategies:

Focus now shifts from asset protection planning to reduction of income planning and avoidance of estate recovery.

Income:

- Reallocate investments from income to growth
- Transfer income producing assets to family
- Transfer income producing assets to spouse
- More diligent use of Hunt v Kizer and Rank v Johnson
- Purchase additional types of medical insurance-vision, dental-for additional deductions
- Convert income producing assets to debt service
- 3100 Petition to Increase MMMNA may still be an option
- Greater creative use of community based programs

Recovery:

Welfare & Institutions Code §14009.5 (2017)
-Reset California Estate Recovery rules to align with federal mandates

State Filing Deadlines: Probated Estates-within 4 months
Trust Estates-within 4 months
Non Probated Estates-within 3 years

Claim must **EXCLUDE**: Benefits received before age 55
 All services except skilled nursing facility care and home and
 community based services (waiver programs)
 IHSS personal care services
 Qualified Medicare Beneficiaries (QMB)
 Specified Low-Income Medicare Beneficiaries (SLMB)

Always ask for an itemized list of costs

Review carefully-both the items charged and the math

For Medi-Cal Managed Care, the State can only recover what DHCS actually pays for services that would be subject to recovery, not the full capitation payment.

IF AN ESTATE IS NOT SUBJECT TO PROBATE, IT IS NOT SUBJECT TO RECOVERY.

Assets that pass by way of a living trust, joint tenancy, POD designations, small estate procedures, 13050 assets, Heggstad petitions-NOT subject to recovery.

Even in a probate-

A homestead of modest value (FMV 50% or less of average price of home in the county where the homestead is located.

-State will probably use a probate referee to determine value of home

-State will use CAR median house price to determine medians

-Google "CAR California Median House Prices" to see table for your county

Complete Bars to Recovery

-Surviving Spouse who dies after 1/1/2017

-Surviving Minor (under age 21)

-Blind or Disabled Child of Any Age

Beneficiary can request an accounting for Medi-Cal expenses that may be recoverable-once a year, charge not to exceed \$5. (Form DHCS 4017 (Rev.07/20)). DHCS has 90 days from receipt of request to make the accounting available.

Strategies to Avoid Estate Recovery:

Review title of all real estate-in a living trust? Joint tenancy? (What happens if the joint tenant dies first?)

Review beneficiary designations on all retirement accounts and life insurance-be sure there is a named beneficiary (NOT the estate!) as well as contingent beneficiaries.

Review title on all bank, investment and brokerage accounts-in a trust? Named beneficiaries? Provision for contingent beneficiaries?

Plan for distribution of all miscellaneous assets-tangible personal property, cars, motor homes-in the event of placement in a facility or after death.

Does the language of your durable power of attorney allow the agent to create a living trust in the event of incapacity? Allow the agent to name beneficiaries on IRAs and life insurance? (Important to choose a trustworthy agent!)

There is usually no reason to transfer the family home in order to avoid recovery any more.

A living trust will be a good planning tool.

MAPTs (Intentionally Defective Grantor Trusts)-No longer needed in most circumstances but don't rule out completely. CAUTION: New IRS regulations.

Despite the shifting landscape of Medi-Cal country, there will still be plenty of work for all of us and more potential to create a meaningful long term care plan without having to worry about benefit silos.

And, of course, as always: **MEDI-CAL IS NOT A GOAL IN LIFE!**