DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 06/01/2015
POSITION: Oppose
SPONSOR: California Advocates for Nursing Home Reform, Western Center on Law & Poverty

BILL NUMBER: SB 33
AUTHOR: Hernandez, Ed
RELATED BILLS: SB 1124 (2014)

BILL SUMMARY: Medi-Cal: estate recovery.

This bill requires the Department of Health Care Services, to the extent permitted by federal law, to refrain from recovering costs of medical care services from the estates of deceased Medi-Cal beneficiaries. The bill also prohibits recoveries from non-probated estates and the estates of the surviving spouse of a decedent, narrows the definition of estates eligible for recovery, and provides a variety of avenues to notify beneficiaries of the amount of expenditures that would be subject to estate recovery upon the beneficiary's death.

FISCAL SUMMARY

This bill results in a $53 million ($26.5 million General Fund) impact to the Medi-Cal program due to reduced recoveries, additional staffing, and support costs. The reduced estate recovery revenue of approximately $51.8 million ($25.9 million General Fund) would reduce the resources available for the Medi-Cal program, which would need to be backfilled by the General Fund.

The bill may also create additional staff and support costs of $1.2 million ($600,000 General Fund) to manage the additional workload and infrastructure upgrades necessary to provide Medi-Cal beneficiaries with their total expenses that may be subject to estate recovery. These costs are not currently funded in the 2015 Budget Act.

COMMENTS

The Department of Finance opposes this bill as it significantly reduces estate recoveries that offset General Fund expenditures in the Medi-Cal program. Medi-Cal is a health care program for individuals with limited income and assets. Recovery of past health care expenditures from the estates of decedents helps fund necessary health care benefits for additional beneficiaries, most of whom have little or no assets. In addition, this long-standing program authorized by federal Medicaid law prevents inappropriate asset transfers for the sole purpose of qualifying for Medi-Cal benefits. Reducing this significant source of funding for the program results in increased General Fund costs and could increase pressure on the state to make reductions in the Medi-Cal program.

Analyst	Date	Program Budget Manager	Date
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Department Deputy Director			Date

Governor's Office:	By:	Date:	Position Approved_____ Position Disapproved

ANALYSIS

1. Programmatic Analysis

According to the author, estate recovery is unfair to low-income people who need Medi-Cal for basic health coverage, is a deterrent to signing people up for Medi-Cal, and is counter to state and federal efforts to enroll people into health coverage. The author asserts that estate recovery unfairly places the burden of financing the Medi-Cal program on the estates of deceased beneficiaries, a financing mechanism that is not a component of other public benefit programs, such as Covered California or Medicare. In addition, the author believes that, because health care services to beneficiaries in the new Medi-Cal expansion population are 100 percent federally funded, the state is merely acting as a collection agency for the federal government. This bill proposes to eliminate estate recovery for medical care services to the extent allowable under federal law. The bill also proposes to eliminate recovery from the estate of a surviving spouse of a deceased Medi-Cal beneficiary and provide a variety of avenues to Medi-Cal beneficiaries to learn the amount of expenditures subject to estate recovery upon the beneficiary's death.

Since its passage in 1965, federal Medicaid law authorized states to recover the cost of health care services from beneficiaries' estates. Section 1902 of the Social Security Act authorized states to seek recovery from the estates of beneficiaries for the cost of medical care received after 65 years of age. However, estate recovery from these beneficiaries could only occur after the death of a surviving spouse and only if the beneficiary had no blind or disabled children under age 21.

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 authorized states to impose liens against the property of beneficiaries for the cost of providing long term care services in an institutional setting to an individual who "cannot reasonably be expected to be discharged from the medical institution and to return home". The liens could not be imposed on the beneficiary's home if it was inhabited by a spouse, a child or a sibling and were immediately dissolved if the beneficiary returned to the home. TEFRA was intended to provide states with an additional tool to prevent individuals with significant assets from transferring those assets to a spouse or other family members in order to qualify for Medicaid's free or low-cost coverage for long-term care services. Chapter 548, Statutes of 1995 (SB 412; Marks), prohibited the levy of liens on living Medi-Cal beneficiaries or the surviving spouse of a deceased Medi-Cal beneficiary. The lien program was later found to be invalid by a U.S. District Court in *Demille v. Belshe* and the program was not achieving any General Fund savings due to the pending legal action.

The federal Omnibus Budget Reconciliation Act of 1993 (OBRA 93) enacted Medicaid's current estate recovery requirements and authority for long-term care beneficiaries. OBRA 93 required estate recovery from beneficiaries who are not expected to return to the home and beneficiaries over age 55 receiving long term services and supports. OBRA 93 also provided the option for states to pursue estate recovery for all other Medicaid services for beneficiaries over age 55. California's estate recovery program recovers for both the required and optional services in its Medi-Cal program for beneficiaries over 55.

Prior to the Affordable Care Act, all Medi-Cal beneficiaries were required to meet an asset test in order to qualify for the program. Under the asset test, beneficiaries must possess no more than $2,000 worth of real or personal property. The beneficiary's principal residence is usually exempt from the asset test, as are a variety of personal property items such as one motor vehicle, musical instruments, wedding or engagement rings, or recreational items. After passage of the Affordable Care Act, however, certain beneficiaries qualify under new modified adjusted gross income (MAGI) eligibility rules. The new MAGI rules eliminate the asset test and create a "bright line" income test at 138 percent of the federal poverty level for most beneficiary categories. These new rules allow individuals

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with significant assets, but who are low-income, to become eligible for the Medi-Cal program without first spending down their assets. The MAGI-eligible population does not include individuals over age 65 or the disabled, for whom the prior non-MAGI eligibility rules and the asset test still apply. The combination of these rules, which allow individuals with significant assets between age 55 and 65 to qualify for Medi-Cal, may lead to a potentially large population of individuals in this age group that would be subject to estate recovery for the cost of health care services delivered.

SB 1124 (2014-Hernandez) would have made similar changes to the estate recovery process as this measure. That measure was vetoed by the Governor, who stated that allowing more estate protection for the next generation may be a reasonable policy goal, but the cost of the bill needed to be considered along other worthwhile policy changes in the budget process.

2. Fiscal Analysis

Over the last five years, Medi-Cal's estate recovery program has annually recovered between $52.9 million and $61 million total funds ($26.5 million and $30.5 million General Fund). Reducing the scope of the estate recovery program and implementing the balance of the bill's provisions would result in costs of $53 million ($26.5 million General Fund) in reduced recoveries, additional staffing, and support costs in the Medi-Cal program.

California currently recovers from beneficiary estates for the cost of all health care services received after age 55, recovering $61 million in 2013-14. According to recent federal guidance submitted after the implementation of the Affordable Care Act, federal regulations require that California seek recovery for nursing facility services, home and community based services, and related hospital prescription drug services. Eliminating services for which California seeks recovery, but are not required by federal regulation, would result in reduced recoveries of $8.1 million ($4.1 million General Fund).

Current law requires estate recovery from estates that are subject to probate and those that are not. This bill exempts from recovery estates that are not subject to probate. The department estimates that approximately 65 percent of estate recoveries are from non-probated estates. This provision results in reduced recoveries of $39.7 million ($19.9 million General Fund) annually.

Current law requires estate recovery from the estate of a surviving spouse of a deceased Medi-Cal beneficiary upon the spouse's death for all services provided to the beneficiary. This bill eliminates recovery from the estate of a surviving spouse. This provision results in reduced recoveries of $1.9 million ($800,000 General Fund) annually.

Current law allows estate recovery from all eligible assets that are part of a deceased Medi-Cal beneficiary's estate. This bill exempts homesteads of modest value from recovery. The bill defines a homestead of modest value 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. This provision results in reduced recoveries of $1.7 million ($870,000 General Fund) annually.

Current law allows the department to enter into voluntary, post-death liens for estate recovery purposes that accrue interest. This bill requires the department to limit the interest rate assessed on voluntary, post-death liens for recovery to no more than 7 percent or the rate equal to the monthly average received on investments in the Surplus Money Investment Fund, whichever is lower. The department currently assesses a 7 percent interest rate on such liens. The Surplus Money Investment

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Fund interest rate is currently 0.249 percent. Based on this rate, this provision would result in reduced recoveries of $316,000 ($158,000 General Fund) annually.

The bill also requires DHCS to provide certain beneficiaries within 90 days, upon request, with the total cost of services paid on their behalf and subject to estate recovery. This provision may require the Medi-Cal program to add approximately 9 additional staff to process these requests at an annual cost of $995,000 ($498,000 General Fund). In addition, DHCS will likely need to upgrade and redesign IT systems to manage the workload at an additional, one-time cost of $201,000 ($100,500 General Fund).

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2015-2016 FC	2016-2017 FC	2017-2018	Fund Code
4260/Hlth Care	SO	No	C	299 C	598 C	598	0001
4260/Hlth Care	SO	No	C	299 C	598 C	598	0890
4260/Hlth Care	LA	No	C	12,945 C	25,890 C	25,890	0001
4260/Hlth Care	LA	No	C	12,945 C	25,890 C	25,890	0890

Fund Code	Title
0001	General Fund
0890	Trust Fund, Federal