

**Department of Health Care Services
Proposed May Revision Trailer Bill Language**

Special Needs Trust Recovery

PROPOSED AMENDMENTS:

Section 3605 of the Probate Code is amended to read:

(b) 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.~~ 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 42 U.S.C. section 1396p(d)(4)(C), 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 such 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. Claims submitted by the State Department of Health Care Services for reimbursement from a special needs trust shall be governed by this section and by 42 U.S.C. section 1396p(d)(4)(A)(B)(C). 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that *Shewry v. Arnold* (2004) 125 Cal.App.4th 186 is inconsistent with the provisions of this section, it is expressly superseded.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.

Section 14009.5(b) of the Welfare and Institutions Code is amended to read:

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

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

(2) Where there is any of the following:

(A) 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) A surviving child who is under age 21.

(C) 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. 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).

(4) None of the exemptions or the deferral contained in subdivision (b) of this section shall apply to reimbursement of claims asserted against special needs trusts pursuant to Probate Code section 3605 and/or 42 United States Code section 1396p(d)(4)(A), or other applicable law.