

38. Diligent Search/Estate Recovery/Fraud Referrals

38.1 Diligent Search

The diligent search process involves the “search” for an applicant's available income and resources when the applicant is unable to assist in the application process. The following are guidelines to be used in determining eligibility for persons who are comatose, amnesiac or otherwise incompetent and there is no friend, guardian, or relative available to supply the information necessary for a Medi-Cal (MC) eligibility determination.

The diligent search process requires the worker to take the following actions:

Table 38-1: Diligent Search Process

Step	Action
1.	Determine and document applicant's competency.
2.	Refer to the Disability Determination Service Division (DDSD) for a disability determination, excluding applicants who appear to be under 21 years old or over 64 years old.
3.	Conduct reasonable search.
4.	Determine eligibility based on diligent search findings.

38.1.1 Disability Determination Referral

Eligibility Workers (EWs) must determine eligibility for MAGI MC first before making a referral to Disability Determination Service Division (DDSD) for all persons whose eligibility is determined through Diligent Search procedures unless the individual is obviously under 21 years old or over 65 years old. The person making the referral must sign the “Authorization for Release of Information” (MC 220), and write “patient is comatose” on the face of the form. The forms “Disability Determination and Transmittal” (MC 221) and “Statement of Facts for Medi-Cal Regarding Disability” (MC 223) must be completed with all available information.

38.1.2 Diligent Search Review

The following is for persons with or without identification:

Persons With Identification

The County SSA must conduct the following search for a person with identification and document the results in the case.

- Property search in the county of physical presence. (If there is information which indicates an address in another county, a property search must also be requested from the county). EWs can contact the County Assessor's Office to determine if the applicant has any real property in Santa Clara County.
- Verification of Social Security benefits via the "SSA Referral Notice" (MC 194) or "Social Security Information Request and Referral" (SCD 1955).
- Verification of Veteran's Administration benefits via form "Military Verification and Referral Form" (MC 05).
- Verification of vehicle registration through written request to the Department of Motor Vehicles.
- If the Income and Eligibility Verification System (IEVS) report indicates an account at a specific banking institution, request information from that bank. Request the bank to search for all accounts belonging to the individual. If the bank refuses to provide the requested information, the EW will document actions in **Search Case Comments** in CalWIN.

When requesting any of the above information, include a cover letter indicating the circumstances, (i.e., the individual is comatose and therefore cannot sign a release of information form; there is no friend or relative to act on behalf of the individual, and the county is trying to establish MC eligibility).

Persons Without Identification

If a member of the hospital staff has attempted to establish the identity of a person who is admitted in a comatose, amnesiac, or senile condition, and the person's identity remains unknown, the County SSA must document in the case record that a search by hospital staff was conducted to establish the identity of this person. The following are the instructions for establishing an identity to use in opening up a MC case and issuing MC cards.



Note:

If a comatose person regains consciousness or is otherwise identified after eligibility is established, revise the case record to reflect the person's true identity and eligibility status. If the person remains eligible for MC and a MC identification number has been assigned, change the aid code, if necessary. If the person is found to be ineligible, discontinue the case with a timely and adequate notice.

38.1.3 Name

If the person's name is unknown, use either John C. Doe or Jane C. Doe for the case name. Clients are primarily identified by CIN and CWIN.

38.1.4 Aid Code

Generally, clients who require immediate healthcare coverage will be granted Hospital Presumptive Eligibility for a minimum of two months while MC eligibility is being determined. EWs will use the aid codes below while identification of the individual is pending:

- If the individual's age is unknown, but appears to be under age 21, use **Aid Code 82**.
- If the individual's age is unknown, but appears to be age 21 or older but under 65, use **Aid Code 38**, or if the individual is in a Skilled Nursing Facility (SNF), use **Aid Code 53**.
- If the individual's age is unknown, but appears to be age 65 or older, use the appropriate aid code (**14**, **17**, or **13** if they are in Long Term Care).

38.1.5 Birth Date

If unknown, use "01" for the month and "01" for the day; use the following for the year of birth:

- If the estimated age is under 21 years old, use the current year minus 10 years.
- If the estimated age is between 21 and 64 years old, use the current year minus 40 years.
- If the estimated age is 65 years old or over, use the current year minus 70 years.

38.1.6 Social Security Number

If unknown, leave blank. A pseudo number will be assigned by Medi-Cal Eligibility Data System (MEDS).

38.1.7 Health Insurance Claim Number

If unknown, leave blank.

38.1.8 Address

Since MEDS will produce a reject message if the address field is blank, use the address of the district office or the address of the facility where the individual is receiving care.

38.1.9 Case Processing

Action on the application cannot be taken until a determination of ineligibility has been established or the diligent search and the disability determination (for persons 21-64) have been completed. However, if a comatose person is placed in a skilled nursing facility/intermediate care facility, aid code 53 may be appropriate.

If at any time during the application process the person's condition changes or a friend or relative is found so that information can be obtained in the usual manner, the diligent search efforts must end, at this point normal case processing must be completed.

Eligibility determinations based on the results of diligent search procedures will be completed in the same manner as any other determination. Residency requirements will be considered to be met in the absence of any other conflicting information. Only the income and resources discovered through the search will be considered available. Once the diligent search and disability determination have been completed, an eligibility decision must be made.

38.2 Estate Recovery

The Estate Recovery Program was created to recoup the cost of MC services received after 55 years old from the estate of a deceased MC client. Beginning January 1, 2017, the Estate Recovery Program will only recoup the cost of certain services from deceased clients who were receiving benefits in a Long Term Care, or Home and Community based program.

After receiving notification regarding the death of a person who received MC benefits, the Department of Health Care Services (DHCS) will decide whether or not the cost of services must be paid back. In making this decision, DHCS will consider how much was paid by MC and what is left in the estate of the deceased MC client. Regardless of what is owed, DHCS will never collect more than the value of the assets owned by the MC client at the time of his/her death.

38.2.1 Estate Recovery Claims

DHCS Estate Recovery Unit cannot file any estate claim for reimbursement of benefits properly paid until after the death of the MC client.

The Estate Recovery Unit makes a claim against the estate of deceased clients for the amount of MC paid services received on or after the client's 55th birthday. The claim is limited to the fair market value of the client's assets at the time of death less any encumbrances, or the amount of the medical services paid by MC, whichever is less.



Exception:

The amount of assets exempted under the provision of California Partnership for LTC is exempt from estate recovery.

Claims Included in the Estate Recovery for Clients Who Pass Away

On or before December 31, 2016 and services were...	On or before December 31, 2017 and services were...
Nursing facility services	Nursing facility services
Home and community based services	Home and community based services
Related hospital and prescription drug services	Related hospital and prescription drug services when the MC client was receiving nursing facility services and/or home and community based services
Health insurance premiums, including Medicare Part A and B and Delta Dental Premiums	

Claims that are Not Included in the Estate Recovery

DHCS' claim does not include the following health care services paid on behalf of the deceased MC client:

- In-Home Supportive Services (IHSS) are not included if the MC client passed away after September 1, 2000,
- Cost of Medicare premiums, co-payments, and deductibles paid on behalf of clients only receiving Medicare Savings Programs including Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB) or Qualified Individual (QI), since the clients are not entitled to, or receiving, any MC services which are subject to recovery.

Notification of Client's Death

When an MC client passes away (or the surviving spouse of the MC client passes away), the person handling the assets of the deceased client **must** provide written notice of the death within 90 days. The notice and a photocopy of the death certificate must be sent to DHCS.

All other questions regarding Probate and Estate Recovery, including Hardship Waiver requests are to be referred to the DHCS Estate Recovery Unit.

Department of Health Care Services
 Estate Recovery Unit, MS 4720
 P.O. Box 997425
 Sacramento, CA 95899-7425

Phone: (916) 650-0490

Fax: (916) 650-6584



Note:

A phone call or written notice to the County, Social Security Administration, or the Office of Vital Statistics, does not satisfy this requirement.

Claims that DHCS May Not Pursue

Once the notice is received, DHCS makes its claim against probated and non-probated estates within four months. DHCS may **NOT** make a claim:

- During the life time of the surviving spouse or domestic partner.
- For services provided before the MC client's 55th birthday.
- If there is a surviving child who is under 21 years old.
- If there is a surviving child of any age who, as of the date of DHCS' claim, is blind or disabled.

When the surviving spouse passes away, MC may bill the estate of the surviving spouse for the lesser of:

- The amount paid by MC for medical assistance, or
- The value of assets received by the surviving spouse.

Definition of Estate for Clients Who Pass Away on or Before December 31, 2016

An estate is defined as those assets owned by the MC client at the time of death, including assets distributed through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement. DHCS will issue regulations at a later time to specify what includes "other arrangement."

Most assets (i.e., home, real property, or bank accounts), considered exempt during the eligibility process, are not exempt from Estate Recovery once the MC client passes away, if the property is still in the client's name.

Definition of Estate for Clients Who Pass Away on or After January 1, 2017

For MC clients who pass away on or after January 1, 2017 recovery is limited to real property, personal property, and other assets in the MC client's probate estate against which DHCS is required by federal law to assert a claim.

DHCS Informing Notice

DHCS sends the “Important Notice Regarding The Medi-Cal Estate Recovery Program” (DHCS 9060) twice a year to all MC clients informing them of the Estate Recovery program and informing them that MC may make a claim against any assets owned by the MC client at the time of his/her death.

The “Medi-Cal Estate Recovery Program” Brochure (DHCS 9059) must be provided in all MC Intake packets.

Access to Estimated Recoverable MC Expenses

Clients at or over 55 years old or permanent in-patient clients in nursing or long term care facilities may request a copy of the amount of MC expenses that may be recoverable upon the MC client’s death. This statement may be requested once a year for a fee. The process to request this information is available on the [MC Estate Recovery Program](#) website.

38.2.2 Hardship Waiver

On or Before December 31, 2016

Any person affected by the estate recovery claim can file for a hardship waiver. The Estate Recovery Unit will waive or reduce its claim if an individual can establish that an undue hardship exists due to the enforcement of the claim. Undue hardship usually exists only in “very limited financial circumstances”.

On or After January 1, 2017

DHCS may waive or reduce a claim against the estate of an MC client if enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the MC client.

Subject to federal approval, DHCS may waive a claim if the estate is considered a "Homestead of Modest Value". A "Homestead of Modest Value" is defined as a home with a fair market value of 50 percent or less of the average price of homes in the county where the homestead is located as of the date the MC client passed away.

Application for Hardship Waiver

For consideration of a waiver or reduction, an applicant must submit an “Application for Hardship Waiver” within 60 days of the date of DHCS’ claim. DHCS includes an application with information regarding how to apply for a waiver when a claim is first presented. If the application for waiver is denied, the applicant then has appeal rights through an estate hearing. The procedure for obtaining a hardship waiver and the criteria for DHCS to grant a waiver are outlined in MC regulations, refer to Title 22, California Code of Regulations (CCR), Section 50960.

38.2.3 Liens

When an MC client enters a Long Term Care (LTC) facility, DHCS may record a lien against the client's principal residence and request that the property be sold; unless:

- The MC client or the client's personal representative declares intent to return home, even if the return is not likely,
- There is a surviving spouse, dependent relative, or co-owner residing in the home,
- There is a surviving child of any age who is blind or disabled as defined by Section 1614 of the Federal Social Security Act,
- There is a surviving child under 21 years old, or
- A sibling with equity interest in the home resided in the home for one year immediately before the date of the client's admission to the medical institution and continues to lawfully reside there.

Property Lien Referral to DHCS

EWs must use a "Property Lien Referral" (DHCS 7014) to notify DHCS when a client in an LTC facility declares that he/she does not intend to return to his/her principal residence. When the DHCS 7014 is received, DHCS places a statutory lien on the real property; a statutory lien is not a recorded lien.

The Estate Recovery Unit will seek reimbursement upon the MC client's death through the presentation/filing of a claim demand. The statutory lien will only then become a recorded lien against the real property by voluntary action of the heir(s) as an alternate method of payment or through court decision.

Voluntary Repayments

DHCS cannot accept voluntary repayments from a MC client before his/her death for medical assistance paid or to be paid on his/her behalf.

Post-Death Claim

The sale of a deceased client's principal residence to pay the estate claim is usually not necessary. If one or more of the dependents, heirs, or survivors, are unable to pay DHCS' claim in full, and can demonstrate he/she is unable to obtain financing to satisfy the claim, DHCS may offer to accept a post-death lien against the home. A post-death lien is used as means to secure DHCS' claim and is voluntary. If a request for hardship waiver has been received, DHCS must render its decision regarding hardship, independent of any discussion of a voluntary post-death lien. While the hardship waiver is pending, no interest accrues on DHCS' claim.

On or after January 1, 2017, if DHCS proposes and accepts a voluntary post-death lien, the voluntary post-death lien will accrue interest at the rate equal to the annual average rate earned on investments in the Surplus Money Investment Fund in the calendar year before the year the MC client passed away or simple interest at 7% per year, whichever is lower.

Monthly Payments

Based on the survivor's financial ability to pay, DHCS may accept monthly payments from the survivor, in addition to the placement of a lien against the estate property. The lien will accrue interest and become due and payable upon the death of the survivor; the sale, refinance, transfer, or change in title to the estate property; escrow funding; or a default in payments.

38.2.4 What Happens When a Medi-Cal Client Passes Away

The following actions occur when a MC client passes away:

Table 38-2: EW Procedures When a Client Passes Away

Step	Who	Action
1.	EW	Discontinues MC for the deceased client.
2.	DHCS	Receives information of MC client's death. This may be reported by the: <ul style="list-style-type: none"> • Representative of the deceased MC client, • California Health and Human Services Agency, • Public Health Department - Vital Statistics, and/or • MEDS System.
3.	DHCS	Sends an inquiry notice to the last known address.
4.	Heirs, executor, administrator, etc.	Completes and returns inquiry letter with a copy of the death certificate attached.

Table 38-2: EW Procedures When a Client Passes Away

Step	Who	Action
5.	DHCS	<p>Determines if an estate recovery claim will be filed against the estate of the deceased client. If filed, an informing notice is sent to the person handling the estate including:</p> <ul style="list-style-type: none"> • The basis for the estate claim. • The specific statutes and regulations supporting the claim. • A hardship waiver application and an explanation of the right to seek a waiver of or to contest the DHCS' claim. • An explanation of the right to request an estate hearing if dissatisfied with the request for a waiver decision. • Timeframes for requesting a waiver or estate hearing. • A summary of the basis for the applicant to seek a waiver or estate hearing due to undue hardship. <p>NOTE: Hardship requests are determined on an individual basis depending on circumstances.</p>

38.2.5 Frequently Asked Questions

Question 1: What laws govern the Estate Recovery Program?

Answer 1: The rights and responsibilities of DHCS, health care providers, Medi-Cal beneficiaries and their representatives are outlined in the California Code of Regulations (CCR), Title 22, §50960-50966; California Medical Assistance Program, Division 3, Subdivision 1, Article 19; Welfare and Institutions Code (W&IC) §14009.5; Probate Code § 215, 9202, and 9203; the United States Code (USC) § 1396; and Senate Bill 833.

Question 2: How is the obligation to repay MC for health care services established?

Answer 2: California law requires that the estate attorney, executor, administrator, heir(s), or anyone who receives assets from a deceased MC client, must provide written notice and a copy of the death certificate to DHCS within 90 days of the beneficiary's death. Notice of death should be forwarded to:

Director, c/o Department of Health Care Services, Estate Recovery Section, MS 4720, P.O. Box 997425, Sacramento, CA 95899-7425.

Notice to the County or Social Security Administration does not satisfy this requirement. DHCS can present a claim within four months of receiving the notice of death.

Question 3: What if the survivor/heir cannot afford to pay the Estate Recovery claim?

Answer 3: DHCS may waive or reduce its claim if payment of the claim would cause a substantial hardship. An application for Hardship Waiver is included with each claim.

Question 4: Is an allowance made for estate debts and expenses?

Answer 4: The value of the estate is reduced by the amount of outstanding debts and certain expenses, including burial expenses.

Question 5: The client currently receiving MC benefits, would like to start paying off the debt now so that the surviving spouse and family are not burdened later.

Answer 5: DHCS does not have a claim until after the MC client's death and the death of the surviving spouse. Nothing is owed during a client's or surviving spouse's lifetime.

Question 6: The survivor/heir believes that there is an error in the amount of services reflected on the bill. What should the survivor/heir do?

Answer 6: If the survivor believes there is an error on the bill related to the claim amount or the services provided, the survivor/heir should contact the collection representative indicated on the claim letter.

Question 7: The survivor/heir wants to pay the claim, but the only estate asset is a home. The survivor/heir would like to keep the home but a lump sum payment is not possible. What can the survivor/heir do?

Answer 7: Whether the estate consists of a home, bank account or other asset, payment options are available. The survivor/heir may contact the collection representative indicated on the claim letter for assistance.

Question 8: Will the State take the house?

Answer 8: If the estate does not have sufficient other resources to repay Medi-Cal, DHCS may allow a voluntary lien to be placed on the house to ensure payment of its claim.

All other questions regarding Probate and Estate Recovery, including Hardship Waiver Requests, are to be referred to the DHCS Estate Recovery Unit.

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Estate Recovery Unit, MS 4720
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Sacramento, CA 95899-7425

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38.3 Medi-Cal Fraud Referrals

The local Special Investigation Unit (SIU) does not process Fraud referrals for MC only cases. Per [Common Place handbook chapter 38](#), MC only fraud referrals should be sent to DHCS Investigations Branch in Sacramento.

The EW has the option to require a client to complete a face-to-face interview before benefits are redetermined **ONLY** when there is suspicion of fraud. A face-to-face interview is not required as long as any questions or discrepancies can be resolved using one or more steps of the ex parte process, a follow-up telephone contact and/or by mail using the MC 355.

At least one of the following circumstances must apply for the EW to require a client to attend a face-to-face interview:

- There is questionable information on the MC forms provided by the client.
- There is questionable information on the verifications provided by the client.

When a face-to-face interview is conducted, the EW must document the reason in the **Search Case Comments** window for program review and audit purposes.

The following table describes the steps and actions to be taken by an EW when completing a fraud referral:

Table 38-3: Medi-Cal Fraud Referrals Procedures

Step	Action
1.	Search for the “Confidential Medi-Cal Complaint Form” (MC 609) DEBS Forms Library.
2.	On the MC 609: <ul style="list-style-type: none"> • Complete the “For County Staff Only” section. • Do not complete any section that says “For DHS Staff Only”.
3.	Attach any supporting documents and either e-mail or fax along with the MC 609 to the DHCS Investigations Branch: E-Mail: fraud@dhcs.ca.gov Fax: (916) 327-4293
4.	Document on the Search Case Comments window that a MC fraud referral was initiated.
5.	Submit a copy of the referral for IDM scanning following the District Office business process.
6.	Upon receipt of the investigator’s report, the EW will make changes as needed and process the case/application appropriately.

The following table describes the steps and actions taken by the DHCS investigator when a fraud referral is received:

Step	Action
1.	Conducts an investigation to gather facts that prove or disprove the allegations.
2.	Informs the EW via telephone call (within 10 days) of the results of their investigation.
3.	Sends the EW (within three days of the telephone call) the investigator's report with all information which supports his/her findings.
4.	Attaches a "FRED Eligibility Action Report" to the investigator's report for completion by the EW.

