

Medi-Cal asset seizure bill heads to Gov. Jerry Brown for consideration

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SACRAMENTO -- After passing the state Senate and Assembly unanimously this week, a bill limiting California's seizure of assets from the estates of Medi-Cal recipients is headed toward Gov. Jerry Brown's desk.

Hanging in the balance are the hopes -- and homes -- of thousands of worried Bay Area residents and Medi-Cal enrollees like Chris Darling of Richmond, Anne-Louise Vernon of Campbell and Eliza O'Malley of El Cerrito.

Brown has until Sept. 30 to sign the bill into law or veto it. His budget advisers continue to recommend that he oppose it because they say California would lose \$15 million annually in general fund revenues as a result.

Should he do that, the 62-year-old Darling said, then he is "the Tin Man of California because he obviously has no heart."

For millions of low-income Americans, asset seizure became an issue because of the Affordable Care Act, also known as Obamacare. One provision of the law expanded Medicaid -- called Medi-Cal in this state -- to adults without children if they earn up to 138 percent of the federal poverty level, which in 2013 was \$15,856 a year for an individual or \$21,403 for a couple.

But many homeowners who have been laid off, are unemployed or underemployed, and are now getting by on dwindling savings, said they did not realize that signing up for the health care program for the poor comes with a catch: The state can recover a broad array of costs and assets -- including homes -- from Medi-Cal recipients 55 and older after they die.

Since 1993, the federal government began requiring all states to recoup the expenses of long-term care for Medicaid recipients ages 55 and older. States were given the option to recover all other Medicaid costs for those recipients, and California took advantage of the option.

The bill approved by the Legislature would still allow the state to recover expenses for long-term care in nursing homes and other facilities.

Officials with the state's Department of Health Care Services, which oversees the Medi-Cal program, have insisted that the provision doesn't affect the vast majority of Medi-Cal beneficiaries. They noted that the average recovery amount is about \$15,000.

But state Sen. Ed Hernandez, D-West Covina, who authored Senate Bill 1124, said the measure would ease the plight of many. If signed into law, the bill prohibits recoveries from estates of surviving spouses and provides a variety of ways for beneficiaries to find out how much of their estate is "recoverable" upon the beneficiary's death.

"I take my fiduciary responsibility to the state very seriously," Hernandez said Wednesday. "But \$15 million is not a lot to spend to do away with a practice that unnecessarily scares needy people out of getting health care coverage."

But even if the bill is vetoed, according to Palo Alto estate attorney Michael Gilfix, Medi-Cal reimbursement claims -- particularly those involving a recipient's home -- can be avoided through estate planning. Still, the bill's advocates say that route can be costly and discriminates against the poor.

Because the Assembly Monday passed the bill on a 78-0 vote and the Senate on Tuesday night approved it on a 34-0 vote, "we're still hopeful that having full bipartisan unanimous support makes a pretty good case for" Brown to sign it, said Tim Valderrama, Hernandez's chief of staff.

With such overwhelming support, others wonder if it could also provide an opportunity for the Legislature to override a veto with two-thirds votes of both houses, should Brown decide to follow that course.

Capitol insiders, however, say that's unlikely. No veto overrides have succeeded during Brown's current term, although during his last stint as governor in the 1970s and early '80s, four bills Brown vetoed were overturned by a Democratic controlled Legislature, according to the One Voter Project, the Online Home of California's Political History.

Veto overrides are threatened on occasion, according to the website, but rarely exercised because they are seen as "a significant insult to the governor and major disruption to the balance of power relationship between the three branches of government."

As one Capitol staffer said Wednesday: "A veto override is sort of like dropping a bomb on Moscow. There's a lot of institutional reluctance to do that."

A spokesman for Senate President Pro Tempore Darrell Steinberg would only say an override is "a consideration, if necessary, for a future Legislature." And because the current two-year session ends Sunday, it wouldn't surface as a possibility until the Legislature reconvenes in January.

A spokesman for Assembly Speaker Toni Atkins called such a move "wildly speculative."

Meanwhile, Bay Area residents like Darling and Vernon are making last-minute pleas to the governor.

"Everyone is now legally obliged to have health insurance," said the 60-year-old Vernon, but "the only group being targeted and essentially being forced into a loan for their health care" are low-income people ages 55 to 65. "No other health or social service program insists on reimbursement in the way that Medi-Cal does."

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