Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.A. We appreciate the fact that some of our recommended changes were incorporated into the proposed regulations. However, there are several outstanding issues that should be resolved prior to finalizing these regulations: These comments are submitted on behalf of California Advocates for Nursing Home Reform. Suggested changes are underlined.

Response
1.A. This comment is related to 1.B. through 1.L. Please see Responses 1.B. – 1.L.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.B. Our recommendation regarding **Section 50961(c)** was not included, and we again recommend that the following sentence be added to the end of this paragraph, reading:

Recovery of payments to managed care plans shall be made only for payments made after the Department has provided a separate notice to the beneficiary that explains that the premium payments made to the managed care organization will be included either in whole or in part in the claim against the beneficiary's estate.

Such language is required by CMS in its State Medicaid Manual, Transmittal No. 75 (Jan. 11, 2001), Part 3 (Eligibility), §3810(A)(6), p. 3-9-5.

Response

1.B. This subsection was not amended based on comment. Please see Response 1.A. in the FSOR Addendum 1, "Response to 45-Day Public Comments."

Commenter Name, Title, Organization and Date of Comment(s)

COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment

1.C. Section 50961 (d)(2):
We believe that the phrase, "in accordance with," is extremely ambiguous. The last sentence should be amended to reflect the statutory authority more clearly, by reading, "However, upon the death of the surviving spouse, the Department shall assert its claim against the estate of the surviving spouse (but only to the extent of property received by the surviving spouse from the decedent spouse), in accordance with subsections (a), (b), and (c) of this section."

Response

1.C. This subsection was not amended based on comment. Please see Response 1.C. in the FSOR Addendum 1, "Response to 45-Day Public Comments."

Commenter Name, Title, Organization and Date of Comment(s)

COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment

1.D. The Department has no authority to claim on the surviving spouses' estate except to the extent that the surviving spouse received assets from the predeceased spouse by distribution or survival. Adding this sentence would clarify this.

Response

1.D. This subsection was not amended based on comment. W&I Code Section 14009.5 (b)(2)(A) states, "upon 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 the decedent's property received by the surviving spouse through distribution or survival, whichever is less." Adding this language to the regulations would be duplicative.

Commenter Name, Title, Organization and Date of Comment(s)

COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment

1.E. Section 50961(d)(1):
As we previously suggested, this section should be amended to read:

(1) Where the decedent was under age 55 when the services were provided, unless the decedent was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and who has been determined, after notice and opportunity for a hearing, to be permanently institutionalized.

Response

1.E. This subsection was not amended based on comment. Please see Response 1.D. in the FSOR Addendum 1, Response to 45-Day Public Comments."

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.F. A reference to another section of the regulations, §50428, in subdivision (A) does not adequately indicate the procedures for determining whether an individual can reasonably be expected to be discharged from the medical institution and return home, as required by 42 USC 1396p(a)(1) (B))

Response
1.F. This subsection was not amended based on comment. Section 50428(a)(1) clearly describes that an individual must receive a Notice of Action and be provided an opportunity for a state hearing prior to a Department's lien.

Furthermore, the Department's State Plan (TN No. 06-011, Attachment 4.17-A) describes the collection procedures prior to imposing liens against the real property of institutionalized beneficiaries. The State Plan provides "At the time of their initial application for Medi-Cal benefits and during their annual redetermination process, institutionalized beneficiaries who own real property are asked if they intend to return home to live in that real property at any time in the future. If the beneficiary or personal representative indicates no intent to return home (and if there is no spouse or dependent relative residing in the home), the County Department of Social Services may send a Notice of Action (NOA) to the institutionalized beneficiary. The NOA informs beneficiaries that if the property is listed for sale (and Medi-Cal eligibility is established or continues), a lien will be recorded against the property to cover the cost of medical care received under the Medi-Cal program. The notice also advises the clients of their right to request further county review and/or a state hearing, within 30 days of the date of notice, in order to present additional information/evidence for consideration. No action is taken during this 30-day period or pending further review and/or a hearing. If, after the 30 days has elapsed [sic], the Department will research the referral from the county to determine if the case meets the criteria of law to impose a lien against the property. That is, there is no surviving spouse, child under age 21, blind or disabled child, or a sibling with an interest in the home, living in the home. Cases that pass this screening are established … If at any time prior to

the sale of the property, the Medi-Cal beneficiary is discharged from the medical institution and resumes use of the property as principal residence, the lien is removed."

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7/20/15
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Comment
1.G. The definition of "permanently institutionalized individual" and the instructions for the process that states must use to determine whether or not a permanently institutionalized individual cannot reasonably be expected to return home are included in State Medicaid Manual (SMM) Section 3810,p. 3-9-3, which instructs the states to include this process in their State plan. This State Manual Section (p. 3-9-5) also includes detailed instructions that states are required to follow in the case of TEFRA liens, including the requirement that any lien imposed on those affected must be dissolved when the individual is discharged from the medical institution and returns home.

State Medicaid Manual (SMM) Section 3810,p. 3-9-3, specifies that the states "… must specify in your State plan the process by which you will determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home, the notice to be given the individual, the process by which the individual will be given the opportunity for a hearing, the hearing procedures, and by whom and on what basis the determination that the individual cannot reasonably be expected to be discharged from the institution will be made." These requirements regarding notice and hearing procedures are missing from the regulations and from the state plan.

Response
1.G. This subsection was not amended based on comment. Please see Response 1.F; Response 1.D. in the FSOR Addendum 1, and the Department's State Plan (TN No. 06-011, Attachment 4.17-A), which clearly describes the Department's procedures for collection on permanently institutionalized individuals, including notice and hearing procedures.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.H. We appreciate that the Department has retained the 90 days timeline for hardship waiver decisions.

Response

1.H. The Department appreciates this comment of support.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.I. Comments on Changes to the Application for Hardship Waiver
We appreciate that a number of the suggestions for improvement of the application were incorporated. However, there a [sic] still several items that could be improved to make the hardship application process more understandable to consumers and easier to process for the Recovery Unit.

Response
1.I. This comment is related to 1.J. through 1.L. Please see Responses 1.J. – 1.L.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.J. Other languages: Although instructions for access to the form in Spanish are included on the front page of the application and the link leads to instructions for access to the application form in other languages, the hardship application itself is in English only. We suggest that there at least be link to instructions on how to complete the form in other major languages.

Response
1.J. Once the proposed Application for Hardship Waiver Form – DHCS 6195 has been approved, the Department will be translating the document to Spanish; the document will be available by accessing the link referenced. In regard to instructions on completing the form in other major languages, please see Response 12.E., in the FSOR Addendum 2, "Application for Hardship Waiver Form – DHCS 6195." The Department will continue to assess the need to provide forms and instructions in additional languages.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment
1.K. Section C, Criteria # 1: Although the Department is likely aware that this documentation is impossible to receive, this criteria still requests "*a letter from the applicant's county social services worker that proves receipt of the inheritance would discontinue the applicant's eligibility from public assistance payments and/or medical assistance programs."*

It is difficult to imagine a county social services worker- if the beneficiary even has one - calculating the impact that receipt of an inheritance would have on a beneficiary's benefits, much less being willing to write a letter to that effect. So why is this still included as one of the documentations required?

If such a letter cannot be obtained, this criteria asks for "*proof that the inheritance would discontinue benefits received by the applicant*." What kind of proof? A copy of the regulations on Medi-Cal asset limits? Under this criteria, the poorest of the poor applicants, i.e., those who are on financial or Medi-Cal benefits, would have the most difficult time proving hardship. As suggested before, it should be sufficient for the applicant to submit proof of eligibility for benefits they are currently receiving. Any inheritance over $2,000 would disqualify them, and that should be proof enough.

Response

1.K. This section was not amended based on comment. Please see Response 12.M., in the FSOR Addendum 2, "Application for Hardship Waiver Form – DHCS 6195." The Department does receive documentation from county social service workers. Eligibility for Medi-Cal is determined at the county level. Medi-Cal eligibility rules have expanded with the Affordable Care Act, and an inheritance over $2000 may or may not disqualify the individual for Medi-Cal. The hardship waiver criterion is not limited to Medicaid assistance. Should the applicant not be able to obtain a letter from their eligibility worker, or if the applicant is eligible for another public assistance program outside of the county, the applicant is asked to provide documentation to prove that he or she is in fact eligible for assistance and proof that the inheritance would discontinue the benefits being received.

Commenter Name, Title, Organization and Date of Comment(s)

COMMENT LETTER #1
Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
7/20/15

Comment

1.L. Section D - Applicant's Monthly Income: this asks the applicant to submit "two most recent pay stubs for each adult member of the household." Examples of whose pay stubs should be submitted would be helpful. A spouse or adult

child, perhaps. But, for example, if an uncle is living there, but not contributing to the household, why would his pay stubs be relevant to the application? If the applicant is sharing a rental with someone, why would the roommate's pay stubs be relevant?

Response

1.L. This section was not amended based on comment. This information is necessary as the Department considers the full financial situation of the household in determining whether a hardship exists. Furthermore, it is necessary to determine whether an adult member of the household is contributing to the applicant or is dependent on the applicant for financial assistance.

Commenter Name, Title, Organization and Date of Comment(s)

COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment

2.A. We appreciate that some of our recommended changes were incorporated into the proposed regulations. However, there are several outstanding issues that should be resolved prior to finalizing these regulations. Below are suggested changes which are underlined.

Response

2.A. This comment is related to 2.B. through 2.L. Please see Responses 2.B. – 2.L.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy,Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.B. Section 50961(c)**:** Our recommendation regarding this section was not included, and we again recommend that the following sentence be added to the end of this paragraph, reading:
Recovery of payments to managed care plans shall be made only for payments made after the Department has provided a separate notice to the beneficiary that explains that the premium payments made to the managed care organization will be included either in whole or in part in the claim against the beneficiary's estate.

Such language is required by CMS in its State Medicaid Manual, Transmittal No. 75 (Jan. 11, 2001), Part 3 (Eligibility), §3810(A)(6), p. 3-9-5.

Response
2.B. This subsection was not amended based on comment. Please see Response 1.B.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.C.-2.H. These comments are identical to 1.E.,1.F.,1.G., 1.C., 1.D. and 1.H., respectively.

Response
2.C.-2.H. Please see Responses 1.E, 1.F.,1.G.,1.C., 1.D. and 1.H.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.I. Comments on Changes to the Application for Hardship Waiver
We appreciate that a number of the suggestions for improvement of the application were incorporated. However, there are still several items that could be improved to make the hardship application process more understandable to consumers and easier to process for the Recovery Unit.

Response
2.I. This comment is related to 2.J. through 2.L. Please see Responses 2.J. – 2.L.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.J. Other languages: Although instructions for access to the form in Spanish are included on the front page of the application and the link leads to instructions for access to the application form in other languages, the hardship application itself is in English only. We suggest the hardship application be translated into Medi-Cal threshold languages.

Response
2.J. Please see Response 1.J.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.K. Section C, Criteria # 1: Although the Department should realize that this documentation is impossible to receive, this criteria still requests "*a letter from the applicant's county social services worker that proves receipt of the inheritance would discontinue the applicant's eligibility from public assistance payments and/or medical assistance programs."*

It is difficult to imagine a county social services worker- if the beneficiary even has one - calculating the impact that receipt of an inheritance would have on a beneficiary's benefits, much less being willing to write a letter to that effect. So why is this still included as one of the documentations required?

If such a letter cannot be obtained, this criteria asks for "*proof that the inheritance would discontinue benefits received by the applicant*." What kind of proof? A copy of the regulations on Medi-Cal asset limits? Under this criteria, the poorest of the poor applicants, i.e., those who are on financial or Medi-Cal benefits, would have the most difficult time proving hardship. As suggested before, it should be sufficient for the applicant to submit proof of eligibility for benefits they are currently receiving. Any inheritance over $2,000 would disqualify them, and that should be proof enough.

Response
2.K. Please see Response 1.K.

Commenter Name, Title, Organization and Date of Comment(s)
COMMENT LETTER #2
Linda Nguy, Legislative Advocate, Western Center on Law & Poverty
7/29/15

Comment
2.L. Section D - Applicant's Monthly Income: this asks the applicant to submit "two most recent pay stubs for each adult member of the household." Examples of whose pay stubs should be submitted would be helpful and those with no legal financial obligation should be included. For instance, a spouse or adult child who contributes to the household may be relevant, but not a relative who is not contributing to a household or roommate.

Response
2.L. Please see Response 1.L.