State of California—Health and Human Services Agency
Department of Health Services

California Department of Health Services

DIANA M. BONTÁ, R.N., Dr. P.H.
Director

GRAY DAVIS
Governor

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TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists Liaisons
All County Health Executives
All County Mental Health Directors

Letter No.: 02 - 51

TREATMENT OF WORK-RELATED PENSION FUNDS, INDIVIDUAL RETIREMENT ACCOUNT (IRA's), KEOGH'S AND OTHER WORK-RELATED RETIREMENT FUNDS UNDER THE INTERNAL REVENUE SERVICE (IRS) CODE.

Ref.: All County Welfare Directors (ACWDL) No. 90-01, Sections 50402 and 50458

The purpose of this letter is to provide counties with information regarding the treatment of work-related pension funds, IRA's, Keogh's and other work-related retirement funds under IRS Code in determining Medi-Cal eligibility. The following questions and answers will hopefully assist the counties in better understanding how to treat these funds.

1. **Question:** What are work-related retirement funds?

   Answer: Work–related plans administered by the employer for providing income when employment ends (e.g. pension, disability, or retirement plans administered by an employer, union or a contractor of the employer or union). Other examples are funds held in an IRA and plans for self-employed individuals, (sometimes referred to as Keogh plans). Also, depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds. Please note that all of the above may be annuities that are not subject to the investment annuity guidelines in Medi-Cal Eligibility Procedures Manual, Section 9-J.

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(916) 657-2941
Internet Address: www.dhs.ca.gov

2. **Question:** Why are retirement funds sometimes referred to as exempt and other times referred to as unavailable?

   Answer: The term exempt is used when the funds are held in the name of someone who is willing to forego eligibility for themselves such as a parent, spouse, child or community spouse, whether that individual would otherwise be eligible or not. The term unavailable is used when the funds are held in the name of the applicant/beneficiary and circumstances indicate that the funds are not to be included in the property reserve.

3. **Question:** What circumstances render these funds exempt?

   Answer: When evidence clearly shows that the funds are held in the name of a family member who is either ineligible or does not choose to receive Medi-Cal. The county should ensure that eligibility is suppressed for that individual. He or she will still be counted for the Maintenance Need Level (MNL), property limit and all other income and property rules will apply as applicable.

4. **Question:** What circumstances render these funds unavailable?

   Answer: There are a number of different situations that may render the balance of these funds unavailable:

   a. If the applicant/beneficiary is receiving periodic payments from each fund, or systematic withdrawals from each fund or minimum mandatory distributions at age 70 and one half or older from his or her total fund or,

   b. The applicant/beneficiary has requested release of the funds either in the form of payments or a lump sum. The balance of the fund is considered unavailable from the first of the month that a request for release of funds is made, until the funds are received. The balance of the funds in the account(s) will continue to be considered unavailable even when not received as long as the applicant/beneficiary continues to make a good faith bona fide effort to receive payment(s) and continues to provide verification of those efforts. Payments once received will be considered income if periodic or will be considered converted property if a cash lump sum is received.

c. If an individual must terminate employment to access the funds.

d. When the funds are jointly held with a third party and/or an employer and that party refuses to grant access to the funds.

5. **Question:** What is considered a good faith bona fide effort?

Answer: Evidence that the applicant/beneficiary is taking reasonable steps to pursue payment(s). For example, sending a letter to the employer/fund holder requesting release of the funds or payments and waiting a month before sending another, if a response has not yet been received on the first request.

6. **Question:** What would be considered acceptable evidence (verification) of that effort?

Answer: Verification that the applicant/beneficiary is corresponding with the employer or fund manager seeking release of the funds, such as letters sent, certified receipts, etc. Verification and documentation that the applicant/beneficiary is taking all necessary steps in a timely manner to obtain payment(s) from the fund. County staff themselves may obtain verbal verification if necessary by contacting the fund manager and documenting the contact in the case record. The county staff person may also use this method to validate information received from the financial broker if necessary.

Note: Remember to obtain a written release prior to contacting the fund holder directly, ABCDM 228-(6/99) "Applicant's Authorization for Release of Information," may be used for this purpose.

7. **Question:** If a petition for release of funds has been denied, does the beneficiary have to repeat the request at renewal?

Answer: No, once the funds have been verified as unavailable no further action needs to be taken, until the individual reaches age 55 or terminates employment. Retain verification of unavailability as a permanent document in the case file.

8. **Question:** What is the required annual minimum distribution under law, i.e. five percent, ten percent, or the total balance.

Answer: There is no single factor to determine the annual minimum withdrawal. The IRS has established criteria for establishing minimum withdrawals based on their own life expectancy tables and formulas. As the Department of Health Services' (DHS) intention is not to second guess the IRS, for purposes of the Medi-Cal eligibility determination it is deemed that the periodic payments that are received by an applicant/beneficiary shall meet the requirements of DHS as long as the distribution includes both principal and interest. Once the person reaches age 70 and one-half years of age or more, DHS considers any payment received to meet eligibility requirements. Verification of life expectancy table on the principal/interest combination is not required after the individual reaches 70 and one-half years of age.

Note: Systematic withdrawals of individuals who are under retirement age are permitted under IRS Code, Section 72(t) without penalty if established properly. Individuals may contact their accountants or financial advisors for information and guidance.

9. **Question:** Is there a mandatory age requirement for establishing periodic payments from IRA's, Keogh's, and other retirement funds under IRS code?

Answer: Yes, with the exception of the new Roth IRA's, an individual who has attained age 70 and one-half years old must begin to withdraw the minimum mandatory distribution from his or her IRA/Keogh, and he or she must comply with federal tax law regarding those withdrawals. Remember that for Medi-Cal eligibility purposes any distribution after a person reaches 70 and one-half is considered to meet DHS requirements and renders the balances of all of the individual's retirement funds unavailable.

10. **Question:** How does Medi-Cal treat Roth IRA's?

Answer: The IRS has no requirements for minimum mandatory distributions from Roth IRA's. Thus, to maintain eligibility the periodic payments from these accounts must constitute interest and principal. Again, a letter from the financial institution indicating that interest and principal is being distributed to the client is required. This is required for Roth IRA's held by ALL age groups.

11. **Question:** If an individual has been receiving periodic payments from his/her IRA/Keogh or other retirement funds in compliance with IRS code by withdrawing the minimum amount required by law from one account each year instead of setting up automatic periodic payments from all of the accounts, can the balances still be considered unavailable?

Answer: Yes, as outlined in Question 8 above once a person reaches 70 and one-half years old, Medi-Cal does not apply a specific formula to establish the amount of payments. Furthermore, once periodic payments from each fund, systematic withdrawals from each fund, or minimum mandatory distributions from their total retirement funds are established, the total balance of all of the individual's IRA/Keoghs/work-related pension funds are then considered unavailable for Medi-Cal purposes.

12. **Question:** Can an applicant/beneficiary elect to defer payments from his/her work-related pension plans, IRA, Keogh or other retirement funds under IRS Code and still be eligible for Medi-Cal?

Answer: No, at any time while a person is a Medi-Cal applicant/recipient he or she chooses to defer payments from these funds, then the cash surrender value shall be considered available and should be included in the property reserve until the property can be considered

13. **Question:** How does the eligibility worker know if a distribution meets the requirements?

Answer: Accept the amount reported by the applicant/beneficiary, who is 70 and one-half years of age or more as meeting the minimum mandatory distribution requirement. If the applicant/beneficiary is under 70 and one-half, obtain verification from the financial broker or fund manager that the distribution would meet the requirements for early distribution based upon IRS life expectancy tables, or that the periodic payments from each fund includes interest and principal.

If you have any questions or concerns regarding this letter, please contact Ms. Kim McCord of my staff at (916) 657-3723 or E-mail at KMcCord@dhs.ca.gov

Sincerely,

ORIGINAL SIGNED BY

Richard Brantingham
Acting Chief
Medi-Cal Eligibility Branch