STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF HEALTH SERVICES
714/744-P STREET
SACRAMENTO, CA 95814

April 20, 1983

To: All County Welfare Directors

Letter No. 83-24

OTHER REAL PROPERTY — RESCISSION OF NOTICES TO BENEFICIARIES ISSUED UNDER ALL COUNTY WELFARE DIRECTORS (CWD) LETTER NO. 83-10

Reference: CWD Letters No. 83-10 and 83-25

CWD Letter No. 83-25, to be issued shortly after this letter, supercedes CWD Letter No. 83-10. CWD Letter No. 83-25 1) incorporates changes in the instructions accompanying both the Other Real Property Questionnaire (DHS 7014) and Change of Status—Liens (DHS 7013) forms as agreed at the February CWDA Medical Care Committee meeting; 2) corrects various errors and omissions in CWD Letter No. 83-10; and 3) revises parts of CWD Letter No. 83-10 to conform to requirements of a permanent injunction order issued in Los Angeles Superior Court on March 24, 1983, as a result of the lawsuit, Griffin v. Dawson.

Please note that the order requires modification of some of the procedures contained in CWD Letter No. 83-10. The order does not require modification of the recently adopted Other Real Property (ORP) regulations. A copy of the order is attached for your information. The order only affects the way in which we notice applicants and beneficiaries in LTC of certain listing-for-sale requirements under Section 50428. The order has no effect on the implementation of Section 50427.

Applicants and beneficiaries who will be notified for the first time of the requirement to list their property for sale per Section 50428 after receipt of this letter by the county shall have their cases processed according to the instructions contained in CWD Letter No. 83-25. The instructions contained in this letter (No. 83-24) apply only to cases which were first noticed of the requirement to list according to the instructions contained in CWD Letter No. 83-10. These cases shall be processed as follows:

1. The caseworker shall rescind any notice issued per CWD Letter No. 83-10 requiring that property be listed for sale. A letter, in the same format as the notice being rescinded, instructing the beneficiary to disregard the prior notice, is sufficient.

2. The caseworker shall rescind any Notice of Action discontinuing eligibility based on failure to list property for sale per Section 50428. Such notices shall inform beneficiaries that their benefits will be restored, retroactively if necessary, and they should disregard the original Notice of Action.

3. Notice of Action—Liens forms issued under CWD Letter No. 83-10 shall likewise be rescinded.

4. Completed Other Real Property Questionnaires sent to the Recovery Branch per CWD Letter No. 83-10 shall be retained by that Branch. Liens will not, however, be filed based on the information contained in them. Liens will only be filed for cases where the Questionnaire was sent under CWD Letter No. 83-10 based on further information furnished by the counties on Change of Status--Liens forms. The blank space at the bottom of these forms can be used to advise the Recovery Branch of any updates to the Other Real Property Questionnaire.

5. Cases should then be processed according to the instructions contained in CWD Letter No. 83-25, again with the exception that new Other Real Property Questionnaires will not be prepared. Those already sent to the Recovery Branch will simply be updated by means of Change of Status--Liens form(s).

The various notices of rescission required above may be combined with one another, for purposes of efficiency, but should not be combined with subsequent notices required under CWD Letter No. 83-25.

In carrying out these instructions, caseworkers and county staff should keep in mind the thrust of this order: No applicants or beneficiaries shall be denied benefits because of a failure to comply with a requirement to list their property for sale without first having the opportunity to submit additional, pertinent written information to the county and having the case reevaluated based on all the available facts. This order is not to be interpreted as abridging any other appeal rights the applicant or beneficiary may have. Applicants and beneficiaries are entitled to request a fair hearing with the Office of the Chief Referee to appeal the requirement that they list their property for sale.

Example 1 (Corresponds to Example 1 in CWD Letter No. 83-10)

On January 10, 1983, a person in LTC applied for Medi-Cal. His former home had a net market value of $22,000 based on the tax assessor's determination less any encumbrances. The home was unoccupied. On the MC 210, the applicant stated he was not expected to return home within six months.

During the face-to-face interview, the county worker explained that the beneficiary's former home was not exempt property since it was not exempt as a home under California Administrative Code (CAC), Section 50425(a), nor was it exempt under Section 50427 since the property exceeded $6,000 and was not being utilized. The worker went on to explain that there are regulations, however, which would allow for Medi-Cal eligibility (if the person is otherwise eligible) after certain conditions are met. The worker outlined the requirements in Section 50428(a), including the requirement that a bona fide and continuous effort must be made to sell the former home. The applicant was informed that DHS will record a lien against this property. The applicant was told to supply to the county a copy of the listing of the property for sale, a letter from the licensed real estate broker verifying that the property was listed at its fair market value, and

a copy of the listing contract between the applicant and the broker. The county in this example was to use the listing contract to determine that a continuous effort was being made during the life of the contract to sell the property.

The applicant supplied the necessary information to the county, and the worker determined that eligibility was established. The applicant was sent a Notice of Action approving Medi-Cal benefits. In addition, the beneficiary was sent a second Notice of Action concerning the lien provision, Liens.

The worker then completed the Other Real Property Questionnaire and sent it to DHS (Recovery Branch). The worker established a tickler file indicating when the listing contract would expire in order to verify that a continuous effort was being made to sell the property.

Follow-Up

Pursuant to the injunction, this All County Letter requires the caseworker to notify the beneficiary in writing to disregard the previous requirement to list his property for sale. The previous Notice of Action—Lien should also be rescinded.

A new notice should be issued according to the instructions in CWD Letter No. 83-25, explaining the county review procedure and describing examples of issues available to the beneficiary requesting county review to obtain exemption from notice requirements. If the beneficiary does not wish a county review (as indicated by no response to the new notice), compliance with the listing requirements is reconfirmed and a new Notice of Action—Liens is sent to the beneficiary. A Change of Status—Liens form is sent to the Recovery Branch indicating the date the second Notice of Action—Liens was sent to the beneficiary. The Recovery Branch will be able to file a lien immediately upon receipt of the change form.

If the beneficiary instead indicates a wish to have the county review its finding by submitting written documents for review, the county has 14 days after receipt to withdraw or affirm the requirement to list. In the latter case the beneficiary would have 30 days from the date of the affirmation notice to meet the listing requirements of Section 50428.

Example 2 (Corresponds to Example 3 in CWD Letter No. 83-10)

Early in January 1983, the county evaluated a continuing case with other real property with a net market value of $20,000. The property was the beneficiary's home before his LTC status began. Net yearly income from the property was at least six percent of its net market value. Since, however, the net market value of the property exceeded $6,000, the property, though utilized, was not exempt under Section 50427. The county sent the notice, Continuing Beneficiaries—Utilized Property Over $6,000.

The notice listed the requirements of Section 50428, which required the beneficiary to provide the county with evidence that the property was listed for sale with a licensed real estate broker at its fair market value.

The following are four scenarios which could occur under the facts of Example 2.

A. The beneficiary failed to supply the necessary information to the county within 30 days. Since the first notice was conditional, a second notice was sent in order to discontinue the recipient. On February 14, 1983, the county sent a Notice of Action discontinuing the beneficiary effective February 28, 1983 for having property in excess of the $1,500 property reserve for a Medi-Cal Family Budget Unit (MFBU) of one person.

Follow-Up

The county must rescind the informational notice requiring listing and the Notice of Action discontinuing benefits on February 28, 1983. The county must take action to restore benefits effective March 1.

A new notice is issued according to CWD Letter No. 83-25. If the beneficiary fails to request county review and fails to provide evidence of listing he is sent a Notice of Action discontinuing benefits.

B. The beneficiary supplied the required information and eligibility was continued. The county completed the Other Real Property Questionnaire and sent it to the Recovery Branch, DHS. A Notice of Action—Liens was sent to the beneficiary informing him about the lien provision.

Follow-Up

The county's follow-up in this case would be the same as for Example No. 1 above.

C. The beneficiary supplied the required information and eligibility was continued. A Notice of Action—Liens was sent to the beneficiary, the county sent a completed Other Real Property Questionnaire form to the Recovery Branch. In January 1983, the beneficiary requested a state hearing. We do not consider that aid paid pending (APP) was granted even though the filing was timely because there was no proposed action to discontinue or reduce benefits and aid was already established. The county completed a Change of Status—Liens form indicating that a state hearing was requested and sent it to the Recovery Branch.

Follow-Up

The county's follow-up in this case would be the same as for Example No. 1 above.

D. The beneficiary requested a state hearing on eligibility before any information was provided. The county did not send the Other Real Property Questionnaire form to the Recovery Branch before the state hearing decision was issued.

Follow-Up

Pursuant to the injunction, this All County Letter requires the caseworker to notify the beneficiary in writing to disregard the previous requirement to list his property for sale.

A new notice should be issued according to the instructions in CWD Letter No. 83-25, explaining the county review procedure and describing examples of issues available to the beneficiary requesting county review to obtain exemption from notice requirements. If the beneficiary does not wish a county review (as indicated by no response to the new notice), compliance with the listing requirements is confirmed and a Notice of Action-Liens is sent to the beneficiary. An Other Real Property Questionnaire is sent to the Recovery Branch. The Recovery Branch will be able to file a lien immediately upon receipt of the form.

If the beneficiary instead indicates a wish to have the county review its finding by submitting written documents for review, the county has 14 days after receipt to withdraw or affirm the requirement to list. In the latter case the beneficiary would have 30 days from the date of the affirmation notice to meet the listing requirements of Section 50428.

If you have any questions, please contact Doug Mac Donald at (916) 445-1797.

Sincerely,

ORIGINAL SIGNED BY

Jo Ann Wray
Acting Deputy Director
Health Care Policy and
Standards Division

Attachments
cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

JOHN K. VAN DE KAMP, Attorney General
of the State of California
ANNE S. PRESSMAN,
G. R. OVERTON,
Deputy Attorneys General
3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010
Telephone: (213) 736-2912

Attorneys for Defendants/Respondents

FILED
MAR 24 1983
JOHN J. CORCORAN, COUNTY CLERK
BY D. LEE, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DONALD GRIFFIN AS GUARDIAN AD LITEM FOR LULA BAGLEY; ELAINE BASS AS GUARDIAN AD LITEM FOR DORA BERGMAN; LUCY DRAKE AS GUARDIAN AD LITEM FOR IDA BLOOM; NANCY ROSENBLUM AS GUARDIAN AD LITEM FOR NATHAN LILLIE; LOUISE MILLER AS GUARDIAN AD LITEM FOR FRANCES MILLER; BETTY DAVIES AS CONSERVATOR FOR VIRGINIA HOWELL; CLARENCE PREVOST AS GUARDIAN AD LITEM FOR LILLIAN MARKS; HAZEL K. HANSON AS GUARDIAN AD LITEM FOR CHRISTINE KASTEN; THOMAS BRADY AS GUARDIAN AD LITEM FOR MILDRED A. BRADY, Plaintiffs/Petitioners, v. WILLIAM DAWSON, as Director of the State Department of Health Services, State Department of Health Services, an agency of the State of California; MICHAEL FRANCHETTI, as Director of the State Department of Finances; STATE OF CALIFORNIA, a Political Entity, Defendants/Respondents	CASE NO. C 446398 PERMANENT INJUNCTION ORDER

The court having considered the presentations and arguments of counsel for all parties *in camera* on March 18 and

21, 1983; and no party having an objection to the granting of a permanent injunction resolving all issues raised in the complaint/petition in the instant matter:

IT IS ADJUDGED, ORDERED AND DECREED THAT:

The California Department of Health Services, its agents, employees, attorneys, representatives or anyone acting by or in concert with them, is hereby permanently enjoined from denying or reducing benefits to Medi-Cal beneficiaries based upon section 50428, Title 22, California Administrative Code, and any information notice or notice of action resulting from All-County Letter 83-10.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED THAT:

The California Department of Health Services, its agents, employees, attorneys, representatives, or anyone acting by or in concert with them, shall issue a notice to all Medi-Cal beneficiaries affected by section 50428, Title 22, California Administrative Code.

Said notice shall advise the beneficiary that:

1. Any prior information notice suggesting the beneficiary list a home for sale in order to maintain the benficiary's Medi-Cal eligibility or that the beneficiary's Medi-Cal has been terminated, reduced or denied for failure to list is rescinded, and that the benefits have been restored, retroactively, if necessary.

2. The beneficiary has a right to a hearing before his or her welfare worker within 30 days of the notice, which hearing shall include the following elements:

a. The hearing shall be by documents only which the beneficiary or a representative shall present to the welfare worker. The documents which may be presented may

consist of declarations, letters, files, or any kind of writing relevant to the issues specified below.

b. The issues to be addressed at the hearing may include:

i. Whether or not the beneficiary is in Long-Term Care;

ii. The value of the beneficiary's home;

iii. Any exemptions specified by statute or regulation which allow the beneficiary to remain eligible for Medi-Cal benefits and not list his or her home for sale; or

iv. Any reasons why the beneficiary cannot comply with the requirement to list the home for sale.

3. The notice shall advise the beneficiary or representative that any adverse decision of the welfare worker based upon the above described hearing or notice of action terminating or modifying the beneficiary's Medi-Cal eligibility may be appealed to the Chief Referee at the California Department of Social Services.

4. The notice shall inform the beneficiary that an appeal must be filed with the Chief Referee within ten days from the notice from the welfare worker in order to receive aid paid pending, but all appeals must be filed within 90 days from the notice of the welfare worker.

/

5. The hearing before the Chief Referee will be conducted pursuant to the provisions of Welfare and Institutions Code section 10950 et seq.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED THAT:

1. All determinations of the welfare worker based upon the documents and writings in the review required in the foregoing part of this order which require the beneficiary to list his or her home for sale in order to remain eligible for benefits shall be by notice to the beneficiary with a description of the beneficiary's appeal right to the Chief Referee as set out above.

2. If a beneficiary fails to comply with a determination of the welfare worker that the beneficiary must list his or her home for sale in order to remain eligible for benefits or fails to appeal such a determination to the Chief Referee, a notice of action terminating the beneficiary may be sent. The notice of action shall describe the beneficiary's right to appeal the termination of eligibility pursuant to Welfare and Institutions Code section 10950 et seq.

3. No beneficiary shall transfer or sell or cause to be transferred or sold any home pending the results of the hearing before the welfare worker or the appeal of the welfare worker's decision to the Chief Referee, as described above, but that this will not affect any beneficiary's other hearing rights provided by law, except:

a. Property held in joint tenancy may be transferred by operation of law to the joint tenant in the event of the death of the beneficiary; or

b. Upon the order of a court of competent jurisdiction.

4. The court shall retain jurisdiction to consider the issues of attorney's fees and costs.

IT IS SO ORDERED.

DATED: March 24, 1983

[signature]
JUDGE OF THE SUPERIOR COURT

Approved:

Harriet Pressley

[signature]

[signature]