TMENT OF HEALTH SERVICES
STREET
), CA 95814

August 23, 1985

To: All County Welfare Directors
County Administrative Officers

Letter No. 85-57

IMPLEMENTATION OF ASSEMBLY BILL 2615 (CALIFORNIA STATUTES OF 1984, CHAPTER 1518)

This letter is to provide you with additional information on a new state law which clarifies existing Medi-Cal policy concerning eligibility determinations for married couples who have divided their community property into equal shares of separate property.

AB 2615 (copy attached) added Section 14006.2 to the Welfare and Institutions (W&I) Code to provide that, if a written interspousal agreement is executed in accordance with California community property law, such a division of property shall be considered to meet the adequate consideration requirements for Medi-Cal purposes. The law has been in effect since January 1, 1985 and must be observed by county welfare departments when determining or redetermining the eligibility of anyone who meets the qualifying conditions.

A valid interspousal agreement must meet the following requirements:

1. The agreement must be in writing and signed by both parties.

2. An accounting of the value of each asset is necessary.

3. How the assets are to be divided must be stated.

4. There must be a total evidencing approximately equal division of the non-exempt assets.

The following considerations should be kept in mind when handling cases which involve a division of community property:

- The enactment of AB 2615 did not change existing Medi-Cal policy which recognizes interspousal agreements to divide community property in accordance with California community property laws.

- AB 2615 does not change current Medi-Cal regulations pertaining to MFBU determinations and what resources are considered available to the MFBU. Specifically, in accordance with Title 22, California Administrative Code (CAC), Section 50377 (MFBU Determination, Family Member in LTC or Board and Care), a couple will not benefit from a division of their community property when both spouses must be included in the same MFBU.

- The spouse who applies for benefits and who is in his/her own MFBU must still meet the property reserve limit for a single individual before eligibility for Medi-Cal can be established.

- Spouses may choose to divide some or all of their identifiable community property.

- The purpose of W&I Code 14006.2 is to clarify that married couples have the right to protect one half of their community property that, absent an interspousal agreement, would have to be reduced before one member of the couple could qualify for Medi-Cal benefits. The only resources which are subject to reduction for Medi-Cal purposes are non-exempt resources. Therefore, it is one half of these non-exempt assets which can be protected by the interspousal agreement. As such, although couples may also choose to divide any exempt resources they own via a written agreement, any non-exempt resources which are divided by the agreement must be divided into equal shares of separate property.

- The agreement does not have to be drawn up by a lawyer as long as it meets the minimum requirements stated above.

- In order to be valid, an interspousal agreement must be based on the mutual assent of both spouses. If one member is incapable of giving such assent, someone (other than that person's spouse) must act on his or her behalf in drawing up the agreement. The person who does this could be the public guardian, a court-appointed conservator, or a person who has been granted a durable power of attorney in accordance with the Uniform Durable Power of Attorney Act (California Civil Code, Section 2400 et seq.).

- AB 2615 provides for the equal division of community property only. Any transfer of separate property by one spouse to the other spouse should be evaluated in accordance with Title 22, CAC, Section 50409. (See the definitions of

community and separate property found in 22, CAC, Sections 50072 and 50075).

- A copy of the interspousal agreement is to be retained in the Medi-Cal case record.

The Eligibility Branch is now developing: 1) regulations to implement this legislation; 2) a revision to the MC 216, "Rights of Persons Requesting Medi-Cal", to assure that applicants and beneficiaries are informed about this method of avoiding the "spenddown" of the total community property assets; and 3) an update to Article 9 of the Procedures Section of the Eligibility Manual.

If you have additional questions, please contact Tom Dickson of my staff at (916) 324-4971.

Sincerely,

Original signed by

Doris Z. Soderberg, Chief
Medi-Cal Eligibility Branch

Attachment

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: December 31, 1985

Assembly Bill No. 2615

CHAPTER 1518

An act to add Section 14006.2 to the Welfare and Institutions Code, relating to health.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2615, Moorhead. Medi-Cal.

Under the Medi-Cal Act, certain medically needy persons are eligible for health care services if their monthly income in excess of the specified amount required for maintenance is not sufficient to provide for the costs of health care, less any amount by which the value of the person's resources exceeds specified amounts. Also, transferring resources without adequate consideration is presumed to constitute a gift of property with intent to qualify for assistance, and disqualifies the owner from assistance for a certain period.

This bill would provide that, in determining the eligibility of a married individual who is considered to be living separately from his or her spouse, certain transfers would be deemed to have been made for full and adequate consideration. The bill would require the State Department of Health Services to furnish Medi-Cal applicants with certain notices regarding steps which may be taken by married individuals determined ineligible under certain income standards of the Medi-Cal program with respect to their property.

It would also state legislative intent in this regard.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to reduce the number of situations in which a misunderstanding of the Medi-Cal Act, as it applies to nursing home costs, causes either the unnecessary destitution of the entire family, or a dissolution of marriage unnecessarily carried out to prevent destitution.

SEC. 2. Section 14006.2 is added to the Welfare and Institutions Code, to read:

14006.2. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who, in accordance with Title XIX of the federal Social Security Act and regulations adopted pursuant thereto, is considered to be living separately from his or her spouse, the individual shall be considered to have made a transfer of resources for full and adequate consideration under Section 14006 or 14015 by reason of either of the following:

(1) Having entered into a written agreement with his or her spouse dividing their community property into equal shares of

separate property. Property so agreed to be separate property shall be considered by the department to be the separate property of the spouse who, pursuant to the agreement, is the owner of the property. Only in cases in which separate property owned by one spouse is actually made available to the other spouse, may the department count the separate property in the eligibility determination of the nonowner spouse.

(2) Having transferred to his or her spouse all of his or her interest in a home, whether the transfer was made before or after the individual became a resident in a skilled nursing facility or an intermediate care facility in accordance with and to the extent permitted by Title XIX of the federal Social Security Act and regulations promulgated pursuant thereto.

(b) The department shall furnish to all Medi-Cal applicants a statement in writing advising them that, to the extent permitted by Section 14006.2 and federal law, (1) in the case of an individual who is an inpatient in a skilled nursing facility, intermediate care facility or other medical institution, if the individual or the individual's conservator transferred to the individual's spouse all of the interest in a home, the individual shall not be considered ineligible for Medi-Cal by reason of the transfer; and that (2) if the individual and the individual's spouse execute a written interspousal agreement which divides and transmutes community property into equal shares of separate property, the separate property of the individual's spouse shall not be considered available to the individual and need not be spent by the spouse for the individual's care in a skilled nursing facility, intermediate care facility or other medical institution.

SEC. 3. The State Director of Health Services shall, within one year of the operative date of this act, adopt regulations implementing the provisions of this act. The regulations adopted by the director may also establish procedures by which the department may determine whether a transmutation of community property to separate property actually occurred, but the regulations shall be consistent with, and shall not vary from, existing community property law. These regulations shall be adopted as emergency regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the State Department of Health Services in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law.

O