STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

GEORGE DEUKMEJIAN, Governor

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

December 10, 1985

TO: All County Welfare Directors
All County Administrative Officers

Letter No. 85-78

RE: AB 987, CHAPTER 1221, STATUTES OF 1985

REFERENCE: Letter No. 85-53, Reese v. Kizer; Letter No. 85-57, AB 261

This is to provide you with instructions for implementing the subject urgency legislation (copy enclosed as Attachment I) which was enacted on September 29, 1985.

I. Section 1: Community Property Ownership Interest in Income.

Enclosed are advance copies of the emergency regulations and accompanying procedures (Attachments II and III) for implementing Section 1 (Welfare and Institutions Code 14005.16) of AB 987. The regulations became effective on December 1, 1985. As a result of AB 987 and these regulations, some of the instructions in Letter No. 85-53 regarding the Reese v. Kizer Stipulated Agreement must be modified commencing with December, 1985 month of eligibility. Briefly, the modifications are in the following areas:

- The Reese v. Kizer Agreement did not affect MFBU determinations; these regulations alter the MFBU composition for certain ABD-MN couples.

- The Reese v. Kizer Agreement required division of only unearned income received by a LTC person; these regulations require division of earned as well as unearned income received by a LTC person.

- Under the Reese v. Kizer Agreement the division of income applied only to persons who requested such a division; these regulations require that the division take place in all instances, whether or not a request has been made.

A. Summary of Regulations

1. MFBU Composition for LTC/Board and Care, 22 CAC Section 50377

Although AB 987 does not specifically require changes in this area, two changes have been made to further implement the intent of the Legislature as expressed in AB 987:

- Spouses who share a room at a facility will no longer necessarily remain in the same MFBU. The MFBU determination will be made following the rules applied to the couple in other LTC living situations.

- When a member of an ABD-MN couple (both apply and are found eligible for Medi-Cal) is in LTC the couple will remain in the same MFBU for the first full six months after entry for purposes of property determinations, but will be separated the month following entry for income and share-of-cost determination purposes.

2. Community Property Ownership of Income, 22 CAC Section 50512

The regulations recognize spouses' community property ownership interest in the income received by each spouse. Therefore, when one spouse is in a separate MFBU solely due to LTC status, the LTC person is the owner of one-half of the couple's combined unearned income and gross earned income. Likewise, the spouse of the LTC person owns the other one-half of the couple's combined unearned and gross earned income.

As under the Reese v. Kizer stipulated agreement, when the spouse at home receives more than one half of the community property income in his/her name none of this income will be considered available to the person in LTC. When less than one-half of the community property income is received by the spouse at home then some of the income received by the LTC person will be considered available to that spouse. This provision will be clarified in a post hearing amendment to the attached emergency regulations.

Additionally, the regulations specify that the community property ownership interest in income provisions do not affect stepparent deeming requirements, 22 CAC Section 50559 and 50561.

3. Presumption That All Income Is Community Property, Rebuttable by Either Spouse, 22 CAC Section 50512.

All income of the couple is subject to the one-half division unless either spouse provides evidence that all or part of the income is his/her separate income. The definitions of community and separate property in existing regulations (22, CAC, Sections 50072 and 50075) apply to ownership interest in income as well as property and should be the basis for deciding whether or not the presumption is successfully rebutted.

For example, an aged woman residing at home receives a private pension of $300 and her aged husband in LTC receives $700 in Social Security Benefits. The woman claims that her pension is her separate income because the benefits were awarded on the basis of her earnings prior to marriage. She provides evidence that she has not worked since the couple married. The woman has successfully rebutted the community property ownership presumption. Neither spouse rebuts the presumed community property ownership of the $700 Social Security benefits, therefore, the one-half division applies only to that source of income.

4. Unavailability of the Spouse's Share of Community Property Owned Income to the Person in LTC, 22, CAC Section 50515.

The law clearly states that the community property interest of the noninstitutionalized spouse in the income of the person residing in LTC shall not be considered available to the LTC spouse. (This is paraphrased in the attached regulations). The law contains no exceptions to this provision; therefore, in no instance should eligibility staff question the availability of the noninstitutionalized spouse's one-half interest to the person in LTC. A spouse no longer has to request the community property division of income, as it is required by law.

Example: A disabled medically needy couple residing at home has $1200 unearned income, all received in the name of the husband. The husband enters LTC where he will have to remain for four or five months. The couple should not be asked how they plan to divide the income while the husband is in LTC; each spouse is presumed to own one-half and none of the at-home spouse's share can be considered available to the LTC spouse. The shares of cost would be calculated as follows:

Month of entry:

1 MFBU; 1 SOC

$1200	unearned income
- 20	any income deduction (AID)
1180	net nonexempt income
- 784	maintenance need
$ 406	SOC to be met with couple's medical care costs

Month following entry:

2 MFBUs; 2 SOCs

$1200 - 2 = $600 each spouse's share

Husband's MFBU		Wife's MFBU	
$600	unearned income	$600	unearned income
- 20	AID	- 20	AID
$580		$580	net nonexempt income
+ 20	Deductions added back	-509	Maintenance Need
$600		$ 71	SOC to be met with wife's medical care costs
-0-	Allocation spouse		
$600	Net nonexempt income		
- 35	Maintenance Need		
$565	SOC to be met with husband's medical care costs		

As stated earlier, no division of income will occur if the spouse at home receives one-half or more of the community property income in his/her name. The income worksheet which was developed as part of the Reese v. Kizer Agreement has been modified to include the earned income received by the LTC person. It will be placed into the Procedures portion of the Medi-Cal Eligibility Manual until it can be incorporated into the MC 176W.

The division of income must also apply when the spouse at home is an SSI/SSP recipient (the law provides for no exceptions). The actual SSI/SSP payment should not be used when determining the amount of community property income owned by each spouse. The SSI/SSP recipient spouse should be advised to report the availability of any additional income received from this division to the local Social Security Administration (SSA) District Office.

We have written to SSA informing Region IX policy staff of this new state statute and have recommended that policy guides be established to ensure that couples with income subject to the AB 987 provisions are treated uniformly throughout the state. We will inform counties of any policy statements issued from SSA.

B. Implementation

These regulations should be implemented immediately at Intake for December, 1985 month of eligibility and forward. All continuing cases which are affected should be converted as quickly as possible but with an effective date of no later than March 1, 1986. Cases with decreased shares of cost must have these regulations applied retroactively to December 1, 1985. The beneficiaries should be given their choice of future month adjustments or corrected MC 177Ss/ Medi-Cal cards in accordance with 22 CAC, Section 50653.3 (a)(3).

II. Section 2: Division of Community Property

A. Summary Of Statute

Section 2 of AB 987 amended Welfare and Institutions Code Section 14006.2 to require the following:

1. If a married couple has not already executed a written interspousal property agreement (as explained in All County Welfare Director's Letter 85-57) the couple's nonexempt community property is automatically divided into equal shares of separate property as of the date the spouse enters a skilled nursing or intermediate care facility.

2. The automatic division, for spenddown purposes, is calculated as of the date the spouse enters the nursing home. However, the first month in which Medi-Cal eligibility can be established pursuant to this "automatic split" provision is September 1985, the month the subject legislation became effective.

3. Community property which becomes separate property due to the automatic division requirement is considered separate property only when the spouse resides in a skilled nursing, intermediate care or other medical facility. That is, the separate property reverts back to community property when the spouse is discharged from the medical facility unless the couple has executed a written interspousal property agreement.

4. The "automatic division" of community property constitutes a transfer of property for full and adequate consideration.

5. To qualify for Medi-Cal, the applicant spouse must provide evidence that his or her separate property (one-half the nonexempt community property) was spent for his or her own benefit.

6. It is to be presumed that all property owned by either spouse is community property. This presumption, however, can be rebutted by either spouse.

7. If the separate property owned by a spouse is actually made available to the other spouse, the amount of the property made available is considered in determining the Medi-Cal applicant's/beneficiary's eligibility for benefits.

8. Moving from one skilled nursing or intermediate care facility to another facility including an acute care hospital has no impact on the "automatic division" of community property.

9. All persons entering a skilled nursing or intermediate care facility shall be notified of the provisions of W&I Code 14006.2. The Department of Health Services is responsible for developing the statement to be given to all individuals who enter a nursing home and insuring that the statement is presented to the patients. All Medi-Cal applicants will be similarly notified by the county welfare department.

B. Implementation

The automatic division rule is to be implemented immediately for all new and pending applications. Continuing cases should not be affected by this change unless new nonexempt community property resources are acquired by the couple or exempt property becomes nonexempt property. When this occurs, the automatic division rule is to be applied in determining ongoing Medi-Cal eligibility.

The Eligibility Branch will promulgate regulations to implement the community property provisions of this new state law and will also revise the MC 216 to meet the Medi-Cal applicant notification requirements. Other forms will be revised or developed as necessary.

Questions regarding the changes in treatment of income should be directed to Ruthell Ussery at (916) 324-4970. Questions on the community property provisions should be directed to Tom Dickson at (916) 324-4971.

Sincerely,

Original signed by

Doris Z. Soderberg, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: June 30, 1986

Attachment I

Assembly Bill No. 987

CHAPTER 1221

An act to amend Sections 14005.16 and 14006.2 of the Welfare and Institutions Code, to amend Section 1 of Chapter 1518 of the Statutes of 1984, and to repeal Section 2 of Chapter 1031 of the Statutes of 1983, relating to medical assistance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1985. Filed with Secretary of State September 29, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 987, Margolin. Medical assistance.

Existing law provides for the medically needy category of eligibility under the Medi-Cal program, under which persons who would qualify for specified public assistance programs but for their income or resources are still eligible for Medi-Cal if they have insufficient income to pay for the cost of health care. Under this category, however, individuals may be required to pay a share of costs in order to fulfill eligibility requirements. Existing law further specifies that the community property interest of the institutionalized spouse in the unearned income of the noninstitutionalized spouse is deemed to be available income to the institutionalized spouse. Existing law, further specifies that, to the extent these provisions are in conflict with federal law or regulation, they shall not apply to the extent of the conflict. Existing law also requires the State Department of Health Services to seek federal waivers necessary to implement these provisions and provides that provisions for which waivers cannot be obtained shall not be implemented.

This bill would repeal the provisions requiring the department to seek waivers. It would also provide that there is a rebuttable presumption that each spouse has a community property interest in one-half of the total monthly income of both spouses.

Under existing law, in determining the eligibility for Medi-Cal benefits of a married individual who is considered to be living separately from his or her spouse, certain transfers are deemed to have been made for full and adequate consideration.

This bill would require a married individual who resides in a skilled nursing facility or intermediate care facility, and who is in a Medi-Cal budget unit separate from his or her spouse, to expend his or her other resources, which includes nonexempt separate property and ½ of all the community property, for his or her own benefit.

This bill would require the State Director of Health Services to adopt emergency regulations to implement this act.

This bill would take effect immediately as an urgency statute.

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

SECTION 1. Section 14005.16 of the Welfare and Institutions Code is amended to read:

14005.16. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who resides in a skilled nursing facility or an intermediate care facility, and who is in a Medi-Cal family budget unit separate from that of his or her spouse, the community property interest of the noninstitutionalized spouse in the income of the married individual shall not be considered income available to that individual.

(b) For the purposes of this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a community property interest in one-half of the total monthly income of both spouses.

SEC. 2. Section 14006.2 of the Welfare and Institutions Code is amended 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 clear and simple statement in writing advising them that (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. The statement provided for in this subdivision shall also be furnished to each individual admitted to a skilled nursing or intermediate care facility, along with, but separately from, the statement required under Section 72527 of Title 22 of the California Administrative Code.

(c) In order to qualify for Medi-Cal benefits pursuant to Section 14005.4 or 14005.7, a married individual who resides in a skilled nursing facility or intermediate care facility, and who is in a Medi-Cal budget unit separate from that of his or her spouse, shall be required to expend his or her other resources for his or her own benefit, so that the amount which remains does not exceed the limit established pursuant to subdivision (c) of Section 14006. For purposes of this section, the term "his or her other resources" shall be limited to the following:

(1) All of his or her separate property that would not have been exempt under applicable Medi-Cal laws and regulations at the time when he or she entered a skilled nursing or intermediate care facility, or at the date of execution of the agreement referred to in this section, whichever is earlier. For purposes of this paragraph, the mere change of residence from one facility to another shall not be deemed to be a new entry.

(2) One-half of all the community property, or the proceeds from the sale or exchange of that property, that would not have been exempt at the time described in paragraph (1).

(d) For purposes of subdivision (c), in the absence of an agreement such as that referred to in subdivision (a), there shall be a presumption, rebuttable by either spouse, that all property owned by either spouse was community property.

(e) The statement furnished pursuant to subdivision (b) shall advise all persons entering a long-term care facility, and all Medi-Cal applicants that only their half of the community property shall be taken into account in determining their eligibility for Medi-Cal whether or not they execute the written interspousal agreement referred to in the statement.

SEC. 3. Section 1 of Chapter 1518 of the Statutes of 1984 is amended to read:

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.

It is further the intent of the Legislature that the community property and community income of a noninstitutionalized spouse be protected for his or her use, when the other spouse becomes

institutionalized, and must apply for Medi-Cal to pay the cost of skilled or intermediate nursing facility care.

It is further the intent of the Legislature that Medi-Cal eligibility standards shall reflect and be commensurate with the duty of an institutionalized recipient to support his or her family.

SEC. 4. Section 2 of Chapter 1031 of the Statutes of 1983 is repealed.

SEC. 5. (a) The State Director of Health Services shall, within 30 days of the effective date of this act, adopt emergency regulations implementing this act 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 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, 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.

(b) If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 6. (a) Any provision of this act that is in conflict with any federal statute or regulation shall be inapplicable to the extent of the conflict, but the provision and the remainder of the provisions shall be unaffected to the extent no conflict exists.

No provision of this act shall be considered to be in conflict with any federal statute or regulation until after a final determination of the Secretary of the United States Department of Health and Human Services, made pursuant to Section 1116(a)(3) of the federal Social Security Act, finding such a conflict.

(b) In the event of an initial determination by the Secretary of the United States Department of Health and Human Services that any provision of this act is in conflict with any federal statute or regulation, the State Department of Health Services shall take all available and necessary steps to obtain a final determination reversing that decision. In the event of a final determination finding conflict with federal law, the State Department of Health Services shall immediately request the Attorney General of California to seek judicial review of the determination, and shall immediately notify the appropriate policy and fiscal committees of both houses of the Legislature.

(c) In the event of a final determination finding that any provision of this act conflicts with federal law, the State Department of Health Services shall adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, if necessary to avoid withholding of federal reimbursement. The State Department of

Health Services shall continue to implement provisions of this act which are unaffected by the final determination.

(d) The State Director of Health Services shall adopt regulations implementing this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, 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. These regulations shall become effective immediately upon filing with the Secretary of State.

(e) If any provision of this act, or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of these provisions that can be given effect without the invalid provision or application, and to this end these provisions are severable.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate necessary changes in the Medi-Cal program as soon as possible, it is necessary that this act go into immediate effect.

O

(OAL-4)

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

R-70-85
Medi-Cal Community
Property Division
of Income

Attachment II

Nov 26 4 51 PM '85
ADMINISTRATIVE LAW

LEAVE BLANK

1. ATTACHED ARE REGULATIONS ADOPTED, AMENDED OR REPEALED BY:

Department of Health Services
(AGENCY)

BY: John Romey
(AGENCY OFFICER AUTHORIZED TO SUBMIT REGULATIONS)

LEAVE BLANK

GENCY CONTACT PERSON AND POSITION
Ron C. Wetherall, Chief, Office of Regulations

TELEPHONE
(916) 322-4990

. Indicate California Administrative Code Title and specify sections to be amended, adopted, and/or repealed:

Title: 22

SECTIONS AMENDED
50377, 50513(d) by renumbering as new Section 50512, 50559, 50561 and 50515

SECTIONS ADOPTED

SECTIONS REPEALED

. TYPE OF ORDER (CHECK ONE)

- [ ] Regular
- [x] Emergency (Attach Finding of Emergency)
- [ ] Certificate of Compliance

Other Regulatory Actions:

- [ ] Procedural and Organizational Change
- [ ] Editorial Correction
- [ ] Authority and Reference Citation Change

. IS THIS ORDER A RESUBMITTAL OF A PREVIOUSLY DISAPPROVED OR WITHDRAWN REGULATION?

- [x] No
- [ ] Yes, if yes give date of previous filing _____

. IS THIS FILING A RESULT OF THE AGENCY'S REVIEW OF EXISTING REGULATIONS?

- [x] No
- [ ] Yes

IF THESE REGULATIONS REQUIRED PRIOR REVIEW AND APPROVAL BY ANY OF THE FOLLOWING AGENCIES, CHECK THE APPROPRIATE BOX OR BOXES.

- [ ] State Fire Marshal (Attach Approval)
- [ ] Building Standards Comm. (Attach Approval)
- [ ] Fair Political Practices Comm. (Include FPPC Approval Stamp)
- [x] Department of Finance (Attach STD. Form 399)

. PUBLICATION DATE OF NOTICE IN CALIFORNIA ADMINISTRATIVE NOTICE REGISTER	b. DATE OF ADOPTION OF REGULATION(S)	c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOV. CODE SEC. 11346.8(c))
	November 26, 1985	

WAS THIS REGULATORY ACTION SCHEDULED ON YOUR AGENCY RULEMAKING CALENDAR?

- [x] No
- [ ] Yes

EFFECTIVE DATE OF REGULATORY CHANGES: (SEE GOVERNMENT CODE SECTION 11346.2 AND INSTRUCTIONS ON REVERSE)

a. [ ] Effective 30th day after filing with the Secretary of State.

b. [x] Effective on December 1, 1985 as required by statutes: (list) AB 987 Chapter 1221, Statutes of 1985

c. [ ] Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Government Code Section 11346.2(d).)

[ ] Request Attached

d. [ ] Effective on _____ (Designate effective date *later than* 30 days after filing with the Secretary of State.)

(1) Amend Section 50377 to read:

50377. Medi-Cal Family Budget Unit (MFBU) Determination, Family Member in Long-term Care or Board and Care.

(a) An aged, blind or disabled person who is in LTC or board and care shall be in his/her own MFBU, except as provided in (c). ~~and (d),~~

(b) An aged, blind or disabled person's spouse who is in LTC or board and care shall be in his/her own MFBU, except as provided in (c). ~~and (d),~~

(c) Spouses and their children shall be in the same MFBU for property evaluations only until the end of the sixth full month of LTC or board and care status when all of the following conditions are met:

(1) Both spouses are aged, blind or disabled.

(2) One or both spouses is in LTC or board and care.

(3) Both spouses apply for and are eligible for Medi-Cal.

~~(d) A couple which includes an aged, blind or disabled person shall be in the same MFBU when both of the following conditions exist:~~

~~(1) Both spouses are in LTG or board and care;~~

~~(2) The spouses share a common room;~~

(e) through (h) no change in text; renumerate as (d) through (g) respectively.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.16 and 14008, Welfare and Institutions Code.

(2) Editorially renumber subsection (d) of 50513 as new Section 50512 to read:

50512. Ownership of Income.

(a) Except as specified in (b), ~~(d)~~ ~~I~~income is considered to belong to the person who ~~is~~:

(1) Is ~~N~~named on a negotiable instrument.

(2) ~~Who~~ ~~I~~Is given cash.

(3) ~~Who~~ ~~r~~Receives the income in kind.

(b) When the person identified in (a) has a spouse and there is no break in marital ties, it shall be presumed that each spouse has a one-half community property ownership interest in the total monthly gross earned and unearned income of both spouses.

(c) The community property ownership presumption in (b) shall be rebuttable by either spouse who provides evidence that all or a portion of the total income is owned separately by one spouse.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 5, Chapter 1221, Statutes of 1985.

Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code; Sections 687, 5105 and 5110, Civil Code.

(3) Amend Section 50515 by adding (b) to read:

(b) When a person is in LTC and is in his/her own MFBU in accordance with Section 50377, his/her spouse's share of the community property owned income shall be considered unavailable to the LTC person.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 5, Chapter 1221, Statutes of 1985.
Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code.

(4) Amend Section 50559 to read:

50559. Income Deemed Available from the Stepparent.

(a) Notwithstanding Section 50512, ~~I~~if there is a stepparent living in the home and only the parent and the parent's separate children are included in the MFBU, the income deemed available from the stepparent shall be determined as follows:

(1) Combine the ~~stepparent's~~ nonexempt unearned income received by or in the name of the stepparent with the ~~stepparent's~~ gross ~~earned~~ income earned by the stepparent minus the deduction for work expenses specified in Section 50553.1.

(2) No change.

(3) No change.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 5, Chapter 1221, Statutes of 1985.
Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code.

(5) Amend Section 50561 to read:

50561. Treatment of Income—Stepparent Cases.

(a) Notwithstanding Section 50512, ~~I~~if there is a stepparent living in the home, and only the parent and the parent's separate children are included in the MFBU, the income considered in determining the share of cost of those children shall be all of the following:

(1) The income of the children.

(2) The income received by or in the name of the parent.

(3) The income available from the stepparent as determined in accordance with Section 50559.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7 and 14005.16, Welfare and Institutions Code.

Statement of Emergency

These regulations implement, interpret and make specific Section 14005.16, Welfare and Institutions Code, as amended by Chapter 1221, Statutes of 1985.

Section 5(a) of Chapter 1221, Statutes, 1985 states:

Section 5. (a) The State Director of Health Services shall, within 30 days of the effective date of this act, adopt emergency regulations implementing this act 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, 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.

In order to fully comply with the legislative intent expressed in Section 3 of Chapter 1221, Statutes, 1985 (copy attached) it is necessary to also amend Medi-Cal regulations at 22, CAC, Section 50377 regarding Medi-Cal Family Budget Unit (MFBU) determinations to conform to federal Medicaid law at 42 USC 1396a(a)(10)(c) which specifies that the income and resource methodology of the cash assistance programs must be used. SSI treats spouses as individuals for income consideration purposes the month after one spouse enters long-term care. Failure to adopt this change on an emergency basis would mean that some aged, blind and disabled spouses would not have the community income protection of the law applied until six months after the other spouse entered long-term care.

It is also necessary to amend regulations at 22 CAC Sections 50559 and 50561 to clearly specify that the community property ownership interest in income does not apply to stepparent situations. Failure to adopt this change on an emergency basis would create confusion at the local level and lead to erroneous eligibility determinations which could adversely affect some children's access to necessary health care.

All of these regulations, therefore, are necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

Attachment III

8B -- MFBU DETERMINATION, FAMILY MEMBER IN LONG-TERM CARE OR BOARD AND CARE

This chart is to be used in conjunction with 22 CAC Section 50377.

I. COUPLES -- NO CHILDREN -- LIVING TOGETHER PRIOR TO ENTRY

Family Composition	Separate MFBUs Month Following Entry	Separate MFBUs Month Following 6 Full Calendar Months of LTC/B&C*	Same MFBU
1. ABD-MN spouse in LTC/B&C; MI spouse at home	X		
2. MI spouse in LTC/B&C; ABD-MN spouse at home	X		
3. ABD-MN spouse in LTC/B&C ABD spouse at home who does not apply or is not eligible.	X		
4. One ABD-MN spouse in LTC/B&C; one ABD-MN spouse at home		X	
5. One ABD-MN spouse in LTC/B&C; MI spouse in LTC/B&C; spouses share a room or are in separate rooms	X		
6. Both spouses ABD-MN in LTC/B&C, sharing a room or in seperate rooms		X	

* For property determinations only; separate income and share-of-cost determinations are completed the month following entry.

I. COUPLES -- NO CHILDREN -- LIVING TOGETHER PRIOR TO ENTRY (Continued)

Family Composition	Separate MFBUs Month Following Entry	Separate MFBUs Month Following 6 Full Calendar Months of LTC/B&C*	Same MFBU
7. Both spouses MI; one or both in LTC/B&C			X

* For property determinations only; separate income and share-of-cost determinations are completed the month following entry.

II. FAMILIES -- ONE PARENT WITH CHILD(REN) -- LIVING TOGETHER PRIOR TO ENTRY

	Family Composition	Separate MFBUs Month Following Entry	Separate MFBUs Month Following 6 Full Calendar Months of LTC/B&C	Same MFBU
1.	ABD-MN parent in LTC/B&C; AFDC-MN child(ren) at home	X		
2.	ABD-MN parent at home; AFDC-MN child in LTC/B&C			X
3.	ABD-MN parent at home; AFDC-MN child in LTC/B&C, but child was not living with parent immediately prior to entering LTC	X		
4.	ABD-MN parent in LTC/B&C; BD-MN child(ren) at home	X		
5.	ABD-MN parent at home; BD-MN child(ren) in LTC/B&C	X		
6.	AFDC-MN parent in LTC/B&C; BD-MN child(ren) at home			X
7.	AFDC-MN parent in LTC/B&C; AFDC-MN child(ren) at home			X
8.	AFDC-MN parent at home; AFDC-MN child(ren) in LTC/B&C			X
9.	AFDC-MN parent at home; BD-MN child(ren) in LTC/B&C	X		

III. FAMILIES -- TWO PARENTS WITH CHILD(REN) -- LIVING TOGETHER PRIOR TO ENTRY

	Family Composition	Separate MFBUs Month Following Entry	Separate MFBUs Month Following 6 Full Calendar Months of LTC/B&C*	Same MFBU
1.	One ABD-MN parent in LTC/B&C; one AFDC-MN/MI parent at home; any category Medi-Cal only child(ren) at home	X		
2.	ABD-MN parent at home; AFDC-MN/MI parent in LTC/B&C; any category Medi-Cal only child(ren) at home	X		
3.	One ABD-MN parent in LTC/B&C; one ABD parent at home who chooses not to apply or is not eligible; child(ren) at home not applying	X		
4.	One ABD-MN parent in LTC/B&C; one ABD-MN parent at home; any category Medi-Cal only child(ren) at home		X	
5.	One AFDC-MN/MI parent in LTC/B&C; one AFDC-MN/MI parent at home; any category Medi-Cal only child(ren) at home			X

* For property determinations only; separate income and share-of-cost determinations are completed the month following entry.

III. FAMILIES -- TWO PARENTS WITH CHILD(REN) -- LIVING TOGETHER PRIOR TO ENTRY (Continued)

Family Composition	Separate MFBUs Month Following Entry	Separate MFBUs Month Following 6 Full Calendar Months of LTC/B&C*	Same MFBU
6. Both parents (any category Medi-Cal only) at home; AFDC-MN/MI child(ren) in LTC/B&C			X
7. Both parents (any category Medi-Cal only) at home; BD-MN child(ren) in LTC/B&C	X		

* For property determinations only; separate income and share-of-cost determinations are completed the month following entry.

1. Community Property Income LTC Spouse
$_____ + $_____ =
earned unearned

2. Community Property Income At Home Spouse
$_____ + $_____ =
earned unearned

3. Total (Add lines 1 &2)

4. Each Spouse's Community Interest
(line 3 divided by 2)

A. If line 2 is equal to or greater than line 4, the at-home spouse's community property interest is adequately protected.

A1. Use the amount in line 2 plus any separate income of at-home spouse when determining SOC of at-home spouse and allocation from LTC spouse pursuant to 22 CAC Section 50563.

A2. Use the amount in line 1 plus any earnings and separate income of LTC spouse when determining LTC SOC.

B. If line 2 is less than line 4 the at-home spouse's community property interest is not adequately protected.

B1. Use the amount in line 4* plus any separate income of at-home spouse when determining SOC of at-home spouse and allocation from LTC spouse pursuant to 22 CAC Section 50563.

B2. Use the amount in line 4* plus any separate income of the LTC spouse when determining LTC SOC.

* If the spouse has earnings, the earned and unearned portions of line 4 must be identified to enable the proper income deductions to be applied.