STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY GEORGE DEUKMEJIAN, Governor

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

August 31, 1987

TO: All County Welfare Directors
All County Administrative Officers

Letter No.: 87 - 52

SUBJECT: TREATMENT OF FUNDS FOR BURIAL

REFERENCE: ACWD LETTER 84-20

This letter provides information on current Medi-Cal policy toward burial funds. The following are answers to commonly asked questions concerning burial funds and sets forth Medi-Cal policy until new regulations are published. A revision of Medi-Cal's regulations governing burial trusts (Section 50479), burial insurance (50476) and plots and crypts (50477) is being submitted which will incorporate recent changes in federal policy and changes in state law regarding treatment of these resources.

1. What are the current limits on burial funds?

   ACWD letter 84-20 briefly informed counties that the limit for irrevocable burial trusts and contracts had been raised to $1800. This remains the Medi-Cal limit on such funds. If an irrevocable burial trust or contract is established in California for more than $1800, the amount over $1800 is included in the property reserve of the MFBU.

   The limit for a revocable burial trust or contract remains $1000. If a revocable trust or contract is established for more than $1000, the excess is included in the property reserve of the MFBU.

2. How should the counties treat the interest on these trusts or contracts?

   Interest that is credited to burial trusts and contracts and is allowed to accumulate and is not withdrawn is considered exempt even if the interest raises the amount in the funds over the established limits. This assumes the accounts were originally established within the Medi-Cal limits.

3. What happens if an applicant/beneficiary removes some of the interest and/or principal and uses it for some other purpose?

   The amount withdrawn from the account and used toward a purpose other than burial arrangements is considered non-exempt property. If this amount when added to the existing property reserve makes the applicant/beneficiary ineligible,

the county should make an overpayment referral for the months in which the withdrawn funds created ineligibility.

4. How should the counties treat a burial trust or contract from out-of-state?

Some counties have encountered burial trusts from other states established with an amount of funds in excess of Medi-Cal's limits. If an applicant/beneficiary presents the county with such a trust or contract, it is not considered an available resource if it is either 1) irrevocable under the laws of the state in which it was created and cannot be liquidated or 2) can be revoked under the terms of the contract only with the consent of both the buyer and the seller and the seller does not agree to revoke it. Counties must examine the actual terms of the burial trust to see if it might be revocable. If a trust or contract is validly irrevocable in the state in which it was created, or the seller refuses to revoke the contract or trust, consider it unavailable property under Section 50489(a) and Section 50402. You may want to consult with the Medi-Cal property analyst on a case by case basis about burial trust law and irrevocability in states other than California.

If the contract or trust is potentially revocable, the county should allow the applicant/beneficiary the same provisions as for trusts in general under Section 50489(b). That is, the applicant/beneficiary has 30 days to initiate an action to determine if the funds can be revoked. It is not necessary however, for a court to be petitioned. Once revoked, the person should be allowed to establish a burial trust or contract within Medi-Cal limits before the end of the month in which the funds from the out-of-state trust are received.

5. May an applicant/beneficiary have one irrevocable and one revocable burial trust yielding a maximum total exemption of $2,800?

No. An applicant/beneficiary may have one or the other completely exempt but not both. If a person owns one of each type of burial trust, the exemption limit allowed for a revocable trust shall be reduced by the amount in any irrevocable trust. For example, if a person has $900 in a revocable and $700 in an irrevocable burial trust or contract, the county would subtract the $700 in the irrevocable account from the $1000 exemption for revocable funds ($1000-

$700 = $300). The result, $300, is the amount of the revocable trust or contract that is exempted. The remaining $400 in the revocable fund is not exempt and is included in the property reserve. Similarly, if a person has the maximum amount of each type ($1000 revocable, $1800 irrevocable) the revocable trust exemption limit is reduced dollar for dollar by the amount in the irrevocable trust ($1800). Eventually, the revocable trust exemptic is reduced to zero before all the funds in the irrevocable trust have been subtracted. Therefore, none of the funds in the revocable trust are exempt.

6. An elderly applicant in LTC is the beneficiary of a trust established by his son with the son's own money. The trust was purchased for $3,000 and designates that it is only for the father's burial expenses and cannot be withdrawn by the father (son is trustee). How should the trust be treated?

The county should review the terms of the trust. If the trust and the interest is clearly unavailable to the applicant, the funds should be treated as unavailable as per Section 50489(a) and Section 9J of the Procedures Manual. The county shall retain a copy of the trust document in the case record as well as a statement from the trustee that the funds are unavailable and cannot be withdrawn for the applicant's current support. If the funds may be available, after the county has reviewed the trust's terms, the steps outlined in Section 50489(b) should be initiated.

I hope these questions and answers provided helpful information in determining the property eligibility of clients. If questions arise, please contact Tim Lockwood (916) 324-4956 or Ric Morales (916) 323-6954.

Sincerely,

Original signed by

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: August 31, 1988