



## DEPARTMENT OF HEALTH SERVICES

714/744 P STREET  
SACRAMENTO, CA 95814

May 2, 1988

TO: All County Welfare Directors  
All County Administrative Officers

Letter: 88 -31

SUBJECT: AB 987 DIVISION OF COMMUNITY PROPERTY  
NOTICES: PREJUDICE CASES

Reference: All County Welfare Directors Letter 85-78, 86-20, 86-24.

The Department of Health Services is notifying persons who were Medi-Cal recipients in Skilled Nursing (SNF) and Intermediate Care Facilities (ICF) at anytime during the period of September 1, 1985 through April 30, 1986 of possible relief for prejudice they may have suffered because the Department delayed issuing the community property notice required by AB 987 (Chapter 1221, Statutes of 1985). As you know, AB 987 created a county administered ("automatic") division of community property once one spouse enters long term care (LTC). The law became effective September 29, 1985, and required the Department to immediately create a notice to be given to all LTC patients informing them of the new law. However, the Department did not publish the notice until March 1986. As a consequence, certain couples may have (unknowingly) spent more than the LTC spouse's share of the community property and may have been eligible during the seven months from September 29, 1985 through April 30, 1986 without making application for Medi-Cal because they did not know of the provisions of the new law.

It is the Department's intent to "make whole" those cases of prejudice which were due to the Department's delay in publishing the required notice.

To this end, we are sending the attached notice to all LTC patients known to the Medi-Cal Eligibility Data System (MEDS) from September 1, 1985 through April 30, 1986. It informs such persons of the possibility that they may have suffered prejudice and spent more on the LTC spouse's care than was necessary under AB 987. It instructs them to contact their local county welfare office (CWD) if they believe they spent more than they had to due to the delay in issuing the original community property notice. This letter gives counties instructions for handling these cases. Preliminary instructions were sent to county welfare directors via a MEDS SYSM message on April 18, 1988.

This is NOT in reference to Reese v Kizer interim activities (ACWDL No. 86-47) which concerns retroactive relief for long term care beneficiaries whose spouses were at home from January 1, 1984 thru December 31, 1985.

Establishing That Prejudice Has Occurred

Once an individual contacts the CWD, the county shall take the following actions:

1. Verify that the individual was married at anytime during the period of September 29, 1985 through April 30, 1986.
2. Verify that the LTC spouse was in a SNF or ICF anytime during the period of September 29, 1985 through April 30, 1986.
3. Establish whether the spouses would have been considered in separate Medi-Cal Family Budget Units (MFBUs) at anytime during this period.
4. If the claimant or his/her spouse does not meet these first three criteria at screening, he/she is not a member of the population prejudiced by the Department's delay in issuing the notice required by AB 987. No Notice of Action is necessary if the claimant does not meet the initial criteria. (The county should contact the Department on a case by case basis if a couple alleges that they did not receive a notice and the entry into LTC occurred after March 1986.)
5. If the claimant or his/her spouse meets the initial criteria, take an application for retroactive Medi-Cal as provided in Section 50148, Title 22, California Code of Regulations. For purposes of this potentially prejudiced population, the one year limit for applying for retroactive coverage (Section 50148(b)) and card issuance (Section 50746) is suspended.
6. Determine whether the LTC spouse reduced his/her property to the Medi-Cal limit for one (\$1,600 in 1985, \$1,700 in 1986) at anytime during the period of September 29, 1985 through April 30, 1986. Use any separate property owned by the LTC spouse and his/her share of the nonexempt community property owned by the couple at the date of entry into a SNF or ICF in calculating the LTC spouse's property. The usual verification requirements for income and property apply.
7. Verify that the expenditures that reduced the LTC spouse's property were for his/her own benefit.
8. Determine the share of cost liability the LTC spouse would have had in the retroactive months utilizing the Welfare and Institutions Code provisions of Section 14005.16, (division of community income, see All County Welfare Directors letter No. 85-78).

9. Determine whether the LTC spouse met his/her SOC liability each month for which he/she is seeking relief and was otherwise eligible. If eligible, issue retroactive cards for those months in which the LTC spouse would have been eligible had he/she applied. If ineligible, issue the appropriate Notice of Action.
10. If the person who was in LTC is now deceased, the spouse or other party mentioned in Section 50143 may apply for eligibility and retroactive cards on his/her behalf.

#### Procedures For Issuing Retroactive Cards

Counties should refer to Section 14-E "Issuance of Medi-Cal Cards More Than One Year After The Date Of Service" in their Procedures Manual when issuing retroactive cards. Section 50746 of the Medi-Cal Eligibility Manual permits the issuance of cards over a year old upon "departmental request". If an LTC spouse was prejudiced by the Department's delay in issuing the AB 987 property notice as outlined above, the Department is requesting that your county issue retroactive cards as appropriate. Pages 14E-3 and E4, Procedures Manual Section contain sample letters which must accompany the issuance of retroactive cards to insure the claims will be processed. Causes are suggested in brackets for the issuance of replacement cards (Court order, etc.). Please state "a request by the Department of Health Services in accordance with Section 50476 of Title 22, of the California Code of Regulations", (formerly the California Administrative Code) as the cause. Under [reason] please write "they were prejudiced because the Department failed to provide a timely notice on the division of community property as required by AB 987".

The deadline for people to apply for retroactive cards will be 90 days from the date the attached notice is issued. The notices are dated April 15 but the notices were issued April 18, 1988. All the usual verification requirements for income and property must be met by the applicants.

Finally, the Department is requesting your cooperation in asking your staff to review its LTC cases at redetermination for possible prejudice. This would mean a brief review of cases at the time routine redeterminations are performed. At this time, your staff should review each case and determine whether the claimant:

1. Was inappropriately denied due to excess property because the county did not know to apply a division of community property in late 1985 or early 1986 (counties were not

informed of the "automatic" division created by AB 987 until All County Welfare Letter 85-78 dated December 10, 1985), or

2. Had failed to apply for benefits because the claimant was not informed of the division of property provision at anytime during the period of September 29, 1985 through April 30, 1986.

If the county identifies a potential prejudice case, explore the facts of the case and issue retroactive cards with supporting documents (Procedures Manual Section 14-E) if the person would have been eligible.

The Department does not know how many persons may have been prejudiced by the delay. Thus far, however, the Department knows of only of a handful of cases statewide where such financial injuries have occurred. We have worked with counties on a case by case basis to resolve these. Nevertheless, we are asking counties to count and record its contacts with alleged prejudice cases whether or not the county ultimately finds these cases eligible for retroactive cards. In the event the counties must deal with more inquiries than we anticipate, we want the counties to present information on the increase in workload this request has generated. We will ask the counties to send us this information after the 90 day application deadline has past. An additional request for workload information will be made in April 1989 to determine how many prejudice cases were found during redetermination. We appreciate your help and thank you for your cooperation in advance. In addition, we apologize for the delay that has occurred in issuing these instructions and for the trouble this delay has caused your county. If you have questions, please contact Tim Lockwood at (916) 324-4956 regarding property issues and Toni Bailey at (916) 324-4967 concerning income.

Sincerely,

Original signed by

Frank S. Martucci, Chief  
Medi-Cal Eligibility Branch

Attachments

cc: Medi-Cal Liaisons  
Medi-Cal Program Consultants

Expiration Date: May 31, 1989

# Attachment

State of California - Health and Welfare Agency  
Department of Health Services

NOTICE TYPE 1  
April 2, 1988

## IMPORTANT NOTICE

To Married Medi-Cal Beneficiaries Who Have Resided In  
Skilled Nursing Or Intermediate Care Facilities At Any Time  
Since September 1985

first name last name  
address line 1  
address line 2  
city/state zip

Social Security Number:  
123-45-6789  
Beneficiary ID Number:  
34-2X-1234567-3-12

If you were in a skilled nursing or intermediate care facility  
at any time since September 1985, you may qualify for retroactive  
Medi-Cal cards which may allow you to get money back from the  
skilled nursing or intermediate care facility.

### Why are retroactive Medi-Cal cards available?

On September 29, 1985, a new law went into effect in California. It required the Medi-Cal program to count only half of a married couple's countable community property when one spouse goes into a skilled nursing or intermediate care facility. This new law makes some patients eligible for Medi-Cal sooner than in the past.

The new law also required Medi-Cal to give notice to all Medi-Cal applicants and all skilled nursing and intermediate care patients about the new way Medi-Cal counts community property. A copy of the original notice is enclosed. Medi-Cal did not give anyone this notice until March 14, 1986. So between September 29, 1985 and March 14, 1986, patients and Medi-Cal applicants were not notified of the new law, they did not apply for Medi-Cal cards as early as they could have and therefore, spent more of their property than they had to. Now, eligible people can get retroactive Medi-Cal cards to cover those past months.

### If you get retroactive Medi-Cal cards, can you get money back from the skilled nursing or intermediate care facility?

Yes, if you are eligible for a retroactive Medi-Cal card for a certain month, Medi-Cal will tell you how much you had to pay the nursing facility for that month as a share of cost. If you paid more, the facility in most cases must pay back the extra. The same is true for other kinds of facilities and health care providers. The county welfare office will give you help on how to use your retroactive Medi-Cal cards to get your money back.

### Who should apply for retroactive Medi-Cal cards?

You should apply for retroactive Medi-Cal cards if you think you fit all the following:

1. You were a patient in a skilled nursing or intermediate care facility at any time since September 1985; and,
2. You were married at any time during your stay in the facility; and,
3. You would have been eligible for Medi-Cal under the new law sometime between September 1985 through March 14, 1986 except your resources were too high.

### How can you apply for retroactive Medi-Cal cards?

You should contact your county welfare office to apply for retroactive Medi-Cal cards. This is the same office where you normally apply for Medi-Cal.

### What will happen when you apply for retroactive cards?

You must be able to show that you meet all the usual requirements for Medi-Cal. The county welfare office will figure out which of your resources were exempt and which were countable.

Also, the welfare office will consider you and your spouse's resources according to the new law. They will start with the day you entered the facility. From then on, they will count only your half of the countable community property resources. You will need to show when your half of the community property was spent (without giving it away). If you can show that your half was spent down to the limit and that you were otherwise eligible, then you may be eligible for retroactive cards for past months as far back as September 1985.

### When is the deadline for making an application for retroactive Medi-Cal Cards?

The deadline for making application for retroactive Medi-Cal cards is 90 days from the date of this notice. However, you should apply as soon as you can.

### What can you do if you have trouble getting retroactive cards?

If you need information, you may contact you local county welfare office. If the county welfare office refuses or denies your application, you have the right to appeal. There are strict time limits for doing this.

If the county welfare office is unable to help you, contact the California Department of Health Services, Medi-Cal Program Inquiry at (916) 445-0266 from 10 A.M. to 3 P.M. weekdays. For additional help, you may contact your local legal aid, legal services for seniors office, or an attorney of your choice.

MEDI-CAL PROPERTY AND INCOME LIMITATIONS  
FOR PERSONS IN LONG-TERM CARE

To be eligible for Medi-Cal benefits, the value of property that may be retained by an individual or family is limited as described below.

Real Property

- o A home is exempt from consideration as a property resource, provided the person in long-term care intends to return to the home or if the spouse or a dependent relative of the person in long-term care continues to reside in the home.
- o Up to \$6,000 of equity may be retained in real estate other than the home but such property must produce an income (e.g., rented) to help support the Medi-Cal applicant.

Personal Property Such As Cash, Stocks, Bonds, Cash Surrender Value of Life Insurance Etc.

The current (1986) limits on personal property are:

- o \$1700 for an individual.
- o \$2550 for a couple.

Medi-Cal eligibility cannot be granted until the total value of all assets has been reduced to or below the appropriate property limit. Reduction of countable property, sometimes referred to as "property spenddown", must be completed by the end of the month in which eligibility is to be established. A transfer-of-assets "without adequate consideration", that is, gift or sale for less than fair market value, will render an applicant ineligible for a period of time.

Community Property

In 1984, Welfare and Institutions Code Section 14006.2 was enacted, permitting couples to transmute (divide) their non-exempt community property by contract into equal separate property shares without triggering the transfer-of-assets rules. Under this law the separate property of a spouse will not be considered in determining whether the other spouse is eligible for Medi-Cal.

New Law. AB 987, was signed by the Governor on September 29, 1985, permits the spouse who remains at home to retain his or her share of community property and income when the other spouse enters a skilled nursing home facility (SNF) or intermediate care facility (ICF).

Division of Community Assets. A written contract between spouses dividing community property into equal shares shall be considered a transfer for adequate consideration. Such a contract may be executed prior to one spouse's entry into a nursing home. AB 987 provides that in the absence of such a contract, a couple's community property is automatically deemed split equally, for Medi-Cal eligibility purposes, as of the date one of the spouses enters a SNF or ICF. This provision assures that only one-half of the couple's community assets is available to the institutionalized spouse for Medi-Cal spenddown purposes.

AB 987 also provides that an applicant shall not be ineligible if he or she transfers all the interest in the home to his or her spouse. This provision applies whether the transfer occurs before or after the individual becomes a resident in a skilled nursing or intermediate care facility.

It should be noted that in the case of persons already in nursing homes in September 1985, the value of their community property is calculated as of the date of entry into the facility. However, eligibility for Medi-Cal based on this automatic division of assets cannot predate September 29, 1985.

Division of Income. AB 987 creates a rebuttable presumption that one-half of the total monthly income of both spouses is community property. The community property interest of the noninstitutionalized spouse in the income of the institutionalized spouse shall not be considered income to the spouse in the institution for purposes of determining Medi-Cal eligibility. However, if the noninstitutionalized spouse receives a greater income than the spouse in the facility, he or she may keep all of that income; none of it will be considered available to the institutionalized spouse.