STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

GEORGE DEUKMEJIAN, Governor

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

April 4, 1989

Letter No.: 89-28

To: All County Welfare Directors
All County Administrative Officers

SUBJECT: INTERSPOUSAL AGREEMENTS WHICH RATIFY EXISTING AUTOMATIC DIVISION OF COMMUNITY PROPERTY

REFERENCE: ACWDL 88-52

This letter is to clarify Question 5 in Part 2 of All County Welfare Directors Letter 88-52. The section is titled "Property Divisions as a Result of Interspousal Agreements - (AB 2615)". Question 5 is, "Which date should be used if the interspousal agreement was later than the entry into LTC?".

The answer to Question 5 stated that, "If the date of entry [into long term care (LTC)] is earlier than the agreement, the property owned at entry is subject to the "automatic" division. In general then, any subsequent division after date of entry of the same property or a portion thereof through an interspousal agreement should be disregarded."

We have reexamined our policy and determined that interspousal agreements which ratify the automatic division shall <u>not</u> be disregarded. Therefore, effective May 1, 1989, an interspousal agreement executed after the date of entry, which contractualizes or ratifies an automatic division calculated by the county, even if it appears to be an unequal division because the spouse in LTC has already spent down all or a portion of his/her one-half share of the community property as determined by the county, shall be recognized. Such an interspousal agreement shall not be considered a transfer without adequate consideration. The property given to the spouse at home through an agreement which ratifies a county's automatic division should be treated as his/her separate property.

Any interest income that accumulates on the separate property of the spouse in the home shall be considered the <u>separate</u> income of the spouse at home and shall not be considered in computing the share of cost (SOC) of the LTC spouse. The procedure for determining the LTC spouse's share of interest income under an automatic division, as outlined in ACWDL 88-52 part A, number 12, should <u>not</u> be used when an agreement has ratified the automatic division and transmuted the property from community to separate. Given the intent expressed by the Legislature in AB 987 (Statutes 1985, Ch. 1221, Sec. 3) to protect the community property interest of the noninstitutionalized spouse for his/her own use, it is reasonable to adopt a policy that recognizes such interspousal agreements.

This change must be implemented as soon as possible, but no later than May 1, 1989 for all new applications. Adjustments to ongoing cases should be completed at redetermination or on a case-by-case basis when there is a change in circumstances. Adjustments to ongoing cases for any overstated shares of cost due to consideration of the at-home spouse's interest income may be made retroactively to May 1, 1989 if the interspousal agreement was executed prior to May 1, 1989. If the interspousal agreement is executed after May 1, 1989, the SOC is adjusted as of the month of the interspousal agreement's date of execution.

If you have any questions in this regard, please feel free to call Sharyl Shanen at (916) 324-4956 or ATSS at 8-454-4956.

Sincerely,

Original signed by

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Directors

Expiration Date: December 31, 1989