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

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320

November 3, 1989
Letter No.: 89-93

TO: All County Welfare Directors
All County Administrative Officers

SUBJECT: MC INFORMATION NOTICES 005 (9/89) AND 007 (9/89)

The purpose of this letter is to transmit the revised MC Information Notice 005 (9/89) and the new MC Information Notice 007 (9/89). These two forms shall be put into use immediately and are necessary to provide all Medi-Cal applicants and beneficiaries at redetermination with information on Medi-Cal eligibility requirements including the new provisions resulting from passage of the Medicare Catastrophic Coverage Act of 1988 (MCCA). These two forms shall be provided to all Medi-Cal applicants and beneficiaries at redetermination in place of the MC Information Notice 005 (7/89).

The MCCA provisions protect the community spouse of an institutionalized spouse against impoverishment and are effective 1/1/90. Those provisions may, however, affect institutionalized and community spouses where the date of admission is on or after 9/30/89. The MCCA also eliminated the treatment of transfers of assets except for institutionalized individuals effective 1/1/90.

The county departments should follow normal procedures when ordering these forms from the DHS State Warehouse. Photocopies must be used until replacement stock is received. The new forms can be ordered approximately 12/31/89 from the State Warehouse. Stock of the old MC Information Notice 005 (7/89) must be recycled as soon as the county departments obtain photocopies of the new forms.

Please note, effective 1/1/90, a 4.3% increase in the Consumer Price Index (CPI) shall be applied to the spousal impoverishment provisions of the MCCA. The CPI increase means that effective 1/1/90, the Community Spouse Resource Allowance (CSRA) will be $62,580 and effective 1/1/90 the Minimum Monthly Maintenance Needs Allowance (MMMNA) will be $1,565 per month. The Family Allowance Base will be $851.

Nursing facilities are required by Welfare and Institutions Code 14006.3 to provide statements to all married residents and newly admitted married persons regarding eligibility for Medi-Cal. Copies of the forms [DHS 7076 (9/89) and DHS 7077 (9/89)] have also been included here for your information. A copy of the letter which was sent to the nursing facilities by the Licensing and Certification Division is also attached.

If you have any questions regarding these forms, or if the attached copies of the MC Information Notices 005 and 007 are not adequate for photocopying, please call Sharyl Shanen at (916) 324-4956.

Sincerely,

Original signed by

Frank Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: November 3, 1990

COMMUNITY PROPERTY - PERSON IN LONG-TERM CARE (LTC)

THIS INFORMATION APPLIES TO YOU *ONLY IF*:

- You were admitted to LTC *before* September 30, 1989; or
- You were admitted to LTC *between* September 30, 1989 *and* December 31, 1989 *and* you are eligible for Medi-Cal in December 1989, and you have remained eligible continuously since that time.

PLEASE NOTE - Changes made by the Medicare Catastrophic Coverage Act of 1988 (MCCA) regarding the division of your community and separate property do not apply to you.

In 1984 Welfare and Institutions (W&I) Code Section 14006.2 was enacted, permitting couples to transmute (divide) their nonexempt community property by contract into equal separate property shares without triggering the transfer-of-property 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.

Legislation (AB 987) was signed by the governor on September 29, 1985 permitting 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 facility(SNF) or intermediate care facility (ICF). This new legislation provides the following:

DIVISION OF COMMUNITY ASSETS

W&I Code Section 14006.2 states that a written contract between spouses dividing nonexempt 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 an SNF or ICF. 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 an SNF or ICF. A written contract may be executed after a spouse enters an SNF or ICF and be valid for Medi-Cal purposes if it ratifies the automatic division the county would have done at entry. A contract completed at this point may appear to be an unequal division due to spenddown of property. Verification of spenddown must be provided to the county. This provision assures that when the institutionalized spouse is in his or her own Medi-Cal budget unit only one-half of the couple's nonexempt community assets is available to the institutionalized spouse for Medi-Cal spenddown purposes.

Important:

An institutionalized spouse must spend his or her separate and/or one-half community property on his or her OWN BENEFIT to qualify for Medi-Cal under this new statute.

This section of the law also provides that an institutionalized applicant or beneficiary shall not be ineligible if he or she transfers all the interest in exempt property used as a home to the at-home spouse. This provision applies whether the transfer occurs before or after the individual becomes a resident in an SNF or ICF.

Note: The eligibility of the institutionalized spouse is not affected if the at-home spouse transfers, sells, or gives away his or her separate property.

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.

Note: There are situations where an institutionalized spouse is not in a Medi-Cal budget unit separate from his/her spouse's. If this occurs, eligibility cannot be established unless their property is at or below that for a couple ($3000 in 1989) or more in relation to family size.

MEDI-CAL GENERAL PROPERTY LIMITATIONS FOR ALL MEDI-CAL APPLICANTS

This form provides a general overview of Medi-Cal property requirements for all Medi-Cal applications and institutionalized spouses admitted to the nursing facility and medical institutions for nursing facility level of care, on or after September 30, 1989, who apply for Medi-Cal on or after January 1, 1990 and who have community spouses. A community spouse is married to an institutionalized spouse and does not reside in a nursing facility or medical institution. If you were admitted to a nursing facility prior to September 30, 1989, and have a spouse, see also the form entitled, "Community Property - Person in Long-Term Care" (MC Information Notice 005 - 9/89).

REAL PROPERTY

- Property used as a home is exempt (not counted) in determining eligibility for Medi-Cal. When an applicant or beneficiary is absent from the home for any reason, including institutionalization, the home continues to be exempt if the applicant or the beneficiary's spouse or a dependent relative continues to reside in the home. However, the money received from the sale of a home can be exempt for six months only if the money is to be used for the purchase of another home.

- Up to $6,000 of equity may be retained in real estate other than the home, mortgages, deeds of trust, or other promissory notes, but such property must produce an annual income of 6 percent of the net market or current face value (e.g., rented) to help support the Medi-Cal applicant.

LIFE INSURANCE POLICIES

Each person may have life insurance policies with a combined face value of $1,500 or less and they will not be counted. If the combined face values are over $1,500, however, the combined cash surrender values are totaled and included in the property reserve as discussed below.

PROPERTY LIMITS - PERSONAL PROPERTY SUCH AS CASH, STOCKS, BONDS, CASH SURRENDER VALUE OF LIFE INSURANCE, ETC.

An applicant or beneficiary may keep a certain amount of personal property, such as a checking/savings account or insurance policies, and still be eligible for Medi-Cal. The amount of property which may be kept is referred to as the "property reserve". The property reserve limits in 1989 are $2,000 for one person and $3,000 for a couple.

Effective January 1, 1990, if you are an institutionalized spouse who was admitted to a nursing facility or medical institution on or after September 30, 1989, and are married to a community spouse who does not reside in a nursing facility or medical institution, and you apply for Medi-Cal on or after January 1, 1990 as an institutionalized spouse, the community spouse may keep up to $60,000 (to be increased on 1/1/90) of the couple's combined community and separate property.

Note: There are situations where an institutionalized spouse is not in a Medi-Cal budget unit separate from his/her spouse's. If this occurs, eligibility cannot be established unless their property is at or below that for a couple ($3000 in 1989) or more in relation to family size.

PLEASE READ THE BACK OF THIS FORM FOR MORE INFORMATION

This amount is known as the Community Spouse Resource Allowance (CSRA) and is calculated as of the date of application for Medi-Cal. The CSRA limit is based on $60,000 in the federal law which will be adjusted by the annual increase in the Consumer Price Index beginning January 1, 1990. An institutionalized spouse must be expected to remain institutionalized for a continuous period of at least 30 days before these laws will apply. The institutionalized spouse may also keep up to $2,000 (the property limit for one). This law also allows the CSRA limit to be exceeded, if ordered by a court, for the "support of" the community spouse.

At any time after the date of institutionalization either spouse may request an assessment of their property even if the institutionalized spouse is not applying for Medi-Cal. If you would like to have an assessment completed, you must make an appointment at the county welfare department. Please note that the assessment can not be completed unless you bring with you verification of the values of all your real and personal property, liquid and non-liquid assets.

Verification may include such things as County Tax Assessments, checking account statements, savings account passbooks, court orders, brokerage account statements, life insurance policies, annuity policies, trust account documents, contracts, lease agreements, life estate documents, copies of patient trust account ledgers, award letters, affidavits or statements from banks, conservators, guardians, pension funds, etc. Basically, verification includes documentation from a qualified person or financial institution, of the values of any real or personal property, liquid or nonliquid assets you and your spouse own.

REDUCTION OF PROPERTY TO WITHIN PROPERTY LIMITS

THE PROPERTY VALUE MUST BE REDUCED TO OR BELOW THE PROPERTY LIMIT BY THE END OF THE MONTH IN WHICH ELIGIBILITY IS TO BE ESTABLISHED

Medi-Cal cannot be approved for a month until the total value of all nonexempt property, that is, property which is counted when eligibility is determined, has been reduced to or below the appropriate property reserve limit in that month . For example, a Medi-Cal applicant whose total nonexempt property consists of a savings account with balance of $3,300 in a month must reduce the savings account down to $2,000 in that month. In this same situation where there is a couple, the saving account must be reduced to $3,000.

Effective January 1, 1990, if an institutionalized and community spouse have combined property totaling more than $62,000 in a month, using the base figures in federal law, the couple must reduce the total to $62,000 in that month before the institutionalized spouse will meet the property requirements. The institutionalized spouse will then have 90 days (longer if a court order is necessary) to complete transfer(s) of the $60,000 (to be adjusted on 1/1/90) to the community spouse, bringing the institutionalized spouse to within $2,000, the property limit for one.

Until January 1, 1990, a Medi-Cal applicant may reduce his or her nonexempt property to within the specified limits in any way he or she chooses except that, a transfer of nonexempt property by anyone for less than fair market value may result in a period of ineligibility. A transfer for less than fair market value is a change in ownership of property by giving away, selling, or otherwise exchanging it for less than the property is worth. After January 1, 1990, a transfer of nonexempt property generally will not result in a period of ineligibility if you are not an institutionalized individual.

IMPORTANT NOTE: After January 1, 1990, if you are an institutionalized individual, or if you may be institutionalized within 30 months, nonexempt property transferred for less than fair market value may still result in a period of ineligibility for Medi-Cal!

The following are examples of ways an applicant may reduce his or her nonexempt property:

- Pay medical bills
- Buy furnishings for the home
- Pay on the home mortgage
- Buy clothes
- Make repairs to the home
- Pay off other debts
- Pay off an auto loan
- Begin process to obtain the cash surrender value of nonexempt life insurance policies
- Borrow against excess property to cover the cost of medical care or request the medical provider to lien against the property to cover the cost of care

THE PROPERTY VALUE MUST BE REDUCED TO OR BELOW THE PROPERTY LIMIT BY THE END OF THE MONTH IN WHICH ELIGIBILITY IS TO BE ESTABLISHED

TRANSFERS OF PROPERTY OCCURRING ON OR BEFORE DECEMBER 31,1989

RESULTS OF TRANSFERS OF PROPERTY OCCURRING ON OR BEFORE DECEMBER 31, 1989, FOR LESS THAN FAIR MARKET VALUE

The transfer of nonexempt property any time within the 24 months before or any time after the Medi-Cal application will result in a period of ineligibility if the property was given away, sold, or otherwise exchanged at less than fair market value. The period of ineligibility could last from one month to several years. This period of ineligibility is based on the uncompensated value of the property (dollar amount of compensation not received) and the Medi-Cal maintenance need level for the number of persons in the case. The period may be reduced if the applicant has other expenses, such as medical expenses or out-of-home care costs in excess of the maintenance needs.

For example, assume an applicant couple reduces their property by transferring $25,000 in savings to a son as a gift. They would be ineligible for Medi-Cal because they did not receive fair market value in return. If the couple has no other allowable expenses, the applicants would be ineligible for 26 months ($25,000 divided by $934 maintenance need for a couple).

PROPERTY TRANSFERS OCCURRING ON OR BEFORE DECEMBER 31, 1989, WHICH DO NOT RESULT IN INELIGIBILITY

The transfer of exempt property, that is, property which is not counted when eligibility is determined, will not result in a period of ineligibility as long as the property was considered exempt at the time of the transfer. This includes a transfer of property used as a home. However, the money received from the sale of a home must be counted as property unless the money is used for the purchase of another home within six months. In addition, any money received from the sale of other exempt assets will be counted as property until it is reduced to or below the property limits.

TRANSFERS OF NONEXEMPT PROPERTY OCCURRING ON OR AFTER JANUARY 1, 1990

NON-INSTITUTIONALIZED INDIVIDUALS

An individual who is not institutionalized will not be ineligible due to a transfer of property for less than fair market value unless the individual is institutionalized within 30 months of the date of the transfer.

PLEASE READ THE BACK OF THIS FORM FOR MORE INFORMATION

INSTITUTIONALIZED INDIVIDUALS

An institutionalized individual may be ineligible due to a transfer of nonexempt property for less than fair market value unless the nonexempt property was transferred to:

- The community spouse (or to another for the sole benefit of the community spouse),
- A child of the institutionalized individual who is blind, permanently or totally disabled, or to
- The spouse (prior to the admission of the institutionalized spouse to the medical institution or nursing facility) provided that the spouse did not transfer the property to another person (other than back to the spouse from which the property came) for less than fair market value.

A transfer of the nonexempt former home to someone not listed below (e.g., a gift of the home to an adult son or daughter who is not blind or disabled and who is not living in the home) or the transfer of nonexempt property anytime within the 30 months before, or any time after, the date the person is both institutionalized and applying for or receiving Medi-Cal may result in a period of ineligibility for nursing facility level of care if the property was given away, sold, or otherwise exchanged at less than fair market value. The period of ineligibility could last from one to 30 months. This period of ineligibility is based on the uncompensated value of the property (dollar amount of compensation not received) and the average rate for privately paid nursing facility care.

For example, assume an institutionalized individual reduces property by transferring $24,000 in savings to a son or daughter as a gift. He/she would be ineligible for Medi-Cal because nothing of fair market value was received in return. Suppose that the average rate for privately paid nursing care is $2,000. The institutionalized individual would be ineligible for 12 months ($24,000 divided by $2,000 average private pay rate).

TRANSFER OF THE NONEXEMPT FORMER HOME BY AN INSTITUTIONALIZED INDIVIDUAL WHICH DOES NOT RESULT IN A PERIOD OF INELIGIBILITY

An institutionalized individual will not be ineligible due to a transfer of the nonexempt former home if title to the home is transferred to:

- The spouse,
- A child under 21 or who is blind or totally and permanently disabled,
- A son or daughter not listed above, who resided in the home for two years immediately preceding the institutionalized individual's date of admission and who provided care which allowed that individual to reside at home rather than in the institution or facility, or
- A sibling who has equity interest in the home and who resided in the home for one year immediately preceding the date the institutionalized individual was admitted to the facility or institution.

Anytime a transfer results in a period of ineligibility, the ineligible individual has the right to request an appeal through a fair hearing. The form for filing a request is on the reverse side of the Notice of Action form discontinuing or denying Medi-Cal eligibility.