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

January 25, 1990
Letter No.: 90-14

TO: All County Welfare Directors
All County Administrative Officers

SUBJECT: DESIGNATED BURIAL FUNDS

REFERENCE: ACWDL 84-20, 87-52

This is to advise you that effective no later than March 1, 1990 the following changes will be implemented when evaluating funds for burial. These changes are being made to comply with current federal Supplemental Security Income (SSI) regulations, Medicaid regulations and state law.

This letter clarifies the treatment of irrevocable burial trusts and prepaid burial contracts and introduces a new exemption for funds for burial titled "Designated Burial Funds". Please note this letter supersedes and replaces All County Welfare Directors Letter (ACWDL) 87-52; however, several questions in that ACWDL have been addressed again in question #7 of this letter.

The Department of Health Services (DHS) is in the process of updating regulations to make these changes. In the meantime, the changes as outlined in this letter should be implemented effective March 1, 1990, for intake cases. Continuing cases should be assessed for impact at annual redetermination. If the revised instructions result in the applicant or beneficiary having excess property, he/she shall be allowed 60 days from the date he/she was informed to make a change.

1. Definition and Exemption of Irrevocable Burial Trusts or Prepaid Burial Contracts

   Current: ACWDL 84-20 (May 11, 1984) announced the maximum dollar limit for irrevocable burial trusts and irrevocable prepaid burial contracts had been raised to $1,800. A more complete definition is given below.

   Revised Treatment: Irrevocability is defined as that which cannot be revoked or recalled. In particular, burial trusts or prepaid burial contracts can only be rendered irrevocable when a person has applied for or is receiving some form of Public Assistance (PA). (Business and Professions Code Section 7737)

Up to $1,800 in the following irrevocable burial trusts or contracts shall be exempt:

a) Money or securities placed in an irrevocable trust for funeral, cremation, or interment expenses with any of the following trustees: a banking institution or trust company empowered by the State of California to act as trustee in the handling of trust funds, cemetery authority which has established an endowment care fund, or not less than three persons one of whom may be in the employ of a funeral director.

b) Money or securities placed in an irrevocable trust created by a deposit in an insured savings institution made by one person of his or her own money in his or her own name as trustee for a funeral director to provide payment for funeral services rendered by the funeral director upon the depositor's death.

c) Life or burial insurance purchased specifically for funeral, cremation, or interment expenses, which is placed in an irrevocable trust or which has no loan or cash surrender value available to the recipient.

d) Securities issued by a licensed cemetery authority which by their terms are convertible only into payment for funeral, cremation or interment expenses.

2. Definition of Designated Burial Funds

Current: Not currently defined; did not previously exist.

Revised Treatment: Designated burial funds include revocable burial trusts, prepaid burial contracts, securities, annuities, cash or any separately identifiable asset which has been clearly designated as set aside for the expenses connected with the individual's burial, cremation or other funeral or interment arrangements. See below for the county's treatment of these funds.

3. Exemption of Revocable Burial Funds

Current: There is a $1,000 exemption for revocable burial trusts and prepaid burial contracts.

Revised Treatment: There shall now be a $1,500 exemption for designated burial funds.

In the event an applicant/beneficiary has excess resources at the time of application, the county should advise the individual he/she can set aside up to $1,500 for his/her burial as a designated burial fund. However, it is not necessary that the applicant/beneficiary exceed the property reserve limit before the county offers this advice. Any asset may be set aside to meet burial expenses. The designated burial fund exclusion is not limited to liquid resources (i.e. cash on hand, savings accounts, time deposits, cash surrender value of life insurance policies, etc.). It is also possible to set aside the value of any real or personal property up to $1,500.

In order to be excluded:

a) The funds must be separately identifiable, and

b) The funds must be clearly designated for burial. Verification must include proof the funds have been designated for burial. The designation is verified if the instrument of ownership of such funds clearly shows the funds are to be used only for burial expenses. If the designation cannot be verified based upon the documents submitted by the applicant/beneficiary and the applicant/beneficiary is over the property limit, the county shall advise the applicant/beneficiary that he/she may designate up to $1,500 of the nonexempt assets for burial expenses for purposes of qualifying for Medi-Cal. This designation may take the form of a declarative statement (see example 10) which contains the following information:

1) the value and owner of the assets set aside,

2) the name of the person for whose burial the assets are set aside,

3) the form in which the assets are held (i.e. savings account, cash on hand, cash surrender value of life insurance policy, etc.),

4) the date on which the funds were considered as set aside, and

5) acknowledgment that if any of the excluded funds are used for another purpose, a period of ineligibility may be assessed.

If the applicant/beneficiary already has a written declaration but this declaration does not contain all the necessary

information, have the applicant/beneficiary sign a separate declaration and specify the date he/she designated the funds.

The county case file must contain:

1. verification of the owner and value of the designated asset,

2. verification that funds have been designated for burial purposes, which may be one of the following:

   a) designation indicated in the instrument of ownership (e.g. copy of stock, copy of account title, etc.);

   b) declarative statement.

   NOTE: If the funds are in the form of "cash on hand" there will not be an instrument of ownership. Therefore, the file does not need a designation indicated in the instrument of ownership if cash on hand is being designated.

3. If the designation date is different from the date stated by the individual, clarify by phone contact and document in case file.

Finally, any time the exempt assets in a designated burial fund, irrevocable burial trust or prepaid burial contract are used for another purpose, these assets will no longer be considered exempt. They must then be evaluated in accordance with Medi-Cal regulations outlined in Article 9, Title 22, California Code of Regulations.

4. Definition of "Member of Family" in exempting burial plot, vault, crypt

   Current: Medi-Cal applicants and beneficiaries may retain any burial plot, vault or crypt for use by any member of the family as exempt property.

   Revised Treatment: "Member of the family" is more clearly defined to include the applicant or beneficiary, his/her spouse, adult or minor children (including adopted and stepchildren), siblings, parents, adoptive parents, and the spouses of those

individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is a "member of the family".

5. What is included as a burial plot or burial space item?

Eligibility Manual Procedures Section 9K - Burial Plots, Vaults and Crypts addresses the items which are included as part of a burial plot or burial space. A burial space or plot is any conventional gravesite, crypt, mausoleum, vault, casket, urn or other repository which is customarily and traditionally used for the remains of the deceased person. As a point of clarification, however, any or all of these items can be purchased as part of the plot or space. In addition, interest on burial space contracts which is allowed to accumulate and is not withdrawn is exempt.

6. How burial space contracts are treated if the burial space items are purchased by installment payments

If the burial space items are being purchased by installment payments, the funds applied towards the value of the burial space items shall be excluded. As stated above, Eligibility Manual Procedures Section 9K defines burial space items which can be considered exempt.

7. Issues addressed in All County Welfare Directors Letter 87-52

a) How should the counties treat the interest on these trusts or contracts?

Interest that is credited to revocable (now called "Designated Burial Funds") or irrevocable 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 within the Medi-Cal limits at application.

b) 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

nonexempt property unless the funds were used to purchase property which is otherwise exempt. If this amount when added to the existing property reserve makes the applicant/beneficiary ineligible, a period of ineligibility shall be calculated for the months in which the withdrawn funds created ineligibility.

c) How should the counties treat an irrevocable burial trust or a 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 $1,800 irrevocable burial trust limit. 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 <u>seller</u> 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 the amount over $1,800 unavailable property under Section 50489 (a) and Section 50402.

If the out-of-state contract or trust is potentially revocable and the value of such contract or trust exceeds $1,500, 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 actually received.

d) 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 it is only for the father's burial expenses upon his death and cannot be withdrawn by the father within his lifetime (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 as in this case, 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 for purposes other than burial, after the county has reviewed the trust's terms, the steps outlined in Section 50489 (b) should be initiated.

e) Previously the Department required counties to offset the amount exempted in a revocable trust by the amount exempted in any irrevocable trust. The offset is eliminated and both types of trusts (irrevocable and revocable) may be retained by the applicant or beneficiary up to the maximum limits for each trust.

8. Treatment of Nonexempt Burial Funds

Current and revised treatment: Nonexempt burial funds shall be included in the property reserve.

9. Discussion of Undesignated Single Premium Annuities

Some counties have had questions about how to treat single premium annuities which contain no statements that they are for burial, cremation or interment expenses. If the Medi-Cal applicant or beneficiary retains ownership, under the new rules for a designated burial fund, these undesignated annuities can now be exempted up to a maximum of $1,500 if the applicant/beneficiary designates in writing the annuity is a fund set aside for burial, cremation or interment expenses. If an annuity is used to fund burial expenses and is part of a trust or contract meeting the requirements for an irrevocable burial trust or contract, it may be exempt up to $1,800.

In many instances, however, the applicant or beneficiary has irrevocably assigned an insurance company, family member or funeral home as the annuity's owner or beneficiary. Thus, a transfer of property has occurred and the county must determine whether adequate consideration was received or whether the transfer affects eligibility. If it would be a disqualifying

transfer, the applicant/beneficiary must be allowed to overcome the presumption property was transferred for the purpose of qualifying for Medi-Cal. The county must determine whether the annuitant's owner or annuitant's beneficiary will receive the proceeds of the annuity upon the annuitant's death.

For example, if a funeral home is to receive the annuity's proceeds, the applicant/beneficiary could overcome the presumption by providing written verification from the funeral home of the burial services it will fund. As another example, if the applicant's/beneficiary's child will receive the proceeds, written verification that the child will use the proceeds for the applicant's/beneficiary's burial expenses may also overcome the presumption.

10. Examples

The following are some examples relating to the instructions above:

Example 1: Mr. Bill Smith establishes an $1,800 burial trust three years prior to applying for Medi-Cal. The interest has accrued on the account to make the total value $2,400. The burial trust has a clause which states if Mr. Smith applies for or receives public assistance, then the trust will become irrevocable. Mr. Smith was not on public assistance at the time he established this burial trust. Therefore, only the first $1,800 would be exempt as an irrevocable trust now that he is applying for public assistance and the remaining $600 could be counted towards the $1,500 exemption for designated burial funds. As described in 7(e), please note that it is a change in policy to allow the full $1,500 exemption even though the $1,800 exemption is used. Any interest that accrues on the $1,800 exempted at application shall be exempt provided Mr. Smith continues to receive public assistance, and the interest is allowed to accumulate and is not withdrawn.

Example 2: In June 1987, Ms. Kelley Smith went to Graham Brothers Funeral Home to make funeral arrangements for herself. She purchased $1,800 worth of services which were financed with an $1,800 life insurance policy (face value). In June 1988, she applied for public assistance. The burial contract has a provision should a person apply for or receive public assistance, the cash surrender value (CSV) of the life insurance policy shall be irrevocably assigned to the funeral home to be

used only for Ms. Smith's funeral expenses. How should the county treat the policy?

Since the policy is designated for a pre-need burial contract (for future funeral benefits), and the face value is within the $1,800 limitation for an irrevocable burial contract, the CSV of the policy would be considered exempt. The Medi-Cal transfer of assets policy would not apply as Ms. Smith received adequate consideration for her future funeral benefits.

Example 3: Ms. Dee Clark establishes an $1,800 irrevocable burial trust through a savings institution while she is applying for public assistance. Three years later she wishes to roll the account over to another trustee. The terms of the trust have not changed. The account is still irrevocable and Ms. Clark is still on public assistance. Interest in the amount of $500 has accrued on the account prior to Ms. Clark rolling it over. Since the account is still held with a trust company and since the account is still irrevocable as Ms. Clark is still on public assistance, the entire $2,300 would continue to be exempt if she were to roll it over.

Example 4: Mr. Lewis has $1,300 in a revocable trust and $900 in an irrevocable burial trust when he applies for Medi-Cal. The $900 in the irrevocable trust would be exempt since it is within the $1,800 limit allowed for an irrevocable burial fund. The $1,300 of the revocable trust will be exempt since it is under the $1,500 limit allowed for a designated burial fund. (Please note that this is a change in policy as described in item 7(e).

Example 5: Ms. Mary Martin, an eligible individual, owns three gravesites. She states they are intended for herself, her daughter, and her daughter's future husband. Two of the gravesites are excluded; one cannot be excluded because it is intended for the use of an individual (her daughter's future husband) who is not currently a member of Mary Martin's immediate family.

Example 6: Mr. Jerry Garcia owns four burial spaces. He states they are intended for himself, his spouse, and his parents who are not living in the same area. All four burial spaces would be excluded because they are for the use of members of Jerry's family.

Example 7: Mr. Gary Smith took $1,800 of his money and entered into an $1,800 burial trust with an employee of Rose Hill Funeral Home and a sales representative of Plan Ahead Life Insurance Company. The trust states that it becomes irrevocable in the event Mr. Smith applies for public assistance. Mr. Smith, the funeral home employee and the sales representative are all named as trustees of the trust. This trust was established to provide payment for funeral services rendered by Rose Hill Funeral Home upon Mr. Smith's death. He immediately applies for Medi-Cal. As three people are trustees, and the $1,800 limit is not exceeded, the burial trust, which is now considered irrevocable, would be exempt.

Example 8: Ms. Mary Martinez states she has cash at home set aside specifically for her burial. This money would be exempt provided she states in writing the money is for her burial and does not exceed the maximum limit for a revocable designated burial fund ($1,500).

Example 9: Sample language for a Declarative Statement

The following assets are to be designated exclusively for the purpose of burial, cremation, or interment expenses:

Type	Value	Owner

Total: $ _____

(not to exceed $1,500)

The date which these assets are considered as set aside for burial expenses is _____.
(mo/day/year)

I understand these funds are to be used solely for my burial expenses and if they are used for any other purpose, these assets will no longer be considered exempt. They must then be evaluated in accordance with Medi-Cal regulations.

Please use these instructions in making eligibility determinations until the revised burial regulations are issued.

If you have any further questions, please direct them to Lisa Reagan of my staff at (916) 322-6238.

Sincerely,

ORIGINAL SIGNED BY

Ricardo Bustamante for
Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: January 25, 1991