STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF HEALTH SERVICES
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March 22, 1991
Letter No.: 91-28

TO: All County Welfare Directors
All County Administrative Officers

SUBJECT: PROPERTY CHANGES CONTAINED IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989 (OBRA 89)

The purpose of this letter is to officially instruct county welfare departments to implement the provisions contained in the attached set of draft regulations as of their respective effective dates. These two changes affect the Medi-Cal program because, although they were made to the State Supplemental Income program, the Medicare Catastrophic Coverage Act of 1988 (MCCA) provides that states cannot apply a more restrictive income or resource methodology than the cash assistance programs.

Property Used in a Trade or Business

Under federal law, effective May 1, 1990, there is no longer a $6,000 limitation on property that is exempt because it is used in a trade or business or by an individual as an employee. In addition, such property need not realize a reasonable rate of return in order to be considered exempt. Therefore, the counties shall implement these changes in accordance with the draft regulations included in this letter no later than May 1, 1991. Due to the delay in implementation, however, if as of May 1, 1990,:

- A case is known to the county to have such excess property, or
- As soon as a case with such exempt property is brought to the county's attention, or
- When reopening a case which was closed since May 1, 1990 due to excess property,

the county shall, if applicable, rescind any discontinuance or denial due to excess property resulting from such trade or business property and, if applicable, issue retroactive Medi-Cal cards.

Applicable draft regulations include: Sections 50416 to 50485.

MFBU Composition

Under federal law, effective October 1, 1990, an MFBU composition rule has changed. The rule prior to October 1, 1990 is contained in draft regulation Section 50377 which was included in All County Welfare Directors Letter (ACWDL) 90-01. This prior rule provided that spouses and their children

shall be in the same MFBU for property purposes only until the end of the sixth full month of long-term-care (LTC) status or board and care when both spouses are ABD, both apply and are eligible, and both are in LTC or board and care. Effective October 1, 1990, spouses (who are not institutionalized spouses in accordance with draft regulation Section 50046.5 contained in ACWDL 90-01) and their children shall be considered to be in separate MFBUs beginning the month following the month of admission.

Counties shall implement this provision no later than May 1, 1991. Due to the delay in implementation, however, if as of October 1, 1990:

- A case is known to the county to have excess property, or
- As soon as a case with excess property is brought to the county's attention, or
- When reopening a case which was closed since October 1, 1990 due to excess property,

the county shall, if applicable, rescind any discontinuance or denial due to excess property resulting from application of the current draft regulation which requires spouses and their children to be in the same MFBU as the LTC or board and care spouse. The county shall issue, if applicable, retroactive Medi-Cal cards.

The applicable draft regulation is: Section 50377.

The final version of the regulatory changes (20 pages) enclosed with this letter will be included with the final version of MCCA regulations which were originally contained in the ACWDL No. 90-01.

If you have any questions regarding either of these issues, please contact Sharyl Shanen at (916) 324-4956.

Sincerely,
ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosure

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Amend Section 50377 to read:

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50377. Medi-Cal Family Budget Unit (MFBU) Determination, Family Member in a Long-Term Care Facility or in Board and Care. (a) Notwithstanding the remainder of this section, an institutionalized spouse, or, for income purposes, an LTC spouse, shall be considered to be in his/her own MFBU at the beginning of the continuous period of institutionalization. When the institutionalized spouse or the LTC spouse and his or her community spouse are both beneficiaries, if the share of cost of either spouse is increased at the beginning of the continuous period of institutionalization, no change in that spouse's eligibility or increase in the share of cost shall be made effective until the first day of the month following a 10-day notice of an adverse action, even though an allocation to the community spouse has been made.

(a b) An aged, blind, or disabled person, other than an institutionalized spouse or an LTC spouse, ~~who is in~~ with LTC status or in board and care shall be in his/her own MFBU, except as provided in ~~(e) and~~ (d).

(~~b~~c) An aged, blind, or disabled person's spouse, other than an institutionalized spouse or an LTC spouse, ~~who is in~~ with LTC status or in board and care shall be in his/her own MFBU, except as provided in ~~(e) and~~ (d).

(~~e~~d) Until October 1, 1990, s Spouses, other than institutionalized spouses and LTC spouses, and their children shall be in the same MFBU for property evaluations only, from the date the first spouse entered the facility until

the end of the sixth full month of LTC status or board and care status when all of the following conditions are met:

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(1) Both spouses are aged, blind or disabled.

(2) ~~One--or-b~~ Both spouses is reside in an LTC facility or board and care.

(3) Both spouses apply for and are eligible for Medi-Cal.

(~~d~~e) A person who is in an LTC facility or in board and care who is not aged, blind or disabled and whose spouse is not aged, blind or disabled shall be included in the MFBU with the person's spouse, and/or children or, where the person is a child, with the child's parents.

(e~~f~~) A child who is a ward of the court or the responsibility of a public agency due to a voluntary placement by a parent or guardian and who is a patient in a medical facility shall be in the child's own MFBU.

(f~~g~~) A child who is not blind or disabled, who ~~is-in~~ has LTC status and who was not living with the child's parents immediately prior to entering the LTC facility shall be in the child's own MFBU.

(g~~h~~) Income and property available to the MFBU established in accordance with this section shall be determined in accordance with Section 50557, ~~and~~ 50402 and 50403.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1221, Statutes of 1985. Reference: Sections 14005.4, 14005.7, 14005.16, 14002, 14005.16, 14005.17, 14006, 14006.2 and 14008.

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Amend Section 50416 to read:

50416. Utilization Requirements. (a) Nonbusiness o Other real property, as specified in Section 50427 (b), shall be utilized in order to be exempt unless the net market value, when added to the net market value of other nonexempt property, falls within the limits set forth in Section 50420.

(b) The property is utilized if ~~any of the following requirements are met:~~

~~(1) T~~ the ~~beneficiary~~ owner is receiving net yearly income from the property of at least six percent of the net market value of the property.

~~(A)~~ (1) For property not limited to seasonal use, this requirement is met if the net monthly income from the property is one-twelfth of six percent of the net market value of the property.

~~(B)~~ (2) For property limited to seasonal use, this requirement is met if the net yearly income is six percent of the net market value of the property. Property limited to seasonal use includes, but is not limited to:

~~1.~~ (A) Farmland.

~~2.~~ (B) Summer cabins.

~~(C)~~ (3) For purpose of determining net yearly income for property limited to seasonal use, the year is considered to begin in the first month of the year in which income normally begins. Income from all months of the year shall be considered in determining net yearly income of the property, regardless of the eligibility status of the beneficiary in those months.

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(2 4) This requirement is met if t The property has been sold, or the sale is in escrow and there is a bona fide attempt to close the sale.

(c) The applicant or beneficiary owner shall be allowed six months to meet utilization requirements. The six month period shall be known as the utilization period, and shall begin on the first of the month following issuance of a notice of action informing the applicant or beneficiary that the property is not yielding sufficient income, as required in (b). The utilization period shall be stayed during periods of ineligibility in accordance with (j).

(d) The utilization period may be extended for a maximum of one year for good cause, as specified in Section 50417.

(e) If the county department determines that utilization requirements can only be met by sale of the property, Tthe utilization period shall be extended for as long as the property is listed for sale and meets the requirements to be considered otherwise unavailable in accordance with Section 50402. ;provided all of the following conditions are met:

(1) The county department determines that utilization requirements can only be met by sale of the property. This determination shall be made using evidence provided by the applicant or beneficiary, which may be, but is not limited to, either of the following:

(A) A written statement from a qualified real estate appraiser which gives the appraisal value of the property and its income potential.

(B) A certificate of condemnation.

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~~(2) The property is listed for sale with a licensed real estate broker at the market value, as determined in accordance with Section 50412 (a):~~

~~(3) The beneficiary provides the following evidence every six months, and at any other time it is requested by the county department:~~

~~(A) A statement from the real estate agency that no bona fide offer has been rejected.~~

~~(B) Copies of any offers that have been submitted and the reasons for rejection.~~

~~(C) Evidence of the efforts being made to advertise the property for sale.~~

~~(f) If the applicant or beneficiary utilizes the property by sale, the property shall be sold for a least market value, unless the property was sold under either of the following situations and the applicant or beneficiary submits evidence that there was a bona fide attempt to sell at market value.~~

~~(1) The property was listed with a licensed real estate broker for at least three months and the final sale price was similar to comparable sales in the area.~~

~~(2) There was an inability to sell the property for the market value and the county department determines that the final sale price was reasonable.~~

(g e) An existing environmental impact report involving a property shall be considered by the county department in determining the utilization potential

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of the property.

(h~~e~~f) A life estate interest in real property shall be utilized in accordance with this section.

(~~i~~ g) The applicant or beneficiary may arrange for a reassessment of the property during the utilization period. The assessment shall affect utilization as follows:

(1) The reassessment value shall be used in determining utilization requirements.

(2) The reassessment shall not affect the beginning date or the length of the utilization period.

(~~j~~ h) The entire net market value of property not utilized in accordance with this section shall be included in the property reserve on the first of the month following the last month of the utilization period.

(~~k~~ i) A utilization period shall begin whenever:

(1) An applicant who is a member of an MFBU, with other real property included in the property reserve of the MFBU that is not being utilized, becomes eligible except as specified in (j).

(2) The other real property ~~of a beneficiary~~, that has been utilized, is no longer utilized.

(3) The net market value of other real property, when added to the net market value of other nonexempt property, no longer falls within the limits set forth in Section 50420.

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(~~i~~ j) When a utilization period has begun and the beneficiary becomes ineligible for Medi-Cal prior to its expiration, the remainder of the utilization period shall be applied if eligibility is subsequently reestablished and the property is not utilized at that time. However, if ~~the beneficiary can verify~~ verification is provided that the property was utilized at any time during the period of ineligibility, a new utilization period shall begin.

NOTE: Authority cited: Sections 10725, 14006.1 and 14124.5, Welfare and Institutions Code. Reference: Section 14006 and 14006.2, Welfare and Institutions Code; and Title 42, United States Code, Section 1396a.

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Amend Section 50417 to read:

50417. Utilization -- Good Cause. (a) Good cause, as required in Section 50416 (e d), shall be found only if the applicant or beneficiary has made a bona fide effort to meet utilization requirements and is unable to do so because of circumstances beyond such person's control.

(b) Circumstances beyond a person's control shall include any of the following situations:

(1) Death of a part owner of the property and inability or refusal of the administrator or executor of the estate or other responsible person to take actions necessary so that the ~~complete disposition~~ utilization requirements are met of the property if such person is other than the applicant or beneficiary.

~~(2) Misplaced reliance by the applicant or beneficiary upon what appeared to be a bona fide offer. The county department shall require a copy of the written offer for the property as evidence that the offer was bona fide. Misplaced reliance may have resulted if the offer was either of the following:~~

~~(A) Bona fide but the purchaser was unable to complete the purchase.~~

~~(B) Apparently bona fide but eventually found not to be bona fide.~~

(3~~2~~) Prolonged illness causing the ~~seller~~ applicant or beneficiary to be homebound or hospitalized during the utilization period and unable to take

the necessary action to meet utilization requirements or to arrange for an agent to do so.

(4 3) Like reasons which the county department determines meet the general intent of good cause.

NOTE: Authority cited: Section 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11153.7, 14006, and 14006.2, Welfare and Institutions Code; and 42 United States Code Section 1396a.

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Amend Section 50427 to read as follows:

50427. Other Real Property. (a) Nonbusiness r Real property not exempt as a principal residence, including deeds of trust as specified in Section 50441 (b), is other real property.

No change to remainder of regulation.

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Amend Section 50441 to read as follows:

50441. Mortgages, Deeds of Trust and Other Promissory Notes. (a) Nonbusiness m Mortgages, notes secured by deeds of trust and other promissory notes which can be sold or discounted shall be included in the property reserve, except as specified in (b).

No change to the remainder of the regulation.

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Amend Section 50453 to read:

50453. Checking and Savings Accounts. (a) The entire amount in nonbusiness checking and savings accounts which is available in accordance with Section 50402 to which the ~~applicant or beneficiary has unrestricted access~~ MFBU shall be included in the property reserve, subject to the limitations in Section 50453.5 and the following conditions:

(1) Income received during a month and deposited in a checking or saving account shall not be considered as property during that month.

(2) Accounts held with persons ~~who are not family~~ members whose property is not otherwise included in the property reserve of the MFBU shall be considered available in their entirety if the ~~applicant or beneficiary~~ MFBU member, or responsible relative or persons for whom that relative is responsible has ~~unrestricted~~ access to the funds, unless ~~the conditions of (3) are met~~ all or a portion of the funds are unavailable in accordance with Section 50402.

~~(3) If the applicant or beneficiary presents evidence which clearly establishes that all or a portion of the funds specified in (2) are the property of a person who is not a family member, those funds shall not be considered the property of the applicant or beneficiary.~~

~~(b) If an applicant or beneficiary has restricted access to a checking or savings account such as accounts which require two signatures or savings accounts held in trust by other than the applicant or beneficiary, only these funds actually available shall be included in the property reserve.~~

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NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006 and 14006.2, Welfare and Institutions Code; 42 United States Code Sections 1396a and 1396r-5; 20 Code of Federal Regulations, Section 416.1245.

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Amend Section 50473 to read as follows:

50473. Livestock, ~~and~~ Poultry or Crops. (a) Livestock , ~~and~~ poultry or crops retained primarily for personal use shall be exempt.

(b) Equipment and personal property used to produce livestock, poultry or crops retained primarily for personal use shall be exempt.

(~~b~~c) The net market value of livestock, ~~and~~ poultry or crops retained primarily for profit shall be included in the property reserve except to the extent it is exempt as business property in accordance with Section 50485.

(e~~d~~) The net market value of livestock, ~~and~~ poultry or crops shall be the net market value listed by the applicant or beneficiary on the Statement of Facts, unless the county department determines further verification is required. If verification is required:

(1) The ~~applicant or beneficiary~~ owner shall submit three appraisals from persons or businesses dealing in livestock, ~~and~~ poultry, or crops. The average of these appraisals shall be the market value.

No change to the remainder of the regulation.

Amend Section 50485 to read as follows:

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50485. Business Property. (a) Equipment, inventory, licenses and materials ~~owned by the applicant or beneficiary~~ which are in current use and are necessary for employment, for self-support or for an approved plan of rehabilitation or self-care necessary for employment shall be exempt.

(1) Equipment, inventory, licenses and materials shall be considered necessary for employment if ~~either of~~ one of the following conditions is met:

(A) The applicant's or beneficiary's ~~employer requires that the applicant or beneficiary provide~~ uses this property ~~as a condition of~~ for employment.

(B) The ~~applicant or beneficiary~~ owner of the property is currently unemployed but has been been required to use this property for employment in the past and can provide reasonable evidence that the ~~applicant or beneficiary~~ owner is actively seeking employment which will require the use of the same property. This property shall be exempt for a maximum of one year from the date the ~~beneficiary~~ owner became unemployed if this condition is met.

(C) The owner verifies the existence of a business by providing prior or current year tax returns for the business such as an Internal Revenue Service, Schedule C, "Profit or Loss from Business or Profession"; Schedule SE, "Computation of Social Security Self-Employment"; Schedule F, "Farm Income and Expenses, etc."; Form 4562, "Depreciation and Amortization"; or

Form 1065, "U. S. Partnership Return of Income".

(D) If business tax returns are not available and subsections (A) and (B) are not applicable, the owner shall provide documentation such as business receipts, checks, invoices, sales slips, and bank statements sufficient to verify the existence of a business.

~~(2)--Equipment,-inventory,-licenses-and-materials-shall-be-considered necessary-for-self-support-if-the-applicant-or-beneficiary-obtains-a reasonable-rate-of-return-from-the-use-of-this-property:~~

~~(A)--A-business-or-means-of-self-support-that-has-been-in-existence-for-more than-one-year-shall-be-considered-to-be-realizing-a-reasonable-rate-of return-if-it-is-earning-an-annual-net-income-equal-to-six-percent-of-the-net market-value-of-the-property.--Net-income-shall-be-determined-in-accordance with-Section-50505-and-50517-(a)-(5):~~

~~(B)--A-business-or-means-of-self-support-that-has-been-in-existence-for-more than-one-year-and-is-not-earning-net-income-equal-to-six-percent-of-the-net market-value-of-the-property-shall-be-considered-to-be-providing-a reasonable-rate-of-return-for-a-maximum-of-six-months-if-the-applicant-or beneficiary-can-show-by-objective-evidence-that-the-property-will-begin earning-six-percent-within-six-months:~~

~~(C)--A-business-or-means-of-self-support-shall-not-be-required-to-realize any-actual-income-during-the-first-year-of-operation-in-order-to-meet-the requirement-for-realizing-a-reasonable-rate-of-return:~~

~~(D)--A-business-or-means-of-self-support-that-has-been-in-existence-for-more~~

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~~than one year and is resumed after an illness, or a period of convalescence from an illness or injury, shall not be required to realize any actual income during the first six months of resumed operation in order to meet the requirement for realizing a reasonable rate of return.~~

(E2) A business or means of self-support that has ~~provided the applicant or beneficiary with income~~ operated in the past shall be exempt ~~considered to be providing a reasonable rate of return~~ for a maximum of:

(A) ~~e~~ One year during a period when it is not in operation if the ~~applicant or beneficiary~~ owner can provide evidence that both of the following conditions are met:

~~3.~~ 1. The business or means of self-support is not in operation due to reasons beyond the ~~applicant's or beneficiary's~~ owner's control.

~~6.~~ 2. Operation will be resumed within one year of the date operation ceased.

(B) Two years if operation ceased due to the owner's illness or disability if the owner provides verification of:

1. The illness or disability, and

2. A plan to resume operation within two years of the date operation ceased.

(23) Equipment, inventory, licenses and materials shall be considered necessary for an approved plan of rehabilitation or self-care necessary for employment if the county department determines that the property is

necessary for any of the following:

(A) Training which will lead to employment or self-support.

(B) Future employment or a means of self-support that will result from a plan or rehabilitation established by the county or the Department of Rehabilitation.

(C) Employment or a means of self-support that will continue after a period of illness or a period of convalescence or both.

(b) Motor vehicles shall be considered equipment only if used for employment or for a means of self-support other than for commuting to and from work.

(c) Cash on hand and money in checking accounts necessary for the functioning of a business or a means of self-support shall be exempt ~~up to a maximum of three times the average monthly cash expenditures of the business~~.

(d) Real property used in whole or in part as a business or as a means of self-support shall be ~~considered other real property in accordance with Section 50427~~ <u>exempt</u>.

(e) Stocks, bonds, and other similar items of personal property shall not be considered property necessary for employment or self-support even in those instances where the ~~beneficiary~~ <u>owner</u> holds stock in the corporation in which the ~~beneficiary~~ <u>owner</u> is employed.

(f) A person who owns equipment, inventory, licenses and materials for

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self-support shall not be required to be personally involved in the business or means of self-support in order for the property to be exempt under (a).

(g) The net market value of nonexempt business equipment, inventory, licenses and materials shall be the amount listed ~~by the applicant or beneficiary~~ on the Statement of Facts, unless the county department determines that Sections 50442 through 50489 provide a method of valuing the specific item of property or that further verification is required. If the county department determines that further verification is necessary:

(1) The owner shall provide a copy of the current or prior year's Internal Revenue Service tax form 4562, "Depreciation and Amortization".

(A) The county shall use the values indicated on the form 4562 as the market value.

(B) The county shall subtract encumbrances of record from the market value to determine the net market value.

(2) If the Internal Revenue Service tax form 4562 is not available and ~~(1)~~ I if any of the sections between Sections 50442 and 50489 can be applied as a method of valuing the specific item of property, that method shall be used.

(2~~3~~) If the Internal Revenue Service tax form 4562 is not available and the county determines that further verification is required and Sections 50442 through 50489 do not apply:

(A) The ~~applicant or beneficiary~~ owner shall submit an appraisal from an appropriate dealer, insurance adjuster or personal property appraiser. The

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value listed on the appraisal shall be the market value.

(B) The county shall subtract encumbrances of record from the market value. This is to determine the net market value.