STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF HEALTH SERVICES
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October 4, 1991

Letter No.: 91-84

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

SUBJECT: CLARIFICATION OF MISCELLANEOUS MEDICARE CATASTROPHIC COVERAGE ACT OF 1988 (MCCA) ISSUES

REFERENCE: EMC2 DHS #91140; THIS LETTER SUPERSEDES ALL COUNTY WELFARE DIRECTORS LETTER NUMBER 91-55

The Department has recently received a number of questions from the counties on several issues relating to the Medicare Catastrophic Coverage Act of 1988 (MCCA) and spousal impoverishment. The purpose of this letter is to provide the requested clarification.

MARRIED V. SEPARATED

For purposes of the MCCA spousal impoverishment provisions only, relating to income and property, a couple is married until that marriage is dissolved or annulled. A legal separation means that the two spouses are still married and entitled to the Community Spouse Resource Allowance (CSRA), plus the property limit for one, and the Long-Term Care (LTC) spouse may still provide the income allocation to the spouse in the community. The undue hardship provisions contained in All County Welfare Directors Letter (ACWDL), Number 90-01, draft regulation Section 50096.5 (see enclosed) may also apply.

SEPARATE BUDGET UNITS IN THE MONTH OF ADMISSION

Recently released ACWDL, Number 91-28, contained a newly revised draft regulation Section 50377 (see enclosed). That section, based upon recently received clarification, makes it clear that the spousal impoverishment provisions relating to income (not just property) also begin with the month of admission to the long-term care facility and not the month following the month of admission when long-term care status is achieved. The spouses are in separate budget units beginning with the month of admission.

Counties shall allow the LTC spouse to provide the income allocation to the community spouse in accordance with revised draft regulation Section 50377. The personal needs allowance for the LTC spouse in the first month shall be $35.00. The final version of draft regulation Section 50605 shall be changed to reflect that in all cases where there is a community spouse, the maintenance need of the LTC spouse shall be $35.00.

PLEASE NOTE: This provisions shall be effective January 1, 1990 and shall be implemented by the counties no later than October 1, 1991. Due to the delay in implementation, when:

- A case is known to the county that ordinarily involves a spousal allocation of income, or
- A case is brought to the county's attention, or
- When reopening a case which was discontinued since January 1, 1990,

and if

- There was a share of cost in the first month of institutionalization, and
- The LTC spouse ordinarily provides/provided for a spousal allocation of income,

the county shall, in accordance with revised draft regulation Section 50377 contained in ACWDL 91-28, redetermine the share of cost to allow for a spousal allocation of income. If this results in a decreased share of cost for the LTC spouse in that first month, follow the procedures outlined in Title 22, California Code of Regulations, Section 50653.3.

COMMUNITY SPOUSE IN BOARD AND CARE

ACWDL, Number 90-01, draft regulation Section 50031.5 (see enclosed) defines a community spouse as, "a person who is not an inpatient in a medical or nursing facility. . ." A "continuous period of institutionalization" is defined in draft regulation Section 50033.5 (see enclosed) as ". . . inpatient medical care in a medical institution or nursing facility. . .". A board and care facility does not provide medical care and is not a medical institution or nursing facility. Therefore, because a community spouse residing in a board and care facility is not in a medical institution or nursing facility, he/she is entitled to the CSRA, and may also receive the MCCA income allocation.

MEDICALLY INDIGENT (MI) COVERAGE UNDER MCCA

ACWDL, Number 90-01, draft regulation Section 50046.5 (see enclosed) states that the institutionalized spouse "Is not AFDC-MN." An LTC spouse is an institutionalized spouse regardless of the date of admission into the LTC facility. There is no MI restriction. As long as he/she meets all the other criteria of draft regulation Section 50046.5 and there is no temporary absence from the home (as defined in Title 22, CCR, Section 50071) which

could result in AFDC-MN linkage, the applicant/recipient shall be considered a institutionalized spouse/LTC spouse. Therefore, he/she is entitled to the CSRA (if admitted to the medical institution or nursing facility on or after September 30, 1989 and applying for Medi-Cal on or after January 1, 1990) and may also provide the community spouse with the spousal income allocation (regardless of the date of admission/application).

PLEASE NOTE: This provision shall be effective January 1, 1990 and shall be implemented by the counties no later than October 1, 1991. Due to the delay in implementation, when:

- A case is known to the county that ordinarily involves a spousal allocation of income, or
- A case is brought to the county's attention, or
- When reopening a case which was discontinued since January 1, 1990,

and if

- There was a share of cost in the first month of institutionalization, and
- The LTC spouse ordinarily provides/provided for a spousal allocation of income,

the county shall, in accordance with revised draft regulation Section 50377 contained in ACWDLs 91-28, redetermine the shares of cost to allow for a spousal allocation of income. If this results in a decreased share of cost for the LTC spouse in that first month, follow the procedures outlined in Title 22, California Code of Regulations, Section 50653.3.

If you have any questions on these issues as they relate to income, please call Sharyl Shanen-Raya of my staff at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

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Add Section 50096.5 to read:

50096.5. Undue Hardship. Denial of eligibility would work an undue hardship against an institutionalized individual if the conditions in (a) and (c), or (b) and (c) exist:

(a) For purposes of reducing property and establishing and maintaining eligibility as an institutionalized spouse under Section 50490, the property is legally unavailable without the signature of the community spouse, and

(A) The community spouse's whereabouts are unknown, or

(B) There has been a break in marital ties and the community spouse refuses to cooperate.

(b) For purposes of Section 50411.5 (a) (5), when one of the following conditions exist:

(1) The institutionalized individual was incompetent at the time of the transfer as evidenced by a statement signed by the institutionalized individual's physician, or

(2) The institutionalized individual was competent but unduly influenced at the time of the transfer, or

(3) When all of the following conditions exist:

(A) The LTC facility is threatening the institutionalized individual with eviction,

(B) Eviction of the institutionalized individual would result in increased

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 ~~(c) 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 ~~(c) and~~ (d).

(~~c~~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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Add Section 50031.5 to read:

50031.5. Community Spouse. A person who is not an inpatient in a medical or nursing facility and who is married to an institutionalized spouse or for income purposes, a person with LTC status.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14002, Welfare and Institutions Code; and 42 United States Code Section 1396r-5.

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Add Section 50033.5 to read:

50033.5. Continuous Period of Institutionalization. A continuous period of institutionalization is 30 or more consecutive days of inpatient medical care in a medical institution or nursing facility. A continuous period of institutionalization begins when a institutionalized person is expected to remain an inpatient for 30 consecutive days and ends when the institutionalized person is no longer an inpatient for a full calendar month. Persons are considered "expected to remain", even though they do not actually remain in an institution, when it was determined at the beginning of the period of institutionalization that he/she was "expected to remain".

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14002 and 14006, Welfare and Institutions Code; 42 United States Code Section 1396r-5; 42 Code of Federal Regulations, Section 435.914 (b) and State Medicaid Manual, Part 3 - Eligibility, Section 3260.1.

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Add Section 50046.5 to read:

50046.5. Institutionalized Spouse. Beginning with the date of admission into the nursing facility or medical institution, an institutionalized spouse is one who is all of the following:

(a) Applying for Medi-Cal on or after January 1, 1990.

(b) Beginning a continuous period of institutionalization on or after September 30, 1989 as an inpatient in a medical institution or nursing facility as defined in Section 50048 and 50064.7.

(c) Is expected to remain in the medical institution or nursing facility for a continuous period of at least 30 consecutive days as evidenced by a statement, signed and dated by the physician of the institutionalized spouse. Non-receipt of nursing facility level of care for a full calendar month shall be considered a termination of a continuous period of institutionalization.

(d) Is married to a community spouse.

(e) Is not AFDC-MN.

NOTE: Authority cited: Section 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14002 and 14005; and 42 United States Code Section 1396r-5.