



State of California—Health and Human Services Agency
Department of Health Care Services



ARNOLD SCHWARZENEGGER
Governor

January 24, 2008

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 08-02
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS

SUBJECTS: TERM LIFE INSURANCE AND ENDOWMENT LIFE INSURANCE
CONTRACTS

TERM LIFE INSURANCE:

The purpose of this All County Welfare Directors Letter is to clarify and contrast the treatment of term life insurance policies and Endowment Life Insurance Contracts (ELICs). Title 22, Section § 50475, "Life Insurance", states:

"Life insurance policies, **except term insurance**, owned by a member of the MFBU", (Medical Family Budget Unit), "on the life of any individual in the family shall be exempt if the combined face value of all of the policies on the insured individual is \$1,500 or less. If the combined face value of all the policies exceeds \$1,500, the net cash surrender value of life insurance policies shall be included in the property reserve."

At the time that this regulation was certified, term insurance policies did not have cash values. Some term insurance policies now do have cash values. The face value of term insurance policies that generate cash surrender value must be combined with the face values of other insurance policies to determine if the combined face values are \$1,500 or less. If the combined face values of all the policies exceed \$1,500, the net cash surrender value of all the life insurance policies of that individual shall be included in the property reserve.

When a term life insurance policy has no cash surrender value, the face value is not taken into account with respect to the \$1,500 limitation.

ELICs

When ELICs are purchased, the issuing company is paid a set amount of money and the issuing company promises to hold that money for a person they refer to in the contract as “the insured” for a designated number of years. The issuing company then promises to return all that money to “the insured” if he/she is alive at the expiration of the designated time period. If “the insured” dies before the time period expires, the issuing company is contractually obligated to pay the named beneficiary(ies) a designated amount of money.

The Department of Health Care Services does not consider ELICs to meet the definition of life insurance under CCR, Title 22, Section § 50054.5, which states:

“Life insurance means a contract for which premiums are paid during the lifetime of the insured, and on which the insuring company pays the face amount of the policy **to the beneficiary upon the death of the insured**. Life insurance may also be purchased by a single premium or by letting dividends accumulate.”

ELICs do not fit this regulatory definition and thus are not considered to be “life insurance” for Medi-Cal eligibility purposes. The contracts are for a term of years and provide that after the expiration of the designated term, “the insured” will be returned his/her initial payment along with some additional money. If “the insured” dies before the expiration of the specified time period, the issuing company is required to pay the named beneficiary(ies) a designated amount of money. Hence, the contract provides for a payout to “the insured” on a specified date in the future and does not just provide for payment to the named beneficiary upon the death of “the insured”. As a result, the contract is not “life insurance” under the Medi-Cal regulations.

Instead, these contracts are considered to be a legal instrument or device similar to a trust under California Code of Regulations (CCR), Title 22, § Section 50489(b) and are thus treated like a trust for Medi-Cal eligibility purposes. § Section 50489(b), subsections (9) and (10) provide:

(b) For purposes of Section § 50489 through § 50489.9, the following definitions apply:

(9) "Similar Legal Device" (SLD) means any legal instrument, device or arrangement that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individual. SLDs also include annuities purchased on or after August 11, 1993.

(10) "Trust" means any arrangement in which an individual or entity (trustor) transfers assets to a trustee with the intent that the assets be held, managed, or administered by the trustee(s) for the benefit of the trustor or certain designated individuals (beneficiaries). The trust must be valid under State law. **The term "trust also includes any legal instrument or device similar to a trust as described in subsection (b)(9) of this section.** [Emphasis added.]

Therefore, the above referenced contracts classify as a "similar legal device" under CCR, Title 22, Section § 50489(b)(9). The individual is transferring a specified amount of cash to the contracting company with the intent that the contracting company hold that money for a set number of years and manage it for his/her benefit or, should he/she die before the term of years expires, for his/her beneficiary's benefit. As a result, under CCR, Title 22, Section § 50489(b)(10), this type of contract is to be treated like a trust subject to the requirements of CCR, Title 22, Sections § 50489 through § 50489.9.

Assets held in ELICs are considered available property and included in the property reserve pursuant to CCR, Title 22, Section 50489.5 (f)(1) which states:

"if payments can be made from the trust to, or for the benefit of, the individual or spouse **at any time** or under any circumstances, the portion of the trust income or principal from which payment(s) to the individual or spouse could be made shall be considered property available to the individual or spouse." [Emphasis added.]

A sample of an endowment life contract is enclosed to this letter as Appendix A. This contract states that it may only be modified or changed with the written consent of an officer of the company and that no other agent or person has the authority to change the contract or waive any of its terms or provisions. It therefore, would be considered an irrevocable, although its terms may be changed.

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If you have any questions regarding this letter, please contact Mr. Bob Laederich at (916) 552-9486.

Enclosure

Original signed by

Vivian Auble, Chief
Medi-Cal Eligibility Division

APPENDIX A – Sample Endowment Life Contract

SINGLE PREMIUM PURE ENDOWMENT LIFE INSURANCE CONTRACT

A pure endowment maturity benefit will be paid on the maturity date provided the insured is then living. A schedule of benefits and premium is on page 3. This is a participating contract. **No benefit is payable at death prior to the maturity date other than accrued dividends.**

PLEASE READ YOUR CONTRACT CAREFULLY

In this contract: You or Your means the owner of this contract; and, We, Us, Our means [CONTRACTING COMPANY].

OWNER AND BENEFICIARY

OWNER: The person or entity stated as such in the application. If an owner is not so stated, the Insured will be the owner.

When You are other than the Insured, in the event of Your death prior to the maturity date the insured will be the owner.

BENEFICIARY: The person(s) or entity stated as such in the application.

DIVIDENDS

Annual dividends have not been anticipated for this contract. Each year We will review Our experience to determine any dividend for this contract. You may apply any dividend We declare under one of the following options. If you do not choose an option, option 2 will apply automatically.

1. Cash. This dividend will be paid to You in cash.
2. Accumulate. We will retain the dividend to the credit of this contract with interest at a rate of not less than 3.0% per year.

POST-MORTEM DIVIDEND

A post-mortem dividend is anticipated to be payable in the event of the death of the insured prior to the maturity date. We will pay any post-mortem dividend to the beneficiary or, if the beneficiary is not then living, the estate of the beneficiary. Such payment will be made within 10 days from the date We receive due proof of the death of the insured and a statement of claim from the beneficiary. Return of this contract is required. Payment will be: (1) in one sum; and (2) in equal shares when the designation of beneficiary does not clearly state the share of each of two or more beneficiaries. To the extent permitted by law, payment will not be subject to the claims of creditors.

GENERAL PROVISIONS

ENTIRE CONTRACT: The entire contract between You and [CONTRACTING COMPANY] consists of: (1) this contract, including the attached copy of the application; and (2) any amendment or endorsement We attached to this contract.

INCONTESTABLE: This contract is not contestable. We consider all statements in the application representations and not warranties.

MODIFICATION OR CHANGE: This contract may be modified or changed only with the written consent of our President, a Vice-President, Secretary, or Assistant Secretary. No agent or other person has authority to change this contract or waive any of its terms or provisions.

INCORRECT SEX OR AGE: Amounts payable under this contract may be adjusted if the insured's date of birth or gender is not correctly stated in the application. The amount will be as provided by the premium paid at the correct age or gender.

ASSIGNMENT: This contract may not be assigned.

GOVERNING LAW: This contract is subject to the laws of the state in which it was delivered. If part of it does not follow such law, it will be treated as if it did.

SCHEDULE

INSURED: [Applicant's name]

CONTRACT NUMBER:

SEX/ISSUE AGE: [Applicant's sex and age]

DATE OF ISSUE: [Date contract becomes effective]

OWNER: [Applicant's name]

MATURITY DATE: [Date applicant is paid if still alive when contract term completed]

SINGLE PREMIUM: [Amount paid by the applicant to company]

MATURITY BENEFIT: [Amount paid applicant after contract term completed]