

DEPARTMENT OF HEALTH SERVICES

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October 2, 1992

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

Letter No.: 92-58

SUBJECT: ADDITIONAL INFORMATION ON BURIAL ITEMS AND DESIGNATED FUNDS AND
SUPERSESION OF ALL COUNTY WELFARE DIRECTORS LETTER (ACWDL),
NO. 92-50

One purpose of this letter is to inform counties that All County Welfare Directors Letter (ACWDL), No. 92-50 is officially superseded by this ACWDL. ACWDL, No. 92-50, was incorrect in stating that cash-on-hand cannot be designated as burial funds. Cash-on-hand can be designated as a burial fund as long as it is not commingled with other nonburial-related funds. Designating burial funds may still be accomplished by signing an affidavit under penalty of perjury. The corrected language of ACWDL, No. 92-50 is provided below.

The second purpose of this letter is to provide additional information on how burial funds may be designated and answer some frequently asked questions regarding burial items. ~~This information is provided after the corrected language of ACWDL, No. 92-50.~~

NOTE: Due to the erroneous information contained in ACWDL 92-50 and the need for additional information on designating burial funds, the implementation date for converting and separating designated burial funds has been extended to no later than February 1, 1993.

CORRECTED LANGUAGE OF ACWDL 92-50

The purpose of this memo is to inform counties of a policy change regarding burial funds. Counties must implement this policy change no later than February 1, 1993.

Under this revised policy, an individual may no longer designate any form of property as burial funds. Designated burial funds must now be separately identifiable funds that are clearly designated for burial expenses. This includes:

- o revocable burial contracts;
- o revocable burial trusts; or
- o other revocable burial arrangements.

Also, designated burial funds no longer may be commingled with nonburial

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property/funds and must be separated in order to continue to be exempt. This change in policy does not affect the \$1500.00 limit on designated burial funds, nor the exemption of the interest which accrues on those funds which are not removed from the fund.

Property that was previously exempt as designated burial funds but that does not meet the new criteria, must be converted to an acceptable form of designated burial funds in order to continue to be exempt. If an individual has designated burial funds which would result in excess property, counties must inform that individual at application or redetermination that such funds must be converted/separated. The individual shall be allowed until the end of the month following the month of the notification to complete the conversion/separation.

ADDITIONAL INFORMATION

EXEMPT BURIAL SPACE ITEMS

An exempt burial space item can be a plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily and traditionally used for the deceased's bodily remains. Exempt burial space items also include vaults, headstones, markers, or plaques, burial containers (e.g., for caskets), arrangements for opening and closing of the gravesite and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care. It no longer matters whether or not these items were required by the cemetery in order to purchase a plot.

DESCRIPTION OF EXEMPT DESIGNATED BURIAL FUNDS

Burial funds are revocable burial contracts, revocable burial trusts, other revocable burial arrangements, cash, financial accounts (e.g., savings or checking accounts), or other financial instruments with a definite cash value (e.g., stocks, bonds, certificates of deposit, etc.).

Property other than that listed in this description will not be considered designated burial funds and may not be exempted under the burial funds provision. For example, a car, real property, livestock, etc., are NOT burial funds.

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METHOD OF DESIGNATING A BURIAL FUND

Burial funds must be clearly designated for the individual's or family member's burial, cremation or other burial-related expenses. Burial funds may be designated by an indication on the burial fund document (e.g., the title on a bank account), or, although there has been some confusion in this area, designating by affidavit under penalty of perjury is permissible. The affidavit must show the value and owner of the property, for whose burial the property is set aside, and the form in which the property is held (burial contract, bank account, etc.).

COMMINGLED BURIAL FUNDS

Burial funds must be kept separate from nonburial-related assets to be exempt. Burial-related assets are burial funds (exempt and nonexempt) and burial spaces (including agreements representing the purchase of a burial space). If burial funds are commingled with nonburial-related assets, the exemption does not apply. Individuals at application and redetermination shall be allowed a full calendar month following the month of notification in order to convert/separate their burial funds.

For example, a bank account containing \$1200, \$500 of which is designated for burial and \$700 of which is other funds the individual uses for living expenses, is NOT allowable and the \$500 may NOT be exempted as a burial fund. If the \$700 is moved to a separate account, the exemption may be applied to the \$500 account.

EXCEPTIONS TO THE REQUIREMENT THAT INDIVIDUALS MUST SEPARATE/CONVERT THEIR DESIGNATED BURIAL FUNDS

Medi-Cal beneficiaries eligible prior to August 1, 1990, who have exempted burial funds prior to August 1, 1990 and whose burial funds do not meet the specifications of an exempt burial fund as stated in the paragraph, "Description of Exempt Burial Funds", or whose burial funds are commingled with nonburial-related assets, are not required to convert/separate their burial funds if there is an impediment to the conversion/separation.

An impediment is a circumstance beyond the individual's control which makes conversion or separation impossible or impracticable. Impediments can include provisions of law, regulations, or the action or inaction of other individuals (other than individuals acting in the individual's behalf, such as an agent, conservator, guardian, trustee, etc.); over whom the recipient has no control. Inconvenience or mere unwillingness to convert or separate

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the funds is not an impediment.

For so long as the impediment exists, the burial funds will be exempted, provided that the individual remains otherwise continuously eligible for the exemption.

When an impediment ceases to exist, the individual has through the end of the month following the month the impediment ceases in order to convert or separate the burial fund. For example, if the impediment is removed in June, the change must be made before August 1.

For example, 1 acre of a 4-acre tract of land is designated as a burial fund. The local zoning ordinance prevents subdivision and the sale of just 1 acre. Since there is an impediment to the conversion of the land designated for burial, the exemption can continue as a burial fund. If the impediment is removed, the burial fund must be converted by the end of the month following the month in which the impediment is removed.

In another case, a second car with a market value of less than \$1500 has been designated as a burial fund. The car may be sold and the cash received may be designated as a burial fund. ~~If the owner says that he/she does not want to sell the car because his/her children use it,~~ then the second car will become countable property. If the county notifies the beneficiary on November 19, the car will be countable property on January 1.

BURIAL FUNDS MAY NOT BE "UNDESIGNATED"

Burial funds cannot be "undesigned". Once a fund has been designated and exempted as such, it remains a burial fund until eligibility terminates, or the individual uses the funds for another purpose, in which case an overpayment referral may apply. The amount withdrawn for another purpose would be added to the amount in the property reserve to determine the amount of potential overpayment.

USE FOR ANOTHER PURPOSE

If an individual uses exempt burial funds for a purpose other than the burial arrangements of the specified individual or family member for whom the funds were set aside, the amount used may result in a potential overpayment. No overpayment will apply if, the funds used, when included in the property reserve in the month used, would not have exceeded the property limit.

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Transferring exempt burial funds from one form to another (e.g., from a certificate of deposit to a burial contract) is not "use for another purpose". A loan against the cash surrender value of a life insurance policy that has been designated for burial expenses is not "use for another purpose" if the loan is for the purchase of another burial fund.

Use of a burial fund as collateral for a loan is "use for another purpose" because the loan creates an encumbrance on the funds. Since the funds are not available for the individual's burial as long as they are encumbered, the funds cannot be considered set aside for the individual's burial.

Only actions ("use for another purpose") by the individual or others acting in the individual's behalf (agents, conservators, guardians, trustees, etc.), can result in an overpayment. Actions by a joint owner of a financial instrument who is not the individual or one of those individuals listed above, (e.g., a joint owner of a designated bank account who withdraws funds for his own use) will not result in a penalty.

EXEMPT INTEREST

Only interest that has accrued from the date of the most recent of the two; November 1, 1982, or the most recent application, on the first \$1500 paid into a burial fund is exempt, and then, only if it has been left in the account to accumulate. The exemption for interest and appreciation applies only for the period of time when an individual is on Medi-Cal.

For example, if an individual put \$1500 in a savings account designated for burial expenses and by the time the individual applied for Medi-Cal, it had accumulated \$300 worth of interest. Only the first \$1500 paid will be exempt and the interest earned on the \$1500 from that point forward will be exempt. The interest which accumulates on the \$300 will not be exempt and the county is required to prorate the accruing interest to determine the amount of countable interest each month, unless the individual chooses to remove the \$300 from the account.

DESIGNATING THE CASH SURRENDER VALUE OF LIFE INSURANCE POLICIES

The cash surrender value of a life insurance may not be designated as a burial fund since the cash surrender value is available only during the lifetime of the individual and therefore cannot be specifically for the individual's burial. However, the life insurance policy itself may be designated as a burial fund and the combined face values of the designated policies must be equal to or less than \$1500. For example, a policy with a

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face value of \$10,000 cannot be designated as a burial fund regardless of the amount of the cash surrender value. Since the cash surrender value is the net market value of the policy, it is the cash surrender value which is applied toward the burial fund limit when determining countable property.

If an individual has two life insurance policies with face values of \$1500 each he may choose to designate one \$1500 policy as an designated burial fund and exempt the other as an exempt life insurance policy. The cash surrender value of the life insurance policy exempted as such will be entirely exempt. If the life insurance policy designated as a burial fund has a cash surrender value in excess of \$1500, only the amount in excess of \$1500 will be included in the property reserve.

In another instance, an individual may have one life insurance policy with a face value of \$1000 and another with a face value of \$500 and a third with a face value of \$1500. The cash surrender value of the \$1500 policy is actually \$2,000, the cash surrender value of the \$1000 policy is \$1100, and the cash surrender value of the \$500 policy is \$550. Because the cash surrender value of the two policies which have face values totaling \$1500, have cash surrender values in excess of \$1500, the individual may designate those two policies as designated burial funds because the amount of cash surrender value in excess of \$1500 would result in a lower amount included in the property reserve than would have been included had the \$1500 policy been designated.

By exempting the policy with the \$1500 face value, the entire cash surrender value of \$2000 is exempt. Only \$150 from the cash surrender value of the life insurance policies designated as burial funds will be included in the property reserve. Had the \$1500 policy been designated, \$500 of the \$2000 cash surrender value would be included in the property reserve. Once again, the interest which accrues on the cash surrender value must be prorated to determine the amount of nonexempt interest.

EXCEEDING THE \$1500 LIMIT WHEN THE AMOUNT OF EXCESS REPRESENTS THE PURCHASE OF EXEMPT BURIAL SPACE ITEMS

The \$1500 designated burial funds can be commingled with other burial-related assets. If an individual has a single contract for \$2500 of burial services and \$2000 in burial space items, then the contract does not have to be separated into two different contracts. The whole amount is burial-related even though we can only exempt \$1500 as a designated burial fund. The entire amount which represents the purchase of specific, otherwise exempt, burial space items is exempt regardless of the amount.

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Apply the burial space exemption to any burial space contract if the contract lists all of the burial space items and either includes a value for each item or the total value of all the items combined and the seller's obligation to provide those items is not contingent on further payment (as in certain installment contracts); i.e., the items are actually being held for the individual's future use.

Treat as burial funds (subject to the \$1500 limit) the unidentified portion of a contract that implies it covers only burial space items but does not identify some or all of the items, or does not include either a value for each burial space item or the total value of all the items combined and the amount paid on an installment contract for burial space items if the contract does not entitle the person to the spaces until the full purchase price has been paid. NOTE: Once full payment has been made, these items can become subject to the unlimited burial space items exemption because at the point of full payment the contract becomes an agreement representing the purchase of a burial space item.

This information will be incorporated into the Procedures Section of the Medicaid Eligibility Manual that is being developed.

If you have any additional questions on this issue, please feel free to contact Sharyl Shanen-Raya at (916) 657-2942.

Sincerely,
ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch