

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320
(916) 657-2941



July 20, 1994

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

Letter No.: 94-26

IMPLEMENTATION OF TITLE 22, CALIFORNIA CODE OF REGULATIONS (CCR), SECTION 50453.7,
LONG-TERM CARE (LTC) INSURANCE EXEMPTION

The purpose of this letter is to provide counties with copies of newly filed Title 22, CCR, Section 50453.7 (see enclosed). The regulations were effective March 31, 1994 and require the exemption of property equal to the amount of benefits paid under State-certified LTC insurance policies for LTC services as defined in Title 22, CCR, Section 58023 (see enclosed). The amount of property exempted under this provision shall also be exempt from estate recovery. Sale of the State-certified policies will begin on July 1, 1994. Counties shall implement these regulations no later than September 1, 1994.

In most cases an individual with such a policy will not apply for Medi-Cal benefits until the policy benefits have been exhausted. Therefore, it is highly improbable that counties will have to deal with such an exemption within the next several months.

To qualify for this exemption, the applicant/beneficiary shall provide verification of the amount of benefits paid under the State-certified policy. Such verification will simply list the amount of qualifying benefits that have been provided to date. A copy of the form that will be used by these insurance companies to provide the verification has been enclosed.

As of the date of this letter, insurance companies that have applied to participate in this program include: AMEX, Bankers Life, CNA, John Hancock, New York Life, Transamerica, and Time. We will keep you updated on those companies that are approved. Since these policies will provide LTC coverage for a minimum of one year and a maximum of five years, it is anticipated that during the first several years that the policies are being sold, only a small number of individuals who have purchased them will need to apply for LTC.

As noted above, an individual with such a policy will generally not apply for Medi-Cal benefits until the policy benefits have been exhausted. However, in some cases, an individual may require acute hospitalization or some other benefit not covered under his/her private insurance and will apply early. In these cases, the individual will receive an exemption equal only to the amount of benefits that have been provided to the date of application and they will have to spenddown any other excess property they may have before eligibility may be established.

Benefits may continue to be paid under the policy and, in almost all cases, these payments will be per diem payments and should be considered income and included in the individual's share-of-cost computation.

All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
Page 2

If a beneficiary happens to acquire additional property after establishing eligibility for Medi-Cal such as proceeds from the sale of his/her former principal residence, inheritance, lotto winnings, etc., the amount of additional benefits paid under the State-certified policy should be verified again to determine how much, if any of the newly acquired nonexempt property can be exempted.

At the time of such an individual's death, whoever is handling the individual's estate, after notifying the Department of the individual's death pursuant to Probate Code Sections 215 and 9202, is responsible for providing the required verification of policy benefits paid to the point of death. An amount equal to these benefits will be exempted for estate recovery purposes. In case the county accidentally receives the verification for estate recovery purposes, or if a person handling the estate of a deceased beneficiary asks, the verification should be sent to:

Department of Health Services
Recovery Section
Attention: Estate Recovery
P. O. Box 2471
Sacramento, CA 95812-2471

If you have any questions regarding the LTC insurance exemption, please contact the California Partnership for LTC at (916) 657-0654. In addition, contact the Recovery Section at (916) 322-0521 for questions on Estate Recovery, and for Medi-Cal Property questions related to the LTC Partnership, contact Sharyl Shanen-Raya of the Medi-Cal Eligibility Branch at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

limit or exclude benefits by requiring that the provision of such services be at a level of certification or licensure greater than that required by the eligible service or by limiting benefits to services provided by Medicare-certified agencies or providers.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code; and 42 United States Code Section 488.1 et seq.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58018. Informal Long-Term Care Services.

"Informal Long-Term Care Services" means long-term care services for which the provider is not paid.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(a), Welfare and Institutions Code.

HISTORY

1. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58019. Insured Event for a Certified Integrated Benefits Policy or Certificate.

"Insured Event" means the insured is eligible to receive insurance benefits and to have these benefits qualify for a Medi-Cal Property Exemption if any one (1) of the following criteria is met:

- (a) the insured has at least two Deficiencies in Activities of Daily Living (ADLs) (to qualify for home and community-based services including but not limited to Home Health Care, Adult Day Health/Social Care, Personal Care Services, Homemaker Services Incidental to Personal Care Service, Respite Care and Residential Care Facility) or three Deficiencies in Activities of Daily Living (ADLs) (to qualify for nursing facility care); or
- (b) the insured has a Cognitive Impairment; or
- (c) the insured has a Complex, Yet Stable Medical Condition.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58020. Insured Event for a Certified Nursing Facility and Residential Care Facility Only Policy or Certificate.

"Insured Event" means the insured is eligible to receive insurance benefits and to have these benefits qualify for a Medi-Cal Property Exemption if any one (1) of the following criteria is met:

- (a) the insured has at least three Deficiencies in Activities of Daily Living (ADLs); or
- (b) the insured has a Cognitive Impairment; or
- (c) the insured has a Complex, Yet Stable Medical Condition.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Section 22006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58021. Integrated Benefits.

"Integrated Benefits" means the benefits can be used interchangeably among the various covered home, community-based, nursing and/or residential care facility benefits, and there is no limit on the use of any specific covered benefit, except for monthly limits that may be set for home and

community-based care benefits and per diem limits that may be set on nursing facility and residential care facility services.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58022. Issuer.

"Issuer" means an entity delivering or issuing for delivery in this State, Certified Long-Term Care Insurance Policies or Certificates, as follows:

- (a) insurers, as defined in Section 23, California Insurance Code;
- (b) fraternal benefit societies, as defined in Section 10990, California Insurance Code;
- (c) any similar organization regulated by the Commissioner of the Department of Insurance pursuant to Section 12921, California Insurance Code; or
- (d) The California Public Employees' Retirement System Board of Administration.

NOTE: Authority cited: Sections 22005(f) and 22009(a), Welfare and Institutions Code. Reference: Section 22013, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58023. Long-Term Care Services Countable Toward Medi-Cal Property Exemption.

"Long-Term Care Services Countable Toward Medi-Cal Property Exemption" means those services that may be covered in a Policy or Certificate which will qualify for the Medi-Cal Property Exemption. These services include the following:

- (a) long-term care in nursing facilities, as defined in Sections 51120 and 51123;
- (b) home health services, as defined in Section 51337;
- (c) home and community-based services approved under 42 U.S.C. Section 1396n(c), and provided in the Welfare and Institutions Code, Section 14132(s) and (t);
- (d) Residential Care Facility Services;
- (e) personal care services as defined in California Code of Regulations, Title 22, Section 51183; and
- (f) adult day health care services as defined in California Code of Regulations, Title 22, Section 54103.

NOTE: Authority cited: Section 22009(a)(3), Welfare and Institutions Code. Reference: Section 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.
2. Certificate of Compliance as to 8-30-93 order transmitted to OAL 12-30-93 and filed 1-28-94 (Register 94, No. 4).

§ 58024. Medi-Cal Property Exemption.

"Medi-Cal Property Exemption" means the total equity value of real and personal property not otherwise exempt under Medi-Cal regulations (Cal. Code of Regs. Title 22, Section 50000 et seq.) equal to the sum of qualifying insurance benefit payments made on behalf of the qualified insured for Long-Term Care Services Countable Toward Medi-Cal Property Exemption in determining the eligibility of such insureds for the Medi-Cal program under Title 22, California Code of Regulations.

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22001, 22003, 22006, 22008.5 and 22009(c)(2), Welfare and Institutions Code.

HISTORY

1. New section filed 8-30-93 as an emergency; operative 8-30-93 (Register 93, No. 36). Submitted for printing only pursuant to section 22009, Welfare and Institutions Code.

sation Law) shall be exempt from consideration as personal property provided these funds are not spent and are kept identifiable.

(b) If the funds referred to in subsection (a) have been spent, the property acquired with the funds shall be included in the property reserve unless otherwise exempt.

(c) If the exempt funds referred to in subsection (a) have been commingled with nonexempt funds, it is the applicant's or beneficiary's responsibility to be able to distinguish which are the exempt commingled funds. It is presumed that withdrawals from an account in which exempt and nonexempt funds have been commingled were made from the nonexempt fund first.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.5 and 14006, Welfare and Institutions Code, and Program Operations Manual SI 01120.405.

HISTORY

1. New section filed 9-4-91; operative 10-4-91 (Register 92, No. 2).

§ 50448. Payments to Victims of Crimes—Treatment as Property.

Payments made under the California Victims of Crimes program, which are exempt as income in the month of receipt in accordance with Section 50534, shall be exempt as property for the 9-month period beginning after the month in which the payment was received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Sections 1383(a)(9), 1382b(a) and 1396a(r), Title 42, United States Code. Reference: Section 13959, Government Code; Section 14006(c), Welfare and Institutions Code.

HISTORY

1. New section filed 10-4-93; operative 11-3-93 (Register 93, No. 41).

§ 50449. Earned Income Tax Credit.

The actual Earned Income Tax Credit (EITC) payment or an advance payment of the Earned Income Tax Credit made by an employer shall be exempt in the month following the month of receipt.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code; Sections 1612b, 1613a and 1902r(2), Social Security Act [42 U.S.C. Sections 1382a(b), 1382b(a), and 1396a(r)(2)].

HISTORY

1. New section filed 2-2-93; operative 3-4-93 (Register 93, No. 6).

§ 50451. Cash on Hand.

Cash on hand shall be included in the property reserve, unless it is income received in that month.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect adding NOTE filed 10-11-88 (Register 88, No. 45).

§ 50453. Checking and Savings Accounts.

(a) The entire amount in checking and savings accounts to which the applicant or beneficiary has unrestricted access 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 savings account shall not be considered as property during that month.

(2) Accounts held with persons who are not family members shall be considered available in their entirety if the applicant or beneficiary has unrestricted access to the funds, unless the conditions of (3) are met.

(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 those funds actually available shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. Amendment filed 3-7-80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50453.5. Savings of a Child.

Reasonable amounts saved from a child's exempt earnings for future education or for other future identifiable needs are exempt as property.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14006, Welfare and Institutions Code.

HISTORY

1. New section filed 3-7-80; effective thirtieth day thereafter (Register 80, No. 9).

§ 50453.7. Long-Term Care Insurance Exemption.

(a) Property shall be exempt up to the amount of benefits that have been paid for Long-Term Care services countable towards the Medi-Cal property exemption as defined in Section 58023 in behalf of the Medi-Cal applicant or Medi-Cal beneficiary under a certified long-term care insurance policy or certificate certified by the State to provide this exemption.

(b) Property exempted under subsection (a) shall also be exempt from any recovery by the State of payments made for medical services.

(c) Income received from property exempt under subsection (a) shall be nonexempt and shall be treated in accordance with regulations contained in Article 10 of Chapter 8.

(d) The Medi-Cal applicant or Medi-Cal beneficiary shall provide verification from the insurance company of the amount of qualified benefits paid which entitle that applicant or beneficiary to an exemption under subsection (a). After notifying the Department in accordance with Probate Code, Sections 215 and 9202, the person handling the estate of a deceased Medi-Cal beneficiary shall also provide verification to the Department from the insurance company of the amount of qualified benefits paid which entitle that deceased beneficiary to an exemption under subsection (b).

(1) If the verification provided by the insurance company is found to be in error resulting in the ineligibility of the Medi-Cal applicant or Medi-Cal beneficiary, the County shall notify the Department to take appropriate actions against the insurance company under Section 58082(e).

(2) If the verification provided by the insurance company is found to be in such a condition that the County cannot determine whether the Medi-Cal applicant or Medi-Cal beneficiary is entitled to an exemption under subsection (a), the County shall determine that the Medi-Cal applicant or Medi-Cal beneficiary is not entitled to such an exemption and shall notify the Department to take appropriate actions against the insurance company under Section 58082(f) of the Partnership Regulations for Insurers.

(3) If the verification provided to the Department by the person handling the estate of a deceased beneficiary is found to be either in error, or in such a condition that the Department cannot determine whether the deceased beneficiary is entitled to an exemption under subsection (b), the Department shall take appropriate actions against the insurance company under Section 58082(e) and (f).

NOTE: Authority cited: Section 22009(a), Welfare and Institutions Code. Reference: Sections 22004, 22005 and 22006, Welfare and Institutions Code.

HISTORY

1. New section filed 11-1-93 as an emergency; operative 11-1-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-1-94 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11-1-93 order including amendment of subsection (d)(3) transmitted to OAL 2-17-94 and filed 3-31-94 (Register 94, No. 13).

3. Editorial correction of printing errors in subsections (a), (d) and (d)(2) (Register 94, No. 13).

§ 50454. Income Tax Refunds.

Income tax refunds shall be included in the property reserve.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, Welfare and Institutions Code.

HISTORY

1. Editorial correction adding NOTE filed 6-10-83 (Register 83, No. 24).

SAMPLE "SERVICE SUMMARY" (Use the company letterhead with the company seal.)

◆Name of Insured John Doe ◆Date of Birth 01/02/33

◆Social Security Number 456-78-9101

◆Address of Insured 123 Dream Street, Heavenly, CA 56789

◆Policy Number A 611 93-24 ◆Issue Date 06/01/94

◆Insurance Company U. S. A. Insurance Co.

SERVICE SUMMARY: The Total Amount of Benefits Paid for Long-Term Care Services Countable toward the Medi-Cal Property Exemption	\$91,000
--	-----------------

To the Insured: This summary provides you with a total amount of insurance payments that count towards the Medi-Cal Property Exemption to be applied in determining eligibility for the State of California's Medicaid (Medi-Cal) program. Please examine this summary and carefully compare your current asset total with the amount. If the amount of your Medi-Cal Property Exemption is close to the amount of the assets you currently have, you may be eligible for the Medi-Cal program. It is your responsibility to make application to the County (usually the Department of Social Services) for such eligibility. At the time of your application, a determination will be made whether and when you are eligible. *(Please note: You may have assets, in addition to the Property Exemption listed above, that are exempted from the determination of Medi-Cal eligibility.)*

To the County: This summary verifies that the amount indicated with the label "SERVICE SUMMARY" was paid by (company name) for long-term care services as defined in California Code of Regulations, Title 22, section 58023 on behalf of the person whose name appears as the "Name of Insured" above. This amount is exempt from the determination of Medi-Cal eligibility pursuant to California Code of Regulations, Title 22, section 50453.7. If such person is found eligible for Medi-Cal by applying the Medi-Cal Property Exemption amount reported in this summary and after receiving Medi-Cal services is found to be ineligible solely by reason of errors in this summary, the Department of Health Services may recover from (company name) the amount of service payments as provided in California Code of Regulations, Title 22, section 50002(c).

(Name and Title) Janes Smith (date) Claims Representative

(Company Name) U. S. A. Insurance Co.