

DEPARTMENT OF HEALTH SERVICES

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TO: All County Welfare Directors
All County Administrative Officers

November 16, 1989
Letter No.: 89-97

SUBJECT: REGULATIONS FOR THE DIVISION OF COMMUNITY PROPERTY FOR COUPLES
WITH A SPOUSE IN LONG TERM CARE (LTC)

Reference: ACWD 85-57, 85-78, 88-52

We are informing you of the publication of regulations governing the division of community property for spouses entering into interspousal agreements and for divisions of community property performed by the counties. Regulations governing interspousal agreements were filed on an emergency basis on February 16, 1988 and were finalized after a public hearing in October 1988. Attachment A contains the revisions to existing regulations in Title 22 of the California Code of Regulations (CCR) for interspousal agreements and these changes are highlighted by a bar in the right hand margin. The regulation changes have not yet been added to the Medi-Cal Eligibility Manual (MEM), so please advise your staff of these new regulations.

In addition, emergency regulations governing the "automatic" division of community property were filed on October 13, 1989. Attachment B contains these emergency regulations which are now in force pending a public hearing. As with the interspousal agreement regulations, these are not yet in the MEM and will not be included until they are finalized following the public hearing.

Division of Community Property Regulations and the Implementation of the Medicare Catastrophic Coverage Act (MCCA).

As you know, California's Medi-Cal program already contains provisions to protect the spouse at home from impoverishment when the other spouse requires costly LTC. These provisions have commonly been known as "the division of community property and income" and predate the Medicare Catastrophic Coverage Act. The MCCA contains language that supersedes any provisions states may already have for protecting at-home spouses and replaces them with another method for preventing "spousal impoverishment." However, the MCCA allows states to continue their prior treatment of property until the effective dates of the spousal impoverishment provisions. Consequently, the division of community property will continue to apply to

LTC and at-home spouses applying and eligible before 1/1/90 or those admitted to an LTC facility prior to 9/30/89 regardless of the date of application for Medi-Cal. California plans to implement MCCA on January 1, 1990. The following is a summary of when counties should utilize California's existing division of community property rules and when they should use MCCA rules.

| <u>Situation</u> | <u>Treatment</u> |
|---|--|
| 1. Case in LTC and on Medi-Cal before September 30, 1989. | CONTINUE TO USE EXISTING DIVISION OF COMMUNITY PROPERTY RULES. |
| 2. LTC cases where the spouse was <u>admitted</u> into LTC before September 30, 1989. (regardless of when they eventually apply) | CONTINUE TO USE EXISTING DIVISION OF COMMUNITY PROPERTY RULES. |
| 3. LTC cases where the spouse was admitted AND applied and was found eligible for Medi-Cal <u>between</u> September 30, 1989 and December 31, 1989. | USE EXISTING DIVISION OF COMMUNITY PROPERTY RULES. |
| 4. LTC cases where the spouse was admitted into LTC <u>after</u> September 30, 1989 and did not apply until <u>after</u> December 31, 1989. | USE NEW MCCA RULES FOR PROPERTY. |
| 5. LTC cases where the spouse was admitted into LTC and applied <u>after</u> December 31, 1989. | USE NEW MCCA RULES FOR PROPERTY |

Details for the new MCCA property rules will be provided in the training sessions already scheduled.

As you also know, considerable controversy is brewing over the possible repeal of the MCCA in whole or in part. If the "spousal impoverishment" portions of the MCCA are repealed, our existing division of community property and income program will be the only protection at-home spouses will have from impoverishment. This is why we thought it was important to provide you with the recently adopted regulations governing the division of community property. It is also important for you to know these rules so you can apply them correctly to those cases identified above which will fall under the old rules even if MCCA is not repealed.

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The Department thanks you for your patience in dealing with an ever-changing Medi-Cal policy environment. We of the Eligibility Branch will try to be as helpful as we can.

If you have questions regarding this letter, please call Sharyl Shanen at (916) 324-4956.

Sincerely,

Original signed by

Frank Martucci, Chief
Medi-Cal Eligibility Branch

Attachments

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: November 16, 1990

ATTACHMENT A

Interspousal Agreements

TITLE 22 MEDICAL ASSISTANCE PROGRAM

§ 50078

(Register 88, No. 49—12-3-88)

(p. 1215)

50075. Property—Separate.

(a) Separate property means any item that is considered separate property under California Property Law. Generally, separate property is property acquired by an individual by any method prior to marriage, after obtaining an interlocutory or final judgment of dissolution, or while voluntarily separated; or at any time by gift or inheritance, or purchases made with funds that are separate property or with funds from the sale of separate property.

(b) Separate property also includes that portion of a couple's former community property which has been transmuted into separate property by a written interspousal agreement in accordance with 50403(c).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2 and 14008, Welfare and Institutions Code.

HISTORY:

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).
2. New subsection (b) filed 2-16-88 as an emergency; operative 2-16-88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-88.
3. New subsection (b) refiled 6-16-88 as an emergency; operative 6-16-88 (Register 88, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-14-88.
4. Emergency language of subsection (b) refiled and operative 6-16-88 repealed on 10-14-88 by operation of Government Code Section 11346.1 (Register 88, No. 49).
5. New subsection (b) filed 11-16-88; operative 11-16-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

50403. Treatment of Property: Separate and Community Property.

(a) The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi-Cal eligibility.

(b) A spouse's share of community property is always one-half of the current total community property.

(c) For purposes of establishing eligibility, an interspousal agreement entered into pursuant to Welfare and Institutions Code Section 14006.2 shall:

(1) be written, dated and signed by both spouses or by a person who has the legal authority to enter into such agreements on behalf of either spouse;

(2) list each asset being transmuted;

(3) clearly designate the owner of each asset;

(4) list the value of each asset; and

(5) evidence an equal division of the nonexempt community property.

(d) If an interspousal agreement does not comply with (c) (4) of this section, the county shall request additional information from the applicant, or other party mentioned in (c) (1) to supplement the agreement and verify the methodology used to value assets. Such information may be necessary pursuant to verification requirements contained in Article 4 of this Division.

(e) If an interspousal agreement evidences an unequal division of the nonexempt community property, and the applicant received the smaller share of such property under the agreement, the county shall determine whether the transfer was for adequate consideration in accordance with Sections 50408 and 50409.

(1) If the county determines that the transfer was not for adequate consideration and was made in order to establish eligibility or to reduce the share of cost, the county shall give the applicant's spouse the option of reconveying to the applicant in accordance with Section 50411 (d) (1) an amount of property sufficient to provide each spouse with equal shares of the total nonexempt community property identified in the interspousal agreement.

(2) If the applicant's spouse does not reconvey property pursuant to (e) (1) above, the county shall assess a period of ineligibility for the applicant in accordance with Section 50411.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2, 14008, 14008.5 and 14015, Welfare and Institutions Code.

HISTORY:

1. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).

2. New subsections (c), (d) and (e) filed 11-16-88; operative 11-16-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

50404. Owner of Property.

(a) The owner of property, for Medi-Cal eligibility purposes, shall be the person who holds legal title to the property unless otherwise specified in these regulations.

(b) Ownership of property may be vested in one individual or shared with other individuals.

TITLE 22 MEDICAL ASSISTANCE PROGRAM
(Register 88, No. 49—12-3-88)

§ 50404
(p. 1238.23)

(c) Notwithstanding (a), a person shall be the owner of separate property designated in a written interspousal agreement.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14006.2, Welfare and Institutions Code.

HISTORY:

1. New subsection (c) filed 2-16-88 as an emergency; operative 2-16-88 (Register 88, No. 10). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-15-88.
2. New subsection (c) refiled 6-16-88 as an emergency; operative 6-16-88 (Register 88, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-14-88.
3. Emergency language of new subsection (c) refiled and operative 6-16-88 repealed on 10-14-88 by operation of Government Code Section 11346.1 (Register 88, No. 49).
4. New subsection (c) filed 11-16-88; operative 11-16-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 49).

§ 50408
(p. 1238.24)

MEDICAL ASSISTANCE PROGRAM

TITLE 22

(Register 88, No. 45—12-3-88)

50408. Transfer of Property Which Does Not Result in Ineligibility.

(a) Transfer of property shall not result in ineligibility for Medi-Cal under any of the following conditions:

(1) The property would have been considered exempt pursuant to Section 50418 of Article 9 of Division 3 of this title at the time of transfer.

(2) The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.

(3) Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 50412 and includes:

(A) A transfer which was to satisfy a legal debt.

(B) A transfer which was to reimburse someone other than a responsible relative, as specified in Section 50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

(C) A written transmutation of a married couple's nonexempt community property into equal shares of separate property through an interspousal agreement.

(4) Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.

(5) The transfer was made in return for an enforceable contract for life care which does not include complete medical care. In this case, each full item of need provided under the life care contract shall be considered income in kind in accordance with Section 50509.

(6) The transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence to the county as specified in Section 50409(b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

(b) There is a presumption that property transferred by the applicant or beneficiary more than two years preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility.

(c) While the transfer of property by an applicant or beneficiary from one form to another, as described in (a) above, has no effect on eligibility, any

ATTACHMENT B

"Automatic" Division of Community Property

Adopt Section 50420.5

50420.5. Separation of Community Property: Spouse in Long-Term Care Facility

(a) The value of property available to an applicant or beneficiary who is in a skilled nursing or intermediate care facility and is in a MFBU separate from his or her spouse shall be determined to meet the property reserve limits if the value as determined in (1)(E) or (2)(D) is equal to or less than the applicable property reserve limit.

(1) If the applicant or beneficiary has entered into an interspousal agreement which meets the requirements set forth in Section 50403(c) and (d), at the time of the eligibility determination, the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate property resulting from the interspousal agreement.

(B) The value of the applicant or beneficiary's one-half share of any nonexempt community property acquired since or not included in the interspousal agreement.

(C) The value of the applicant or beneficiary's nonexempt separate property from sources other than the interspousal agreement.

(D) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(E) The value of property remaining after deducting expenditures made for the applicant or beneficiary's own benefit as defined in (b) and verified loses, if any, in the market value of such property from the combined values determined in (a)(1)(A) through (D).

(2) If the date the interspousal agreement was executed is later than the date of entry into a skilled nursing or intermediate care facility, or in the absence of an interspousal agreement which meets the requirements of Section 50403 (c)and(d), at the time of the eligibility determination, the county shall determine:

(A) The value of the applicant or beneficiary's nonexempt separate and one-half share of nonexempt community property on the date of most recent entry, as limited by (d) of this section, into a skilled nursing or intermediate care facility.

(B) The value of the applicant or beneficiary's share of any nonexempt separate and one-half share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined.

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(C) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary.

(D) The value of property remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b), and verified losses, if any, in the market value of such property from the combined values determined in (a)(2)(A) through (C).

(b) Expenditures for the applicant or beneficiary's own benefit shall include but are not limited to:

(1) Expenditures for the applicant or beneficiary's own medical expenses.

(2) Expenditures associated with property owned by the applicant or beneficiary and for improvements to such property in proportion to his or her ownership interest in the property, for example.

(A) Payments made on the mortgage on a jointly owned principal residence.

(B) Payments made on a note on a jointly owned motor vehicle.

(C) Expenditures for improvements on a jointly owned principal residence.

(3) Expenditures for other exempt or nonexempt property for the sole benefit of the applicant or beneficiary including, but not limited to, personal effects, recreational items, and burial trusts.

(4) Transfer of nonexempt assets for adequate consideration as defined in 50408 (a) (2).

(c) For purposes of this Section, it shall be presumed that all property is community property. This presumption may be rebutted by either spouse.

(d) The mere change of residence from one medical facility to another shall not be considered a new entry into LTC for purposes of Subsection (a) of this Section.

(e) Effective 1/1/90, the regulations contained in this section shall not apply to an institutionalized spouse as defined by Section 1924 (h)(1) of Title XIX of the Social Security Act.

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

Reference: Sections 14006, 14006.2, and 14008, Welfare and Institutions Code and Section 1924 of Title XIX of the Social Security Act.

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