480-1
Conversion of property from one form to another in itself has no effect on eligibility but property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect. (§50407)

481-1
If a person or family meets the property limit at any time during the month, property eligibility exists. (§50420(c))

481-2
The property limit for one person is $2,000. The MFBU shall be ineligible if this limit is not met sometime during the month. (§50420)

If a person or family meets the property limit at any time during the month, property eligibility exists. (§50420(c))

481-3
The property limit for ___ person(s) is ___. The MFBU shall be ineligible if this limit is not met sometime during the month. (§50420)

481-5
Once a state has chosen to participate in the MN program, it must use a single resource standard that meets the requirements of 42 Code of Federal Regulations (CFR) §435.840(a).

In states which do not use more restrictive criteria than SSI for aged, blind, or disabled individuals, the resource standard must be established at an amount that is no lower than the lowest resource standard used under the cash assistance programs that relate to the state's covered MN eligibility group or groups. (42 CFR §435.840(b))

481-6
Effective February 1, 1998, certain individuals who would otherwise have had excess property for the entire month, including the application month (but not the three retroactive months prior to application), may receive Medi-Cal benefits when:

1. They are otherwise eligible for Medi-Cal benefits.

2. They spend down retroactively on qualified medical expenses in a later month within three years from the notice denying Medi- Cal benefits based on excess resources, and reduce property holdings to allowable limits.

3. Verification of payment is provided to the county.

“Qualified medical expenses” are bills incurred in any month by the individual or individual's spouse, any member of the individual's MFBU, or the individual's children who are not in that

person's MFBU but who are living with the individual; and the bills are unpaid in the same month where there is also otherwise excess property for the entire month.

(All-County Welfare Directors Letter (ACWDL) No. 97-41, October 24, 1997, implementing the settlement in *Principe* v. *Belshé*)

481-6A
An example of the application of the *Principe* v. *Belshé* court case is set forth below.

A hospitalized single person applies for Medi-Cal late in July 1998. The person owns excess property, e.g., a $5,000 bank account. The person is not unconscious, comatose, or incompetent at any time during the month, but simply is unable to spend down to $2,000, the property limit for one person.

In November, the person spends $4,000 on medical expenses which were incurred in July. There is $3,000 in otherwise excess property, and no excess property as of November. If other eligibility requirements are met, the person is retroactively eligible for Medi-Cal benefits for July through October 1998, and currently eligible in November. (The person cannot establish eligibility prior to the application month.)

Of the $4,000 the person paid towards medical expenses to establish eligibility, $1,000 may be reimbursed. ($5,000 property, - $3,000 to meet property limit; $4,000 - the $3,000 *Principe* exemption = $1,000)

(All-County Welfare Directors Letter No. 97-41, October 24, 1997)

481-7
The SSI/SSP program rules and methodology are used in several Medi-Cal programs such as Pickle, Qualified Medi-Cal Beneficiaries (QMB) determinations, the Tuberculosis Program, and the 250% program for the Working Disabled. (All-County Welfare Directors Letter No. 99-67, December 3, 1999)

In the SSI program, there are two resource limits: $2000 for an individual, and $3000 for an individual and spouse. (20 Code of Federal Regulations (CFR) §416.1205(c))

482-1
The owner of property for Medi-Cal purposes shall be the person who holds legal title to the property unless otherwise specified in the regulations. Ownership of the property may be vested in one individual or shared with other individuals. (§50404)

482-1A
It is the position of CDHS that if evidence clearly establishes that property held in the individual's name, in whole or as a joint owner, does not belong to the individual, then the property shall not be considered available to the individual.

Such evidence may include withdrawals and deposits made by someone other than the individual; a postmarked envelope with a letter discussing the property and providing instructions as to its use; or copies of the other person's pay stubs with corresponding dates and deposits into the individual's account.

Statements or affidavits alone are insufficient to establish unavailability.

If the property is personal property, the individual must make a good-faith intent and bona fide effort to remove his/her name from the property, or restrict his/her access to the property.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990; Draft Regulation §50402(f))

482-2
State law provides that the resources of a married individual who resides in skilled nursing care shall be limited to all of his or her nonexempt separate property and one-half of his or her nonexempt community property at the time when he or she entered a skilled nursing facility. (Welfare and Institutions Code (W&IC) §14006.2(c))

483-1
The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi-Cal eligibility. A spouse's share of community property is always one-half of the current total community property. (§50403)

483-2
At the time of the screening, application, or restoration, the county shall inform all applicants of the appropriate property limits, and how property is exempted, counted, and valued; review the MC 007 with all applicants; inform all applicants of their right to reduce nonexempt excess property within the month of application; and provide options as to how excess property may be reduced and how adequate consideration may be obtained to establish eligibility in the month. (ACWDL No. 91-78)

Effective February 1, 1998, counties were required to destroy all old MC 007s, and to issue new MC 007s. The forms will contain a note about the property disregard program, the property limits and a list of the most common property exemptions, including information on the *Principe* v. *Belshé* provisions. (ACWDL No. 98-07, February 1, 1998)

On March 14, 2000, counties were reminded that they must provide the MC 007 to “all Medi-Cal applicants whenever a Medi-Cal application is submitted or information is requested about Medi-Cal. It must be reviewed with the individual during the face-to-face interview or at screening/assessment.” (ACWDL No. 00-11, March 14, 2000)

483-2A

As of February 1, 1998, counties must inform applicants during the face-to-face (and/or at screening, if the county has that process) of the *Principe* v. *Belshé* provisions for establishing property eligibility for a month (beginning with the month of application) whether or not there appears to be excess property. The county worker shall provide the individual with the appropriate property limit, and paraphrase or give the following information:

> "If you have property which exceeds the property limit for an entire month for which Medi-Cal is requested, you may still be able to receive Medi-Cal benefits for that month or months if you are otherwise eligible and you reduce your excess property by paying qualified medical expenses. Qualified medical expenses are bills that are incurred in any month by you, your spouse or any member of your Medi-Cal Family budget Unit (MFBU), or your children who are living with you but who are not members of your MFBU. These are bills which were unpaid in the same month where there was also excess property for the entire month beginning with the month of application. You may not establish eligibility for Medi-Cal in this way for any of the three months immediately preceding the month of application."

(All-County Welfare Directors Letter No. 97-41, October 24, 1997)

483-2B
Counties must provide a form (currently DHS 7077, 12/99) containing specific language, in 10-point type, to all long-term care (LTC) applicants, their spouses and/or agents/authorized representatives. This form must be provided and reviewed during an assessment or the face-to-face interview. The form must be signed by, and a copy must be provided to the applicant and his or her spouse, legal representative, or agent, if any, and a copy retained in the case record.

If the applicant is not competent, the form must be reviewed with, signed by, and provided to the competent spouse, if any, attorney and/or agent. If the legal representative or agent is a public guardian or conservator and that person is not attending a face-to-face interview, then the form must be mailed to the guardian or conservator for their signature. The county must request that a signed copy be returned to the county for retention in the case record.

In reviewing the form with the individual(s) counties are requested to underscore that there is NO PERIOD OF INELIGIBILITY FOR NURSING FACILITY LEVEL OF CARE FOR TRANSFERS OF EXEMPT PROPERTY, INCLUDING THE PRINCIPAL RESIDENCE, AS LONG AS THE PROPERTY WAS EXEMPT AT THE TIME OF THE TRANSFER. IF AN APPLICATION WAS NOT FILED BY THE TIME OF THE TRANSFER, THEN THE COUNTY MUST DETERMINE IF THE PROPERTY , INCLUDING THE PRINCIPAL RESIDENCE, WOULD HAVE BEEN CONSIDERED EXEMPT AT THE TIME OF THE TRANSFER AS IF AN APPICATION HAD BEEN SUBMITTED FOR THE MONTH OF THE TRANSFER.

Since exempt property, nonexempt property included in the Community Spouse Resource Allowance and nonexempt property under the property limit can all be retained without affecting Medi-Cal eligibility, it is only when excess property is transferred that Medi-Cal eligibility is

affected. Before a period of ineligibility for nursing facility level of care may occur, the county must make a determination that the nonexempt property transferred would have been considered excess nonexempt property at the time of the transfer. If no application was filed by the time of the transfer, then the county must determine whether the nonexempt property transferred would have been considered excess nonexempt property as if an application had been submitted for the month of the transfer.

(All-County Welfare Directors Letter No. 00-11, March 14, 2000, implementing W&IC §§14006.3 and .4)

483-2C ADDED 9/08
County Department Responsibilities for Informing All Medi-Cal Applicants or Potential Applicants at Screening.

(a) At screening or at application and restoration, the county department shall:

(1) Inform all applicants of the appropriate property limits and how property is exempted. Counted, and valued. As appropriate, inform applicants how property is divided as community property under Section 50403 or divided between institutionalized and community spouses.
(2) Review the "Community Property -- Person in Long-Term Care (LTC) " (MC Information Notice 005) with all applicants with LTC status who have entered an LTC facility prior to 9/30/89 and review with all applicants. The Medi- Cal General Property Limitations for All Medi-Cal Applicants" (MC Information Notice 007) including clarification of the provisions listed in subsection (8) below.
(3) If applicable, inform all applicants of their right to reduce nonexempt excess property within the month of application, provided the applicant receives adequate consideration. After January 1. 1990, the requirement to receive adequate consideration applies only to an institutionalized individual as defined in Section 50046.4.
(4) If applicable, provide options as to how excess property may be reduced and how adequate consideration may be obtained, in order to establish eligibility in the month. This shall be done as soon as there is an indication that the applicant may own property which could result in ineligibility whether or not there is actual verification. Such options shall include but are not limited to: (A) Paying off medical or other bills (B) Purchasing exempt items (C) Paying off mortgages or car loans: making home repairs or improvements to property. If the applicant has LTC status, is not an institutionalized spouse, and is reducing excess nonexempt property in this manner, the payments must be made in no more than the same proportion to which the applicant holds ownership interest in these items. (D) Encumbering (in accordance with Section 50039) or borrowing against the cash values of nonexempt property and life insurance policies and then reducing the proceeds while receiving adequate consideration, by the end of the month for which Medi-Cal is being requested. (E) The county shall inform the applicant that the cash surrender value of nonexempt life insurance policies and any other asset will be considered unavailable as long as the applicant continues to make a. good faith effort to liquidate the asset as limited by Section 50402

(All County Welfare Director's Letter 90-01, January 5, 1990, proposing draft regulation §50154)

483-3A
A Medicaid Qualifying Trust (MQT) or Similar Legal Device (SLD) is an instrument established prior to August 11,1993 which: (1) is established, other than by will, by an individual, or the individual's spouse, guardian, conservator or legal representative who is operating on the person's behalf; (2) provides that the individual may receive all or a part of the payment from the trust, either directly or to another person or entity on behalf of the individual; (3) gives the trustee any discretion in distributing funds to the individual or another person on behalf of the individual.

Property in an MQT or SLD is generally considered available if the instrument is revocable. If the MQT or SLD is irrevocable, (1) any amount distributed to, or on behalf of, the individual from principal is available property; (2) any amount distributed to, or on behalf of, the individual from income is income; and (3) the maximum amount the trustee could legally distribute under the terms of the instrument, even if not distributed, is available property.

(All-County Welfare Director's Letter No. 93-07, February 10, 1993, proposing amendment to §50489; and relying on 42 United States Code, §§1396a(k), 1396 (r)(2)(A), and 1396(c), and Welfare and Institutions Code §§14005.7, 14006(c) and 14015; §50489)

483-3B
Section 50489 (pertaining to Medicaid Qualifying Trusts (MQTs) and Similar Legal Devices (SLDs) had not been amended from May 6, 1994 through January 27, 1998, but 42 United States Code (USC) §1396p(d) was amended effective August 11, 1993 and provided for a different treatment of MQTs and SLDs than had previously existed. The CDHS issued instructions to the counties as to the treatment of trusts established on or after August 11, 1993 which instructions are contained in All-County Welfare Directors Letter (ACWDL) No. 94-01, January 5, 1994.

The following summarizes the provisions of 42 USC §1396p(d) and is generally reflective of the CDHS position as contained in ACWDL 94-01 and of §50489.5, effective January 28, 1998.

Trusts affected by this section are those established on or after August 11, 1993. The assets in the trust must include at least some assets of the individual as part of the trust corpus. The trust must not have been established by will. It must have been established by the individual or his/her spouse; or a person, including a court or administrative body with legal authority to act in place or on behalf of the individual or his/her spouse; or which person is acting at the direction or upon the request of the individual or the individual's spouse. (42 USC §1396p(d)(2)(A))

When the corpus consists of assets of other persons, those assets shall not be governed by these provisions. (Subsection (2)(B))

In the case of a revocable trust, the corpus is considered an available resource. Payments from the trust to or for the benefit of the individual are income. Any other payments are considered transfers of assets and treated in accord with 42 USC §1396p(c). (Subsection (3)(A))

In the case of irrevocable trusts in which payment from the trust could be made to or for the benefit of the individual, then the entire amount the trustee could legally distribute is available property. Distributions from income to or on behalf of the individual are income; distributions of property are property. (Subsection (3)(B)(i))

Any portion of the irrevocable trust from which no income nor property payments could be made is treated as a transfer under 42 USC §1396p(c). (Subsection (3)(B)(ii))

The following trusts are not governed by the above.

1. A trust containing the assets of an individual under age 65 who is "disabled" (under Title II or XVI) and which is established for the individual's benefit by a parent, grandparent, or legal guardian of the individual, or by a court: IF the State will receive all amounts remaining in the trust upon the individual's death, up to an amount equal to the State's payment for medical assistance on behalf of the individual. (Subsection (4)(A))

2. A trust containing the assets of a "disabled" (under Title II or XVI) individual; established by the individual's parent, grandparent, legal guardian, or by a court; managed by a nonprofit association which pools the accounts for investment and management purposes but maintains separate accounts for each beneficiary: IF the State will receive all amounts remaining in the trust upon the individual's death, up to an amount equal to the State's payment for medical assistance on behalf of the individual. (Subsection (4)(C))

The CDHS issued new trust regulations effective January 28, 1998. (§50489)

483-4
State regulations provide that property which is not available shall not be considered in determining eligibility. (§50402)

Although §50402 has not been formally amended as of December 1, 2002, the following rules have been in effect since January 1, 1990 based on federal law.

Property which the applicant or beneficiary has the legal right, power, and authority to liquidate is considered available and is used in determining eligibility.

If there is excess property and the applicant or beneficiary establishes a good-faith intent and makes a bona fide effort to liquidate the property or otherwise fulfill the requirements of this proposed section, the property shall be considered unavailable beginning the first day of that month. The property shall remain unavailable until after consideration for the property is received, or until the applicant or beneficiary discontinues his/her good faith intent or bona fide efforts to liquidate the property. This availability principle applies to other real property regardless of value.

A bona fide effort to sell includes listing the property for sale with a licensed real estate broker for its fair market value, advertising the property for sale in a local newspaper, accepting bona fide offers within two-thirds of the fair market value, and supplying copies of all offers.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing modification of §50402)

483-4A
If evidence clearly establishes that property held in the name of an applicant or beneficiary or shared with another person does not belong to the applicant or beneficiary but belongs to a person who is not an MFBU member, then such property shall not be considered available to the applicant or beneficiary.

(1) Such evidence may include but is not limited to:

A. Corresponding withdrawals and deposits from the non-MFBU member's accounts to the account belonging to the applicant or beneficiary.

B. A postmarked envelope with the letter from the non-MFBU member discussing the property in question and providing instructions as to its use which corresponds with dates and amounts of deposits into the applicant's or beneficiary's account.

C. Copies of paystubs belonging to the non-MFBU member and corresponding dates and deposits into the account (of) the applicant or beneficiary.

(2) Such evidence shall not consist only of statements or affidavits but must be supported by other evidence as described in subsection (1).

(All-County Welfare Director's Letter (ACWDL) 90-01, January 5, 1990, proposing modification of §50402(f))

483-5
The CDHS policy is to consider an individual's property unavailable whenever that individual is unconscious, comatose, or incompetent at any time during the month, since that individual would not have the legal capacity to liquidate the property. Counties must consider whether property is available before including property in the property reserve. (All-County Welfare Directors Letter (ACWDL) No. 97-41, October 24, 1997, referencing ACWDL No. 90-01, and §50402)

483-5A ADDED 12/04
Even if the applicant is regarded as incompetent (this includes individuals in a comatose or unconscious state) and unable to handle his/her own affairs, if another individual (family member, friend, etc.) can get access to the property then it must be regarded as available. Many elderly persons have friends or relatives listed on bank accounts and this joint access situation should be determined. If the incompetent individual is the only person who has access, the account will be regarded as unavailable. (ACWDL 94-62, August 2, 1994)

483-6

Loans which require repayment, other than certain educational loans and grants as specified in §50533, shall be included in the property reserve beginning in the month of receipt. Loans that do not require repayment are treated as income in the month of receipt and treated as property thereafter. (§50483)

483-7
Property and income held in trust for the benefit of a person, or the person's spouse, shall be treated in accord with §§50489 through 50489.9. (§50489(a)) For purposes of these §§50489 through 50489.9, the following definitions apply. (§50489(b))

"(1) 'Annuitant' means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.

"(2) 'Annuitized' means that an annuity is paying a fixed, equal amount to the annuitant on a periodic basis. Payments shall be no less frequent than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary for the Department of Health and Human Services, contained in §3258.9 (Revision 64), Part 3 of the Health Care Financing Administration's State Medicaid Manual and titled 'Life Expectancy Table--Males and Life Expectancy Table--Females'. The final annuity payment may be for an amount less than the previously fixed annuity payments in order to fully exhaust benefits under the annuity. An annuity shall be considered annuitized even though it may provide an annual cost of living adjustment equal to or less than 5%.

"(3) 'Annuity' means a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, §50402 and Article 10 of this chapter.

"(4) 'Assets' shall mean all income and property of the individual or the individual's spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

"(A) the individual or the individual's spouse, or

"(B) any other individual or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse, or

"(C) any other individual or entity, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"(5) 'Beneficiary' means any individual or individuals designated in the trust instrument as benefiting in some way from the trust.

"(6) 'Date of establishment' means the date the trust document (in the case of a trust), annuity purchase agreement (in the case of an annuity), or other creating document (in the case of a similar legal device) is signed and dated. A trust is not considered to be established on the date it has been amended.

"(7) 'Irrevocable trust' means a trust which cannot be revoked by its own terms or a trust deemed to be irrevocable under State law.

"(8) 'Revocable trust' means a trust which can be revoked by its own terms or a trust deemed to be revocable under State law.

"(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 benefits of the transferor or certain other individuals. 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.

"(11) 'Trustee' means any individual(s), entity, trust advisory committee, or individual(s) with power of appointment, who manages, holds, or administers a trust for the trust beneficiary or beneficiaries.

"(12) 'Trustor' means an individual who creates a trust. A trustor is also known as the 'settlor' or 'grantor'."

(§§50489(b)(1)-(b)(12))

483-8

For purposes of §§50489 through 50489.9, trusts are classified as:

(1) Medicaid Qualifying Trusts (MQTs), established prior to August 11, 1993 and described in §50489.1.

(2) OBRA 93 Trusts, established on or after August 11, 1993 and described in §50489.5.

(3) Other Trusts, i.e., trusts different from MQTs or OBRA 93 Trusts.

(§50489(c))

483-9

A written trust shall be verified by examining the trust and other related documents. (§50489(e)(1)) An oral trust cannot exist for real property. An oral trust shall be verified by affidavits dated and signed under penalty of perjury, specifying the terms of the oral agreement, or by any other related document. (§50489(e)(2))

483-10

When an OBRA 93 trust will result in ineligibility, eligibility shall not be denied if undue hardship is found to exist. The county shall notify the individual that undue hardship is being considered prior to denying eligibility based on an OBRA 93 Trust or annuity. If undue hardship is considered and found not to apply, the county shall state that on the Notice of Action.

"Undue hardship" exists when all of the conditions in §§50489.5(h)(1) through (h)(4) exist, or when the conditions in either Subsection (h)(5) or (h)(6) exist. Those subsections are set forth below:

"(1) The trust assets cannot, under any circumstances, be used to provide for the health care or medical needs of the Medi-Cal applicant or Medi-Cal beneficiary, and

"(2) Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing or shelter or other necessities of life, and

"(3) The individual's parents (if the individual is under 21) or the individual's spouse, cannot provide for the health care and medical needs or health care coverage of the individual without depriving themselves of food, clothing or shelter or other necessities of life, and

"(4) The courts have denied a good faith petition to release the trust assets to pay for the required medical care.

"(A) A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language which suggests or requests that the courts do anything other than release the trust assets needed to pay for the required medical care.

"(B) The counties shall verify that the criteria contained in subsections (h)(4) and (h)(4)(A) of this section, concerning a valid good faith petition and court order exist by examining the petition and the court order.

"(C) Subsection (h)(4) of this section does not apply to an annuity.

"(5) No person shall be made ineligible to the extent that trust contains otherwise exempt income or property.

"(6) No person shall be made ineligible due to the application of subsection (g) of this section, concerning an annuity purchased prior to March 1, 1996 when the annuity cannot be annuitized to comply with the provisions of subsection (g) of this section. Any annuity purchased prior to March 1, 1996 which cannot be annuitized to comply with the provisions of subsection (g) of this section, shall continue to be considered in accordance with §50402."

(§50489.5(h))

483-11
Annuities purchased on or after August 11, 1993 which are not subject to treatment under undue hardship provisions shall be treated as follows:

- Payments from the annuity shall be considered income in accordance with Article 10.

- If payments are deferred at any time, the cash surrender value of the annuity shall be considered available property.

A. PERIOD CERTAIN ANNUITIES

- Once the individual or spouse receives or takes steps to receive periodic payments of principal and interest, the balance of the annuity shall be considered unavailable.

- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security Administration and set forth in §9J of the Medi-Cal Eligibility Procedures Manual (MEPM). Use the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

- If the years of expected life for the annuitant, based on the life expectancy tables compiled by the Actuary of the Social Security Administration, is less than the years of scheduled payments under the terms of the annuity, and if the annuity cannot be restructured, then the payments in excess of the annuitant's life expectancy shall be considered a transfer of property for less than fair market value that may be a disqualifying transfer.

- Any predetermined specified amount or number of payments set aside for any other individual (other than for the sole benefit of the spouse) shall be considered a transfer of property that may be a disqualifying transfer.

- After payments to the annuitant begin, if payments are later designed to be made to any other individual (other than for the sole benefit of the individual or spouse), the payments shall be considered a transfer of income that may be a disqualifying transfer in the future.

Note: Whenever an annuity has not been properly annuitized, counties shall advise the individual that he/she must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant/beneficiary that he/she must annuitize the annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to

annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See MEPM §9 J V - I) When undue hardship is considered and found not to apply, the notice of action shall state that "the undue hardship provisions were considered and found not to apply."

(MEPM §9J-13, 14)

483-12 ADDED 9/08

a) For purposes of this section pension funds are funds held in Individual Retirement Accounts (IRAs) or in work related pension funds for income when employment ends which are administered by an employer or union including such plans as Deferred Compensation Plans and Thrift Plans and including such plans for self-employed individuals as KEOGH plans.

(b) Notwithstanding any interspousal agreement. pension funds shall be exempt from consideration as a resource if the funds are held in the name of the applicant's or beneficiary's spouse community spouse, parent or parent's spouse if that person is either ineligible or does not choose to receive Medi-Cal.

(c) Pension funds shall continue to be nonexempt for purposes of determining if an interspousal agreement under Section 50403 was equally divided.

(d) If payment of nonexempt pension funds are deferred anytime while the owner is a Medi-Cal applicant or beneficiary, the cash surrender value of the pension fund will be deemed available to the owner and counted in his/her property reserve.

(e) If the applicant or beneficiary has the option of selecting a cash lump sum payment or periodic payments of accumulated principal and interest from a nonexempt pension fund, the applicant or beneficiary may choose either option. The pension fund shall be considered unavailable in accordance with Section 50402 once the applicant provides evidence that he/she has notified the pension fund to begin payment(s).

(f) If, or once periodic payments of the principal and accumulated interest of the nonexempt pension funds have started, the periodic payments shall be considered income and the remaining principal and interest shall be considered unavailable property. A cash lump sum payment of principal and interest shall be considered property in accordance with Section 50455.
(All County Welfare Director's Letter 90-01, January 5, 1990, proposing § 50458)

483-12A

Funds in an IRA account are unavailable if:

- The applicant is receiving periodic payments from each fund or systematic withdrawals from each fund or minimum mandatory distributions at age 70 and ½ or older from his/her total fund or,
- The applicant has requested release of the funds in the form of a lump sum or payments in which case the balance of the funds are unavailable from the first of the month that a request for the release of the funds is made, until the funds are received or,
- The individual must terminate employment to access the funds or,

- The funds are held jointly with a third party and that party refuses to grant access to the funds.

(ACWDL 02-51, October 18, 2002; answer to question 4)

483-13 ADDED
1/15The California Uniform Gift to Minors Act provides that a person may make an irrevocable gift to a child that is managed by a custodian for the benefit of the child. The duties imposed on the custodian are similar to a trustee to manage and prudently invest custodial property solely in the interest of a trust beneficiary. A custodian, unless a trustor however, does not thold legal title to the property and has no ownership interest. The transferor, who is also the custodian of such property, may choose to restrict his/her custodial powers. In that case, none of the funds could be spent before the time of distribution except by court order "upon a showing that the expenditure is necessary for the support, maintenance or education of the minor." If there is no indication that the transferor/custodian has restricted the custodial powers, the custodian is free to use the funds for the child's benefit without a court order. When a child has an account of this type and is to be included in the MFBU, the value of the account is considered available when no restrictions have been placed on the property. When the custodian's powers have been restricted, preventing access to the funds except by court order, the funds shall be considered unavailable. If funds are distributed from trust income, they shall be considered income in accordance with Article 10. (Medi-Cal Eligibility Procedures Manual (MEPM), Article 9J)

484-1
Mortgages, deeds of trust and other promissory notes are to be included in the property reserve. Their value is to be determined by the principal amount remaining on the note or by a qualified appraisal. Parties qualified to appraise such items include but are not limited to: banks, savings and loan associations, credit unions, or licensed loan or mortgage brokers. (§50441)

A mortgage or note secured by a deed of trust which has been obtained through the sale of real property, shall be classified as real property. (§50441(b))

484-2
The net market value of property is the owner's equity in the property and it is determined by subtracting the encumbrances of record from the market value. (§50415)

484-3
Stocks, bonds, and mutual funds shall be included in the property reserve. The value of these items shall be the closing price on the date the property is evaluated. (§50456)

484-4
A life estate interest in real or personal property shall be considered real or personal property, respectively. The value of the life estate shall be the entire market value of the property if the applicant or beneficiary was the owner of the property prior to selling the property, and retains a revocable life estate in the property. In all other instances, the value is determined in

accordance with the California State Gift Inheritance Tax Formula, or at the applicant's or beneficiary's option, a lesser value as determined by a qualified appraiser (as described in §50441(c)). (§50442)

484-5
State law, which applies to the medically needy and to state-only Medi-Cal persons, provides that if property holdings consist of money on deposit, the value is the actual amount. If the holdings are in any other form of personal property or investment, except life insurance, the value shall be the conversion value as of the date of application or the anniversary date of such application. If the holdings are in the form of life insurance, the value shall be the cash surrender value as of the policy anniversary nearest the date of such application. (Welfare and Institutions Code §14006(g))

484-6
State law provides that the value of property holdings shall be determined as of the date of application and if the person if found eligible, this determination shall establish the amount of such holdings to be considered during the succeeding 12 months. A new determination shall be made on the first anniversary date of the application, or such alternate date as may be established following the acquisition of additional holdings, as provided in Subsection (i). (Welfare and Institutions Code (W&IC) §14006(h))

If any person shall acquire additional holdings by gift, inheritance, or other manner (other than from his or her own earnings), that person shall immediately report such acquisition, and the anniversary date shall become the date of such acquisition. (W&IC §14006(i))

485-1
As of October 15, 1996, the CCR provides that one motor vehicle that is used for transportation is exempt. If there are two or more vehicles, the applicant or beneficiary shall be allowed to choose the exempt vehicle. (§50461(a)) Nonexempt vehicles shall be included in the property reserve. (Subsection (b)) The nonexempt vehicle's net market value is determined by multiplying the vehicle license fee (not including registration or weight fees) by 50, and then subtracting any encumbrances of record. (Subsection (c)) The applicant or beneficiary may obtain three estimates if he/she disagrees with the value established by the county. (Subsection (e))

While these regulations remain in effect as of December 1, 2002, they have been inconsistent with the Social Security Act (42 United States Code §1396(r)(2)) since April 6, 1992, because they are more restrictive than the rules which govern AFDC. To remedy this, the CDHS issued proposed §50461 which provides that:

(a) One motor vehicle shall be exempt.

(b) The applicant or beneficiary shall be allowed to choose which vehicle shall be considered exempt except that recreational and business vehicles shall be exempt under this section only if other motor vehicles are not available to provide transportation to the applicant or beneficiary.

(c) The net market value of a motor vehicle may be determined by multiplying the vehicle license fee by 50, and subtracting encumbrances of record.

(d) When the class of the motor vehicle is unknown, the State Department of Motor Vehicles may be contacted to determine the license fee, or the county may use Subsection (e) to determine market value.

(e) When there is disagreement as to the net market value, the county may use:

(1) The wholesale “Kelley Blue Book” value.

(2) The National Auto Dealers Association Guide value.

(3) An estimate obtained by the applicant from a disinterested, knowledgeable source.

(f) The net market value shall be the market value minus encumbrances of record.

(g) The net market value of all nonexempt motor vehicles shall be included in the property reserve.

(All-County Welfare Directors Letter No. 96-55, September 20, 1996)

486-1
Income received during a month and deposited in a checking or savings account shall not be considered as property during that month. (§50453(a)(1))

Although §50453(a)(1) has not been formally amended as of December 1, 2002, §50453(a)(1) was modified by CDHS effective May 1, 1990 (based on its interpretation of State and federal law) to apply only to nonbusiness accounts which are available in accordance with proposed §50402. (All-County Welfare Directors Letter No. 91-28, March 22, 1991)

486-2
There is an exclusion of business property from property consideration in certain circumstances. Equipment, inventory, licenses and materials shall be considered necessary for self-support if the business is realizing a reasonable rate of return. Motor vehicles shall be considered equipment only if used for employment. Cash on hand and money in checking accounts necessary for the functioning of the business shall be exempt up to a maximum of three times the average monthly cash expenditures of the business. (§50485)

Although §50485 has not been formally amended as of December 1, 2002, the following rules have been in existence since May 1, 1990 based on federal law. First, it is no longer necessary to realize a reasonable rate of return in order to exempt the equipment, inventory, licenses and materials. Second, cash on hand and money in checking accounts necessary for the functioning of the business are totally exempt. Third, real property used in whole or in part as a business or

means of self-support is exempt. (All-County Welfare Directors Letter No. 91-28, March 22, 1991)

486-2A
The CDHS exempts equipment, inventory, licenses, materials, and real estate which are in current use and are necessary for employment, for self-support or for an approved plan of rehabilitation or self-care necessary for employment. (All-County Welfare Directors Letter (ACWDL) No. 91-28, March 22, 1991, proposing to amend §50485)

The CDHS clarified ACWDL 91-28 as follows:

1. Property used simply for investment purposes, rather than for self-employment is not exempt. This includes a former home which is now rented. (Such former home may be exempt as a principal residence if it meets the requirements of §50485(c))

2. As long as individuals have an approved plan for achieving self-support, from the county, the Department of Rehabilitation, or the SSI program, property included in that plan, even if not currently in use, may be exempted. (ACWDL No. 95-22, April 3, 1995)

486-2B
The CDHS considers equipment, inventory, licenses, and materials "necessary for employment" (and therefore exempt property) if the applicant or beneficiary uses them for employment; or if they have been used for employment in the past year and the currently unemployed applicant or beneficiary is actively seeking employment in which the same property can be used; or if the owner verifies the existence of a business by providing current or prior year tax returns for the business such as Internal Revenue Service (IRS) Schedules C, SE, F, or Forms 4562 or 1065 (or other business records if these IRS forms are unavailable). (All-County Welfare Directors Letter No. 91-28, March 22, 1991, proposing §50485(a)(1))

Motor vehicles are considered "equipment" when used for employment or self-support, but not when used for commuting purposes. (Proposed §50485(b))

Cash on hand and money in checking accounts necessary for the business or as a means for self-support are exempt (Proposed §50485(c) as is real property used in whole or in part as a business or means of self-support (Proposed §50485(d)), but stocks, bonds, and other similar items of personal property are not exempt. (Proposed §50485(e))

486-3 REVISED 3/08
The net cash surrender value of life insurance policies, except term insurance, is included in the property reserve except when the combined face value of all policies on each individual is $1,500 or less. (§50475)

At the time §50475 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. (ACWDL 08-02, January 24, 2008)

486-3A ADDED 3/08
"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. (§50054.5)

Endowment Life Insurance Contracts (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. (ACWDL 08-02, January 24, 2008)

486-3B ADDED 3/08
Endowment Life Insurance 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. (ACWDL 08-02, January 24, 2008)

486-3C ADDED 3/08
Assets held in Endowment Life Insurance Contracts 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." (ACWDL 08-02, January 24, 2008)

486-4
Mobile homes which are not assessed as real property by the county assessor shall be included in the property reserve unless exempt as a principal residence, or as a vehicle used for transportation. (§50463(a))

486-5
The entire amount in checking and savings accounts to which the applicant has unrestricted access shall be included in the property reserve. If the applicant or beneficiary presents clear evidence that all or a portion of these funds are the property of a nonfamily member, that portion of the account shall not be included in the property reserve. Income received during a month and deposited in a checking or savings account shall not be considered as property during that month (§50453)

486-5A
Although §50453 has not been formally amended as of December 1, 2002, the following modifications to that section have been in effect since May 1, 1990 based on CDHS interpretation of State and federal law.

First, §50453 applies only to nonbusiness accounts.

Second, availability to the MFBU of those accounts is determined in accordance with proposed §50402 (as set forth in All-County Welfare Directors Letter (ACWDL) No. 90-01, January 5, 1990).

Third, proposed Subsection (a)(2) provides that accounts held with persons whose property is not otherwise included in the property reserve of the MFBU shall be considered available in their entirety if the MFBU member, or responsible relative or persons for whom that relative is responsible has access to the funds, unless all or a portion of the funds is unavailable in accordance with proposed §50402. (ACWDL No. 91-28, March 22, 1991)

486-6
Retroactive SSI and Title II benefit payments shall not be included in the property reserve for a period of six months after the month in which they are received. (§50455(b))

486-7
All recreational items shall be exempt with the exception of recreational motor vehicles, boats, campers and trailers. (§50469)

486-8
Property purchased under a signed contract of sale by the applicant or beneficiary shall be included in the property reserve. Property being sold by the applicant or beneficiary under a signed contract of sale shall not be considered the property of the applicant or beneficiary. The interest payments received under the contract of sale shall be treated as unearned income, while the principal payments shall be treated as property. When property is being purchased or sold under a verbal or unsigned contract of sale the property shall be considered the property of the seller until the sale is complete. (§50405)

486-9A
The first $1,500 paid for revocable designated burial funds, which funds include burial trusts and contracts, securities, annuities or any separately identifiable asset designated as set aside for the individual's burial, cremation or interment, are exempt. (§50479(b))

Designated burial funds may include cash on hand, but the fund must be separately identifiable and clearly designated for burial expenses. Commingling of burial funds with other funds will cause loss of the $1,500 exemption.

Previously exempt burial funds that do not meet these criteria must be converted to meet these new criteria. Counties must notify individuals at application or redetermination of burial funds that result in excess property, and the individual must be given until the end of the month following this notification to complete the conversion.

Burial funds may not be "undesignated". Once a fund is exempted, if all or a portion of the funds are used for another purpose, those funds would be added to the property reserve, and could result in an overpayment.

(All-County Welfare Directors Letter (ACWDL), No. 92-58, October 2, 1992)

486-9B
The following burial funds are exempt:

1. Money or securities placed in an irrevocable trust for funeral, cremation, or interment expenses with trustees such as banking institutions or trust companies, or certain cemetery authorities.

2. Money or securities placed in an irrevocable trust created by the deposit in an insured savings institution, made by a person with his/her money, in his/her name as trustee, for a funeral director to provide payment for funeral services on the depositor's death.

3. Life or burial insurance purchased specifically for funeral, cremation, or interment expense, which is placed in an irrevocable trust, or which has no loan or surrender value available to the recipient.

4. Securities issued by a licensed cemetery authority which by their terms are convertible only into payment for funeral, cremation or interment expenses.

(§50479(a))

486-10
Federal regulations provide that to determine eligibility on the basis of resources for Medically Needy (MN) individuals, the state agency must deduct the value of resources that would be deducted in determining eligibility under Supplemental Security Income (SSI). (42 Code of Federal Regulations (CFR) §435.845(d))

In determining the resources of an individual (and spouse, if any) $1,500 of funds set aside for the burial of each individual and his/her spouse, shall be excluded. (20 CFR §416.1231(b))

486-11
All student assistance payments provided to students under authority of Title IV of the Higher Education Act of 1965 and Bureau of Indian Affairs education assistance, are exempt for purposes of determining Medi-Cal income eligibility and property eligibility (notwithstanding §50483).

The major student assistance programs exempt under Title IV are: Pell grants (formerly BEOG); Federal Supplemental Educational Opportunity grants (SEOG); Perkins loans; Stafford loans (formerly FISL Program); Cal Grants (A, B, and C); College Work Study; Federal PLUS loans; Federal Direct Loan Demonstration Program; and Federal Supplemental Loans for students. (All-County Welfare Directors Letter No. 94-06, January 12, 1994; Public Law 102-325, §479B; 20 United States Code 1087uu)

486-12 ADDED 6/08
According to the Medi-Cal Eligibility Manual, Section 9D, loans requiring repayment and which are not exempt under (Title 22, CCR §50533) are considered property in the month of receipt rather than income (Title 22, CCR §50483). However, some reverse mortgages may be an exception to this rule.

Specifically, a reverse annuity mortgage plan may provide that part of the equity of the home be used to purchase an annuity payable to the homeowner. These payments would be considered unearned income pursuant to (Title 22 CCR §50507). Conversely, payments from home equity conversion plans funded by the financial institution, without utilizing an annuity, would be considered property in the month of receipt.

With respect to a line of credit, Department of Health Care Services does not consider a line of credit to be an available resource since it is not a loan requiring repayment until the funds are drawn down. Once funds are drawn down it becomes an obligation or a loan requiring repayment (Title 22, CCR §50533) and would be a countable resource in the month of receipt.(ACWDL 08-17, April 25, 2008)

487-1
Sections 50408 and 50409 discuss transfers of property which result in ineligibility to Medi-Cal. 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 to reduce the share of cost. Such property shall not be considered in determining eligibility, unless there is evidence which disproves the presumption.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

487-1A REVISION 7/10

The CDHS has established the following policy for transfers of nonexempt property which occurred on or after January 1, 1990.

An institutionalized individual who transfers nonexempt property at any time, including within 30 months immediately preceding the date of application for Medi-Cal, shall be presumed to have transferred that property in order to establish eligibility or reduce the share of cost (SOC).

Unless that presumption is rebutted, there shall be a period (not to exceed 30 months) in which the person is ineligible for nursing facility services or their equivalent. (All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing §§50408.5 and 50411.3; 42 United States Code §§1396p and 1396r-5)

Effective January 1, 1997, counties are instructed to gather all the necessary information as usual, determine whether or not the transfer was made on or after January 1, 1997 and whether or not it is potentially disqualifying in accordance with ACWDL No. 90-01, Section 50408 – 50411.5. If the transfer still appears to be a disqualifying transfer, counties shall complete the Medi-Cal 176 PI. If in completing the Medi-Cal 176 PI, any months remain for which a period of ineligibility would be imposed resulting in restricted services eligibility for the institutionalized individual, then the counties shall copy and send or fax all pertinent case record documentation to the Department of Health Care Services/MCED at 1501 Capitol Ave..Suite 71-4063, MS 4607, P.O. Box 997417 Sacramento, California 95899-7417; Attn: Property Analyst. *The county shall pend the case and shall NOT send a Notice of Action for restricted services eligibility to the institutionalized individual until the property analyst has completed the review of the case record documentation and determination*. (All County Welfare Director's Letter 97-05, February 26, 1997)

487-2
Section 50408(a)(1) provides that exempt property which is transferred shall not result in ineligibility. Subsection (a)(2) provides that ineligibility will not result when the property transferred, if included in the property reserve, would not result in ineligibility.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was

a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

487-2A
The CDHS has established the following policy for transfers of property made on or after January 1, 1990 by institutionalized individuals.

Any such transfer shall not result in any period of ineligibility in the following situations.

1. The property was previously exempt as the principal residence under §§50425(c)(1-7) and title was transferred: To the spouse or community spouse; to a son or daughter under 21; to a son or daughter who is blind or disabled under §50167(a)(1); to a sibling with an equity interest in the property and who resided in the property at least one year before the date the transferor was institutionalized; or to a son or daughter who resided in the property at least two years before the transferor was institutionalized, and who provided care to the transferor which enabled that person to reside at home rather than in a medical or nursing facility.

2. The property was exempt under §50418.

3. The nonexempt property was transferred to, or for the sole benefit of, the community spouse; to a son or daughter who is blind or disabled under §50167(a)(1); to, or for the sole benefit of, the person's spouse prior to institutionalization, as long as the spouse did not transfer the property for less than fair market value.

4. The nonexempt property was, or was intended to be, transferred at fair market value or for other equally valuable consideration.

5. The resources were transferred exclusively for a purpose other than to qualify for medical assistance.

6. The period of ineligibility would work an “undue hardship” on the transferor.

(All-County Welfare Directors Letter No. 90-01, January 5, 1990, proposing §§50411.5 and 50096.5; 42 United States Code §§1396a, 1396p, and 1396r-5)

487-3
Section 50408(a)(3) provides that a transfer of property shall not result in ineligibility for Medi-Cal if adequate consideration is received. Adequate consideration includes a transfer which was to satisfy a legal debt; a transfer which was to reimburse someone other than a responsible relative, as specified in §50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made; or a written interspousal agreement that transmutes a married couple's nonexempt community property into equal shares of separate property. 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.

Section 50408(a)(6) provides that the transfer of property shall not result in ineligibility when the transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence, as specified in §50409(b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

487-4
Section 50409(b) as modified by *Beltran* v. *Myers* provides that transfer of property without adequate consideration shall result in ineligibility for Medi-Cal if the transfer was made to establish eligibility or to reduce the share of cost. It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost. To overcome the presumption, the applicant or beneficiary shall present "convincing evidence" including subjective evidence that the transfer was for some other purpose.

As of January 1, 1990, there was neither state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed of resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

487-5

Section 50411 discusses the period of ineligibility resulting from a transfer of property. This period shall be the time during which the net market value of the property at the time of the transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family. The period of ineligibility is computed by determining the net value of the property transferred which was in excess of the property standard. This amount is then divided by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The period of ineligibility may be further reduced by deducting the actual cost of medical expenses, out-of-home care costs in excess of the maintenance need, and major home repairs necessary to put the home in a liveable condition. The period of ineligibility shall begin the first of the month following the date that the transfer which resulted in ineligibility occurred. The period of ineligibility shall end if the property involved is reconveyed or the applicant or beneficiary receives adequate consideration for the property.

As of January 1, 1990, there was no state nor federal authority to impose a disqualification period for the transfer of assets, except in certain cases involving institutionalized individuals, who, or whose spouse at any time during or after the 30-month period immediately before the date the individual became an institutionalized individual, disposed or resources for less than fair market value. See 42 United States Code §1396p(c) and Welfare and Institutions Code §§14002 and 14006. However, as of October 1, 2002, the regulations cited above had not been amended nor repealed.

Although CDHS has not formally amended the regulations, it is the departmental policy, based on federal law, not to apply the regulations to transfers of property unless the transfer occurred before January 1, 1990, and was made by an institutionalized individual or by a person who was a beneficiary prior to January 1, 1990. (All-County Welfare Directors Letter No. 90-01, January 5, 1990)

487-6
There are restricted benefits for individuals in long-term care facilities who transfer property for less than fair market value. If a disqualifying transfer occurs, all Medi-Cal services other than long-term care services will be covered. (All-County Welfare Directors Letter (ACWDL) No. 92-57, October 2, 1992)

487-6A REVISED 7/10
The Statewide Average Private Pay Rate (APPR) for nursing facility services is $5698 in 2009 and $6311 in 2010. The APPR is used for calculating the period of ineligibility for transfers of non-exempt property for less than fair market value. The APPR is used when the date of application or date of institutionalization (the more recent of the two) occurs in 2009 or 2010 as applicable and there is a disqualifying transfer. Existing periods of ineligibility are not updated to reflect the increase in the APPR. (ACWDLs 09-05, February 2, 2009 and 10-08,April 30, 2010)

487-6B ADDED 11/05

The 20__ statewide Average Private Pay Rate (APPR) for nursing facility services is $____. This rate is used for calculating the period of ineligibility for transfers of non-exempt property for less than fair market value. This figure is used when the date of application or date of institutionalization occurs in 2005 and there is a disqualifying transfer. Existing periods of ineligibility prior to ____ are not updated to reflect the increase in the APPR. (ACWDL _____)

487-7 ADDED 3/09
Effective January 1, 1997, counties are instructed to gather all the necessary information as usual, determine whether or not the transfer was made on or after January 1, 1997 and whether or not it is potentially disqualifying in accordance with ACWDL No. 90-01, Section 50408 – 50411.5. If the transfer still appears to be a disqualifying transfer, counties shall complete the Medi-Cal 176 PI. If in completing the Medi-Cal 176 PI, any months remain for which a period of ineligibility would be imposed resulting in restricted services eligibility for the institutionalized individual, then the counties shall copy and send or fax all pertinent case record documentation to the Department of Health Care Services/MCED at 1501 Capitol Ave..Suite 71-4063, MS 4607, P.O. Box 997417 Sacramento, California 95899-7417; Attn: Property Analyst.

The county shall pend the case and shall NOT send a Notice of Action for restricted services eligibility to the institutionalized individual until the property analyst has completed the review of the case record documentation and determination. When the property analyst completes the review, counties will be notified whether or not the Notice of Action should be sent and if any modification in the imposed period is required. Only at that point shall counties issue Notices of Action granting restricted services or reducing services to restricted services for institutionalized individuals.

(All County Welfare Director's Letter 97-05, February 26, 1997)

488-1 ADDED
1/13Under *Sneede, v. Kizer,* there is an equal allocation of income and property from the spouse and/or parent to himself/herself (property only), his/her spouse and/or natural or adoptive children. Income and property can only be allocated in that one way direction which means that a child's own income or property cannot be used to determine eligibility or share of cost for anyone other than himself/herself. (*Sneede* v. *Kizer*; ACWDL 90-76)