

ADVOCACY WITHOUT BORDERS: ONE COMMUNITY

January 19, 2009 – Monday

REMEMBERING DONALD ROBERTS WHO PASSED AWAY JAN 11TH

California Disability Community Action Network Disability Rights News goes out to over 45,000 people with disabilities, mental health needs, seniors, veterans with disabilities and mental health needs, their families, workers, community organizations, including those in Asian/Pacific Islander, Latino, African American communities, policy makers and others across California

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BACKGROUND AND STATUS OF SB 483 – IMPLEMENTS KEY PARTS OF THE FEDERAL DEFICIT REDUCTION ACT (DRA)

BACKGROUND OF THE DEFICIT REDUCTION ACT

- The federal “Deficit Reduction Act” (DRA) was passed by the US Congress (then controlled by the Republicans) in February 2006 and was signed into law also that same month by President Bush.
- The “Deficit Reduction Act” makes several major changes to the federal Medicaid program, especially those impacting longterm care services.
- The federal legislation gave time to the states to make changes to state laws – and SB 483 was needed to make those changes.
- Significant changes include requiring state to lengthen the “look-back” period for asset transfers to establish Medicaid's eligibility for nursing home coverage from 3 to 5 years, requiring annuities to be disclosed and states to be named a beneficiary for the cost of Medicaid assistance with certain specific exceptions, and excluding Medicaid coverage for long-term care for persons with home equity in excess of \$500,000 (or up to \$750,000 if a state chooses the higher option), with an exception when a spouse or child with a disability is residing in the home.
- Home and facility care" is defined as the following Medi-Cal services: (a) Nursing facility care services (b) a level of care in any institution equivalent to that of nursing facility care services; or (c) Home or community-based care services furnished under a federal waiver.
- The Department of Health Care Services already – through State regulations – made changes regarding citizenship requirements, as required by the “Deficit Reduction Act”.

STATUS OF SB 483

SB 483, by now termed out State Sen. Sheila Kuehl (Democrat – Santa Monica), was introduced to conform (align) California State law to the changes made to

federal Medicaid due to the passage in February 2006 of the “Deficit Reduction Act”.

- The bill was last amended on June 18, 2008 before passing both houses in August and signed by the Governor in September 2008.
- It was passed by the Assembly on 8/12/08 by vote of 45 to 31. It passed the State Senate 8/21/08 by a vote of 24 to 14.
- Governor Arnold Schwarzenegger signed the bill into law on 9/27/08. It was chaptered (filed) by the Secretary of State on that same date, Chapter 379, Statutes of 2008. It became law as all other regular session bills that are not “urgency” bills, on January 1, 2009 (see CDCAN Reports covering that and other bills signed by the Governor)
- However in the case of SB 483, the actual effective dates of the provisions vary – and also all provisions are to be effective prospectively. See below.
- Department of Health Care Services will be determining which of the sections in the bill require new or a change in existing State regulations in order to implement it. If regulations are needed (new or a change to existing), then that section would not be effective until AFTER such regulations are actually adopted.
- Copy of the enacted version of the bill is on the CDCAN website at www.cdcan.us
- CDCAN will be scheduling a special Townhall Telemeeting (conference call open to anyone) on the implementation of this bill in the coming weeks.

SUMMARY OF MAJOR PROVISIONS OF SB 483

CONTINUING CARE RETIREMENT COMMUNITY ENTRANCE FEE

CDCAN Comment: *California does not currently count entrance or admission fees as a resource in determining Medi-Cal eligibility. The federal “Deficit Reduction Act” now makes that requirement.*

SB 483 requires the Department of Health Care Services, for an individual who is living in a continuing care retirement community under a continuing care contract or a life care contract that collects an entrance fee from its residents upon admission, to consider the individual's entrance (or admission) fee as a resource available to the individual when determining Medi-Cal eligibility if the following applies:

- If the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used to pay for care if other resources or income of the individual are insufficient to pay for care;
- The individual is eligible for a refund of any remaining entrance fee when he or she dies or terminates his or her contract with and leaves the continuing care retirement community; and,
- The entrance fee does not confer an ownership interest in the continuing care retirement community.

HOME EQUITY

CDCAN Comment: *the 2005 federal "Deficit Reduction Act" changed previous federal law that exempted the home and instead would exempt up to \$500,000 equity interest in the principal residence (states were given the option to increase that cap to \$750,000, which California did in SB 483).*

- Prohibits a person from being eligible for Medi-Cal home and facility care if his or her equity interest in the principal residence exceeds \$750,000, with specified exemptions.
- Requires, by December 31, 2011, this amount to be increased annually based on the percentage increase in the consumer price index (CPI) for all urban consumers (all items, United States city average), rounded to the nearest one thousand dollars (\$1,000).
- Requires that to the extent that federal financial participation (federal matching Medicaid funds) is unavailable to cover the costs associated with subparagraph (C) of paragraph (3) of subdivision (c), state general funds shall be used.
- Effective Dates: This section relating to home equity shall be implemented pursuant to the requirement of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any State regulations adopted pursuant to that act, and except for subparagraph (C) of paragraph (3) of subdivision (c), and subdivision (d), only to the extent that federal financial participation is available.
- To the extent that State regulations are necessary to implement this section, the Department of Health Care Services shall propose regulations using the non-emergency regulatory
- It is the intent of the Legislature that the provisions of this section relating to home equity shall apply prospectively to any individual to whom the act applies commencing from the date State regulations adopted pursuant to this act are filed with the Secretary of State.

HOME EQUITY – EXEMPTIONS

SB 483 exempts a person from the home equity requirement that would deny them eligibility for Medi-Cal home and community-based care if *any* of the following circumstances exist:

- The spouse of the individual or the individual's child, who is under 21 years of age, or who is blind or who has a disability (as defined in paragraph (3) of subsection (a) of Section 1382c of Title 42 of the United States Code) is lawfully residing in the individual's home;
- The individual was determined eligible for Medi-Cal home and facility care based on an application filed before January 1, 2006.
- The Department of Health Care Services determines that ineligibility for Medi-Cal home and facility care would result in demonstrated hardship on the individual. Demonstrated hardship is defined to include, but not be limited to, any of the following:
- The individual was receiving home and facility care prior to January 1, 2006;

- The individual has been determined to be eligible for Medi-Cal home and facility care based on an application filed on or after January 1, 2006, and before the date that regulations adopted under this bill (SB 483) are certified with the Secretary of State;
- The individual purchased and received benefits under a long-term care insurance policy certified by the Department of Health Care Services' "California Partnership for Long-Term Care Program" (if federal matching funds of federal financial participation or "FFP" is unavailable to cover these individuals, state General Fund money is required to be used);
- The individual's equity interest in the principal residence exceeds the equity interest limit of \$750,000, but would not exceed the equity interest limit under if it had been increased by using the quarterly House Price Index for California, published by the Office of Federal Housing Enterprise Oversight;
- The applicant or person receiving Medi-Cal has been denied a home equity loan by at least three lending institutions, or is ineligible for any one Federal Housing Administration approved loan or reverse mortgage; and
- The applicant or beneficiary, with good cause, is unable to provide verification of the equity value; and,
- The applicant or beneficiary has an undue hardship, as defined in SB 483.

ANNUITIES

- Requires a person, to be eligible for Medi-Cal home and facility care, to disclose at Medi-Cal application or redetermination a description of any interest that he or she or his or her spouse has in an annuity.
- An "annuity" is defined in SB 483 as a contract that names an annuitant and gives a person or entity the right to receive periodic payments of a fixed or variable sum for a described period of time, which may include a lump-sum payment or periodic payments upon the death of the annuitant.
- Requires the Department of Health Care Services, at the time of the person's Medi-Cal application or redetermination, to inform the individual and his or her spouse that, by providing Medi-Cal home and facility care to the individual, the state will become a remainder beneficiary of certain annuities by operation of law, as described.
- Requires the state, as a result of providing Medi-Cal home and facility care to an individual, to become a remainder beneficiary of annuities purchased in whole or in part by the individual or his or her spouse in which the individual or his or her spouse is an annuitant, except as provided in SB 483, or to the extent required by federal law.
- Effective Dates: This section relating to annuities shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any State regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

- To the extent that State regulations are necessary to implement this section relating to annuities, the Department of Health Care Services shall propose State regulations using the nonemergency regulatory process .
- It is the intent (as specified in SB 483) of the Legislature that the provisions of this section relating to annuities shall apply prospectively to any individual to whom the act applies commencing from the date State regulations adopted pursuant to this act are filed with the Secretary of State.

ANNUITIES – EXCEPTIONS TO STATE BECOMING “REMAINDER BENEFICIARY”

SB 483 prohibits the State from becoming a “remainder beneficiary” of an annuity that is any of the following:

- An annuity purchased by a community spouse with resources of the community spouse during the continuous period in which the individual is receiving Medi-Cal home and facility care and after the month in which the individual is determined eligible for these benefits;
- Is contained in a retirement plan qualified under specified provisions of federal law established by an employer or an individual, including, but not limited to, an Individual Retirement Annuity or Account (IRA), Roth IRA, or Keogh fund; or,
- An annuity that is all of the following: (1) The annuity is irrevocable and nonassignable and (2) the annuity is actuarially sound; and (3) the annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made from the annuity.
- Individuals or the community spouse (or both) bear the burden of demonstrating that limit the state's right to become a remainder beneficiary, are met.
- Effective Date: identical as above for “Annuities”

ASSET TRANSFERS & “LOOK BACK”

- Narrows an existing State law provision that results in a period of ineligibility for Medi-Cal because of transfers of gifts of income and assets for less than fair market value to instead be a limitation for Medi-Cal home and facility care only instead of for Medi-Cal generally.
- Requires items, including notes, loans, life estates, or annuities that are held and distributed in a manner that does not conform with federal Medicaid law and regulations to be treated as a transferred asset, which may result in a period of Medicaid ineligibility as required by federal law.
- Requires (as required by the federal Deficit Reduction Act) that the time period from 30 months (California State law) to 60 months in which the state "looks back" for asset transfers that appear to be made to establish Medicaid eligibility for long-term care.
- Amends existing State law by reference to federal law and regulations to extend the look back period to 60 months through the adoption of new State (non-emergency) regulations.

- Effective Date: identical to above for “Annuities:

ASSET TRANSFERS – PARTIAL MONTHS OF ELIGIBILITY

CDCAN Comment: *Medi-Cal eligibility was "whole month" eligibility, and California currently rounds down fractions to the nearest whole number of months when computing the period of ineligibility that arises from a gift transfer of assets (example: a person ineligible for Medi-Cal for 2.1 months based on a gift transfer would currently be ineligible for 2 whole months). The federal “Deficit Reduction Act” requires states to impose partial months of ineligibility when amounts are transferred, so the period would be 2.1 months rather than 2 months)*

- Requires that individuals receiving Medi-Cal for home and facility care to be ineligible for periods of time, including partial months of ineligibility, as determined under federal law and state law.

UNDUE HARDSHIP WAIVER (UNDUE HARDSHIP)

- Requires the Department of Health Care Services to determine, at initial Medi-Cal application or redetermination, whether an undue hardship, as defined, exists prior to finding that an applicant or recipient is subject to a period of ineligibility for Medi-Cal home and facility care.
- Prohibits a person from being subject to a period of ineligibility for Medi-Cal home and facility care at the time of the initial application or redetermination if the Department of Health Care Services determines that an undue hardship exists as specified in SB 483.
- Requires the Department of Health Care Services to establish regulations, procedures, and forms that ensure that the Department of Health Care Services or the county provides a notice of the undue hardship process, at the initial request and the annual Medi-Cal redetermination, to any individual who requests Medi-Cal for home and facility care. Requires the notice to inform the individual that undue hardship must be considered before a request for Medi-Cal home and facility care is denied, Requires that a timely and simplified process is established to determine whether an undue hardship exists and an exception will be granted.
- Requires the Department of Health Care Services, if the issue of undue hardship is considered and found not to apply, to provide the individual with a “Notice of Action” (NOA) that states the reasons for the decision, and requires the Notice of Action to specify how that decision denying the hardship request (or waiver) can be appealed.
- Requires, upon the request of the applicant or beneficiary, undue hardship notices to be provided to the home and facility care administrator in accordance with State regulations to be proposed and adopted by the Department of Health Care Services.

UNDUE HARDSHIP REASONS

SB 483 prohibits a person from being subject to a period of ineligibility for Medi-Cal for home and facility care at the time of the initial application or

redetermination if the Department of Health Care Services determines that an “undue hardship” exists under the following circumstances:

- A person has been determined eligible for Medi-Cal for home and facility care based on an application filed on or after January 1, 2006, and before the date that State regulations adopted pursuant or relating to this section have been certified with the Secretary of State;
- The denial of Medi-Cal for home and facility care would cause an endangerment to the life or health of the individual
- The denial of Medi-Cal for home and facility care would result in the eviction of the individual from a nursing facility;
- The person is otherwise eligible for the Medi-Cal program and unable to obtain home and facility care without Medi-Cal;
- The denial of Medi-Cal for home and facility care would cause a person to be unable to remain at home or in the community and would make more likely or actually cause the individual's entry into a medical or long-term care institution; or,
- The individual would be deprived of food, clothing, shelter, or other necessities of life.

HARDSHIP WAIVER – FAIR HEARINGS

Allows, to the extent federal financial participation (FFP) [this is the federal Medicaid matching funds] is available, any of the following individuals to request a fair hearing on the issue of undue hardship:

- * An individual requesting or receiving Medi-Cal home and facility care,
 - * A personal representative of an individual requesting or receiving Medi-Cal home and facility care; or,
 - * The facility in which the individual requesting or receiving Medi-Cal home and facility care is residing, with the consent of that individual or the personal representative of that individual.
- * Prohibits the provisions of above from altering or limiting the right of applicants or recipients to obtain a state hearing in accordance with existing law provisions.
- * Requires an individual with a pending undue hardship appeal who is subject to a period of ineligibility to receive Medi-Cal for home and facility care for a maximum of 30 bed-hold days.

REGULATIONS TO IMPLEMENT SB 483

- Requires, to the extent that regulations are necessary to implement specified provisions of this bill, the regulations to be adopted using the non-emergency regulatory process of the Administrative Procedure Act (APA)

EFFECTIVE DATE OF PROVISIONS

CDCAN Comment: *the bill was signed into law by the Governor in September 2008, but the bill was not an “urgency” measure so it became effective January 1, 2009. However the specific provisions of the bill that require – as determined by the Department of Health Care Services – new state regulations to implement,*

would not take effect until after those regulations are proposed AND adopted. The bill states the legislative intent that specified provisions of this bill apply prospectively to any individual to whom the bill applies beginning with the date regulations adopted under this bill are filed with the Secretary of State. Each of the sections of the bills contains this identical provision – with one exception (relating to home equity – see above – all others identical):

- This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.
- To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.
- It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

URGENT!!!! PLEASE HELP CDCAN CONTINUE ITS WORK!!!

CDCAN Townhall Telemeetings, reports and alerts and other activities cannot continue without your help!

***CDCAN Disability Rights News Reports, Telemeetings & other Events
Advocacy Without Borders - ONE Community:***

*To respond to this report reply to: Marty Omoto at martyomoto@rcip.com CDCAN website: www.cdcan.us
To continue the CDCAN website, the CDCAN News Reports. sent out and read by over 45,000 people and organizations, policy makers and media across California and to continue the CDCAN Townhall Telemeetings which since December 2003 have connected thousands of people with disabilities, seniors, mental health needs, people with MS and other disorders, people with traumatic brain and other injuries to public policy makers, legislators, and issues.*

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CDCAN

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Costa, Pause4Kids, Manteca CAPS, Training Toward Self Reliance, UCP, California NAELA, Californians for Disability Rights, Inc (CDR) including CDR chapters, CHANCE Inc, , Strategies To Empower People (STEP), Harbor Regional Center, Tri-Counties Regional Center, Asian American parents groups, Resources for Independent Living and many other Independent Living Centers, several regional centers, People First chapters, IHSS workers, other self advocacy and family support groups, developmental center families, adoption assistance program families and children, and others across California.