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Title 22@ Social Security

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Division 3@ Health Care Services

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Subdivision 1@ California Medical Assistance Program

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Chapter 2@ Determination of Medi-Cal Eligibility and Share of Cost

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Article 9@ PROPERTY

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

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

(a)

The value of property available to an applicant or beneficiary who is in a skilled nursing or intermediate care facility and is in a MFBU separate from his or her spouse shall be determined to meet the property reserve limits if the value as determined in (1)(E) or (2)(D) of this subsection is equal to or less than the applicable property reserve limit.(1) If the applicant or beneficiary has entered into an interspousal agreement prior to or on the date of entry into a skilled nursing or intermediate care facility and the agreement meets the requirements set forth in section 50403(c) and (d), the county shall determine:(A) The value of the applicant or beneficiary's nonexempt separate property resulting from the interspousal agreement. (B) The value of the applicant or beneficiary's one-half share of any nonexempt community property acquired since or not included in the interspousal agreement. (C) The value of the applicant or beneficiary's nonexempt separate property from sources other than the interspousal agreement. (D) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary. (E) The value of property determined in (a)(1)(A) through (D) of this section remaining after deducting expenditures made for the applicant or

beneficiary's own benefit as defined in (b) of this section and verified losses, if any, in the market value of such property since the date of the interspousal agreement. (2) If the date the interspousal agreement was executed is later than the date of entry into a skilled nursing or intermediate care facility, or in the absence of an interspousal agreement which meets the requirements of section 50403(c), (d) and (e), the county shall determine: (A) The value of the applicant or beneficiary's nonexempt separate and one-half share of nonexempt community property on the date of most recent entry, as limited by (d) of this section, into a skilled nursing or intermediate care facility. (B) The value of the applicant or beneficiary's share of any nonexempt separate and one-half share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined. (C) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary. (D) The value of property determined in (a)(2)(A) through (C) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b) of this section, and verified losses, if any, in the market value of such property since the date of entry into a skilled nursing or intermediate care facility.

(1)

If the applicant or beneficiary has entered into an interspousal agreement prior to or on the date of entry into a skilled nursing or intermediate care facility and the agreement meets the requirements set forth in section 50403(c) and (d), the county shall determine: (A) The value of the applicant or beneficiary's nonexempt separate property resulting from the interspousal agreement. (B) The value of the applicant or

beneficiary's one-half share of any nonexempt community property acquired since or not included in the interspousal agreement. (C) The value of the applicant or beneficiary's nonexempt separate property from sources other than the interspousal agreement. (D) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary. (E) The value of property determined in (a)(1)(A) through (D) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit as defined in (b) of this section and verified losses, if any, in the market value of such property since the date of the interspousal agreement.

(A)

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

(B)

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

(C)

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

(D)

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

(E)

The value of property determined in (a)(1)(A) through (D) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit as defined in (b)

of this section and verified losses, if any, in the market value of such property since the date of the interspousal agreement.

(2)

If the date the interspousal agreement was executed is later than the date of entry into a skilled nursing or intermediate care facility, or in the absence of an interspousal agreement which meets the requirements of section 50403(c), (d) and (e), the county shall determine: (A) The value of the applicant or beneficiary's nonexempt separate and one-half share of nonexempt community property on the date of most recent entry, as limited by (d) of this section, into a skilled nursing or intermediate care facility. (B) The value of the applicant or beneficiary's share of any nonexempt separate and one-half share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined. (C) The value of any nonexempt separate property owned by the applicant or beneficiary's spouse and/or the applicant or beneficiary's spouse's share of nonexempt community property which is actually made available to the applicant or beneficiary. (D) The value of property determined in (a)(2)(A) through (C) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b) of this section, and verified losses, if any, in the market value of such property since the date of entry into a skilled nursing or intermediate care facility.

(A)

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

(B)

The value of the applicant or beneficiary's share of any nonexempt separate and one-half

share of nonexempt community property acquired from the date of most recent entry into a skilled nursing or intermediate care facility to the date eligibility is determined.

(C)

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

(D)

The value of property determined in (a)(2)(A) through (C) of this section remaining after deducting expenditures made for the applicant or beneficiary's own benefit, as defined in (b) of this section, and verified losses, if any, in the market value of such property since the date of entry into a skilled nursing or intermediate care facility.

(b)

Expenditures for the applicant or beneficiary's own benefit shall include but are not limited to: (1) Expenditures for the applicant or beneficiary's own medical expenses. (2) Expenditures associated with property owned by the applicant or beneficiary and for improvements to such property in proportion to his or her ownership interest in the property, for example. (A) Payments made on the mortgage on a jointly owned principal residence. (B) Payments made on a note on a jointly owned motor vehicle. (C) Expenditures for improvements on a jointly owned principal residence. (3) Expenditures for other exempt or nonexempt property for the sole benefit of the applicant or beneficiary including, but not limited to, personal effects, recreational items, and burial trusts. (4) Transfer of nonexempt assets for adequate consideration as defined in 50408(a)(3).

(1)

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

(2)

Expenditures associated with property owned by the applicant or beneficiary and for improvements to such property in proportion to his or her ownership interest in the property, for example. (A) Payments made on the mortgage on a jointly owned principal residence. (B) Payments made on a note on a jointly owned motor vehicle. (C) Expenditures for improvements on a jointly owned principal residence.

(A)

Payments made on the mortgage on a jointly owned principal residence.

(B)

Payments made on a note on a jointly owned motor vehicle.

(C)

Expenditures for improvements on a jointly owned principal residence.

(3)

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

(4)

Transfer of nonexempt assets for adequate consideration as defined in 50408(a)(3).

(c)

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

(d)

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

(e)

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

Security Act.