

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Treatment of Funds Received by Residents In Skilled Healthcare Settlement

WARNING: This only applies to plaintiffs/class members of the Skilled Healthcare litigation. This fact sheet is not a substitute for legal advice. For those with legal questions or with complicated estate issues, we strongly recommend that you contact an attorney knowledgeable about Medi-Cal/SSI rules. You can contact CANHR's Lawyer Referral Service at (800) 474-1116 or your local Bar Association's LRS.

Current and former residents in the Skilled Healthcare lawsuit are now receiving settlement funds. From the calls CANHR has received thus far, these funds range from \$90 to \$12,500, depending on the number of days the plaintiff stayed in a Skilled Healthcare facility. A number of these plaintiffs are Medi-Cal and/or SSI recipients, and the receipt of the settlement funds could impact their SSI checks or their Medi-Cal if the funds are not handled properly.

- 1.) SSI Recipients:** SSI recipients can retain \$60 in irregular income such as settlement funds (POMS Section 00810.410 Infrequent or Irregular Income Exclusion). The remainder could be deducted from their SSI benefit as income in the month received. Because the settlement may raise the income above their SSI benefit, they may not receive SSI during that month. If the recipient retains more than \$2,000 in liquid assets into the next month, then they would be discontinued from SSI until they are below the asset level. SSI recipients must report any change of income or resources within 10 days after the month it happens.

For example, Joan receives \$1,000 from the settlement in the month of August—that would be income in the month received. Her SSI benefit is 800/monthly. \$1,000-\$60 (irregular income)=\$940. The settlement increased Joan's income over her SSI benefit amount for August, therefore she will not be eligible for SSI in that month. As long as Joan spent it down in August and didn't carry more than \$2,000 in assets for September, the only penalty would be one month of discontinuance for SSI.

- 2.) Medi-Cal Recipients at Home (non-SSI recipients):** Medi-Cal counts income in the month received as income. If more than \$2,000 is retained into the next month, then Medi-Cal will be discontinued as over assets. *However, timeliness is a factor with Medi-Cal.* Since *available* income or assets that would affect Share of Cost (SOC) or eligibility must be reported to the eligibility worker (EW) within 10 calendar days (Title 22, CCR, Section 50185(a)(4)), it is always better to receive that income toward the end of the month of receipt and spend it down or transfer it within the month of receipt. Income becomes *available* when the check is deposited (Title 22, CCR, Section 50513).

For example, if Paul received \$4,500 on July 25 he wouldn't report it until August 2 or 3 – still within 10 days, and he would include in his report that he already spent it down. *Why?* Because it would be too late to do an adjustment for July, and the receipt would not affect his July SOC. He would, however, make sure he spent it or transferred it out of his account by the end of July--thus, no excess assets for August, either.

If Paul received the settlement on July 5, he needs to report it within 10 days and, again, let the EW know that he has already or will have transferred the funds or spent them down by the end of the month. The EW would probably have enough time to issue a notice of adverse action or discontinuance due to excess assets, but this should be rescinded at the end of the month when the recipient sends proof that the funds have already been spent/ transferred.

Important: there are no transfer penalties when at home, so you can gift, transfer or spend down assets.

- 3.) **Medi-Cal Recipients in a Nursing Home** (*non-SSI recipients*): Again, any Medi-Cal recipient must report receipt of any income or assets that would affect the SOC or eligibility to the EW within 10 days, but the funds received are still income in the month of receipt, so they are treated similarly as above.

For example, a current nursing home resident received \$12,500 in the month of July, he/she would want to spend it down within the month to ensure that their Medi-Cal will not be discontinued for August for being over the asset limit—excess of \$2,000. The resident can gift \$6,000 to one daughter and \$6,000 to another daughter – there won't be a penalty since each gift is under the Annual Private Pay Rate (APPR) of \$6,840. Once reported, the EW might still issue a notice of adverse action, but it should be rescinded when the EW receives proof that the funds were spent/transferred in the month received. Remember, income is considered to be received on the day it becomes available for use by the beneficiary. So, for example, if the check was received on August 30, deposited in the bank on September 20, and cleared the bank on September 23 - the income is not "available" until September 23. You need to report receipt of the income within 10 calendar days of September 23.

Important: there **ARE** transfer penalties when living in a nursing home. All gifts or transfers must be under the APPR of \$6,840.

- 4.) **Medi-Cal Recipient Died Before Receipt of Settlement Funds:** If the Medi-Cal recipient has died before receipt of the settlement funds, then the funds would become a part of the deceased's estate and could be subject to recovery, depending on the individual circumstances. The normal Medi-Cal recovery rules apply, in that if there are exempt individuals, e.g., a surviving spouse, a minor child or a disabled child of any age – there is no recovery. If no exempt individuals, file for a hardship, if applicable. Otherwise, the funds would be recoverable. However, expenses related to the funeral, estate administration, etc. can be deducted, but the person should be sure to itemize and include copies of receipts. See CANHR's Fact Sheet on [California's Medi-Cal Recovery Program](#) on the Medi-Cal for Long Term Care page at www.canhr.org
- 5.) **Some Ways The Settlement Money can be Spent if on Medi-Cal** (*non-SSI recipients*): although you are limited to \$2,000 in resources, you can use the settlement money to improve your quality of life.

If you are at home:

- Home Improvements (new roof, painting, new appliances)
- Prepay Rent and Utilities
- New Car (limit one)
- Pay Down Debt
- Take a Vacation

If you are in a nursing home:

- New Clothes and Shoes
- New Television, Radio, Telephone or An Electronic Reading Device
- Prepay Cable, Telephone and Internet
- Give Gifts less than \$6,840

Note: You can always prepay funeral and burial costs.

* To learn more about Long Term Care Medi-Cal, Spending Down and Gifting, Eligibility, Resources Limitations or Share of Cost for Long Term Care Medi-Cal see CANHR's Fact Sheet on [Long Term Care Medi-Cal](#) at www.canhr.org