INITIAL STATEMENT OF REASONS

Introduction

A Continuing Care Retirement Community (CCRC) or Life Care Community (LCC) provides independent housing, assisted living services, and nursing care, usually all in one location, and usually for a resident’s lifetime. CCRCs and LCCs enable people to remain in a familiar setting as they grow older.

These services provide care and assist individuals in their daily chores, enabling them to remain in their homes and communities and avoid institutional care. There is usually, but not always, a substantial entrance fee and a very detailed contract which spells out the services provided by the community.

The costs of entrance fees to these types of communities can be substantial, and some communities allow an individual to purchase an apartment in the community, but most only provide living accommodations as long as the individual resides in the community. In addition to the entrance fee, an individual will also pay a monthly maintenance fee which varies depending on the size of the unit and the community.

The entrance fee is frequently at least partially reimbursable if the individual leaves the facility or dies while a resident. Under some CCRC contracts, the facility may be permitted or required to use a portion of the entrance fee toward monthly resident charges if the resident exhausts his resources and becomes otherwise unable to pay.

The Deficit Reduction Act of 2005 as Adopted in Welfare & Institutions Code § 14006.1

Section 6015 of the Deficit Reduction Act (DRA) of 2005 (P. L. 109-171) and California Welfare and Institutions Code (W&IC), Section 14006.1 require that CCRC and LCC entrance fees (also known as deposits, reservation fees, and admission fees) be treated as countable property under certain circumstances when an individual applies for or receives Medi-Cal. Such entrance fees are typically reserved by the CCRC or LCC to meet the individual’s care expenses if other private resources are no longer available. States previously did not have any basis in federal law to consider these funds to be available property in determining eligibility for Medicaid.

DRA Section 6015 and California W&IC Section 14006.1 require that CCRC and LCC entrance fees are Medicaid countable property under certain circumstances, precluding eligibility until these funds, in addition to any other countable property, are within the state’s Medicaid limits. When a CCRC or LCC collects an entrance fee from a resident upon admission pursuant to a continuing care contract or a life care contract that entrance fee is considered countable property to the extent that:

(1) 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 should other property or income of the individual be insufficient to pay for such care;
(2) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care or life care contract and leaves the community; and

(3) the entrance fee does not confer an ownership interest in the CCRC or LCC.

Section 50442. Continuing Care Retirement Community Entrance Fees.

W&IC Section 14006.1 requires the Department of Health Care Services (the Department) to promulgate regulations to implement the requirement to count CCRC entrance fees through the non-emergency regulatory process. The proposed amendment to Title 22, California Code of Regulations, Section 50442 sets forth the criteria for determining when an entrance fee paid to a CCRC or LCC is treated as countable property for the purposes of determining Medi-Cal eligibility. The language of Section 50442 is similar to federal law, but clarified for easier administration in the 58 counties operating the Medi-Cal program.

Participation by interested parties

[Hold for comments after distribution to broader stakeholder group and comments]

Materials Relied Upon

California Government Code, Section 17500.

Continuing Care Retirement Communities in California, California Department of Health Services, Community Care Licensing Division, Publication 240, January 2004.


Health and Safety Code, Sections 20, 1771.

Senate Bill 483, Chapter 379, Kuehl, September 2008.

Title 42, United States Code, Section 1396p(g).

California Welfare and Institutions Code, Sections 10721, 10725, 14006.01(d), 14124.5.
STATEMENTS OF DETERMINATION

Alternatives Considered

The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

Local Mandate Determination

The Department has determined that the proposed regulations would not impose a new mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Economic Impact Determination

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

(A) the creation or elimination of jobs within the State of California,
(B) the creation of new businesses or the elimination of existing businesses within the State of California, or
(C) the expansion of businesses currently doing business within the State of California.

Effect on Small Businesses

The Department has determined that the proposed regulations would not affect small businesses. This proposed action simply brings the regulations into conformity with federal and state law regarding the criteria used for Medi-Cal eligibility determinations and redeterminations.

Housing Costs Determination

The Department has made the determination that the proposed regulations would have no impact on housing costs.
FISCAL IMPACT ESTIMATE

(a) **Fiscal Effect on Local Government:**

The direct total cost to local agencies or school districts that must be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:

None.

(b) **Fiscal Effect on State Government:**

The direct cost or savings to any state agency:

[Insert Fiscal when available].

Funding for the eligibility determinations is included in the base Medi-Cal budget. There may be an indeterminate insignificant program savings to the extent these proposed regulations would make an individual ineligible for Medi-Cal.*

*Most individuals enter into these communities to avoid going on to Medi-Cal.

(c) **Fiscal Effect on Federal Funding of State Programs:**

The direct cost/savings to the federal government via matching funds:

None.

The Department continuously receives federal funds for individuals who are Medi-Cal eligible. There may be an indeterminate insignificant federal savings for the reasons stated above.

(d) **Cost Impact to Representative Private Person or Businesses:**

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
(e) **Other Nondiscretionary Costs or Savings including revenue changes imposed on State or Local Governments:**

None.
INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Medi-Cal is California's Medicaid program, and is administered by the California Department of Health Care Services. Medi-Cal is a public health insurance program which provides needed health care services for qualified low-income individuals. Medi-Cal is financed by the State and Federal government.

To be eligible for Medi-Cal, an applicant’s or beneficiary’s countable property may not exceed the established property reserve limits for the respective Medi-Cal program. Property is defined as “real property” and “personal property.” “Real property” is land, buildings, and mobile homes which are taxed as real property and life estates in real property. “Personal property” is any kind of liquid or non-liquid asset, i.e., cash, cars, jewelry, stocks, bonds, financial institution accounts, boats, trucks, trailers, promissory notes, mortgages, and deeds of trust, etc. Property that is not counted in determining eligibility is called “exempt” or “unavailable” property. Countable property (property which is not exempt or unavailable) is included in the “property reserve.” Any amount over the property reserve limit will make an applicant or beneficiary ineligible for Medi-Cal.

Prior to the Deficit Reduction Act of 2005 (DRA), California excluded entrance fees from consideration as available property when determining Medi-Cal eligibility. The DRA requires that under specific circumstances, such entrance fees are countable property, precluding Medicaid eligibility until these funds, in addition to any other countable property, are within the State’s Medicaid limits.

California W&IC Section 50442 defines CCRC, LCC, entrances fees, and related terms. It also requires that these entrance fees be considered as countable property for determining Medi-Cal eligibility under certain circumstances. The proposed regulation amendment simply implements these definitions and the criteria to be used in determining when CCRC and LCC entrance fees are countable in determining Medi-Cal eligibility.
Section 50442 amended to read as follows:

Section 50442. Continuing Care Retirement Community Entrance Fees

(a) For purposes of this section, the following definitions apply:

(1) “Assisted living services” includes, but is not limited to, assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(2) “Care” means nursing, medical, or other health related services, protection or supervision, or any combination of those services. For purposes of this section, “care” also includes “assisted living services.”

(3) “Continuing care contract” means a contract that includes a continuing care promise made, in exchange for an entrance fee, the payment of periodic charges, or both types of payment. A continuing care contract may consist of one agreement or a series of agreements and other writings incorporated by reference. The agreement may include a standardized admission form, addendum agreements, and any amendments.
(4) “Continuing care promise” means a promise, expressed or implied, by a provider to provide one or more elements of care to a resident for the duration of his or her life or for a specific period of time. Any such promise or representation, whether part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral, is a continuing care promise.

(5) “Continuing care retirement community” (CCRC) means a facility of the type licensed by the Department of Social Services and located within the State of California where services promised pursuant to a continuing care contract are provided. A distinct phase of development of the type approved by the California Department of Social Services may be considered to be a continuing care retirement community when a project is being developed in successive distinct phases over a period of time. When services are provided in residents’ own homes, the homes into which the provider takes those services are considered part of the continuing care retirement community.

(6) “Entrance fee” means the sum of any initial, amortized, or deferred transfer of consideration made or promised to be made by, or on behalf of, a person entering into a continuing care or life care contract for the purpose of ensuring care or related services pursuant to that contract or as full or partial payment for the promise to provide care for the term of that contract. Entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in
connection with a promise of continuing care or life care. Entrance fee shall also include any fees charged for the purpose of assuring care, including but not limited to deposits, reservation fees, and admission fees.

(7) “Life Care Community” means a facility of the type licensed by the Department of Social Services and the Department of Health Care Services, which is located within the State of California, where services promised in a life care contract are provided.

(8) “Life care contract” means a continuing care contract that includes a promise, expressed or implied, by a provider to provide or pay for routine services at all levels of care, including acute care, and the services of physicians and surgeons, to the extent not covered by other public or private insurance benefits, to a resident of a Life Care Community for the duration of his or her life. Care shall be provided under a life care contract in a continuing care retirement community or life care community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on or adjacent to the premises. No change may be made in the monthly fee based on level of care. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(9) “Ownership interest” means a property right held by a resident in a continuing care retirement community or life care community, that includes but is not limited to real property interest, stock, and liquidatable memberships.
(b) An entrance fee shall be considered available property if all of the following apply:

(1) The individual has the ability to use part or all of the entrance fee, or the contract provides that some or all of the entrance fee may be used, to pay for care if other property or income of the individual are insufficient to pay for care.

(2) 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 or life care community.

(3) The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

(c) Entrance fees shall be verified by reviewing the continuing care contract or life care contract, which shall be provided by the individual, or, the individual's spouse or representative.

(d) A determination of eligibility that involves a continuing care contract or life care contract entrance fee shall take into account the amount that the spouse of an institutionalized individual is allowed to retain before determining the amount of the entrance fee that is considered excess property.

NOTE: Authorities cited: Section 20, Health and Safety Code; Sections 10721, 10725, and 14124.5, Welfare and Institutions Code; Reference: Section 14006.01, Welfare and Institutions Code; Section 1771 Health and Safety Code; Title 42 U.S.C. Section 1396p(g).