Amend Section 50012 to read as follows:

Section 50012. Abbreviations.

The following abbreviations shall apply to chapter 2 of this division:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABD</td>
<td>Aged, Blind or Disabled.</td>
</tr>
<tr>
<td>ABD-MN</td>
<td>Aged, Blind or Disabled - Medically Needy.</td>
</tr>
<tr>
<td>AFDC</td>
<td>Aid to Families with Dependent Children.</td>
</tr>
<tr>
<td>AFDC-MN</td>
<td>Aid to Families with Dependent Children - Medically Needy.</td>
</tr>
<tr>
<td>BRU</td>
<td>Benefits Review Unit.</td>
</tr>
<tr>
<td>CETA</td>
<td>Comprehensive Employment and Training Act.</td>
</tr>
<tr>
<td>CHDP</td>
<td>Child Health and Disability Prevention Program.</td>
</tr>
<tr>
<td>EAS</td>
<td>Eligibility and Assistance Standards Manual.</td>
</tr>
<tr>
<td>ETS</td>
<td>Employment Training Services.</td>
</tr>
<tr>
<td>HAF</td>
<td>Home and Facility.</td>
</tr>
<tr>
<td>HIC</td>
<td>Social Security Health Insurance Claim Number.</td>
</tr>
<tr>
<td>INS</td>
<td>Immigration and Naturalization Service.</td>
</tr>
<tr>
<td>LTC</td>
<td>Long-Term Care.</td>
</tr>
<tr>
<td>MBSAC</td>
<td>Minimum Basic Standard of Adequate Care.</td>
</tr>
<tr>
<td>MFBU</td>
<td>Medi-Cal Family Budget Unit.</td>
</tr>
<tr>
<td>MI</td>
<td>Medically Indigent.</td>
</tr>
<tr>
<td>MN</td>
<td>Medically Needy.</td>
</tr>
<tr>
<td>OASDI</td>
<td>Old Age Survivors and Disability Insurance.</td>
</tr>
<tr>
<td>Other PA</td>
<td>Other Public Assistance.</td>
</tr>
<tr>
<td>PA</td>
<td>Public Assistance.</td>
</tr>
<tr>
<td>PCCM</td>
<td>Primary Care Case Management.</td>
</tr>
<tr>
<td>PHP</td>
<td>Prepaid Health Plan.</td>
</tr>
<tr>
<td>POE</td>
<td>Proof of Eligibility.</td>
</tr>
<tr>
<td>SDX</td>
<td>State Data Exchange.</td>
</tr>
<tr>
<td>SSN</td>
<td>Social Security Number.</td>
</tr>
<tr>
<td>SSI/SSP</td>
<td>Supplemental Security Income/State Supplemental Program.</td>
</tr>
<tr>
<td>UIB</td>
<td>Unemployment Insurance Benefits.</td>
</tr>
<tr>
<td>WIN</td>
<td>Work Incentive Program.</td>
</tr>
</tbody>
</table>

Amend Section 50015 to read as follows:

Section 50015. Adverse Action.

(a) Adverse action means an action taken by a county department which discontinues Medi-Cal eligibility, reduces benefits, imposes a period of ineligibility for payment of HAF care services, or increases an MFBU's share of cost.

(b) The following shall not be considered to be adverse actions:

(1) Discontinuance due to any of the following reasons:

(A) Death, for a one-person MFBU.

(B) The whereabouts of the beneficiary is unknown and the post office has returned county department mail directed to the beneficiary indicating no forwarding address.

(C) Admission to an institution which renders the beneficiary ineligible.

(D) The beneficiary also has Medi-Cal eligibility under another identity or category, or in another county or state; or will have such dual eligibility as of the first of the coming month if discontinuance action is not taken.

(E) Receipt of the beneficiary’s clear and signed written statement that does either of the following:

(i) States the beneficiary no longer wishes Medi-Cal benefits.

(ii) Gives information that requires discontinuance and includes the beneficiary's acknowledgment that this must be the consequence of supplying such information.

(2) An increase in an MFBU's share of cost due to either of the following:

(A) The voluntary inclusion of eligible family members who currently are not receiving benefits under any Medi-Cal program.

(B) Receipt of the beneficiary’s clear and signed statement which gives information which requires an increase in the share of cost and includes the beneficiary's acknowledgment that this must be the consequence of supplying such information.

Amend Section 50029 to read as follows:

Section 50029. Certification for Medi-Cal.

Certification for Medi-Cal means the determination by the county department or the Department that a person is eligible for Medi-Cal and:

(a) has no share of cost,

(b) has met the share of cost, or

(c) is in long-term care and has a share of cost which is less than the cost of long-term care at the Medi-Cal rate.

The person certified for Medi-Cal may not be eligible to receive all Medi-Cal covered services due to restrictions or other limitations.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14002.5, 14005, 14005.7, 14005.9, 14006, 14006.41, 14009.6, 14015 and 14018, Welfare and Institutions Code; and Sections 1396p(c), (d), (e), (f) and (h), and 1396r-5, Title 42, United States Code.
Adopt Section 50044.1 to read as follows:

**Section 50044.1. Home and Facility (HAF) Care**

(a) “Home and facility care” (HAF care) means any of the following services:

1. **Nursing facility care services.**
2. A level of care provided in any institution equivalent to that of nursing facility care services.
3. Home and community-based care services furnished under a waiver granted under subsection (c) or (d) of Section 1396n of Title 42 of the United States Code.

**NOTE:** Authority cited: Section 20, Health and Safety Code; and Sections 10271, 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14002.5(c), Welfare and Institutions Code.
Adopt Section 50071.9 to read as follows:

Section 50071.9. Property – Beneficial Interest.

Beneficial interest means the possession of a legally enforceable claim or right in a trust, estate, income, or in real or personal property from which the possessor is entitled to benefit. Beneficial interest does not include the possession of mere legal title as a fiduciary of another, including but not limited to, as trustee, conservator, legal guardian, executor, administrator or court appointed personal representative.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code; and Sections 1396p(c), (d), (e), (f) and (h), and 1396r-5, Title 42, United States Code.
Adopt Section 50075.5 to read as follows:

Section 50075.5. Property – Property Right

A property right means a legally enforceable current or future interest to receive, consume, apply, expend, control, own or hold legal title to, in whole or in part, identifiable income or personal or real property. Property right does not include the possession of mere legal title as a fiduciary of another, including but not limited to, as trustee, conservator, legal guardian, executor, administrator or court appointed personal representative.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 14006 and 14015, Welfare and Institutions Code; and Sections 1396p(c), (d), (e), (f) and (h), and 1396r-5, Title 42, United States Code.
Adopt Section 50179.1 to read as follows:

Section 50179.1 Notice of Action–Specific Financial Eligibility Requirements

(a) In addition to the requirements in section 50179, the following requirements apply in the specified circumstances.

(b) In circumstances involving share of costs, the Notice of Action shall specify

   (1) The amount deducted for any spousal or family member income allocation, and the method for computing that amount.

   (2) The amount of the share of cost, if any.

   (3) the amount of the net nonexempt income used to determine the share of cost, and

   (4) the method for computing those amounts.

(c) In circumstances involving excess property, the Notice of Action shall specify:

   (1) The determination of whether property is exempt or nonexempt,

   (2) whether nonexempt property is considered available for Medi Cal eligibility purposes.

   (3) the net market value of all nonexempt available property, and the method for computing that value.

   (4) the applicable property limit under Section 50420.

   (5) whether the total net market value of all available, nonexempt property is in excess of that property limit, and the amount of the excess property.

(d) In circumstances involving an institutionalized individual’s spouse who was allowed to retain property under state law, the Notice of Action shall specify:

   (1) The amount of nonexempt available property that the spouse is allowed to retain under state law, and the method for computing that amount.

   (2) The right of the spouse to request a State hearing if dissatisfied with a determination regarding ownership or availability of income or property, the amount of any monthly income allocation, or the amount of property the spouse is allowed to retain .

   (3) The right to represent him or herself, or use legal counsel, a relative, a friend, or other spokesperson at the hearing.
(e) In circumstances involving a disqualifying transfer of assets that results in a period of ineligibility for HAF care, the Notice of Action shall specify:

(1) The value of the transferred asset(s) transferred to establish eligibility, and the method for determining that value.

(2) The average private pay rate used to calculate the period of ineligibility for HAF care.

(3) The beginning date and the end date of the period of ineligibility for HAF care.

(f) In the case where changes in circumstances were reported within 10 days of the change pursuant to Section 50185, the Notice of Action shall be mailed no later than 10 days prior to the date the adverse action becomes effective and is implemented, excluding the date of mailing.

(g) In the case where changes in circumstances were either not reported or not reported within 10 days of the change pursuant to Section 50185, the Notice of Action shall be mailed no later than 10 days prior to the date the adverse action is implemented and a potential overpayment exists pursuant to Sections 50781 or 50781.5 for the days on and after the effective date to the date of implementation.

(h) If a beneficiary’s eligibility worker is changed based on admission or participation in HAF care services, the Notice of Action shall include the new worker’s name, address, and telephone number, and the beneficiary’s Medi-Cal case number, and hours during which the county’s Medi-Cal eligibility workers may be contacted.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 10950, 10951, 11002, 11004, 11050, 11052, 11055, 14000, 14002.5, 14005, 14005.4, 14005.6, 14005.7, 14005.9, 14005.10, 14005.12, 14005.17, 14005.33, 14006, 14006.4, 14006.15, 14016, 14016.2, 14023, 14023.7 and 14124.90, Welfare and Institutions Code; and Sections 1396p(c), (d), (e), (f) and (h), and 1396r-5, Title 42, United States Code.
Amend Section 50262 to read as follows:

Section 50262. Special Zero Share of Cost Programs for Pregnant Women and Infants.

The following eligibility criteria shall apply to pregnant women, and infants under one year old with a share of cost. As used in this section the terms “woman” and “women” mean any female regardless of age. Counties shall determine eligibility for applicants and beneficiaries under either of the programs described in subsections (a)(1) and (a)(2). Eligibility shall first be determined under subsection (a)(1).

(a) Eligibility criteria:

(1) 185 Percent Program. The net nonexempt Medi-Cal Family Budget Unit (MFBU) income of an otherwise eligible pregnant woman, or infant under one year old, shall be above the maintenance income need level but shall not exceed 185 percent of the federal poverty level, as revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

(2) 200 Percent Program. The net nonexempt Medi-Cal Family Budget Unit (MFBU) income of an otherwise eligible pregnant woman, or infant under one year old, shall exceed 185 percent of the federal poverty level as specified in (a)(1) but shall not exceed 200 percent of the federal poverty level, as revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

(3) In determining net nonexempt income of the MFBU, all deductions and exemptions applicable solely to AFDC-MN persons or families, as provided in article 10, shall be allowed except health insurance premiums.

(4) A pregnant woman or infant may not reduce MFBU income to the 185 or 200 percent level by meeting a share of cost.

(5) If the pregnant woman and/or infant meet the requirements of the 200 Percent Program, but have assets which exceed the resource property limit, the property assets shall be waived for those applicants or beneficiaries in accordance with Section 50401(b).

(b) Period of Eligibility:

(1) Pregnant woman. Eligibility for the pregnant woman shall begin no earlier than the first day of the month for which pregnancy is verified. Eligibility shall end on the last day of the month of the 60-day period immediately following the last day of pregnancy.
(2) Infant. Eligibility for an infant shall end upon attainment of age one, unless the infant is an inpatient for whom medical services are provided during a continuous period which began before his/her first birthday. In that event, the infant shall continue to be eligible until the end of the stay for which the inpatient services are furnished.

(3) Retroactive eligibility. Eligibility for a pregnant woman or infant may be established retroactively in any of the three months immediately preceding the month of application as provided in section 50710.

(c) Scope of Benefits:

(1) A pregnant woman shall be eligible only for pregnancy related services, including services for conditions which complicate pregnancy.

(2) An otherwise eligible infant shall receive full Medi-Cal benefits if the infant is a United States citizen or meets the requirements of section 14007.5 of the Welfare and Institutions Code, as added by Statutes of 1988, chapter 1441, Section 3. If the infant does not meet the requirements of this subsection, services shall be restricted to treatment of emergency medical conditions only.

Amend Section 50403 to read as follows:

Treatment of Property: Separate and Community Property.

(a) The separate property and share of community property of any person included in the MFBU shall be considered in determining Medi-Cal eligibility.

(b) A spouse’s share of community property is always one-half of the current total community property.

(c) For purposes of establishing eligibility, an interspousal agreement entered into pursuant to Welfare and Institutions Code Section 14006.2 shall:

(1) be written, dated and signed by both spouses or by a person who has the legal authority to enter into such agreements on behalf of either spouse;

(2) list each item of real or personal property asset being transmuted; and

(3) clearly designate the owner of each asset item of real or personal property.

(4) list the value of each asset; and

(5) evidence an equal division of the nonexempt community property.

(d) If an interspousal agreement does not comply with (c)(4) of this section, the county shall request additional information from the applicant, or other party mentioned in (e)(1) to supplement the agreement and verify the methodology used to value assets. Such information may be necessary pursuant to verification requirements contained in Article 4 of this Division.

(e) If an interspousal agreement evidences an unequal division of the nonexempt community property, and the applicant received the smaller share of such property under the agreement, the county shall determine whether the transfer was for adequate consideration in accordance with sections 50408 and 50409.

(1) If the county determines that the transfer was not for adequate consideration and was made in order to establish eligibility or to reduce the share of cost, the county shall give the applicant’s spouse the option of reconveying to the applicant in accordance with section 50411(d)(1) an amount of property sufficient to provide each spouse with equal shares of the total nonexempt community property identified in the interspousal agreement.

(2) If the applicant’s spouse does not reconvey property pursuant to (e)(1) above, the county shall assess a period of ineligibility for the applicant in accordance with Section 50411.
NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14006, 14006.2 14008, 14008.5 and 14015, Welfare and Institutions Code; and Section 1396p(c) and (h), Title 42, United States Code.
Amend Section 50406 to read as follows:

**Section 50406. Conversion or Transfer of Property Definitions in Regard to Treatment of Assets**

Conversion or transfer of property may affect eligibility. Sections 50407 through 50411 describe methods of converting or transferring property, and the effect of each method on eligibility.

The following definitions shall apply to this Article unless specified otherwise:

(a) “Asset” means all community and separate income and property of the individual and of the individual’s spouse, including, but not limited to, the following:

(1) Vested rights to receive future lump sum income payments, income streams or property.

(2) Rights to income streams or property.

(3) Beneficial interests.

(4) Property rights.

(5) Property that is unavailable pursuant to Section 50402 that is listed for sale and that is transferred for less than fair market value, shall be subject to Section 50407.1, and may cause ineligibility for payment of HAF care services pursuant to Article 9 of this chapter and Welfare and Institutions Code section 14005.

(b) “Average private pay rate” means the average monthly or per diem cost of nursing facility care for a person who is not a Medi-Cal beneficiary as determined annually by the Department.

(c) “Balloon payment” means any payment that is larger than the other periodic payments of an income stream. It is usually the final payment and frequently represents a substantial return of principal.

(d) “Base-line date” is the most recent of the following:

(1) The date of application by or for an individual receiving or requesting HAF care services.

(2) The date HAF care services are requested by or for a Medi-Cal beneficiary.

(e) “Blind” means that a person has been determined and verified as blind in accordance with Sections 50167 and 50219.

(f) “County” means county of responsibility, as defined in Article 3 of this chapter.
(g) “Date of Institutionalization” is the date the individual is admitted to a facility or
institution, or the date the individual applies to participate in a home and community-
based waiver.

(h) “Deferred” means that the receipt of payments, pursuant to the income stream
agreement, have been delayed, postponed or have not yet begun.

(i) “Disabled” means that a person has been determined and verified as disabled in
accordance with Sections 50167 and 50223.

(j) “Disqualifying transfer” means a transfer of assets for less than fair market value that
provides a basis for a period of ineligibility for Medi-Cal payment of HAF care.

(k) (1) Except as provided in (B) below, “fair market value” means the prevailing price
that an asset or service would bring in an open market of willing buyers and sellers
at the time of the transfer as determined under the provisions of Articles 9 and 10 of
this chapter, unless otherwise specified.

(2) The “fair market value” of real property in which an institutionalized individual or
his or her spouse has a property right or beneficial interest shall equal the market
value as determined under Section 50412.

(l) “Income stream” means the right to receive future periodic payments that are
scheduled to be received either for a fixed period of time, until a designated date, or
during the life expectancy of a designated person and includes, but is not limited to,
income streams from notes, loans, mortgages, trusts, life estates or annuities where
the institutionalized individual or spouse has a beneficial interest in the income.

(m) “Institutionalized individual” means a person who is or at some point in time
becomes any of the following:

(1) A person who is receiving nursing facility care services.

(2) A person who is receiving a level of care provided in any institution equivalent to
that of nursing facility care services.

(3) A person who is receiving home and community-based waiver services.

(4) A person who initiates a request for the services described in (1), (2) or (3).
However, such a request shall not be considered a bona fide request if later any
of the following occurs:

(i) a treatment authorization or needs assessment is not fully or accurately
completed and submitted to the Department or administrator of the waiver,
(ii) the Department determines that the medical evidence submitted is not sufficient to approve the treatment authorization request or that the medical criteria are not met, or

(iii) the administrator of the waiver determines that the evidence presented is not sufficient to qualify for the waiver services or that the criteria to qualify for the waiver services are not met.

(5) When the county determines that an initial request for HAF care services was not a bona fide request, the individual shall not be considered an institutionalized individual for purposes of evaluating transfers of assets.

(i) If a period of ineligibility for payment of HAF care services was imposed as a result of a disqualifying transfer of assets, but it is later determined that the person is not an institutionalized individual, the original notice of action imposing the period of ineligibility must be rescinded, the period of ineligibility must be voided, and a corrected notice of action must be sent.

(6) If a Treatment Authorization Request (TAR) or a needs assessment is disapproved, but the disapproval is overturned on appeal, then the county must reinstate any period of ineligibility for payment of HAF care services based on a disqualifying transfer of assets, with a baseline date consistent with the appeal order.

(n) “Look-back date” is the day that is 60 calendar months immediately preceding and including the base-line date.

(o) “Net value” means the fair market value of an asset, less any encumbrances of record.

(p) “Period of ineligibility for HAF care” means the months and days, as calculated in accordance with Section 50411, for which the institutionalized individual is not eligible for Medi-Cal payment of HAF care.

(q) “Transfer of assets” means any event, act, or transaction by persons or entities conveying all or part of an asset or assets to other persons or entities.

(1) When these actions, including preventing access to assets, are taken by any of the following individuals or entities, they shall be considered actions taken by an institutionalized individual:

(A) The institutionalized individual’s spouse, where the spouse is acting in the place of or on the behalf of the institutionalized individual.

(B) A person, including a court or administrative body, with the legal authority to act in place of or on the behalf of the institutionalized individual by his or her spouse.
(C) Any person, including a court or administrative body, acting at the direction or upon the request of the institutionalized individual or his or her spouse.

(2) A revocable transfer of an asset as described in (3) below, shall not be treated as a transfer of assets. The asset(s) transferred shall be considered available to the institutionalized individual or his or her spouse depending upon which person has, or through his or her representative has the right, power, and authority to take either of the actions described in (3) below.

(3) The transfer is treated as revocable if the transferring party retains the right, power and authority to do either of the following:

(A) Revoke the transfer and restore full title of the asset transferred to the institutionalized individual or his or her spouse, or

(B) Sell or transfer full title to the asset and the right to retain, own or expend the sale proceeds received due to such sale or transfer.

(r) “Uncompensated value” means the uncompensated difference between:

(1) the net value of the transferred assets at the time of transfer, and

(2) the net value of any assets, and the fair market value of any services, received by the institutionalized individual or his or her spouse in exchange for the transferred assets.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14006, 14006.2, 14015 and 14052, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Amend Section 50407 to read as follows:

**Section 50407. Conversion of Assets Property—Treatment.**

(a) Conversion of property in itself assets in itself from one form to another form of assets, including conversions that occur as the result of a transfer of assets, has no effect on eligibility; however, the property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated by the county in accordance with the standards set forth in this Chapter to determine the conversion’s effect on the individual’s or spouse’s eligibility for Medi-Cal, share of cost, or scope of benefits, including but not limited to an institutionalized individual’s eligibility for payment of HAF care services or share of cost.

(b) After the conversion of an asset that may affect an individual’s Medi-Cal eligibility, share of cost, or eligibility for payment of HAF care services under Medi-Cal, the individual, institutionalized individual, spouse or representative must report that conversion to the county within 10 calendar days following the date of the conversion. Insurance or other third-party payments for the loss or damage of property shall be treated as converted property rather than income.

(c) Insurance or other third-party payments for the loss of or damage to property shall be treated as converted property rather than income.

**NOTE:** Authority cited: Section 20, Health and Safety Code; and Sections, 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14006, 14006.2 and 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Add Section 50407.1 to read as follows:

Section 50407.1. Transfers of Assets -- Treatment and Verification

(a) Although transfers of assets by an individual or spouse have no effect on an individual or spouse’s eligibility for Medi-Cal, if a transfer of assets is made by an institutionalized individual or his or her spouse on or after the look back date, it may result in a period of ineligibility for payment of HAF care services.

(b) Any property received in exchange for a transferred asset may affect Medi-Cal eligibility and therefore shall be evaluated by the county in accordance with the standards set forth in this Chapter to determine the transfer’s effect on eligibility for Medi-Cal.

(c) Transfers of assets made by an institutionalized individual or his or her spouse on or after the look back date must be reported to the County by the institutionalized individual, spouse, or representative when requesting payment of HAF care services. Such transfers shall be evaluated by the county in accordance with the standards set forth in this Chapter to determine the effect of the transfer of assets on the institutionalized individual’s eligibility for payment of HAF care services.

(d) Any transfer of an asset that may affect an individual’s Medi-Cal eligibility, share of cost, or eligibility for payment of HAF care services, must be reported by the individual, spouse, or representative to the county within 10 calendar days following the date of the transfer.

(e) The county shall request verification to determine whether to impose a period of ineligibility for payment of HAF care services whenever an institutionalized individual, spouse or representative reports that a transfer of assets occurred on or after the look-back date that may have resulted in excess property or an increased share of cost, if retained.

(f) At application for HAF care services the county shall request copies of the institutionalized individual’s or his or her spouse’s financial institution account statements for the month that includes the look-back date and every twelfth month thereafter. The county shall request explanation and, if appropriate, verification sufficient to determine whether a disqualifying transfer occurred if the financial institution account statements indicates that a disqualifying transfer may have occurred.

(g) The county shall also request verification whenever information from other sources is received by the county that indicates an institutionalized individual or his or her spouse made a transfer of assets on or after the look-back date that may have resulted in excess property or an increased share of cost if retained.
(h) The verification requested pursuant to subsections (e) and (f) above must be sufficient to:

1. establish whether the transferred asset was exempt or unavailable.
2. establish the fair market value of any nonexempt available transferred asset.
3. establish the fair market value of any consideration received for the nonexempt available transferred asset.
4. document any encumbrances of record on the transferred asset or consideration received for the transferred asset(s).
5. document the circumstances and change of ownership of the transferred asset.

(i) Medi-Cal eligibility for payment of HAF care shall not be denied or discontinued if good cause exists for failure to provide such verification regarding a transfer of assets. For purposes of this section, good cause exists when any of the following occurs:

1. Delays in production or mail which are beyond the institutionalized individual’s, spouse’s or representative’s control that prevent him or her from obtaining the requested verification.
2. Verification has been requested and documentation of the request is provided, but the entity of which the verification has been requested is nonresponsive and the provisions of Section 50167(c) have been followed.
3. Verification is only available with an unreasonable fee, and the provisions of Section 50167(c) have been followed. For purposes of this section, fees shall be considered unreasonable if the fees would preclude the payment of either the institutionalized individual’s or spouse’s share of cost.
4. Circumstances beyond the institutionalized individual’s control prevent him or her from obtaining the requested verification, which include, but are not limited to:
   
   (A) Physical or mental illness or incapacity of the beneficiary, spouse and the representative which precludes their ability to obtain the requested verification in a timely manner.
   
   (B) A level of literacy of the beneficiary, spouse and the representative that in conjunction with other social or language barriers precludes their ability to obtain the requested verification in a timely manner.
   
   (C) No agent under a durable power of attorney or conservator exists for the institutionalized individual, and there is no one with authority to act on the institutionalized individual’s behalf who can obtain the requested verification.
(j) If an institutionalized individual has good cause for not obtaining the requested verification pursuant to subdivision (h) above, then the county shall conduct a diligent search to obtain the requested verification, according to the diligent search procedures set forth in section 50167(c).

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections, 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14006, 14006.2 and 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Amend Section 50408 to read as follows:

**Section 50408. Transfers of Property or Assets Which Do Not Result in a Period of Ineligibility for Payment of Home and Facility Care Services.**

(a) Transfer of property shall not result in ineligibility for Medi-Cal under any of the following conditions:

1. The property would have been considered exempt pursuant to Section 50418 of Article 9 of Division 3 of this title at the time of transfer.
2. The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.
3. Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 50412 and 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 Section 50351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. 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.
   - A written transmutation of a married couple's nonexempt community property into equal shares of separate property through an interspousal agreement.
4. Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.
5. The transfer was made in return for an enforceable contract for life care which does not include complete medical care. In this case, each item of need provided under the life care contract shall be considered income in kind in accordance with Section 50509.
6. The transfer was made without adequate consideration but the applicant or beneficiary provides convincing evidence to the county as specified in Section 50409(b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

(b) 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 reduce the share of cost. Such property shall not be considered in determining eligibility.

(c) While the transfer of property by an applicant or beneficiary from one form to another, as described in (a) above, has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility and therefore shall be evaluated to determine its effect.
(a) It shall be presumed that assets transferred by the institutionalized individual or his or her spouse on or after the look-back date were transferred for the purpose of establishing eligibility or reducing the share of cost.

(b) Any assets transferred prior to the look-back date do not result in a period of ineligibility for payment of HAF care services.

(c) Transfers of income to relatives or non-profit organizations made on or after the look-back period up to the baseline date do not result in a period of ineligibility for payment of HAF care services when the total income transferred in that month is equal to or less than the lower of:

1. The remainder of total income in a month, after deducting the total cost of living expenses for that month, or
2. $2,000.

(d) For purposes of this section, the term “convincing evidence” means such evidence as is sufficient to establish the proposition in question beyond hesitation, ambiguity, or reasonable doubt in an unprejudiced mind, and the term “satisfactory evidence” means such evidence as is sufficient to produce a belief that the thing is true; credible evidence.

(e) No period of ineligibility for payment of HAF care services shall be imposed if the institutionalized individual, his or her spouse or representative shows with satisfactory evidence, unless another standard of proof is specified, that any of the following conditions exist:

1. The asset transferred would have been exempt or considered unavailable because it cannot be liquidated, pursuant to Articles 9 or 10 of this chapter at the time of transfer.
2. The asset was transferred:
   (A) To the spouse, or to another for the sole benefit of the spouse in accordance with Section 50410.4.
   (B) From the spouse to another for the sole benefit of the spouse in accordance with Section 50410.4.
   (C) To a son or daughter who is blind or disabled, or to a trust [including a trust described in Section 50489.9 (a)(3) or (a)(4)] established solely for the benefit of a son or daughter who is blind or disabled in accordance with Section 50410.4.
(D) To a trust [including a trust described in Section 50489.9 (a)(3) or (a)(4)] established solely for the benefit of a disabled individual who is under 65 years of age in accordance with Section 50410.4.

(3) The asset was the nonexempt former principal residence under Section 50425(c)(1) through (7), and its title was transferred to:

(A) Any person identified in paragraph (2) of this subdivision.

(B) A son or daughter who is under the age of 21.

(C) A sibling who had an equity interest in the principal residence at the time of transfer and who was residing in such residence for a period of at least one year immediately before the date the individual became institutionalized.

(D) A son or daughter (other than as described in (B)) who resided in the principal residence for a period of at least two years immediately before the date the individual became institutionalized and who provided care to the individual that permitted him or her to reside in the principal residence rather than in a medical institution or nursing facility.

(4) The transfer of assets was executed to satisfy all or a portion of a legally enforceable debt of equal or greater value owed by the institutionalized individual or spouse.

(A) The institutionalized individual, his or her spouse or representative must provide written evidence that clearly establishes that the debt existed and was legally enforceable prior to the transfer and that the fair market value of the transferred asset was equal to or less than the amount of the debt.

(B) If the fair market value of a transferred asset exceeds the fair market value of the legal debt, the uncompensated value of the transferred asset is a transfer for less than fair market value that must be considered by the county in determining whether a period of ineligibility for payment of HAF care services should be imposed.

(5) When the transfer of assets is reimbursed or paid to a third party for any services, including personal care services as set forth in 51183, provided on the basis of a prior agreement or understanding that reimbursement or payment would be made, all of the following must be met:

(A) Reimbursement or payment for the services was made at no more than the prevailing rate charged for the delivery of such services within the area where the services were rendered.
(B) If payment for services was made, whether at the time of service or later, then the following requirements must be met:

(i) The services were provided pursuant to an enforceable oral or written agreement.

(ii) The institutionalized individual, his or her spouse, or representative provides a written receipt itemizing each service and reflecting the amount of payment made for each service.

(C) When the services would require a professional license, registration and/or certificate when offered to the general public, the following requirement must also be met:

(i) The services are provided by an appropriately licensed, registered and/or certified provider, and

(ii) The services are provided pursuant to an enforceable written agreement.

(D) When services are provided by a relative, including personal care services as set forth in Section 51183, there is a rebuttable presumption that the services were intended to be provided without compensation. This presumption may be overcome by tangible evidence clearly establishing the existence of a prior agreement or understanding at the time the services were provided that reimbursement or payment would be made for the services.

(E) Amounts reimbursed or paid by the institutionalized individual or his or her spouse for services that are in excess of the prevailing rate for those services in the local area, are transfers of assets for less than fair market value that must be considered by the county in determining whether a period of ineligibility for payment of HAF care services should be imposed.

(F) The institutionalized individual, his or her spouse, or representative has the burden to provide evidence that clearly establishes that the value of the transferred assets and than the prevailing rate for the services received.

(6) The transfer of assets was made at a time when foreclosure or repossession of the transferred asset was imminent.

(7) The transfer of assets was made in return for an enforceable continuing care contract for life that does not include complete medical care, as established in accordance with Health and Safety Code Section 1770 et seq. The county shall document and treat the existence of other health care coverage provided under the contract in accordance with the requirements set forth in Article 15 of this chapter.
(8) (A) The institutionalized individual, his or her spouse or representative demonstrates that the transfer was made for a specific purpose other than to establish Medi-Cal eligibility or to reduce the share of cost. Verbal or written assurances by the individual or his or her spouse or representative that he or she was not considering Medi-Cal when the asset was disposed of are not sufficient.

(B) After the transfer occurred, the institutionalized individual his or her spouse, or representative shows:

(i) The institutionalized individual or his or her spouse suffers the onset of a traumatic injury or illness or is diagnosed with a previously undetected condition that results in the need for HAF care services and the date of the injury or onset is verified in writing by the afflicted person’s physician, or

(ii) The institutionalized individual or his or her spouse experienced an unexpected and unavoidable loss of assets, as documented by tax returns, financial statements issued by a certified public accountant, property tax assessment records, corporate stock statements, court records, or property tax assessments, and

(iii) As supported by the statement of either a physician or court appointed guardian, the institutionalized individual or his or her spouse who transferred the asset for less than fair market value lacked mental capacity at the time of the transfer.

(iv) The institutionalized individual or his or her spouse who transferred the asset for less than fair market value, had the mental capacity to consent to the transfer, but was unduly influenced by a third party at the time of the transfer.

(I) Undue influence exists when the third party holds a real or apparent authority over the institutionalized individual or spouse thereby taking an unfair advantage of the institutionalized individual’s or spouse’s weakness of mind; or a grossly oppressive and unfair advantage of the institutionalized individual’s or spouse’s necessities or distress.

(II) Undue influence exists only if referrals have been made for investigation of elder financial abuse to the county district attorney’s office or adult protective services division, the Department’s Audits and Investigation Division, the Long-Term Care Ombudsman’s Office or to the California Department of Justice.

(9) The institutionalized individual or his or her spouse shows by convincing evidence that assets were transferred for less than fair market value by a third party, including but not limited to an agent or fiduciary of the institutionalized individual or his or her spouse, and all of the following apply:
(A) The transfer of assets was not for the sole benefit of the institutionalized individual or his or her spouse.

(B) The transfer of assets occurred without the knowledge and informed consent of both the institutionalized individual and his or her spouse, in the case of community property or, in the case of separate property, the person who is the owner.

(C) Referrals have been made for investigation of financial or fiduciary abuse to the county district attorney's office or adult protective services division, the Department's Audits and Investigation Division, the Long-Term Care Ombudsman's Office or to the California Department of Justice.

(10) At the time of the transfer, the asset transferred for less than fair market value was the institutionalized individual's former principal residence, and its title was transferred to the son or daughter of the institutionalized individual, who is not a child who is under age 21, blind or disabled, who:

(A) resided with the individual in the individual's principal residence for a period of at least two years immediately before the date the individual became institutionalized, and

(B) provided care to the individual throughout that two year period that the person resided with the individual which permitted the individual to reside in the principal residence rather than in the medical institution or nursing facility.

(11) (A) The transfer of assets was for less than fair market value, but at the time of the transfer, the institutionalized individual or his or her spouse intended to dispose of the assets at fair market value.

(B) The institutionalized individual, his or her spouse or representative undertakes a continuous good faith and bona fide effort to recover the asset or its fair market value in cases where the cost of recovery, including the written estimate pursuant to (C)(iii) below, is less than both:

(i) the amount in the institutionalized individual's property reserve and

(ii) the fair market value of the asset transferred.

(C) The institutionalized individual, his or her spouse or representative bears the burden of demonstrating that the requirements of this subparagraph have been met by providing written evidence that must include, but is not limited to evidence:

(i) of attempts to dispose of the asset for fair market value,
(ii) to support the value (if any) of what was received in exchange for the asset, and

(iii) of the estimated cost of recovery of the transferred asset, or of recovery of its fair market value, as verified by an attorney’s written estimate. In cases where the cost of recovery is less than the fair market value of the asset transferred, evidence must be provided of the continuous good faith and bona fide effort to recover the asset or its fair market value.

(D) Circumstances that meet these requirements include, but are not limited to, the following:

(i) There is a legally enforceable contract to transfer the assets for fair market value and payments were stopped after the contract was entered into.

(ii) The institutionalized individual or his or her spouse had an erroneous good faith belief about the fair market value of the asset(s) transferred, and believed at the time of the transfer that he or she was receiving fair market value for the asset.

(iii) The institutionalized individual or his or her spouse had an erroneous good faith belief about the fair market value of the assets and/or services received in exchange for the transfer and believed at the time of the transfer that he or she was receiving fair market value for the asset.

(iv) For the purposes of this paragraph, an “erroneous good faith belief” means a genuine but mistaken subjective belief that was based on identifiable information in the possession of the institutionalized individual or his or her spouse at the time of the transfer.

(12) The institutionalized individual or his or her spouse made a good faith attempt to dispose of the asset for fair market value but was unsuccessful in that attempt and thereafter reasonably disposed of the asset for less than fair market value. The institutionalized individual, his or her spouse or representative shall provide written evidence of all attempts to dispose of the asset for fair market value and to support the value (if any) of what was received in exchange for the disposition of the asset.

(13) After the date of the transfer, one of the following occurs:

(A) The asset is returned to the institutionalized individual or his or her spouse in its entirety.

(B) A portion of the asset is returned, and in conjunction with what was originally received in exchange for the asset results in the institutionalized individual or
his or her spouse receiving fair market value for the transferred portion of the asset as determined on the date of the original transfer.

(C) A portion of the asset is returned, and payment or assets are received that, in conjunction with what was originally received, results in the institutionalized individual or his or her spouse receiving fair market value for the transferred portion of the asset as determined on the date of the original transfer.

(D) Additional payment or assets are received by the institutionalized individual or his or her spouse that, in conjunction with what was originally received, result in the institutionalized individual or his or her spouse receiving fair market value for the transferred asset as determined on the date of the original transfer.

Return of assets to the institutionalized individual or his or her spouse leaves the institutionalized individual or his or her spouse with assets which must be considered in determining eligibility retroactively to the date of the transfer and for as long as the institutionalized individual or his or her spouse has those assets.

(14) The asset was irrevocably transferred with the retention of a life estate and fair market value was received for the transferred property in accordance with Section 50410.

(15) The transfer of assets was made in exchange for promise to repay and fair market value was received in accordance with Section 50410.1

(16) The asset transferred was a lump sum and fair market value was received in accordance with Section 50410.2.

(17) The asset transferred was a right to receive an income stream, and fair market value was received in accordance with Section 50410.3.

(18) The transfer of assets was made pursuant to a court order against the institutionalized individual or his or her spouse for the support of family members.

(19) The transfer of assets was made pursuant to a court order against the institutionalized individual or his or her spouse resulting from a judgment against the institutionalized individual or his or her spouse.

(20) The transfer was made for the sole benefit of another person, in accordance with Section 50410.4.

(f) When an institutionalized individual or his or her spouse makes transfers of assets for less than fair market value on or after the look-back date, such transfers are not disqualifying transfers under Section 50409 if, as determined as of the base-line
date or the month of transfer, whichever is most recent, the total cumulative uncompensated value of all assets so transferred within a month by the institutionalized individual or his or her spouse meets either of the following conditions:

(1) (A) The total cumulative uncompensated value, when included in the property reserve pursuant to Section 50419, does not cause the property reserve, as reduced by (ii) below, if applicable, to exceed the permitted property limit described in Section 50420.

(B) Any amounts of non-exempt property that an institutionalized individual’s spouse is allowed to retain shall be deducted from the property reserve before determining whether the amount in the property reserve exceeds the property limit.

(2) The total cumulative uncompensated value, when included in the property reserve pursuant to Section 50419, causes the property reserve, as reduced by (1)(B) above, if applicable, to exceed the property limit described in Section 50420 by an amount that is less than the per diem average private pay rate in effect at the time of the applicable base-line date.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725, and 14124.5, Welfare and Institutions Code. Reference: Sections 14006, 14006.2, and 14015, and 14105.1, Welfare and Institutions Code; Sections 1396p(c), (d), (e), (f) and (h), and 1396r-5(f)(3), Title 42, United States Code.
Amend Section 50409 to read as follows:

Section 50409. Disqualifying Transfers of Property Which Assets That May Result Results in a Period of Ineligibility for Payment of Home and Facility Care.

(a) Transfer of property shall result in ineligibility for Medi-Cal if:
   (1) the transfer met none of the conditions specified in Section 50408; or
   (2) the transfer was in return for an enforceable life care contract which includes complete medical care.

(b) 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.
   (1) It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).
   (2) To overcome the presumption, the applicant or beneficiary has the burden of establishing that this presumption is not correct.
      (A) The applicant or beneficiary shall provide evidence which may include verification of the onset of traumatic injury or illness, diagnosis of a previously undetected disability condition or unexpected loss of income or resources after transfer and/or that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant’s or beneficiary's age, health, life expectancy, and ability to understand extent of resources.
      (B) Such evidence may also include other subjective evidence including, but not limited to, evidence that the claimant transferred in order to avoid probate and/or that the claimant had no knowledge of Medi-Cal or its benefits at the time of the transfer.
      (C) However, any such evidence presented must be convincing evidence in order to overcome the presumption stated in (b)(1) above.

(a) Except as specified in Section 50408, a transfer of assets for less than fair market value made by an institutionalized individual or his or her spouse on or after the look-back date is a disqualifying transfer of assets. The uncompensated values of the disqualifying transfers of assets made in a month in excess of the property limit, after deducting the amount of non-exempt property that the spouse is allowed to retain, shall be used to determine a period of ineligibility for payment of HAF care services, which shall be calculated in accordance with Section 50411.

(b) Disqualifying transfers include, but are not limited to, the following:

(1) The asset was transferred for less than fair market value and none of the conditions set forth in Section 50408 apply.

(2) The asset was a transfer involving a life estate and less than fair market value was received for the transferred asset as provided in Section 50410.
(3) The asset was transferred in exchange for a promise to repay and less than fair market value was received, as provided in Section 50410.1.

(4) The asset transferred was a lump sum payment of income, one time payments of income, and income received less frequently than monthly, as provided in Section 50410.2, and less than fair market value was received.

(5) The asset transferred was a right to receive an income stream and less than fair market value was received as provided in Section 50410.3.

(6) The asset was transferred for the sole benefit of another person, less than fair market value was received, and the criteria set forth in Section 50410.4 are not met.

(7) The assets were transferred to or from a trust or similar legal device, or were transferred to purchase an annuity, and were not for the sole benefit of the individual, spouse or disabled individual pursuant to Section 50489 et seq.

(c) Except as specified in Section 50408, a transfer of assets shall be considered disqualifying when an institutionalized individual or his or her spouse waives his or her right to receive a non-exempt asset.

(d) (1) The uncompensated value of a disqualifying transferred asset shall be determined using the fair market value of that asset on the date of the transfer.

(2) Disqualifying transfers may result in a period of ineligibility for payment of HAF care services only when both of the following conditions are met:

(A) The total cumulative uncompensated value of all disqualifying transfers in a month, when included in the property reserve under Section 50419, would cause the property reserve to exceed the permitted property limit described in Section 50420 and any amounts of property that an institutionalized individual’s spouse is allowed to retain.

(B) The excess amount determined in (A) above is greater than the per diem average private pay rate in effect on the most recent of the following:

(i) the date an institutionalized individual applies for Medi-Cal; or

(ii) the date a Medi-Cal beneficiary becomes an institutionalized individual.

(3) To calculate the period of ineligibility for payment of HAF care services under Section 50411, use the total cumulative uncompensated value of disqualifying asset transfers pursuant to (d)(2).
(e) The existence of an undue hardship, as provided in Section 50411.1, must be considered prior to imposing any period of ineligibility for payment of HAF care services.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14006 and 14015, 14015.2, 50411, 50411.1, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Amend Section 50410 to read as follows:

**Section 50410. Transfer of Property with Retention of a Life Estate.**

(a) Property transferred by the applicant or beneficiary with retention of a life estate shall be treated as any other transfer to determine whether the transfer results in ineligibility evaluated to determine its effect on eligibility.

(b) Assets transferred to purchase a life estate interest, or with the retention of a life estate interest, shall be evaluated in accordance with Sections 50408 and 50409 et seq. to determine whether the transfer was a disqualifying transfer that may result in a period of ineligibility for payment of HAF care services.

(1) For purposes of Section 50409(d), the uncompensated value of assets transferred with the retention of a life estate interest is determined as follows:

(A) Determine the net value of the property transferred in which the life estate interest was retained.

(B) Subtract the net value of the retained life estate interest from the net value of the property transferred as determined in (i)(I). The net value of the retained life estate is the product of the net value of the property transferred on which the life estate interest was retained, multiplied by the life estate factor that corresponds to the lesser of the institutionalized individual's or his or her spouse's age at the time of the transfer, as determined by the life estate tables as published by the Social Security Administration for the Supplemental Security Income program.

(C) Subtract the net value of any compensation for the transferred property from the result of (i)(II). The remainder, if any, is the uncompensated value of the property transferred, which must be evaluated as provided in Section 50409(b)(2).

(2) For purposes of Section 50409(d), the uncompensated value of assets transferred to purchase a life estate interest is determined as follows:

(A) The county shall evaluate any transfer of an asset to purchase a life estate interest, in accordance with Sections 50408 and 50409 et seq. to determine whether the transfer was a disqualifying transfer that may result in a period of ineligibility for payment of HAF care services.

(B) Determine the net value of the assets used to purchase the life estate.

(C) If the institutionalized individual or his or her spouse purchases a life estate in another person’s home and resides there for a period of less than one year
after the date of the purchase, the uncompensated value is the entire amount used to purchase the life estate.

(D) If subdivision (2)(C) does not apply, subtract the net value of the purchased life estate from the amount in (2)(B). The net value of the purchased life estate is the product of the net value of the property in which the institutionalized individual or his or her spouse purchased the life estate multiplied by the life estate factor that corresponds to the lesser or the institutionalized individual’s or his or her spouse’s age at the time of the purchase, as determined by the life estate tables as published by the Social Security Administration for the Supplemental Security Income program.

(3) The uncompensated value of a transferred life estate interest is determined as follows:

(A) Determine the net value of the property upon which the life estate is held.

(B) Determine the net value of the life estate by multiplying the value determined in (3)(A) by the life estate factor that corresponds to the age, at the time of the transfer, of the person upon whom the life estate is based, as determined by the life estate tables as published by the Social Security Administration for the Supplemental Security Income program.

(C) Subtract any compensation received from the result in (3)(B).

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 11050, 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Adopt Section 50410.1 to read as follows:

Section 50410.1. Transfer of Assets In Exchange For a Promise to Repay Including Promissory Notes, Loans, Mortgages or Deeds of Trust

(a) The county shall evaluate any transfer of assets for a promise to repay, including promissory notes, loans, mortgages, or deeds of trust, in accordance with Sections 50408 and 50409 et seq. to determine whether the transfer was a disqualifying transfer that may result in a period of ineligibility for payment of HAF care services.

(b) For purposes of Section 50409(d), the transfer of assets shall be considered disqualifying unless all of the following criteria are met on the date of the transaction:

1. The repayment terms are actuarially sound.

2. The payments are scheduled to be made in equal amounts during the term of the promise to repay with no deferral of payments and no balloon payments. The final payment may be less than the payment immediately preceding the final payment.

3. The promise to repay specifically prohibits the cancellation of the balance upon the death of the lender. If the promise to repay does not meet the criteria specified in (b), the net value of the transferred assets shall be the outstanding balance due as of the date of the individual's request for payment of HAF care services.

4. A promise to repay received in exchange for a transferred asset is actuarially sound if the payments are structured to be completed:

   (A) Within the life expectancy of the institutionalized individual transferor, or

   (B) Within the greater life expectancy of either the institutionalized individual or his or her spouse, if transferred jointly.

The life expectancy shall be based on the life table of the Office of the Chief Actuary of the Social Security Administration (SSA). This table (called the "Period Life Table") can be found on SSA's Actuarial Publications Statistical Tables Web page under the heading ("Life Table").

(c) For purposes of this section, payments will be considered deferred if they are scheduled to be made less frequently than annually.
(d) For purposes of determining share of cost pursuant to Article 10, interest payments shall be apportioned as if received monthly. Payments of principal shall be treated as property.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Adopt Section 50410.2 to read as follows:

Section 50410.2. Transfer of Assets—Lump Sum Payments of Income, One Time Payments of Income, or Payments of Income Received Less Frequently than Monthly

(a) The county shall evaluate any transfer of a lump sum payment of income, one time payments of income, and income received less frequently than monthly, in accordance with Sections 50408 and 50409 et seq. to determine whether the transfer was a disqualifying transfer that may result in a period of ineligibility for payment of HAF care services.

(b) If not included when calculating the current month’s share of cost or apportioned over time in accordance with Section 50517 and used in future months’ shares of cost, the uncompensated value of a transferred payment described in (a) above is a disqualifying transfer of assets that may result in a period of ineligibility for payment of HAF care services.

(c) For the purposes of this section, a “lump sum payment” is an accumulation of retroactive income payments from a single source.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Adopt Section 50410.3 to read as follows:

Section 50410.3 Transfer of Assets—Right to Receive an Income Stream.

(a) The county shall evaluate a transfer of any right to receive an income stream, in accordance with Sections 50408 and 50409 et seq., to determine whether the transfer was a disqualifying transfer that may result in a period of ineligibility for payment of HAF care services.

(b) The uncompensated value of a transferred right to receive an income stream is a disqualifying transfer of assets that may result in a period of ineligibility for payment of HAF care services if:

(1) the uncompensated value is not included when calculating the current month’s share of cost, or

(2) the uncompensated value is apportioned over time in accordance with Section 50517 and used in future months’ shares of cost.

(c) The fair market value of a right to receive an income stream shall be determined as of the date of the transfer as follows:

(1) If the right to receive an income stream is scheduled to end within a fixed period of time or on a designated date, then the fair market value is the present value of all future payments, including balloon payments, if any, scheduled to occur within the fixed period or until the designated date but not received due to the transfer. The fair market value shall be determined by calculating the present value utilizing the formula and tables below that will be made available by the Department.

(A) Total all payments that were to be received within the term of the income stream from the date of the transfer to the end of the fixed period or until the designated date, including any balloon payments.

(B) Determine the interest rate being paid on the income stream at the time of the transfer using Internal Revenue Service (IRS) Regulations, Section 7520 interest rates published monthly by the IRS, which will be made available by the Department for this purpose.

(C) Using the interest rate from (B) above, find the corresponding term certain remainder factor for the term of years from Internal Revenue Service (IRS) Regulations, Section 20.2031-7, including Term Certain Remainder Factors, Table B, Book Aleph, IRS Publication 1457, Table B.

(D) Multiply the factor identified in (C) above, by the amount determined in (A) above.
(2) If the right to receive an income stream is scheduled to end upon the death of a designated person, then the fair market value equals the present value of all future payments estimated to occur but not received due to the transfer, including any balloon payments whether or not scheduled to be paid within the person’s life expectancy. The fair market value shall be determined by calculating the present value utilizing the formula and tables below that will be made available by the Department. The fair market value shall be calculated as follows:

(A) Determine the designated person’s life expectancy from the Period Life Tables published by the Social Security Administration’s Office of Chief Actuary.

(B) Total all payments that were to be received within the designated person’s life expectancy pursuant to (A) above from the date of the transfer including any balloon payments whether or not scheduled to be paid within the person’s life expectancy.

(C) Determine the interest rate being paid on the income stream at the time of the transfer using IRS Regulations, Section 7520 interest rates published monthly by the Internal Revenue Service.

(D) Using the interest rate from (C) above, and the life expectancy from (A) above, find the corresponding term certain remainder factor for the term of years from Internal Revenue Service Regulations, Section 20.2031-7, Table B.

(E) Multiply the factor identified in (D) above, by the amount determined in (B) above.

(3) If the terms of the right to receive an income stream include both:

(A) payments that conclude within a fixed period of time or on a designated date, and

(B) at the end of a designated person’s lifetime,

then the fair market value equals the present value of all future payments that were estimated to occur, but were not received due to the transfer, including any balloon payments whether or not scheduled to be paid within the person’s life expectancy. Calculate both values using the procedures set forth in (c)(1) and (c)(2), as follows:

(C) where the contract specifies that payments were to be paid for the person’s lifetime or until a designated date, whichever is longer, the fair market value is the greater of the values as determined under subdivision (c)(1) or (c)(2);
(D) where the contract specifies that payments were to be paid for the period of
the person’s lifetime or until a designated date, whichever is shorter, the fair
market value is the lesser of the values as determined under subdivision
(c)(1) or (c)(2).

(4) In the case of a transfer of a right to receive a deferred income stream, the fair
market value shall be the greater of:

(A) the amount originally paid to obtain the right to receive the deferred income
stream,

(B) the cash surrender value, or

(C) the amount determined by utilizing the formulas in (c)(1), (c)(2) or (c)(3)
above, based upon the type of income stream scheduled to begin at the end
of the deferral period, and, for purposes of determining the term of years for
an annuity described in (c)(1), add the number of years remaining in the
deferral period from the date of the transfer to the number of years throughout
which payments are to be made.

(5) If the income stream is not described in (c)(1) through (c)(4), then the
institutionalized individual, his or her spouse, or representative shall provide an
written opinion of the fair market value as determined by a person licensed or
certified in California to value the income stream. That opinion shall be
considered by the Department in determining the fair market value and any
potential period of ineligibility for payment of HAF care services. Persons
licensed or certified to provide an opinion as to the fair market value of the
income stream shall be Certified Public Accountants who are Accredited in
Business Valuation or Certified Valuation Analysts, Accredited Valuation
Analysts, Certified Business Appraisers or Accredited Senior Appraisers who are
trained in business valuations.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721,
and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States
Code.
Adopt Section 50410.4 to read as follows:

**Section 50410.4. Transfers Made For the Sole Benefit of Another Person.**

(a) As provided in Section 50408(e)(2), no period of ineligibility for payment of HAF care services shall be imposed against an institutionalized individual for a transfer of assets for less than fair market value if that asset was transferred for the sole benefit of the institutionalized individual’s spouse, the disabled or blind son or daughter, or the disabled person under the age of 65, and all of the following conditions are met:

(1) The transfer of assets is executed in a written instrument of transfer which legally binds the parties as specified in (b), clearly sets out the conditions under which the transfer was made, and specifically describes who can benefit from the transfer. A transfer of assets without such an instrument shall not be treated as having been transferred for the sole benefit of the institutionalized individual’s spouse, a disabled or blind son or daughter, or a disabled person under the age of 65.

(2) The transfer, transfer instrument, or trust must require that the transferred assets be expended on a basis that is actuarially sound based on the life expectancy of the individual benefiting from the transfer of assets.

(3) To determine a person’s life expectancy, counties shall use the Life Expectancy Tables specified in Section 3258.9 (B) (Revision 64), Part 3 of the Centers for Medicare and Medicaid Services’ State Medicaid Manual and titled “Life Expectancy Table-Males and Life Expectancy-Females,” which will be made available by the Department.

(b) The term, “for the sole benefit of” shall mean that the transfer is arranged in such a way that no entity or person except the institutionalized individual’s spouse, the disabled or blind son or daughter, or the disabled person under the age of 65, can in any way benefit from the assets transferred, whether at the time of the transfer or at any time in the future.

(c) A transfer, transfer instrument, or trust that provides for assets to pass to a person not listed in (a) above, except for trusts meeting the criteria set forth in section 50489.9(a)(3) or (a)(4), shall not be considered to be made or established for the sole benefit of the institutionalized individual’s spouse, the disabled or blind son or daughter, or the disabled person under the age of 65.

(d) However, a trust satisfying the criteria set forth in subsection (a) above, may provide for payment of reasonable fees to trustees to manage trusts, and for payment of reasonable fees associated with investing trust assets or otherwise managing the funds or property in the trust.
(1) A “reasonable fee” for a trustee to manage a trust shall be no more than the fair market value of compensation, if any, for managing a trust of similar size and complexity.

(2) A “reasonable fee” associated with investing trust assets or otherwise managing the funds or property in the trust shall be no more than the fair market value of compensation, if any, for that type of action or transaction.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11050, 14006, 14006.2 and 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Amend Section 50411 to read as follows:

Section 50411.- Period of Ineligibility for Payment of Home and Facility (HAF) Care Services Due to a Disqualifying Transfer of Property Assets.

(a) Following a determination of ineligibility due to the transfer of property, there shall be a period of ineligibility. This period shall be the time during which the net market value of the property at the time of transfer, less consideration received, would have supported the applicant or beneficiary and the applicant’s or beneficiary’s family.

(b) The period of ineligibility shall be computed in the following manner:

Determine the net market value of the property at the time of transfer less any consideration received which is the net value of the property transferred.

(2) Determine the portion of the net value of the property transferred which, if included in the property reserve at the time of transfer, would not have caused such reserve to exceed the property limit that was applicable at the time.

(3) The portion of the net value of the property transferred that would not have fallen within the property limit at the time of transfer is the excess net value of the property transferred and shall be used to determine the period of ineligibility.

(4) The number of months in the period of ineligibility shall be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the applicant or beneficiary and the applicant’s or beneficiary’s family. The maintenance needs used shall be the maintenance needs in effect during each individual month since the date of the transfer. Income received by the family after the transfer shall not affect this computation.

(5) The period of ineligibility may be further reduced by deducting the actual cost to the applicant or beneficiary of the following:

(A) Medical expenses.

(B) Out-of-home care costs in excess of the maintenance needs.

(C) Major home repairs necessary to put the home into a liveable condition.

(c) The period of ineligibility shall begin the first of the month following the date of the transfer which resulted in ineligibility occurred, unless a 10 day notice is required and cannot be given. In that case, the period of ineligibility shall begin the first of the next month.

(d) The period of ineligibility shall end when any of the following situations occur.

(1) The property which was transferred and caused ineligibility is reconveyed to the applicant or beneficiary.

(2) The applicant or beneficiary receives adequate consideration for the property.

(3) Deduction of the amounts specified in (b) (4) and (5) has reduced the excess net market value to zero.

(a) Following a determination that a disqualifying transfer of assets has occurred on or after the look-back date and the provisions of Section 50408 do not apply, the county shall calculate a period of ineligibility for payment of HAF care services

(1) by dividing the total, cumulative uncompensated value of all disqualifying transfers made in a month on or after the look-back date pursuant to 50409(d)(2),
by the monthly average private pay rate in effect on the most recent base line date. The result is the number of months in the period of ineligibility for payment of HAF care services.

(2) The remainder shall be divided by the per diem average private pay rate. Any remainder shall be ignored. The result is the number of days in the period of ineligibility for payment of HAF care services.

(3) The sum of (1) and (2) shall represent the number of months and days in the period of ineligibility for payment of HAF care services.

(b) Except as provided in (d), periods of ineligibility for payment of HAF care services shall be imposed on the most recent of the following days:

(1) When a period of ineligibility for payment of HAF care services is being imposed at application for an institutionalized individual, the period is effective on the first day of month of application.

(2) When a period of ineligibility for payment of HAF care services is being imposed upon an institutionalized beneficiary, and the transfer was reported within 10 days of the transfer, the period is effective on the first day following the 10-day period required for provision of a Notice of Action in compliance with Section 50179.1.

(3) When a period of ineligibility for payment of HAF care services is being imposed upon an institutionalized beneficiary, and the transfer was not reported to the County within 10 days of the transfer:

(A) the period of ineligibility for payment of HAF care services is effective the twenty first day following the date assets were transferred. This takes into consideration what would have been the 10-day reporting period pursuant to 50185 and the 10-day Notice of Action period in accordance with Section 50179.1 had the transfer been reported timely and timely notice provided.

(B) A potential overpayment exists for the period beginning on and after the effective date to the implementation date of the period of ineligibility for HAF care services pursuant to Section 50781.

(c) If the institutionalized individual is married at the time of the transfer, disqualifying transfers made on or after the look-back date by the institutionalized individual’s spouse, including those of the institutionalized individual’s spouse’s sole and separate property, shall result in a period of ineligibility for payment of HAF care services for the institutionalized individual, except as provided for under (e), in the same way as disqualifying transfers made by the institutionalized individual.
(d) If disqualifying transfers are made in more than one month on or after the look-back date, separate periods of ineligibility for payment of HAF care services shall be imposed, as follows:

(1) Any separate periods of ineligibility for payment of HAF care services shall run consecutively rather than concurrently.

(2) Any period of ineligibility for payment of HAF care services that follows another period of ineligibility for payment of HAF care services cannot begin until the day following the day on which the former period expires subject to the notice requirements of 50179.1.

(e) (1) The period of ineligibility for payment of HAF care services imposed for a disqualifying transfer, as specified in Section 50409, shall run without interruption, regardless of Medi-Cal eligibility or continued receipt of HAF care services and regardless of which spouse, if any, is later re-admitted or becomes the institutionalized individual subject to (f) and (g) below. It shall end or be modified only if one of the following situations occur:

(A) All of the assets transferred for less than fair market value are reconveyed to the institutionalized individual or his or her spouse.

(B) A portion of the assets transferred for less than fair market value is reconveyed to the institutionalized individual or his or her spouse.

(C) The individual or spouse is fully compensated for the uncompensated value of the asset transferred.

(D) The individual or spouse is partially compensated for the uncompensated value of the asset transferred.

(E) The period of ineligibility for payment of HAF care services has concluded.

(2) The net value of any assets received by the institutionalized individual or his or her spouse due to the occurrence of one of the situations described in (1)(A) and (1)(B), shall be deemed to have been available from the date of the original transfer and evaluated by the county under the provisions of this Chapter to determine its retroactive impact both on the institutionalized individual’s or his or her spouse’s Medi-Cal eligibility or share of cost, including eligibility for payment of HAF care services and any potential overpayment.

(f) Except as provided under (g), any time remaining in a period of ineligibility for payment of HAF care services imposed against an institutionalized individual shall be divided equally between the institutionalized individual and his or her spouse if the spouse becomes an institutionalized individual before the period expires, as follows:
(1) If either the institutionalized individual or his or her spouse is discharged from the facility or waiver program, any time remaining in the period of ineligibility for payment of HAF care services must be applied to that person who continues to need HAF care services.

(2) If a period of ineligibility for payment of HAF care services was imposed against an institutionalized individual who dies before the period expires, and the surviving spouse is or becomes an institutionalized individual, the months remaining in the period of ineligibility for payment of HAF care shall be applied to the surviving spouse. However, once begun, the period of ineligibility for payment of HAF care services does not stop and may expire before the surviving spouse requires HAF care services.

(g) Periods of ineligibility for payment of HAF care services resulting from disqualifying transfers made by an institutionalized individual prior to marriage to the current spouse shall not be applied or apportioned to the current spouse.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, 10725, Welfare and Institutions Code. Reference: Section 11050, 14006, and 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (h), Title 42, United States Code.
Adopt Section 50411.1 to read as follows:

Section 50411.1. Undue Hardship

(a) No period of ineligibility for payment of HAF care services shall be imposed due to a disqualifying transfer of assets when it would result in an undue hardship to the institutionalized individual.

(b) In making that determination, the county shall do the following:

(1) The county shall send a notice to the institutionalized individual stating that the institutionalized individual or his or her spouse made a disqualifying transfer of assets that is subject to the imposition of a period of ineligibility for payment of HAF care services, and the county is considering whether an undue hardship exists to exempt the transfer from the period of ineligibility for payment of HAF care services. Such notice shall state the criteria for establishing undue hardship and shall provide the institutionalized individual, his or her spouse, or representative with 20 days to provide the county in writing, information and documentation to support the existence of an undue hardship.

(2) If the institutionalized individual, his or her spouse, or representative consents, the facility in which the institutionalized individual is residing may request the undue hardship consideration on behalf of the institutionalized individual, subject to the requirements of this section.

(3) The County may extend the 20-day period to respond to the notice that undue hardship is being considered if there is good cause for delay in the receipt of evidence necessary to determine whether an undue hardship exception should be granted.

(4) For the purposes of this section, “good cause for delay” means that the county has not received, within the 20-day period, the supporting evidence due to circumstances beyond the control of the institutionalized individual, his or her spouse, or representative, or the county. Good cause for delay occurs only when any of the following are demonstrated:

(A) There is a failure of the postal system to deliver mail to the institutionalized individual, his or her spouse, or representative in a timely manner.

(B) The physical or mental illness or incapacity of the institutionalized individual, his or her spouse or representative precludes the timely completion and submission of the request for information needed to determine whether an undue hardship exists.

(C) A level of literacy of the institutionalized individual, his or her spouse or representative which, in conjunction with other social or language barriers, precludes the institutionalized individual, his or her spouse or representative...
from completing and submitting the request for undue hardship determination in a timely manner.

(5) The county must make an undue hardship determination within 10-days of receipt of the request and supporting evidence.

(6) If the county determines that undue hardship exists, then no period of ineligibility for payment of HAF care services shall be imposed.

(7) If the county determines that the facts are insufficient to demonstrate that undue hardship exists, then the county shall issue a notice of action in accordance with Section 50179.1, stating all of the following information:

(A) A determination has been made that the institutionalized individual or his or her spouse has made a disqualifying transfer of assets and that a period of ineligibility for payment of HAF care services must be imposed against the institutionalized individual.

(B) A description of the grounds supporting the county’s determinations that both of the following apply:

(i) a transfer of assets for less than fair market value has occurred on or after the look-back date, and

(ii) none of the provisions of Section 50408 apply.

(C) The county sent a notice giving the institutionalized individual, his or her spouse, or representative the opportunity to demonstrate that an undue hardship existed, including a description of the undue hardship exception criteria, but either of the following occurred:

(i) The county did not receive a response from the institutionalized individual, his or her spouse, or representative.

(ii) The county evaluated the response received from the institutionalized individual, his or her spouse, or representative, and determined that the information submitted failed to demonstrate the existence of an undue hardship.

(D) A description of the reasons that undue hardship was found not to exist.

(E) The institutionalized individual or his or her spouse has a right to request a fair hearing pursuant to Section 50951, either directly or through his or her representative, and the means and process for requesting a hearing.
(F) An institutionalized individual with a pending undue hardship appeal who is subject to a period or ineligibility for payment of HAF care services shall receive payment for a maximum of 30 bed-hold days.

(c) An undue hardship exists under any of the following circumstances:

(1) The institutionalized individual was determined eligible for payment of HAF care services based on an application filed on or after January 1, 2006, and before the date that these regulations are certified by the Secretary of State.

(2) The institutionalized individual, his or her spouse or representative demonstrates that a period of ineligibility for payment of HAF care services would cause an endangerment to the life or health of either the institutionalized individual or his or her spouse as supported by his or her physician’s written statement that in the physician’s professional medical opinion, without HAF care services being provided during the period of ineligibility for payment of HAF care services, any of the following could occur:

(A) the institutionalized individual’s physical or mental condition would reasonably be expected to be a danger to himself or herself or to others,

(B) the institutionalized individual can reasonably be expected to materially deteriorate, resulting in serious impairment of bodily functions or to irreparably damage any bodily organ or function, or

(C) the institutionalized individual would be at significant risk of death.

(3) The institutionalized individual or his or her spouse, or representative demonstrates that a period of ineligibility for payment of HAF care services would deprive the institutionalized individual or his or her spouse of food, clothing, shelter, or other necessities of life.

(A) Deprivation of food, clothing, shelter or other necessities of life exists when the total of the institutionalized individual’s and his or her spouse’s exempt and nonexempt separate and community income after income tax withholding is less than the sum of the following:

(i) the cost of HAF care services or the monthly average private pay rate, whichever is less,

(ii) the actual monthly expenses of the institutionalized individual’s, his or her spouse’s and any financially dependent children living in the home for necessary actual living expenses given each person’s specific physical needs and out-of-pocket health care costs, other than the cost of HAF care services of the institutionalized individual and his or her spouse, or amounts of income that his or her spouse is allowed to retain, whichever is less, and
(iii) the cost of other health insurance.

(B) Deprivation of food, clothing, shelter or other necessities of life also exists when the transfer was made to the institutionalized individual’s same sex spouse or registered domestic partner and the transfer was any of the following:

(i) All or a portion of the institutionalized individual’s ownership interest in his or her nonexempt former principal residence that is or would be considered the exempt principal residence if the same sex spouse or registered domestic partner were an opposite sex spouse.

(ii) An amount of net nonexempt available property that when added to the net nonexempt available property of the same sex spouse or registered domestic partner is no more than that spouse or partner would be allowed to retain if he or she were an opposite sex spouse. An undue hardship shall not be found to exist in relation to the amount of the property transferred that is in excess of the amount that spouse or partner would be allowed to retain if he or she were an opposite sex spouse.

(iii) An amount of net nonexempt available income that when added to the income of the same sex spouse or registered domestic partner is no more than that spouse or partner would be allowed to retain if he or she were an opposite sex spouse. An undue hardship shall not be found to exist in relation to the amount of income transferred that is in excess of the amount that spouse or partner would be allowed to retain if he or she were an opposite sex spouse and shall continue to be included in the institutionalized individual’s share of cost subject to the following:

(I) To the extent that the excess income transferred was the institutionalized individual’s right to receive a future income stream and that transfer can be revoked, the transfer shall be revoked.

(II) To the extent that the income stream described in (i) above cannot be revoked, undue hardship shall not be found to exist.

(C) For purposes of this subsection, the following definitions apply:

(i) “Opposite sex spouse” means a person of the opposite sex who is legally married to an applicant for, or beneficiary of, HAF care.

(ii) “Registered domestic partner” means a person that meets the requirements of Section 297 of the Family Code and with whom the applicant for or beneficiary of, HAF care shares, or would have shared the common residence were it not for institutionalization.
(iii) “Same sex spouse” means a person of the same sex who is legally married to an applicant for, or beneficiary of, HAF care.

(4) Denial of payment for HAF care services would result in the eviction of the institutionalized individual from a nursing home, as evidenced by a notice of eviction from the nursing home.

(5) The individual is otherwise eligible for the Medi-Cal program and unable to obtain HAF care services without Medi-Cal.

(6) Denial of payment for HAF care services would cause the individual to be unable to remain at home or in the community and would hasten or cause the individual’s entry into a medical or long-term care facility, as evidenced by a letter from the individual’s physician.

(d) Upon the request of the institutionalized individual, his or her spouse, or representative undue hardship notices shall be provided to the HAF care administrator.

(e) Changes in circumstances must be reported to the county within 10 days in accordance with Section 50185, and that the county must determine the effect of those changes on any period of ineligibility for payment of HAF care services and undue hardship.

(f) Any undue hardship found pursuant to this section shall be reexamined at annual redetermination or when a change of circumstances has been reported to determine if the facts underlying the claim of undue hardship have changed.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 11050, 14006, and 14015, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f), (g), and (h), Title 42, United States Code.
Amend Section 50781 to read as follows:

Section 50781. Potential Overpayments.

(a) A potential overpayment occurs when all of the following conditions exist, as limited by (b).

(1) A beneficiary, or other person acting on the beneficiary's behalf, has been informed verbally and in writing on the MC 210 cover sheet (9/91), and the certification in the Statement of Facts (Medi-Cal), MC 210 (3/92), or on the cover sheet to and the Application for Cash Aid, Food Stamps, and/or Medical Assistance (SAWS 1) (9/90) CA 1/DFA 285-A1, or on the Important Information For Applicants and Recipients For Cash Aid, Food Stamps and Medical Assistance (SAWS 2A) (5/92) (Important Information) CA2/DFA 285-A2/MC 210, or on the Statement of Facts Cash and Food Stamps - (JA2) (4/90) CA2/DFA 285-A2 of his/her responsibility to report completely and accurately, facts required pursuant to Subdivision 1, Chapter 2, which would affect eligibility, scope of benefits, eligibility for HAF care services, or share or cost, and to report any changes in those facts within 10 days.

(2) A beneficiary or the person acting on the beneficiary's behalf has completed and signed the Medi-Cal Applicant/Beneficiary Understanding, MC 210 (9/91) cover sheet and the certification in the Statement of Facts (Medi-Cal) MC 210 (3/92), or the certification in the Statement of Facts Cash Aid and Food Stamps - (JA2) (4/90) CA2/DFA 285-A2, or the certification in the Application for Cash Aid, Food Stamps, and/or Medical Assistance (SAWS 1) (9/90) CA1/DFA 285-A1, or the certification in the Important Information For Applicants and Recipients For Cash Aid, Food Stamps and Medical Assistance (SAWS 2A) (5/92) (Important Information) CA2/DFA 285-A2/MC 210 and has, within his/her competence, done any of the following:

(A) Provided incorrect oral or written information.

(B) Failed to provide information required pursuant to Subdivision 1, Chapter 2, which would affect the eligibility, scope of benefits or share of cost determination.

(C) Failed to report changes in circumstances regarding any information required pursuant to Subdivision 1, Chapter 2, which would affect eligibility, scope of benefits, eligibility for HAF care services, or share of cost within 10 days of the change.

(3) These facts, when considered in conjunction with other information available on regarding the beneficiary's circumstances, would result in ineligibility, restrictions or other limitations to scope of benefits, on periods of ineligibility for payment of HAF care services, or an increased share of...
cost in accordance with Article 9 of this chapter and Welfare and Institutions Code Section 14005 et seq.

(b) If an increase occurred in a person's income or assets property, and that increase would not have affected the person's eligibility or share of cost in the that month in which there was an increase in income or assets or in the following month because of the 10-day notice requirements specified in Sections 50179, 50185 and 50653.5, no potential overpayment exists in either such month as long as the person reports the change was reported by the person to the county within 10 days of the change.

(c) In accordance with Section 50179.1, a potential overpayment exists for the amount of payment for HAF care services provided during the days or months for which a period of ineligibility for payment of HAF care services, based on a disqualifying transfer of assets, has been imposed prior to the effective date of such period even though a 10 day notice is required.

(cd) No potential overpayment exists if the beneficiary timely informed the county department of circumstances which would result in ineligibility or an increased share of cost, and the county department failed to act on the information.

(de) No potential overpayment exists when there is a failure on the part of a beneficiary to perform an act which is a condition of eligibility if the failure is due to an error by the Department or the county department.

(ef) For purposes of this section, potential overpayments shall be determined by applying the laws in effect in the month or months for which the potential overpayment is being determined.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 11050, 14009 and 14016.4, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (gh), Title 42, United States Code.
Amend Section 50783 to read as follows:

Section 50783. County Action on Potential Overpayment.

(a) The county department shall take the following action when it appears that there may be a potential overpayment:

(1) Determine the correct eligibility status, scope of benefits, eligibility for payment of HAF care services, and share of cost based on the correct evaluation of income, property, transfers of assets and other circumstances.

(2) Determine whether a potential overpayment exists in accordance with Section 50781.

(3) If a potential overpayment exists, refer it to the Department or to the county unit contracting with the Department to collect overpayments in accordance with the procedures established by the Department.

(4) In those instances where the potential overpayment is due to the willful failure to report facts and there was a person acting on behalf of the beneficiary:

(A) Determine whether the beneficiary is competent to handle his/her own affairs.

(B) If the beneficiary is competent, require that the beneficiary act on his/her own behalf in the future.

(C) If the beneficiary is not competent, refer the case to Social Services and/or the public guardian or conservator to ensure that the beneficiary's interests are protected.

NOTE: Authority cited: Section 20, Health and Safety Code; Sections 10721, 10725 and 14124.5, Welfare and Institutions Code; and Section 133.5, Chapter 102, Statutes of 1981. Reference: Sections 11004, 11050, 14009 and 14016.4, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (gh), Title 42, United States Code.
Amend Section 50786 to read as follows:

Section 50786. Action on Overpayment - Department of Health Care Services or County Unit Contracted to Collect Overpayments.

(a) Upon receipt of a potential overpayment referral, the Department's Recovery Section or the county unit contracted to collect overpayments shall:

(1) Determine the amount of Medi-Cal benefits received by the beneficiary for the period in which there was a potential overpayment.

(2) Compute the actual overpayment in accordance with the following:

(A) When the potential overpayment was due to excess property, the actual overpayment shall be the lesser of the:

(i) Actual cost of services paid by the Department during that period of consecutive months in which there was excess property throughout each month.

(ii) Amount of property in excess of the property limit during that period of consecutive months in which there was excess property throughout each month. This excess amount shall be determined as follows:

(I) Compute the excess property at the lowest point in the month for each month.

(II) The highest monthly amount determined in (a), shall be the amount of the excess property for the entire period of consecutive months.

(B) When the potential overpayment was due to increased share of cost, the actual overpayment shall be the lesser of the:

(i) Actual cost of services received in the month(s) which were paid by the Department.

(ii) Amount of the increased share of cost for the month(s) in which services were received which were paid by the Department.

(C) When the overpayment was due to excess property and increased share of cost, the actual overpayment shall be a combination of (A) and (B).

(D) When the potential overpayment was due to other factors which result in ineligibility, periods of ineligibility for payment of HAF care services, or reduction in the scope of benefits, the overpayment shall be the actual cost of services paid by the Department that should not have been paid.
(E) Potential overpayments, due to beneficiary possession of other health coverage that is not subject to post-services reimbursement, shall be processed by the Department to determine and recover actual overpayments in all cases. The actual overpayment in such cases shall be the actual cost of services paid by the Department which would have been covered by private health insurance or other health coverage, had the coverage been known to the Department. The actual overpayment shall not include any costs which can be recovered directly by the Department from the health insurance carrier or other source.

(3) Refer to the Investigations Branch of the Department those cases where there it appears there may be fraud to the Investigations Branch of the Department.

(4) Take appropriate action to collect overpayments in accordance with Section 50787.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10721, 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 11004, 11050, 14005.9, 14009 and 14016.4, Welfare and Institutions Code; and Section 1396p(c), (d), (e), (f) and (hg), Title 42, United States Code.