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Treatment of Funds Received from the Golden Gate Equity Holdings, LLC, Settlement

WARNING: This notice only applies to plaintiffs/class members of the Maria Hernandez, et al. v. Golden Gate Equity Holdings, LLC, et al., lawsuit (San Francisco County Superior Court, Case No. CGC-10-505288). This fact sheet is not a substitute for legal advice. For those with complicated estate issues, we strongly recommend that you contact an attorney knowledgeable about Medi-Cal/SSI rules. You can contact CANHR's Lawyer Referral Service at (800) 474-1116 or your local Bar Association's LRS.

The settlement covers all persons who resided in and received skilled nursing services from one or more of the following facilities between November 10, 2006, through and including March 15, 2013, or, if such a resident is now deceased, his or her successors-in-interest:

Golden Living Center-Galt	Golden Living Center-Reedley
Golden Living Center-Chateau	Golden Living Center-Sanger
Golden Living Center-Hy-Pana	Golden Living Center-Shafter
Golden Living Center-Portside	Golden Living Center-Bakersfield
Golden Living Center-Redding	Golden Living Center-Fresno
Golden Living Center-Clovis	Golden Living Center-Napa
Golden Living Center-Fowler	Golden Living Center-Petaluma
Golden Living Center-Country View Alzheimer's Care	Golden Living Center-Santa Rosa
Golden Living Center-Hillcrest	Golden Living Center-London House Sonoma
Golden Living Center-Hy-Lond	

Class members of this lawsuit will be receiving settlement funds. A number of these plaintiffs are Medi-Cal and/or SSI recipients, and the receipt of the settlement funds could impact their SSI checks or their Medi-Cal eligibility if the funds are not handled properly.

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

For example, Susan receives \$1,000 from the settlement in the month of June 2013—that would be income in the month received. Her SSI benefit is \$800/monthly. $\$1,000 - \60 (irregular income) = \$940. The settlement increased Susan's income over her SSI benefit amount for June; therefore she will not be eligible for SSI in that month. As long as Susan spends it down in June and doesn't carry more than \$2,000 in assets for July, the only penalty would be one month of discontinuance for SSI. She would report the change of income to Social Security by July 10, 2013.

2. **Medi-Cal Recipients at Home (non-SSI Recipients):** Medi-Cal counts income in the month received as income, not assets. If more than \$2,000 is retained into the next month, then Medi-Cal will be discontinued for excess income. However, timeliness is a factor with Medi-Cal. Since available income or assets that would affect Share of Cost (SOC) or eligibility must be reported to the eligibility worker (EW) within 10 calendar days (Title 22, CCR, Section 50185(a)(4)), it is always better to receive that income toward the end of the month and spend it down or transfer it within the month of receipt. Income becomes available when the check is deposited and cleared (Title 22, CCR, Section 50513).

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

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

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

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

For example, a current nursing home resident received a settlement check for \$14,000 in the month of June, he/she would want to spend it down within the month to ensure that their Medi-Cal will not be discontinued for July for being over the asset limit—excess of \$2,000. The resident can gift \$7,000 to one daughter and \$7,000 to another daughter – there won't be a penalty since each gift is under the Annual Private Pay Rate (APPR) of \$7,549. Once reported, the EW might still issue a notice of adverse action, but it should be rescinded when the EW receives proof that the funds were spent/transferred in the month received.

Important: there ARE transfer penalties when living in a nursing home. All gifts or transfers must be under the APPR of \$7,549 for 2013.

4. **Medi-Cal Recipient Died Before Receipt of Settlement Funds:** If the Medi-Cal recipient has died and the settlement funds are issued in the name of the deceased beneficiary, then the funds would become a part of the deceased's estate and could be subject to recovery, depending on the individual circumstances.

When a Medi-Cal beneficiary dies, his or her spouse, estate attorney, heir, personal representative or successor in interest must provide notice of the person's death to the Department of Health Services in Sacramento. The notice must be sent no later than 90 days after the person's death, along with a copy of the death certificate. It should be sent by registered or certified mail to: Director of Health Care Services, Estate Recovery Unit, MS-4720, P.O. Box 997425, Sacramento, CA 95899-7425.

The normal Medi-Cal recovery rules apply, in that if there are exempt individuals, e.g., a surviving spouse, a minor child or a disabled child of any age – there is no recovery. If no exempt individuals, file for a hardship, if applicable. Otherwise, the funds would be recoverable. However, expenses related to the funeral, estate administration, etc. can be deducted, but the person should be sure to itemize and include copies of receipts. See CANHR's Fact Sheet on California's Medi-Cal Recovery Program on the Medi-Cal for Long Term Care page at www.canhr.org.

5. **Special Needs Trust:** If the recipient receives a significant amount of the settlement funds (\$30,000+) and is a person on SSI or Medi-Cal, you may consider creating a trust for their special needs. A Special Needs Trust (SNT) or a Pooled Trust (for small amounts and for persons over 65) is a way to reserve money for the person's needs that Medi-Cal or SSI won't pay for and it will not affect public benefits.
6. **Some Ways the Settlement Money Can Be Used if on Medi-Cal (non-SSI Recipients):** although you are limited to \$2,000 in resources, you can use the settlement money to improve your quality of life.

If you are at home on Medi-Cal:

- Home Improvements (new roof, painting, new appliances)
- Prepay Rent and Utilities
- New Car (limit one)

- Pay Down Debt
- Make gifts or spend on anything for your benefit

If you are in a nursing home on Medi-Cal:

- New Clothes and Shoes — but mark to keep from theft and loss
- New Television, Radio, Telephone or An Electronic Reading Device
- Prepay Cable, Telephone and Internet
- New hearing aide, dental needs, or eyeglasses
- Give Gifts less than \$7,549

Note: You can always prepay funeral and burial costs.

- *Questions? Call CANHR at (800) 474-1116.*
- *To learn more about Long Term Care Medi-Cal, Spending Down and Gifting, Eligibility, Resources Limitations or Share of Cost for Long Term Care Medi-Cal see CANHR's Fact Sheet on Long Term Care Medi-Cal at www.canhr.org.*

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