

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

## Treatment of Funds Received from the Hycare, Inc., et al. Settlement

**WARNING:** This notice only applies to plaintiffs/class members of the class action lawsuit entitled *Regina, et al. v. Hycare, Inc., et al.*, (Superior Court of the State of California, In and For the County of Alameda, Case No. RG 12647573) (the “Lawsuit”). 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 September 12, 2008 through and including November 1, 2015, or, if such a resident is now deceased, his or her survivors or heirs:

### Kyakameena Care Center, also known as:

**Kyakameena Sanatorium**

**San Leandro Health Care Center**

**Elmwood Care Center**

**Willow Pass Health Care Center**

**Red Bluff Health Care Center**

**Jones Convalescent Hospital**

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. **Medi-Cal Recipients in a Nursing Home:** A Medi-Cal recipient must report receipt of any income or assets that would affect the share of cost or eligibility to their county Eligibility Worker within 10 days. However, monies received in a given month are considered income in the month of receipt, so they can be spent down for any purpose.

For example, a current nursing home resident received a settlement check for \$1,000 in the month of January. It is considered income, but he/she would still want to spend it down within the month to ensure that their Medi-Cal will not be discontinued for February for being over the asset limit—excess of \$2,000. The resident can gift away the funds in the month of receipt or spend it on anything they prefer.

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

- Buy a gift card (e.g., Target, Walgreens, etc.) of any amount
- 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

- Gift Cards of any amount (do not count as assets for Medi-Cal purposes)
- You can always prepay funeral and burial costs

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, it needs to be spent down by the end of that month or Medi-Cal could be discontinued for excess income. 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 receives the settlement funds on January 5, he needs to report it within 10 days and 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. At the end of the month the recipient can send proof that the funds have been spent/ transferred. Important: There are no transfer penalties when you are at home on Medi-Cal, so you can gift, transfer or spend down assets on anything.

**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
- Gift Cards of any amount (do not count as assets for Medi-Cal purposes)

3. **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 and the amount received. The State's recovery program has stated that they do not consider \$500 or less in an estate worth the funds to recover. However, anything received by the deceased Medi-Cal beneficiary's estate over and above \$500 will be subject to recovery. **If the beneficiary has died, it is always best for the checks to be made out to the deceased beneficiary's heirs or survivors. That way the funds will not be part of the estate.**

See CANHR's Fact Sheet on [California's Medi-Cal Recovery Program on the Medi-Cal for Long Term Care](http://www.canhr.org) page at [www.canhr.org](http://www.canhr.org).

4. **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.

5. **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 January 2016—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 January; therefore she will not be eligible for SSI in that month. As long as Susan spends it down in January and doesn't carry more than \$2,000 in assets for February, the only penalty would be one month of discontinuance for SSI. She would report the change of income to Social Security by February 10, 2016.

If you have questions about your settlement visit:

[www.HycareFacilitiesSettlement.com](http://www.HycareFacilitiesSettlement.com)

Or call the settlement administrator Gilardi & Co. LLC at 1-877-255-2662.

If you have questions about this factsheet or how the settlement will affect your benefits, 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](http://www.canhr.org).