December 22, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to former homes of Medi-Cal beneficiaries in long-term care facilities (File No. SA1999 RF 0061). This measure, entitled the California Medi-Cal Initiative, would amend the Welfare and Institutions Code to eliminate the state's authority to place liens against a Medi-Cal beneficiary's principal residence in order to recover health care costs paid by the Medi-Cal Program.

Background

Most Medi-Cal beneficiaries who are in nursing homes or other long-term care facilities qualify for Medi-Cal by meeting the requirements of the "medically needy" eligibility category. In order to qualify as medically needy and receive no-cost Medi-Cal benefits, residents of long-term care facilities must have no more than $35 per month of income and their nonexempt property cannot have a value that exceeds the "property reserve" of $2,000 (after allowable allocations to the person's spouse, if any). Persons with income or property in excess of these limits must "spend-down" their excess income or property before Medi-Cal will cover any of their health care costs. For example, if nursing home care for an individual costs $3,000 per month, and the individual has a monthly income of $1,000, then the individual is responsible for $965 ($1,000 minus $35) of the monthly cost, and Medi-Cal pays the remainder of $2,035.

Existing law exempts a person's principal residence from the Medi-Cal property limits. This exemption continues to apply to Medi-Cal beneficiaries residing in long-term care facilities, *provided that* they indicate an intent to return to their home (regardless of their medical condition). Most such beneficiaries who own a home indicate their intent to return home.

If a beneficiary does not indicate an intention to return to his or her former home (and if a spouse, child, or other dependent relative does not reside in the home), the net value of the former home, after a $6,000 deduction, may be counted towards the property limit. However, the value of the property will continue to be excluded from the property limit if the former home is put up for sale. State law requires the Department of Health Services (DHS), which administers the Medi-Cal Program, to place a lien against the property in these cases in order to facilitate recovery of Medi-Cal costs from the proceeds of the eventual sale. In the event that the beneficiary returns to live in the former home regardless of his or her earlier intent, the lien is dissolved, and the home becomes fully exempt property as the beneficiary's principal residence.

Effect of This Measure

This measure prohibits the state from placing a lien on the principal residence of any medically needy Medi-Cal beneficiary. The measure also eliminates the existing provision of state law that exempts former homes of institutionalized beneficiaries from the property limit, provided that the home is put up for sale. (Homes to which a beneficiary does intend to return would remain exempt from the property limit.)

Although the initiative would eliminate the *specific* exemption for former homes in state law, former homes put up for sale would remain exempt from the Medi-Cal property limit. This is because other state law requires the Medi-Cal Program to follow federal Medicaid rules in determining the property limit. Those rules prohibit the state's property limit for elderly, blind, or disabled persons from being more restrictive than the property limit used by the federal government to determine eligibility for the Supplemental Security Income (SSI) program, which provides grants to low-income elderly, blind, or disabled persons. The SSI eligibility rules allow persons to own nonliquid assets, such as real estate, that exceed the regular SSI property limit, provided that they put the excess property up for sale. Accordingly, former homes put up for sale would remain exempt from the Medi-Cal property limit.

The current Medi-Cal lien process enables the state to recover health care costs directly from the sale proceeds of property. In the absence of liens, however, federal law requires the state to seek recovery of health care costs from the *estate* of deceased institutionalized Medi-Cal beneficiaries whose former homes constituted "excess" property. By eliminating state authority to place liens against former homes, this measure would restrict the state to using the estate-recovery approach.

Fiscal Effect

The DHS indicates that the existing lien provision regarding former homes affects only a very small portion of the Medi-Cal long-term care population, since almost all homeowners indicate a desire to return to their homes. Currently, the department has about 100 liens in force (compared with a Medi-Cal long-term care population of about 70,000) and collects approximately $500,000 annually through these liens to offset Medi-Cal costs. The state and federal governments, which share Medi-Cal costs on a roughly equal basis, also share these recoveries, so that the state receives about $250,000 annually from this source.

By prohibiting these liens, the initiative would require the state to seek recoveries from estates, which is likely to be more complex and take longer to accomplish than the use of liens. Consequently, this measure may reduce the amount recovered by the state to some extent and/or increase collection costs. Given the small amount of current recoveries from former homes, however, this measure would not have any material fiscal effect on state spending for the Medi-Cal Program, which currently exceeds $7 billion annually.

Summary of Fiscal Effect. We estimate that this initiative will have a negligible effect on state revenues and spending.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance