STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY PETE WILSON, Governor

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August 11, 1998

TO: All County Welfare Directors
All County Public Health Directors
All County Administrators
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 98-31

CLARIFICATION OF APPLICATION OF SPOUSAL IMPOVERISHMENT RULES TO SPOUSES WHO ARE ENROLLED IN PROGRAMS FOR THE ALL INCLUSIVE CARE OF THE ELDERLY

Ref.: All County Welfare Directors Letters No. 97-18

This is to provide clarification of the policy issued in All County Welfare Director Letter (ACWDL) 97-18 regarding the application of the spousal impoverishment provisions to beneficiaries who are participants in a Program for All Inclusive Care for the Elderly (PACE) and the spouses of these beneficiaries. This ACWDL will be primarily of interest to the three counties, Alameda, Sacramento, and San Francisco, in which PACE programs are located.

ACWDL 97-18 provides that the spousal impoverishment provisions apply to a spouse enrolled in a PACE program (PACE spouse) who has a community spouse. Under these provisions, the PACE spouse is considered to be in his/her separate Medi-Cal Family Budget Unit (MFBU) and permitted to transfer resources and income under the spousal impoverishment rules to his/her community spouse. This ACWDL addresses certain living situations, and the treatment of income and property in those living situations, which ACWDL 97-18 did not address.

SPOUSAL IMPOVERISHMENT INCOME PROVISIONS APPLICABLE TO CERTAIN PACE SPOUSES

The Pace Spouse is Living in the Home and the Other Spouse is Institutionalized: The spousal impoverishment provisions described in ACWDL 97-18 are not applicable if the PACE spouse does not have a community spouse. If the former community spouse, who was previously living in the home of the PACE spouse becomes institutionalized, the PACE spouse no longer has a community spouse and the PACE spouse is no longer treated as if he/she were institutionalized. The PACE spouse, who in fact is living in the home, now becomes the community spouse. The former community spouse, who now resides in the nursing home or medical care facility, becomes the institutionalized spouse. (See the Section below, titled "Spousal Impoverishment Resource Provisions" for background and additional information on how the institutionalization in a nursing home or medical facility of the PACE participant or his spouse affects their status under the spousal impoverishment rules.)

The spouse in the nursing home or medical facility is subject to the spousal impoverishment income provisions and may allocate his/her income to the PACE spouse. Allocations from the institutionalized spouse to the PACE spouse are income to the PACE spouse. The PACE spouse, now the community spouse, cannot allocate to the institutionalized spouse. The policy in this paragraph applies whether the institutionalized spouse was on Medi-Cal previous to becoming institutionalized.

The Pace Spouse and the Other Spouse Are Institutionalized: A PACE spouse with a community spouse may himself or herself become institutionalized in a nursing home or other medical facility. The regular spousal impoverishment rules apply to this situation. However, if the PACE participant is residing in a nursing home and the community spouse subsequently becomes institutionalized, both spouses are now institutionalized and the spousal impoverishment provisions no longer apply to either spouse. The former community spouse who has recently been institutionalized cannot make a spousal income allocation to the PACE spouse. No allocations are allowed from either spouse to the other in this situation. This is because, in contrast to the circumstances described under the heading above this one, the PACE spouse is actually institutionalized. If the spouse of the institutionalized PACE spouse also becomes institutionalized, there is no longer a community spouse. The existence of a community spouse is a requirement for the application of the spousal impoverishment provisions.

SPOUSAL IMPOVERISHMENT RESOURCE PROVISIONS APPLICABLE TO CERTAIN PACE SPOUSES

The PACE Participant Continues Living at Home; His/Her Spouse Becomes Institutionalized: Often, the purpose of a waiver or demonstration project is to apply rules which are not applied in the regular Medi-Cal program. Example: in regular Medi-Cal, spousal impoverishment rules apply when one spouse is actually institutionalized and meets the definition of an institutionalized spouse. However, a waiver or demonstration project will allow the provision of spousal impoverishment rules when there is not an actual institutionalized spouse. That means that a spouse in a home or community-based waiver or in PACE is NOT institutionalized, but is able to have spousal impoverishment rules apply.

Generally the PACE participant lives at home with his/her spouse, and based upon the waiver or demonstration project, spousal impoverishment rules apply even though the PACE participant is at home. However, if the PACE participant's spouse becomes institutionalized, that spouse is defined as the institutionalized spouse as long as he/she is expected to remain in the medical institution or nursing facility for 30 consecutive days. The PACE spouse, since he/she is not actually institutionalized, under the regular spousal impoverishment rules, is defined as the community spouse since he/she remains at home and is married to an institutionalized spouse.

The circumstances may be reversed in some cases and the PACE participant actually becomes institutionalized. At that point, he/she meets the definition of an institutionalized spouse under the regular spousal impoverishment rules, without the need for the waiver or demonstration project to allow the spousal impoverishment rules, as long as he/she is expected to remain in the medical institution or nursing facility for 30 consecutive days. The PACE participant's spouse remains the community spouse as long as he/she remains at home.

Finally, when the circumstances of the spouses change and one or both become institutionalized, if both spouses decide that they each want to receive Medi-Cal, then the spouses will remain in separate MFBUs. In order to be eligible for Medi-Cal, the spouse that retained the community spouse resource allowance (CSRA), will have to spend down his/her property to the $2,000 property limit for one.

When the circumstances of the spouses involved in PACE change, the county shall explain to the applicant and spouse, or authorized representative(s) that the couple may choose to cover one or both spouses. The county shall also explain the ramifications of both options.

1. Both spouses want to be Medi-Cal eligible.

If the PACE participant's spouse becomes institutionalized and wishes to be on Medi-Cal and the PACE participant remains at home and wishes to remain on Medi-Cal, then the spouses remain in separate MFBUs. In order to establish eligibility, however, the PACE participant's spouse will need to spend the remaining CSRA down to $2,000.

2. The couple want eligibility for one spouse only.

- The couple wishes to establish eligibility for the PACE participant's spouse who has become actually institutionalized and now meets the definition of an institutionalized spouse and wishes to discontinue Medi-Cal eligibility for the PACE participant.

  Because the application is for a newly institutionalized spouse with a community spouse, under the regular spousal impoverishment rules counties shall count the nonexempt available property held in the name of either or both spouses and compare that against the CSRA plus the $2,000 allowed for the institutionalized spouse. As soon as the couple spends down their countable property to that amount, the county shall establish initial eligibility and another CSRA transfer period shall begin. The couple has until the end of the month in which the 90th day occurs from the date of the notice of action granting initial eligibility, to transfer the CSRA into the name of the community spouse only. At the end of the CSRA transfer period the institutionalized spouse may have no more than $2,000 worth of countable property in held in his/her name.

REMINDER: The CSRA transfer period shall be extended to take into consideration such time as necessary to obtain a court order for support thereby increasing the CSRA and/or transfer the CSRA to the new community spouse as long as either spouse, or authorized representative of either spouse, informs the county of their plans and provides verification that continuous steps are being taken to obtain the court order.

- The couple wishes to maintain Medi-Cal eligibility for the PACE participant only who became actually institutionalized and meets the definition of an institutionalized spouse. The institutionalized spouse continues to be the Medi-Cal beneficiary and is not a newly institutionalized applicant. The PACE participant's spouse meets the definition of a community spouse because he/she remains in the home. The spouses remain in separate MFBUs and there is no additional spenddown since the PACE participant's spouse continues to be considered the community spouse.

The PACE Participant and the PACE Participant's Spouse Both Become Institutionalized
Should both spouses become institutionalized after having received the benefit of the spousal impoverishment rules, unless both spouses want Medi-Cal there is no new spenddown. The MFBUs are not recombined. If the spouse who retained the CSRA wishes to establish eligibility for Medi-Cal, then he/she will need to reduce his/her property to the $2,000 property limit for one.

Please direct questions regarding spousal income allocation issues to Dave Rappolee at (916) 657-0163, and questions regarding the CSRA to Sharyl Shanen-Raya at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

Angeline Mrva, Chief
Medi-Cal Eligibility Branch