State of California—Health and Human Services Agency
Department of Health Care Services

TOBY DOUGLAS
Director

EDMUND G. BROWN JR.
Governor

November 9, 2011

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 11-38
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY MEDS LIAISONS

SUBJECT: INSTRUCTIONS FOR IMPLEMENTING THE LESS RESTRICTIVE PROVISIONS OF ASSEMBLY BILL 1269 FOR THE 250 PERCENT WORKING DISABLED PROGRAM

The purpose of this letter is to notify counties of upcoming changes that will affect the 250 Percent Working Disabled Program (250 Percent WDP). Effective August 1, 2011, the less restrictive provisions of Assembly Bill (AB) 1269 are to be implemented based upon the recently received approval of our State Plan Amendments submitted to the Centers for Medicare and Medicaid Services (CMS). The less restrictive provisions expand the current 250 Percent WDP by allowing additional income and resource exemptions and allowing a beneficiary to remain on the program for up to twenty-six weeks if he or she is temporarily unemployed. The more restrictive provisions, pertaining to counting certain income exempted during the eligibility determination process when determining the premium amount for the 250 Percent WDP and changing the current premium methodology from a sliding scale process to a calculation of five percent of net nonexempt income, will not be effective until CMS determines that California's State Health Insurance Exchange is fully operational.

<u>Background</u>

AB 1269 was approved and chaptered in October 2009 (Chapter 282, Statutes of 2009). In 2011 subsequent legislation, AB 97, Section 91, was approved to ensure continued federal funding for the Medi-Cal program. Section 91 allows the less restrictive provisions of AB 1269 to be implemented once the enhanced federal funding under the American Recovery and Reinvestment Act of 2009 is no longer available. Section 91 also prevents any violations of the maintenance of eligibility requirements under the Affordable Care

Medi-Cal Eligibility Division
1501 Capitol Avenue, MS 4607, P.O. Box 997417, Sacramento, CA 95899-7417
(916) 552-9430 phone, (916) 552-9477 fax
Internet Address: www.dhcs.ca.gov

Act (ACA) by delaying the more restrictive provisions contained in AB 1269 until they are permitted under the ACA. At this time, we plan to implement the less restrictive provisions of AB 1269 which are:

- Permit 250 Percent WDP participants to remain on the program during periods of temporary unemployment up to 26 weeks during each annual eligibility time period as long as the participants continue paying their monthly premiums.

- Exempt retained earned income when held in a separately identifiable account as long as it is not comingled with other resources.

- Exempt a 250 Percent WDP participant's Social Security disability income that has converted to Social Security retirement income when the individual retires, including any increase (cost-of-living increases) in that income.

- Extend the current exemption of retirement arrangements for the 250 Percent WDP participants to those who leave the 250 Percent WDP for other Medi-Cal programs that serve aged, blind and disabled individuals.

Twenty-Six Weeks of Temporary Unemployment

The timeline for measuring the period of unemployment will begin with the date that the 250 Percent WDP participant states that their unemployment began. If counties have other sources of information (such as Income Eligibility and Payment Verification System, Employment Development Department printouts) available to them that documents a client's employment/unemployment, we encourage counties to use that information as proof of unemployment. This information needs to be documented in the county's eligibility record for this individual and acted upon after the twenty-six week period expires by contacting the individual regarding their employment status. If the 250 Percent WDP participant remains unemployed past twenty-six weeks per each annual eligibility period, the county shall review the case and redetermine eligibility for other Medi-Cal programs. Counties are reminded that, consistent with the current policy on premium payments, counties are not responsible for tracking or enforcing the collection of premium payments during the period of unemployment for the 250 Percent WDP.

Exempt Retained Earned Income

All retained earned income is exempt and will continue to be exempt as long as it is held in a separately identifiable account and it is not commingled with other resources. Additionally, there is no maximum limitation on the amount that an individual can keep in their separately identifiable account as exempt retained earned income. A separately identifiable account is any account that can be distinguished from an individual's checking and savings account that is counted as a resource under the Medi-Cal program.

Counties shall require individuals to furnish proof of their exempt retained earned income and this income should not be combined with their personal checking, savings or other resources that would be counted as a resource under the Medi-Cal program. If interest accrues on these accounts, the interest income cannot remain in the account. Any interest that accrues when determining eligibility for the 250 Percent WDP shall be counted as interest income under the Medi-Cal program. Interest income generated by interest bearing accounts shall be considered unearned income in accordance with Section 50507 (20), Title 22 of the California Code of Regulations (CCR) and All County Welfare Director's Letter 05-17 and shall be handled in accordance with the instructions in Article 10 of Title 22 of the CCR.

Exempt Disability Income That Converts to Retirement Income

This provision applies to all new 250 Percent WDP applicants and currently enrolled individuals whose Social Security income based on disability converts to Social Security income based on retirement. This provision also applies to individuals who have been denied or discontinued due to their income being converted to retirement income since August 1, 2011. These groups of individuals are identified as:

- Individuals applying after August 1, 2011, regardless of their age at the time of their application.

- Individuals currently enrolled in the 250 Percent WDP who will be reaching their full retirement age for Social Security purposes.

- Previously enrolled individuals in the 250 Percent WDP that were discontinued because their Social Security income based on disability converted to Social Security income based on retirement.

The exception to this provision is individuals receiving disability income, which converts to retirement income from sources other than Social Security, such as other public or private retirement organizations. For example, if an individual receives disability benefits through a public entity such as California Public Retirement System, those benefits are not considered Social Security income based on disability. Therefore, if the individual became eligible for Social Security income based on retirement, this provision would not apply.

For discontinued individuals, counties should evaluate all sources of information available to them including information from the Social Security Administration and the Medi-Cal Eligibility Data System (MEDS) to substantiate Social Security income based on disability.

Counties can also request award letters from individuals or ask them to produce written verification from their local Social Security Administration (SSA) Office. If the individual is a Disabled Adult Child or Disabled Widower, an award letter or written verification from SSA is suggested, but workers may also obtain verbal verification from the local SSA office. The verbal verification from SSA should be documented in the county case file since this specified retirement income is exempt for the 250 Percent WDP.

Continuation of Retirement Arrangement to other Medi-Cal programs

Counties will need to develop a mechanism to track 250 Percent WDP participants as they move into and out of other Medi-Cal programs that require age, blindness or disability as the basis for eligibility. Counties need to document all eligibility records for 250 Percent WDP participants with retirement accounts. The county eligibility records should indicate that the individual’s current exemption of his/her retirement account will continue when transferring eligibility to another aged, blind or disabled Medi-Cal program.

Implementation of All New Income/Retained Income Exemptions

Counties shall retroactively apply these new provisions to all individuals currently enrolled in the 250 Percent WDP going back to August 1, 2011, and to individuals who have previously been denied or discontinued from the 250 Percent WDP starting August 1, 2011.

Counties are to implement these provisions by programming existing county eligibility systems and revising existing Notices of Action (NOAs) as needed. Counties shall review cases at annual redetermination, state hearings, or whenever a case is brought to the counties’ attention, and apply these new policies retroactive to August 1, 2011.

Notices of Action

The Department of Health Care Services (DHCS) is requesting that counties follow instructions issued in All County Welfare Director Letters (ACWDL) 08-32 and 10-20 when sending NOAs.

Outreach

DHCS will be compiling an informational notice (see enclosed informational notice) in English that will be sent to all current individuals in aid code 6G by using data from MEDS regarding the new AB 1269 provisions.

DHCS is requiring that counties use the language from our informational notice to inform all new 250 Percent WDP enrollees on the new AB 1269 provisions. This informational notice will be available on the DHCS website in the future.

DHCS will update ACWDL 09-33 and the Medi-Cal Eligibility Procedure Manual to reflect these new provisions.

If you have any questions regarding this letter, please contact Ms. Tammy Kaylor, Financial Unit at (916) 327-0406 or by email at Tammy.Kaylor@dhcs.ca.gov.

Original signed by:

René Mollow, MSN, RN, Chief
Medi-Cal Eligibility Division

Enclosure:

IMPORTANT INFORMATION REGARDING THE MEDI-CAL 250 PERCENT WORKING DISABLED PROGRAM

The California Department of Health Care Services is sending you this notice to inform you of the recent changes in the law that affect the 250 Percent Working Disabled Program. Beginning August 1, 2011:

- You can remain in the 250 Percent Working Disabled Program for up to 26 weeks if you become unemployed. You will be required to pay your monthly premiums while unemployed.

- You can save your earned income as long as it is kept in a separate account from your regular savings and checking accounts. The earned income that you save in your separate account **will not** be counted as income used to determine your eligibility for the 250 Percent Working Disabled Program.
  NOTE: *If your separate account earns interest – that interest may be counted as income for the Medi-Cal program.*

- You can stay in the 250 Percent Working Disabled Program if you receive Social Security Income, based on your disability, that changes to Social Security Retirement Income, when you reach your full retirement age. Social Security Retirement Income, including cost of living increases, is now exempt for the 250 Percent Working Disabled Program.

- If you currently have an Internal Revenue Service approved retirement plan (such as a 401K, 403B, or Keogh plan) that is currently exempt for the 250 Percent Working Disabled Program, those plans will remain exempt if you leave the 250 Percent Working Disabled Program and you qualify for a Medi-Cal program based on being aged, blind, or disabled.

If you have any questions about this notice, please contact your local county Social Services Agency. They have interpreters to assist you with reading this notice in languages other than English. Your Social Services Agency is where you received your eligibility determination for the Medi-Cal 250 Percent Working Disabled Program. Be sure you bring a copy of this notice when discussing with your Social Services Agency.