



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



GAVIN NEWSOM
GOVERNOR

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TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 21-19
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: Pacific Gas and Electric Company Settlements

The purpose of this All County Welfare Directors Letter (ACWDL) is to provide instructions to counties regarding the treatment of Pacific Gas and Electric Company (PG&E) settlement payments as a result of several California wildfires. Payments from these settlements may be counted in the eligibility determination depending on the terms of the settlement.

Background

PG&E has agreed to settlements with the Official Committee of Tort Claimants (TCC) and with firms representing individual claimants who sustained losses from the 2015 Butte Fire, 2017 Northern California Wildfires and 2018 Camp Fire, as well as major groups of wildfire claim holders including a \$1 billion settlement with cities, counties and other public entities, and an \$11 billion agreement with insurance companies and other entities that have already paid insurance coverage for claims relating to the 2017 and 2018 wildfires.

Treatment of Settlement Income for Modified Adjusted Gross Income (MAGI) Medi-Cal

For the purposes of MAGI Medi-Cal eligibility, payments received from PG&E settlements are generally not considered taxable by IRS rules and therefore, are not counted as income in the eligibility determination. However, there are instances when the income, as a result of a legal settlement, may be taxable. Therefore, counties must discuss the terms of the settlement with the Medi-Cal applicant or beneficiary to ascertain how the settlement funds will be allocated, i.e., to pay back property damage, lost wages or profits etc., and to determine the frequency of the payment (such as a one-time lump sum or recurring payment). The county may advise the Medi-Cal applicant or beneficiary to contact the attorney or organization handling the settlement

to determine how the funds will be allocated and if it is tax exempt. As a reminder, per [ACWDL 15-15](#), county eligibility workers (CEWs) shall not provide beneficiaries or applicants with tax advice.

Additional Information for Covered California

For the purposes of Covered California eligibility, whether the income is countable or not depends on the purpose for which the individual received those awards and what the settlement (and its corresponding payments) intended to replace. For example, compensatory damages an individual receives for personal physical injury or physical sickness, including damages received for emotional distress due to a physical injury or sickness are not included in their taxable income. However, interest on any award, compensation for lost wages or lost profits (in most cases), and punitive damages (in most cases) are included in the taxable income. Applicants or consumers can consult with a tax advisor for assistance in determining if the settlement should be included when applying for a Covered California health insurance plan.

Once the necessary information has been acquired as to the purpose in which an individual receives a settlement, the CEW can utilize the following resources to assist in determining whether or not the settlement income is taxable and included in the financial determination for MAGI Medi-Cal or Covered California:

- [The Income and Deductions Type Chart](#) located on the County Operations Page of the DHCS website,
- [IRS Publication 4345](#),
- [IRS Tax Implications of Settlements and Judgments](#), and
- [IRS Publication 547](#)

Treatment of Settlement Income for Non-MAGI Medi-Cal

For the purposes of Non-MAGI Medi-Cal eligibility, payments received from PG&E's settlements may or may not be included as income or property depending on the terms of the settlement. These payments may be in the form of an insurance payment, a settlement payment, or payments dispersed through a Fire Victims Trust that was established to assure the claims of individual wildfire victims. Counties must discuss the terms of the settlement on an individual case basis to determine whether or not the payment is countable.

Payments or funds received from **any** source intended to replace lost, damaged, or stolen excluded resources, are exempt as property for a nine-month initial period plus

any applicable extension periods. For example, if the county finds that the applicant/beneficiary has good cause when circumstances beyond their control prevents the repair or replacement of the exempt property, the initial nine-month period can be extended for up to an additional nine-months, for a total of eighteen-months, only if the applicant/beneficiary intends to use the funds for the designated purpose per [Medi-Cal Eligibility Procedures Manual \(MEPM\) Article 9](#). Additionally, there is the potential that applicants or beneficiaries may receive settlement payments in multiple disbursements. Each payment shall have its own initial nine-month exemption period that will begin from the month of receipt.

Furthermore, if the payments or funds received are for:

- Nonexempt property damage, then the payment would be considered property in the month of receipt pursuant to Title 22, CCR, Section 50407(b) or,
- If the payment comes in the form of settlements for the purposes of pain and suffering or for basic unmet needs, then the payment is not excluded and should be included as income as a one-time lump sum counted in the month received, and if retained, is countable property in the following month.

Lump Sum Income or Property

For Non-MAGI, lump sum payments, such as payments for pain and suffering, are considered income in the month received, and, if not spent down before the end of the following month, the payment would be countable property in that following month. As always, the individual has 10 days to report the receipt of the payment and the county must issue a 10-day notice for adverse actions. Therefore, if the month of receipt is too late for issuing a 10-day notice of action (NOA) for share of cost, the county may need to issue a 10-day NOA for excess property for the first of the following month.

When an individual reports the receipt of a nonexempt payment, the county must:

- Ask the individual what they plan to do with the payment,
- Advise the individual that their case may be terminated for excess property at the end of the following month,
- Explain options for the individual to maintain eligibility by spending down, transferring or taking actions to make the payment unavailable,
- Inform the individual that they need to provide receipts or other verifications such as bank and credit card statements to establish what they did with the payment

(payment of any legal debt is considered a transfer for adequate consideration),
and

- Inform the individual that if the spenddown or allocation sufficiently reduces the household's non-exempt property below the property limit before the end of that following month, then the county will rescind the discontinuance and that there will be no break in Medi-Cal coverage.

For spenddown and transfer of property options, counties shall either mail or review the spend down options and transfer of property rules that are described on the form [“General Property Limitations” Information Notice MC 007](#), to the applicant or beneficiary, also ensuring that narrations in the Statewide Automated Welfare System (SAWS) are included as to which action was taken. Counties shall explain that if the payment is received by a beneficiary to whom the spousal impoverishment provisions apply due to the beneficiary’s long-term care or home and community based waiver or program participation, the transfer of the payment to the community spouse as the community spouse’s sole and separate property will not affect eligibility. Individuals may also transfer the funds into a trust for the benefit of any disabled individual or trust as a result of the Achieving a Better Life Experience (ABLE) Act, otherwise known as an ABLE account (see [ACWDL 19-21](#) for further information). Neither of these transfers would result in a period of ineligibility for nursing facility level of care of an institutionalized individual. If the amount is transferred by a non-institutionalized individual to any individual, such as a son or daughter, there will not be a transfer of property penalty as long as they do not need nursing facility level of care for the next 30 months.

Individuals may make otherwise countable funds unavailable if they have a contract with or have made a deposit to a contractor to perform services for the purpose of repair or replacement of damaged property. The funds must be transferred into an escrow account or any another account in which the funds are identified to pay for the future services. This is considered an encumbrance on those funds and would reduce the net market value of the funds in that account to zero.

Treatment of Disaster Relief Payments

Due to the historic wildfires that swept through California, many affected individuals may have applied for and potentially received qualified disaster relief payments. A qualified disaster includes a federally declared disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act per Section 26

U.S.C. §165(i)(5)(A). Pursuant to Section 139 of Title 26 of the United States Code (26 U.S.C. §139), the definition of a qualified disaster relief payment includes:

- Any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- Qualified disaster relief payment exemptions only apply to payments made by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster. **PG&E is an American investor-owned utility with publicly traded stock and does not qualify under the plain meaning of a disaster assistance organization,** and
- Additionally, gross income shall not include any amount received by an individual as a qualified disaster relief payment. Therefore, qualified disaster relief payments received remain exempt in the financial determination of eligibility for MAGI, Non-MAGI Medi-Cal and APTC.

Further guidance for the treatment of federal, state and local disaster assistance payments related to Non-MAGI Medi-Cal can be found in; [ACWDL 92-08](#), [CCR Title 22, § 50535.5](#), and [CCR Title 22, § 50481](#), while treatment of disaster assistance for MAGI Medi-Cal can be found in [ACWDL 15-36](#).

Affidavit for Verification

Counties shall accept a sworn statement signed under penalty of perjury as verification to determine the purpose of the current payment for instances when the individual is unable to obtain any additional detailed information for their settlement payments. The sworn statement must clearly indicate that the payment is for the purposes of replacement or repair of lost, damaged, or stolen exempt property in order to be considered exempt property. Additionally, when the applicant or beneficiary opts to complete a written affidavit, CEW's may assist and/or advise the applicant or beneficiary in indicating on the sworn statement as specifically as possible how they intend to use the income. Counties are further reminded that they must accept electronically signed verifications, such as by phone, email, fax, or uploads, per [ACWDL 19-17](#).

PG&E Settlement Type Reference Chart

The following chart below provides a list for quick reference to the various settlement types and whether or not it is taxable for MAGI Medi-Cal, or included in the Non-MAGI

Medi-Cal budget. This chart is not intended to be exhaustive and CEWs shall continue to discuss the terms of the settlement with the Medi-Cal applicant or beneficiary.

Settlement Type	MAGI	Non-MAGI
Qualified Disaster Relief Payments	Not Counted	Not Counted
Lost Wages*	Count Taxable Portion	Counted
Personal Injury or Sickness*	Not Counted	Counted
Replacement Of Lost, Stolen, Damaged Property As A Result Of A Qualified Disaster	Not Counted	Not Counted For Exempt Property
Interest Earned On A Settlement	Count Taxable Portion	Counted
Lump Sum Payment For Pain and Suffering	Not Counted (if due to physical injury)	Counted
Property Damage*	Not Counted	Counted As Property In Month Received

*CEWs shall review [IRS PUB 4345](#) regarding the settlement payment to determine how these are treated for MAGI Medi-Cal.

NOTE: Per [MEDIL I 20-25](#) and [MEDIL I 20-14](#), counties shall delay negative actions for Medi-Cal, Medi-Cal Access Program (MCAP), Medi-Cal Access Infant Program (MCAIP), and County Children's Health Initiative Program (CCHIP) through the duration of the COVID-19 Public Health Emergency.

If you have any questions, or if we can provide further information, please contact Janis Kimball by phone at (916) 345-8060 or by email at Janis.Kimball@dhcs.ca.gov.

Original Signed by

Sandra Williams, Chief
Medi-Cal Eligibility Division