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

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Medi-Cal Eligibility Division Information Letter No.: I 22-08

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY CONSORTIA MANAGERS
ALL COUNTY MEDS LIAISONS

SUBJECT: FREQUENTLY ASKED QUESTIONS RELATED TO HCBS SPOUSAL IMPOVERISHMENT
(References: All County Welfare Directors Letters 17-25 and 18-19)

The purpose of this letter is to provide counties with frequently asked questions (FAQs) related to the rules and processes for Home and Community-Based Services (HCBS) Spousal Impoverishment (SI) provisions. The Department of Health Care Services (DHCS) conducted a series of trainings on the SI provisions in August and September of 2021, and these questions were developed in response to materials and discussion covered during these trainings.

If you have any questions or if we can provide further information, please contact:

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Original Signed By

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Enclosure

Frequently Asked Questions (FAQs) related to the Home and Community-Based Services Spousal Impoverishment Provisions

Posted March 3, 2022

Commonly Used Acronyms	
HCBS	**Home and Community-Based Services**
SI	**Spousal Impoverishment**
ACWDL	**All County Welfare Directors Letter**
CEW	**County Eligibility Worker**
IHSS	**In-Home Supportive Services**
Non-MAGI	**Non-Modified Adjusted Gross Income**
SOC	**Share of Cost**
IRA	**Individual Retirement Account**
ABD FPL	**Aged, Blind, and Disable Federal Poverty Level Program**
CSRA	**Community Spouse Resource Allowance**
NFLOC	**Nursing Facility Level of Care**
MFBU	**Medi-Cal Family Budget Unit**

A. Application

1. **When an applicant indicates that they have requested waiver services on the Medi-Cal application, does the county eligibility worker (CEW) need to verify, or is the initial request and the MC 604 MDV sufficient to evaluate the individual for Spousal Impoverishment (SI)?**

   The initial request on the application and the MC 604 MDV is sufficient to evaluate. Please remember that there are multiple ways for an applicant/beneficiary to request waiver services, aside from indicating the need on the Medi-Cal application. For more information on this topic, please refer to ACWDL 21-18.

2. **What would happen if the Community spouse passed away in the middle of the application process?**

   If the community spouse was alive during any time of the month, then the SI provisions would apply for that month, pursuant to 22 CCR 50193(d) and 50195(c)(2).

B. Income

1. **In some cases, In-Home Supportive Services (IHSS) income is exempt. Please explain why?**

Non-MAGI IHSS wages are exempt when the caregiver lives in the home with and provides IHSS services to a spouse or disabled minor child. For more information, please refer to ACWDL 07-02.

2. What is the "Name on Check" rule?

The “Name on Check” rule allows the community spouse to keep all of the income received in their name, regardless of the amount. These funds belong to the community spouse only, and are not part of the Medi-Cal budget for the Home and Community-Based Services (HCBS) spouse. Please see below for more information on how the community spouse’s income is used to determine a potential spousal allocation.

3. Can the Community Spouse allocate income to the Institutionalized Spouse/HCBS spouse so that both could have a zero share of cost (SOC) Medi-Cal?

No. The community spouse cannot allocate income to the HCBS spouse for any reason.

C. Minimum/Maximum Monthly Maintenance Needs Allowance (MMMNA)

1. Please explain the MMMNA and how it is used.

The MMMNA is the standard amount of income used to determine the spousal income allocation. The standard MMMNA amount is determined each year by the federal government and reported to counties via an ACWDL. The standard MMMNA amount should be used when calculating the spousal income allocation, unless a state fair hearing or court order has established a higher amount to be used.

If the community spouse has income under the MMMNA, they can receive a spousal income allocation from the HCBS spouse in an amount that will bring the community spouse’s total gross income up to the MMMNA, if the HCBS spouse has that amount available to allocate. If the community spouse’s income is higher than the current MMMNA, then they may not receive a spousal income allocation from the HCBS spouse, unless they have a higher spousal income allocation amount established by fair hearing or court order.

2. Is the MMMNA amount going to be changed when the asset limit is increased in 2022?

No. The MMMNA is federally determined and the asset limit increase for Non-MAGI Medi-Cal programs is a state-level change.

D. Property

1. **Under the SI provisions, Individual Retirement Accounts (IRA) are considered unavailable when receiving periodic payments. Will the interest be counted as income?**

   IRAs are considered unavailable as property for the HCBS spouse when they are receiving periodic payments of principal and interest or if they are taking the required minimum distribution. The entire balance of the IRA is considered unavailable property, including non-distributed interest. The payments/distributions are considered countable income, per 22 CCR § 50507. Please refer to ACWDL 02-51 for additional information about the treatment of IRAs.

2. **If each spouse has a vehicle, is only one exempt? Or since they are in separate Medi-Cal Family Budget Units (MFBU) are they both exempt?**

   When applying the SI provisions, the CEW must first look at all property together. Only the first vehicle would be exempt under the regular Non-MAGI property rules for determining the value of property. Once the couple is determined to be under the community spouse resource allowance (CSRA) plus the current property limit for the HCBS spouse, then the CSRA transfer period begins. Any property included in the CSRA, or any newly acquired property held in the name of the community spouse is unavailable to the HCBS spouse after the CSRA transfer period ends.

3. **Does the Asset Verification Program (AVP) apply to this population?** Yes, the AVP does apply to this population. Any property held by the HCBS and/or community spouse must be verified at the time of the initial application. At redetermination, asset verification is required for the HCBS spouse only.

4. **Are all of the community spouse's resources exempt?**

   No. When evaluating the property that is held in the name of either or both spouses for the initial month of eligibility, regular Non-MAGI rules are applied to each item to determine whether it is exempt, nonexempt or unavailable. Please follow the guidance in Article 9, Title 22 of the California Code of Regulations regarding types of exempt property. Examples of exempt items are also listed on the MC Information Notice 007 and some are included in ACWDL 18-19. After the CSRA transfer period ends, as long as the community spouse's property is below the current CSRA, only property held by the HCBS spouse must be evaluated to determine whether the property is exempt, nonexempt, or unavailable.

E. Transfers

1. **Please define the Potential Spousal Income Allocation. Is it income that would be added to the HCBS spouse's income or deducted?**

   The Potential Spousal Income Allocation is income that can be deducted and transferred from the HCBS spouse to the community spouse in order to reduce the HCBS spouse's income and allow the HCBS spouse to qualify for Medi-Cal. Please see Step 1 of the budget steps worksheet included in MEDIL I 21-07.

2. **When is it appropriate to calculate the budget utilizing the spousal income allocation?**

   Per ACWDL 90-03, spousal allocations must be verified at intake, at redetermination, and whenever a change occurs. The exception would be if instructed to apply the spousal income allocation deduction to the budget automatically, without verification, as part of a state fair hearings process.

   For spouses with joint accounts, there are several ways the transfer of funds can be verified. Please see ACWDL 90-03 question 16 for additional information.

3. **If there are children in the household, can income from the HCBS spouse be allocated to them as well?**

   Yes. Income may be allocated from the HCBS spouse to the community spouse and any dependent family members living in the home. This amount would be in addition to the spousal income allocation. The Family Member Base Allocation (FMBA) is used to determine the amount of the allocation to family members. Please refer to the budget steps worksheet included in MEDIL I 21-07 for more information.

4. **Are there written tips on how to transfer property to the community spouse for clients to refer to, or should counties use the MC 007?**

   The MC Information Notice 007 does include information about transfers of property. However, actual transfers of title are legal actions and may require legal assistance. It is the couple's responsibility to seek such legal advice and make any necessary transfers, and not the county's role to advise on ways to do this. The county's responsibility is to explain the rules and limits under the SI provisions, not to facilitate transfers of property.

F. Community Spouse Resource Allowance (CSRA)

1. **If a couple is over the CSRA at the time of application, should the application be denied for excess property?**

DHCS strongly encourages counties to work with couples who are potentially eligible for SI to meet all eligibility requirements in a timely manner. While it is allowable to deny the couple for having excess property, it would be ideal if the county can support the couple in meeting the criteria without issuing a denial. Please see 22 CCR 50193 (c), which allows the initial month of eligibility to be established in a month that is subsequent to the initial month requested.

2. **Will the CSRA amount be changed when the asset limit is increased for Non-MAGI Medi-Cal programs in 2022?**

   No, it will not. The CSRA is federally determined, and the asset limit increase for Non-MAGI Medi-Cal programs is a state-level change.

G. Nursing Facility Level of Care

1. **What is a nursing facility level of care (NFLOC)?**

   NFLOC is the need for a nursing facility level of care for at least 30 consecutive days. For HCBS SI, a doctor can verify that the individual would need a NFLOC, or it can also be established through a needs assessment completed by IHSS or the HCBS waiver or program. For more information, please see 22 CCR 51120 and 51124.

2. **If a client is receiving a Community First Choice Option waiver (CFCO) aid code and has a spouse, and is potentially eligible for SI, do we need a MC 604 MDV on file?**

   No. In order to be determined eligible for IHSS-CFCO (aid code 2K) the beneficiary had NFLOC status verified, so there is no need for another NFLOC determination. Presence of the aid code 2K can be used to verify NFLOC status.

3. **In the instructions in both the training and the HCBS SI Screening Tool, does "indicate need for services" refer to Medi-Cal Services or SI specifically?**

   The instructions to screen for whether an applicant has indicated a need for services refers to HCBS. These can be waiver services, or IHSS.

4. **Is a written statement from the doctor that has all the required information allowed to be used in place of the MC 604 MDV to verify NFLOC?**

No. The MC 604 MDV is signed under penalty of perjury. If an MC 604 MDV is required, it must be completed by the doctor and returned to the county. Please refer to ACWDL 18-19, page 4 for additional information.

5. **What should the county do if the MC 604 MDV is returned by the client, instead of being delivered directly from the doctor's office? Does the doctor's signature on the MC 604 MDV need to be verified?**

   It is preferred that the MC 604 MDV be returned to the county directly from the doctor's office, but it is permissible for the client to return the form, as long as the county takes the additional step of contacting the doctor's office to verify the authenticity of the information and the signature. This can be done via a phone call or in writing. Please note, for counties that are having issues verifying MC 604 MDV forms, in accordance with ACWDL 18-19 counties are to mail the form directly to the doctor with a postage paid envelope for its return. It is also permissible to instruct the client to have the doctor's office return the form directly to the county. In this case, additional verification would not be necessary.

6. **If a client indicates a need for service, how long is allowed before requiring the client to show proof of receipt of services?**

   Indicating a need for services is sufficient to become eligible for SI. Because waiver waitlists can be long, and actually being enrolled isn't required, simply confirming the request for services is enough. Please see ACWDL 18-19, page 12 for additional information.

7. **How many days are allowed for the client to return the MC 604 MDV?**

   The county must allow the doctor's office a minimum of 10 days to respond. If no response is received, the county should contact the doctor's office and confirm receipt of the form. If the form was not received, the county should provide another copy at that time. Current policy does not specify a maximum amount of time for the form to be returned, but counties are advised to inform the doctor's office of the importance of returning the form promptly so that the Medi-Cal application may be processed timely.

8. **Can an HCBS waiver be applied to a married couple where both require NFLOC?**

   Both spouses, if eligible for full scope federally-funded Medi-Cal, are permitted to participate in an HCBS waiver and programs or receive IHSS services. However, for the HCBS SI provisions to apply, there must be a

community spouse, meaning a spouse who does not participate in an HCBS waiver or program.

9. **Do SI provisions begin in the month they meet NFLOC, or 30 days after?**

   SI provisions should be applied in the first month the applicant meets all of the eligibility criteria, including NFLOC. There is no waiting period once the criteria are met. The only 30-day requirement is that the doctor must indicate that the individual requires at least 30 continuous days of NFLOC.

H. Medi-Cal Hierarchy

1. **During the training, counties were instructed not to apply the SI provisions to the Mega Mandatory groups. Are there any exceptions?**

   ACWDL 18-19 states to check for Pickle eligibility before evaluating for Non-MAGI program eligibility. At this time, SI provisions may be applied to individuals who are eligible for Pickle. There is not a DHCS-approved budget for the application of SI provisions to the Pickle program available at this time.

I. 250% Working Disabled Program

1. **For the 250% Working Disabled Program (WDP), under SI provisions, will the client need to be deemed disabled by the state? Or does MC 604 MDV suffice to evaluate under 250%?**

   The SI provisions effect only the income and property rules for eligibility. There is no change to the process for being determined disabled when someone is SI eligible. For additional information about the 250% WDP and disability, please see ACWDL19-12 .

2. **If a community spouse is on the 250% WDP and an IRA was exempted, is the property still exempt for SI provisions?**

   Remember that the SI provisions must be applied as part of determining program eligibility for the HCBS spouse. Items of property and income are determined, defined, exempted, counted and valued or considered unavailable in the same manner as for regular Non-MAGI Medi-Cal. The rules for the program for which the HCBS spouse is being evaluated must be applied.

   As with regular Non-MAGI Medi-Cal, under SI, IRAs and other retirement funds may be treated as exempt if the individual is taking distributions of

principal and interest or the required minimum distribution. Please refer to ACWDL 02-51 for more information.

3. **Following the hierarchy of Non-MAGI Medi-Cal, if an individual fails for the Aged, Blind, and Disabled (ABD FPL) program, but qualifies for the 250% WDP, does the client also need to turn in sworn statement stating that they are working? Do they need to be disabled by Social Security Administration (SSA) definitions?**

   Please refer to ACWDL 19-12 for 250% WDP eligibility rules.

J. Medi-Cal Renewal

1. **At annual renewal, does the CEW need to ask for the community spouse's income to verify if the community spouse can continue receiving a spousal income allocation from the HCBS spouse?**

   Yes. At annual renewal, the budget steps worksheet should be completed again with up-to-date income and potential spousal income allocation calculations.

2. **Is it correct that at annual renewal, only the HCBS spouse's property is being verified (to be under the current property limit for one person)? Can the community spouse have property above the CSRA at that time?**

   Yes, if only the HCBS spouse is receiving Medi-Cal benefits, then only the HCBS spouse's property needs to be re-evaluated at annual renewal. The community spouse's property does not need to be checked at annual renewal. The only exception is if the property is income producing. In this case, the property would still not need to be evaluated, but the income would be considered in determining the spousal income allocation.

K. Retroactive Eligibility

1. **What if a couple is property eligible for only one month in the retro period?**

   If they are eligible for one month, that is sufficient. This will be the initial month of eligibility.

2. **If a couple is determined eligible for no cost Medi-Cal under the Spousal Impoverishment provisions for a retro period, but previously had a SOC, are they now eligible for reimbursements?**

Yes. If an individual paid any money towards a SOC, and was later found eligible under the SI provisions for zero SOC Medi-Cal, then they can be refunded through the Conlan process.

3. **If a couple was previously denied Medi-Cal, and is later found eligible retroactively under the SI provisions, how might this affect IHSS? Can IHSS be granted retroactively?**

   Yes. If an individual was found ineligible due to a failure to apply the SI provisions at the time of application, and would have otherwise been eligible for IHSS services, then services should be granted retroactively. Retroactive IHSS payments may be made to the beneficiary under a special Conlan process. Please see ACWDL 20-15 for more information.

L. Budget Steps Worksheet

1. **Where do we find the budget steps worksheet?**

   The current budget steps worksheet may be found in MEDIL I 21-07.

2. **Can both spouses apply for Medi-Cal and have the SI provisions applied?**

   If both spouses are applying for Medi-Cal and there is both an HCBS spouse and a community spouse, the SI provisions may be applied. The spouses would be in separate MFBUs following the initial determination. However, each spouse would have to spend down to the property limit for one person. The spousal income allocation would still be part of the eligibility determination, but would be determined in collaboration with the couple to determine the best amount, since SOC may be affected.

3. **Will the HCBS SI budget steps worksheet be programmed into CalSAWS/CalWIN in the near future?**

   DHCS has requested automation of the HCBS SI budget steps worksheet in the SAWS system. It has not yet been determined when this will be completed. At this time, all HCBS SI budgets must be completed manually.

4. **The budget steps worksheet from December 2020 (line 17, page 2) states that the incurred Part B premium disregard will continue, even if the state begins paying for Part B. Does that mean that the applicant/beneficiary will continue to get that deduction? Does that also**

mean that if the state was already paying for Part B, that individual now gets that deduction?

Yes. As of December 1, 2020, changes in legislation now allow the Part B disregard for individuals in the ABD FPL program regardless of who is paying the premium. For more information on these changes, please refer to ACWDL 20-18.

5. **Please explain the Pre-and Post-Buy In deductions from Section 4 of the budget steps worksheet. When do they apply?**

   For the Medically Needy program, Part B premium deductions are only allowed Pre-Buy In. The Post-Buy-In amount, for the purposes of this Section of the budget steps worksheet, should be zero.

M. Miscellaneous

1. **What is a registered domestic partnership (RDP) and how is this verified?**

   Registered Domestic Partnership is registered with the state and is not the same as common law spouse. Counties may not request verification. Self-attestation is sufficient, following the same rules that apply to married individuals. Please see ACWDL 12-36 for more information on Registered Domestic Partnership.

2. **When do counties need to submit a copy of the screening tool to DHCS?**

   The screening tool shall be submitted to DHCS if counties require technical assistance, or at the request of DHCS. In both cases, the screening tool and all verifications shall be submitted as well.

3. **Is the HCBS waiver wait list statewide or do individual counties get a specific allotment?**

   There are a number of different waivers available throughout the state. Three of the waiver programs, Home and Community-Based Alternatives (HCBA), Assisted Living Waiver (ALW), and Multipurpose Senior Services Program (MSSP) sometimes have waitlists; however, this can vary by county. Some of the waiver programs are only available in particular counties. CEWs should familiarize themselves with the waiver programs available in their counties.