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Director

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



ARNOLD SCHWARZENEGGER
Governor

February 9, 2009

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 09-04
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY QMB/SLMB/QI COORDINATORS

SUBJECT: INTERIM GUIDANCE SAME SEX MARRIAGES
(Reference: All County Welfare Directors Letter (ACWDL),
Number 09-03)

The purpose of this ACWDL is to provide counties with interim instructions on how to determine Medi-Cal eligibility for those who are spouses of the same sex.

On May 15, 2008, the California Supreme Court held that the constitutional right to marry protected by the California Constitution applies to same-sex couples as well as to opposite-sex couples. (*In Re Marriage Cases* (2008) 43 Cal.4th 757, 829 [76 Cal.Rptr.3d 683, 183 P.3d 384].) This decision became final and effective at 5:00 p.m. on June 16, 2008. (See June 4, 2008, Order Denying Petitions for Rehearing and Requests for Stay in *In Re Marriage Cases*, Case No. S147999.)

In November 2008, voters approved a change to the State Constitution, Proposition 8, entitled "Eliminates the Right of Same-Sex Couples to Marry," that eliminated the right of same sex individuals to marry in California. Proposition 8 became effective on November 5, 2008. (Cal. Const., art. XVIII, § 4.)

Unless and until changed by the courts, the marriages of individuals of the same sex who were married on or after 5:00 p.m. on June 16, 2008, and before November 5, 2008, remain valid as long as the marriage has not been dissolved or annulled.

ACWDL 09-03, dated February 9, 2009, provided counties with instructions for determining Medi-Cal eligibility for those individuals who are in registered domestic partnerships. Similarly, marriages between individuals of the same sex are not recognized by the federal government and, there is no federal reimbursement for any Medicaid expenditure based on same sex marriages. However, same sex spouses have the same rights and responsibilities for any state-only funded programs that are not based on federal law. Therefore, counties shall apply the same instructions provided in the above referenced ACWDL when determining eligibility for same sex couples. These instructions shall also be applied to same sex spouses of legally valid marriages performed in other states as long as the applicant(s)/beneficiary(ies) are current residents of California.

Additional lawsuits have been filed and further instructions may be provided if those decisions change the instructions provided in this ACWDL.

If you have any questions on this issue, please contact Ms. Sherilyn Walden, of my staff, at Sherilyn.Walden@dhcs.ca.gov or at (916) 552-9502.

Original Signed By

Vivian Auble, Chief
Medi-Cal Eligibility Division