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

MICHELLE BAASS
*DIRECTOR*

GAVIN NEWSOM
*GOVERNOR*

DATE: September 14, 2022

Medi-Cal Eligibility Division Information Letter No.: I 22-35

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: ASSET LIMIT CHANGES – UPDATES TO THE SPOUSAL IMPOVERISHMENT SCREENING TOOL

The purpose of this letter is to provide counties with the attached updated Spousal Impoverishment Screening Tool. Effective July 1, 2022, the asset limits for Non-MAGI Medi-Cal programs have changed. The Statewide Automated Welfare System (SAWS) has updated their system with the new asset limits for Non-MAGI programs, including Medicare Savings Programs (MSP) and Long-Term Care (LTC) programs. These changes were enacted by Assembly Bill (AB) 133 (Chapter 143, Statutes of 2021) and increase the asset limits for Non-MAGI programs as described in ACWDL 21-31.

The Department of Health Care Services (DHCS) has updated the Spousal Impoverishment Screening Tool to reflect the changes to the asset limits that are effective July 1, 2022. Please use the updated Screening Tool to process any Spousal Impoverishment cases with an initial and/or applicable application date which is on or after July 1, 2022, as appropriate. As a reminder, for cases which have an initial and/or applicable application date prior to July 1, 2022, the former limits of $2,000 for one person should be used when determining property eligibility prior to July 1, 2022, and the new limits shall be used when determining eligibility July 1, 2022 and later. When applying the spousal impoverishment provisions, use the applicable income and property limits for the month of eligibility being determined.

If you have any questions or if DHCS can provide further information, please contact Sara McDonald at (916) 345-8061 or by email at Sara.McDonald@dhcs.ca.gov.

**Original Signed By**

Sandra Williams, Chief
Medi-Cal Eligibility Division

Enclosure

# HCBS Spousal Impoverishment
# Screening Tool, Checklist and Additional Information

This form is intended for use by County Eligibility Workers in determining whether the Spousal Impoverishment (SI) provisions should be applied to an application, renewal, or when a change in circumstances is reported.

**Section 1** is a preliminary checklist, to be used to quickly identify if a case may be suitable for application of the SI provisions.

**Section 2** is a checklist for processing cases while applying the SI provisions.

**Section 3** provides detailed information and reminders, including references and resources.

**Case Name:** **Case Number:**

**Current Date:** **Month of Eligibility:**

# HCBS Spousal Impoverishment

# Section 1: Screening Tool

Use the following checklist to screen for SI.

- **Is the applicant/beneficiary married or in a registered domestic partnership (RDP)?**
  Yes  No *If yes, proceed to the next item. If no, SI may not be applied.*

- **Has the applicant/beneficiary requested or indicated a need for In-Home Supportive Services (IHSS) or Home and Community-Based Services?**
  (for additional information, please see item #1 in Sections 2 and 3)
  Yes  No *If yes, proceed to the next item. If no, SI may not be applied.*

- **Is the applicant/beneficiary being screened for a Non-MAGI Medi-Cal program?**
  Yes  No *If yes, SI Provisions may be applied.*

❖ If any of the answers above are **No**, and the applicant/beneficiary is not eligible to SI, please document in the journal or case file.

❖ If the answers to all three questions above are **Yes**, then the applicant/beneficiary is potentially eligible to have the SI provisions applied. **Please continue to Section 2**.

**Case Name:** **Case Number:**

**Current Date:** **Month of Eligibility:**

# HCBS Spousal Impoverishment

# Section 2: SI Provisions Checklist

Once a case has been screened for SI eligibility, use the following checklist to apply the SI provisions. Please check-off items as they are completed, and include all necessary forms in the case file, e.g. Budget Worksheet.

1) Determining who SI provisions apply to:

☐ **Is the applicant/beneficiary married or in a RDP?** Yes ☐ No☐

☐ **Has the applicant/beneficiary indicated a need for or requested either In-Home Supportive Services (IHSS) or a Home and Community-Based Services (HCBS) waiver, or have a referral from an IHSS or HCBS coordinator?** Yes ☐ No☐

Please select one or more of the following used to verify need for services:

- ☐ The Medi-Cal Single Streamlined Application (SSApp) in Step 2
- ☐ The SAWS 2 Plus question 6
- ☐ Form MC 216 part 7
- ☐ Form MC 210 RV
- ☐ Through a waiver referral
- ☐ Submission of a waiver application (please see the following link for an example of a waiver application: HCBA Waiver Application
- ☐ Other _____

☐ **Does the applicant/beneficiary meet a nursing facility level of care (NFLOC)?**

Please select one of the following used to verify NFLOC:

- ☐ The needs assessment for Community First Choice Option (CFCO) (which may be verified by the presence of the aid code 2K)
- ☐ The needs assessment for an HCBS waiver or program
- ☐ A MC 604 MDV form

☐ **Has the MC 604 MDV been provided to the applicant/beneficiary?** (if applicable) Yes ☐ No☐ N/A☐

**Case Name:** **Case Number:**

**Current Date:** **Month of Eligibility:**

2) Medi-Cal Eligibility Determination:

☐ **Is the applicant/beneficiary potentially eligible for a Non-Modified Adjusted Gross Income (Non-MAGI) Medi-Cal program?** Yes ☐ No☐

3) Determining the date on which to apply SI Provisions:

☐ **Determine the SI applicable application date.**

- Date of the request/referral for either IHSS or HCBS: _____
- Date the applicant/beneficiary meets a nursing facility level of care: _____
- SI applicable application date (date on which both of above criteria are met): _____

4) Process for applying the SI provisions:

a) Property determination
   - ☐ **Evaluate which items of property are exempt, unavailable, or countable.**
   - ☐ **Compare the net non-exempt, available property of both spouses to the applicable Community Spouse Resource Amount (CSRA) limit plus the $130,000 property limit for one person.**

b) Income calculations
   - ☐ **Calculate countable income.**

c) Manual budgets
   - ☐ **Complete the manual budget worksheet.**
   - ☐ **Retain a copy of the manual budget for the case file.**
   - ☐ **Complete a journal entry.**

d) MEDS
   - ☐ **Complete any necessary overrides.**
   - ☐ **Verify necessary transactions are sent to Medi-Cal Eligibility Data System (MEDS).**

5) Community Spouse eligibility
   - ☐ **Confirm the community spouse is not requesting Medi-Cal.**

- ☐ **Confirm the community spouse is <u>not</u> requesting IHSS or waiver services with a NFLOC.**

6) <u>Retroactive eligibility</u>
   - ☐ **Verify whether retroactive eligibility applies.**

7) <u>Annual renewal process</u>
   - ☐ **Confirm continued HCBS participation.**

# HCBS Spousal Impoverishment

# Section 3: Additional Information

| Commonly used terms: | Definitions: |
|---|---|
| Spousal Impoverishment (SI) Provisions | Financial methodologies that allow the community spouse to retain more income and property when their spouse needs HCBS/IHSS and Medi-Cal |
| Community Spouse | The spouse or RDP who is NOT requesting HCBS services |
| HCBS Spouse | The spouse or RDP who is requesting HCBS services/Medi-Cal |
| CSRA - Community Spouse Resource Allowance | The CSRA is the amount of resources (property and assets) that the community spouse is permitted to retain. |
| Spousal Income Allocation | The amount of monthly income that may be allocated to the community spouse or family member(s). |
| Minimum/Maximum Monthly Needs Allowance | The maximum amount (determined annually) of monthly income allowed for the community spouse, including any income allocations from the HCBS spouse. |

1) Determining who SI provisions apply to:

- There are certain life scenarios that may indicate a need for HCBS. County Eligibility Workers (CEW) should screen for these circumstances, and contact the individual to confirm whether they would like to request services or enroll in a waiver.
  - Discharge from Long-Term Care (LTC)
  - Wanting to stay in home and avoid LTC
  - Declining health
  - Became disabled
  - Existing disability worsened
  - Need assistance at home

- The MC 604 MDV must be signed by a licensed medical provider stating that the applicant/beneficiary requires/required nursing facility level of care for 30 consecutive days.
- CEWs should establish communication with IHSS program staff for any cases where a request for IHSS services is indicated.
- For a list of HCBS waivers and programs, please see the waiver page on the DHCS website.
- CEWs should familiarize themselves with the HCBS waivers and programs available in their county.
- When determining whether an individual is receiving CFCO, check MEDS for the presence of aid code 2K, which may be used to verify that the applicant/beneficiary meets a nursing facility level of care. A full copy of the needs assessment from IHSS is not necessary before applying the SI provisions when CFCO participation has been verified with aid code 2K.

**Remember that the MC 604 MDV must be provided to the applicant/beneficiary as soon as the request for IHSS or HCBS is made if they are not currently enrolled in IHSS-CFCO or an HCBS waiver or program.**

2) Medi-Cal Eligibility Determination:

SI provisions can only be applied when the applicant/beneficiary is potentially eligible for a Non-MAGI Medi-Cal program.

- HCBS SI provisions do not apply to other eligibility categories such as Mega Mandatory or MAGI Medi-Cal.
- If an applicant/beneficiary is determined ineligible for Non-MAGI Medi-Cal due to excess property, do not advise or counsel the applicant regarding spending down their excess property until the county has fully screened the applicant/beneficiary under the SI provisions.
    - If the SI provisions apply, the applicant/beneficiary may not have to spend down their excess property to qualify for Medi-Cal.

3) Determining the date on which to apply SI Provisions:

SI provisions must be applied in the first month when both of the following criteria are met:

- The request for either IHSS or HCBS has been made by the applicant/beneficiary or a referral by an IHSS or an HCBS care coordinator has been made, **and**
- The applicant/beneficiary meets a nursing facility level of care, which can be verified in either of two ways:
    - Needs assessment for Community First Choice Option (CFCO) or for an HCBS waiver program, **or**
        - An MC 604 MDV form signed by a licensed medical provider stating that the applicant/beneficiary requires/required nursing facility level of care for 30 consecutive days.

**The date that both these criteria are met is known as the SI applicable application date for SI provisions. This is the date when the SI provisions must be applied.**

- Example: Applicant submitted an application for the Home and Community-Based Services (HCBA) waiver on May 10, 2021 and the waiver agency advises them they need to apply for Medi-Cal. The application for Medi-Cal is received on June 2, 2021. The applicant provides a copy of the HCBA application with the Medi-Cal application. The county provides the MC 604 MDV to the applicant. The applicant takes the form to their primary care physician, who certifies that the applicant required nursing facility level of care for 30 or more days starting March 15, 2021. **May 10, 2021 is the SI applicable application date. May 2021 is the first month the SI provisions apply.** Please note that the **applicable application date** is often not the same as the Medi-Cal application date.

4) Process for applying the SI provisions:

a) Property determination
- Evaluate which items of property are exempt, unavailable, or countable. Please see below for examples of specific types of property which may require special consideration:
    - Individual Retirement Accounts (IRAs), Keoghs and Work-Related Pension Funds: an applicant or beneficiary must receive periodic payments of principal and interest or a cash lump sum in order for these accounts to be considered unavailable. Provide the MC 355 with a 30-day time period to provide verification of steps taken. If the applicant or beneficiary is of Required Minimum Distribution (RMD) age, ask how they take their RMD (e.g. monthly, quarterly, annually, etc.) and how much the payment(s) will be. Remember that IRAs, Keoghs and Work-Related Pension Funds held in the name of someone who does not want Medi-Cal for themselves are exempt property.

- Compare the net non-exempt, available property of both spouses to the applicable CSRA limit plus the $130,000 property limit for one person, if the applicable application date is July 1, 2022 or later. For applications with an applicable application date prior to July 1, 2022, please use the former property limit of $2,000 for one person when determining property eligibility through June 30, 2022, and use the increased property limits as of July 1, 2022. If countable assets are equal to or below the combined total of the CSRA limit plus the appropriate property limit for one person, then the HCBS spouse meets the property requirements to qualify for Medi-Cal under the SI provisions.
    - The HCBS spouse's property must meet the property limit for one person ($130,000 after July 1, 2022) by the end of the CSRA transfer period (90 days after the HCBS spouse is approved for Medi-Cal under the SI provisions). For additional information on the CSRA transfer period, please see All County Welfare Directors Letter (ACWDL) 90-01.

b) Income calculations
- Calculate countable income using the following guidelines:
    - The spouses are in separate Medi-Cal Family Budget Units (MFBUs), meaning the community spouse's income is NOT counted toward the HCBS spouse's eligibility.
    - The spousal income allocation is optional and may be adjusted to best fit the spouses' circumstances (e.g. in order to preserve Medi-Cal eligibility for the community spouse).
    - Use all applicable Non-MAGI program income deductions and disregards, including the board and care deduction.
    - Compare the applicant's countable income to the FPL for a household of one person since they are in their own MFBU.
    - When calculating the share of cost (SOC), use the $600 maintenance needs income level for a person living in the community.
    - Spousal and dependent family member income allocations apply.

c) Manual budgets
- Budgets for SI/HCBS cases shall be completed **manually** until the State Automated Welfare System (SAWS) programming can be implemented post migration.
- Please see MEDIL 21-07 - Budget Steps for HCBS Spousal Impoverishment.

- The CEW shall retain a copy of the manual budget and complete a journal entry to that effect.

d) MEDS
   - The CEW shall ensure that any necessary overrides are completed and all necessary transactions are sent to MEDS to ensure eligibility for the correct Non-MAGI program starting with the first month the SI provisions apply and ongoing.

5) Community Spouse eligibility

- If the community spouse requests Medi-Cal eligibility subsequent to the HCBS spouse's eligibility, they may need to spend down their non-exempt countable property if they are subject to the $130,000 property limit and have property in excess of that amount.
- SI provisions continue to apply and the spousal income allocation is still permitted.
- The spousal income allocation amount may be adjusted.
- If the community spouse also requests HCBS at a nursing facility level of care, there is no longer a community spouse, and the SI provisions may no longer be applied.

6) Retroactive eligibility

- Counties must apply the SI provisions retroactively under any of the following circumstances in cases where there is an HCBS spouse:
  - At application
  - At annual renewal
  - Who is a CFCO beneficiary in the 2K aid code with a SOC on or after January 1, 2014 (see below)
  - Who is married or an RDP who requested HCBS but was denied or discontinued from Medi-Cal for excess property
  - Who requests a retroactive redetermination
  - Who requests a fair hearing
  - For more information, please see section 7 on page 13 of ACWDL 18-19.
- Per ACWDL 18-19, retroactive evaluations may go back to January 1, 2014, if all of the criteria are met.
- The county shall issue letters of authorization (MC 180) and share of cost letters (MC 1054) in order for beneficiaries to seek reimbursement for out of pocket expenses.

- DHCS released ACWDL 20-15 regarding reimbursement for retroactive IHSS claims. HCBS SI retroactive applications will often lead to claims for reimbursement, particularly for IHSS.

7) Annual renewal process

- The same processes used for determining eligibility at the time of the original application are also required at renewal, with the following exceptions:
  - The HCBS spouse, community spouse, beneficiary representative, administrator, or care coordinator need only confirm continued HCBS participation or waitlist status.
  - CEWs shall not recalculate the CSRA.
  - Property of the community spouse shall not be verified.
  - Nursing facility level of care shall not be verified, all that is needed is an indication in the renewal packet that the applicant/beneficiary continues to receive HCBS services.
  - Counties should confirm that SI provisions continue to be manually applied, if appropriate.
  - Application of the SI provisions should be entered in the case notes.

**For more information regarding HCBS SI, please refer to these key resources: ACWDLs 17-25 and 18-19.**

**For the Budget Steps for HCBS Spousal Impoverishment, please see MEDIL 21-07.**

If you have questions regarding this Screening Tool or for technical assistance, please contact:

- Sara McDonald at (916) 345-8061 or e-mail at Sara.McDonald@dhcs.ca.gov
- Meuy Saeteune at (916) 345-8064 or e-mail at Meuy.Saeteune@dhcs.ca.gov.