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TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 09-03  
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: THE DOMESTIC PARTNERS RIGHTS AND RESPONSIBILITIES ACT  
OF 2003

The purpose of this All County Welfare Directors letter is to provide information about the implementation of the Domestic Partner Rights and Responsibilities Act of 2003, [Assembly Bill (AB) 205 (Chapter 421, Statutes of 2003)] and how counties are to determine Medi-Cal eligibility for those who are registered domestic partners.

## **BACKGROUND**

### **Registered Domestic Partners**

Effective January 1, 2005, AB 205 extends the rights and responsibilities of a spouse under state law to registered domestic partners (RDP). By its terms, the new law does not amend or modify federal laws or the benefits, protections, and responsibilities provided by these laws (Family Code, Section 297.5).

## **DEFINITION OF A REGISTERED DOMESTIC PARTNERSHIP**

A registered domestic partnership exists when:

- Two individuals of the same sex complete a notarized Declaration of Domestic Partnership that is signed by both partners and filed with the Secretary of State; or

- Two individuals of the opposite sex complete a notarized Declaration of Domestic Partnership that is signed by both partners and filed with the Secretary of State and when one or both of the individuals:
  - a) Meets the eligibility requirements under Title II of the Social Security Act as defined in 42 U.S.C., Section 402 (a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C., Section 1381 for aged individuals, and
  - b) Is/Are over the age of 62.

A legal union between two persons of the same sex, other than a marriage that was validly formed in another state, is also valid in California if it is substantially equivalent to a registered domestic partnership as defined by AB 205. Therefore, this letter includes as RDPs, those individuals with a legal union validly formed in another state.

**Please note: Just as a marriage certificate is not required of a married couple, domestic partners are not required to document their status. They only need to indicate on the application that they are domestic partners and then sign under penalty of perjury.**

### **RDPs With Mutual Child(ren)**

#### **Medi-Cal**

If the RDPs have a mutual child (a natural/adopted child of one RDP that has been adopted by the other RDP), or the name of both RDPs appear on the child's birth certificate, treat both parents as unmarried parents of the child when determining Medi-Cal. The rules that relate to married couples do not apply when determining Medi-Cal eligibility.

California Work Opportunity and Responsibility to Kids (CalWORKs) RDPs who want to be included in the Assistance Unit (AU) and who do not adopt the eligible child(ren) are treated as stepparents in the AU by CalWORKs. In these cases, the CalWORKs parent will have the option, as do stepparents, to include or exclude the RDP in the AU, which could affect the availability of childcare in the home. If a RDP adopts the eligible child(ren), then CalWORKs considers the RDP to be a parent and a member of the AU and applies two-parent family rules.

## **MEDI-CAL ELIGIBILITY IMPACT**

The federal Centers for Medicare and Medicaid Services have confirmed that federal law does not recognize RDP relationships and that there is no federal reimbursement for any Medicaid expenditure based on RDP relationships. However, RDP rights and responsibilities under AB 205 apply for State-only funded Medi-Cal programs that are not based on federal law.

The Department of Health Care Services has determined that the new law only has an eligibility impact on the following State-only programs:

- The Dialysis program - Dialysis and supplemental dialysis-related services.
- The Total Parenteral Nutrition (TPN) program – TPN-only services of the Medi-Cal Special Treatment program. (See Medi-Cal Eligibility Procedures Manual, Article 17, for the Medi-Cal Special Treatment Program definition, eligibility requirements, and procedures).
- The Medically Indigent Adults in Long-Term Care (LTC) program – LTC for individuals who have no linkage to federal programs.
- The Minor Consent program - Confidential services to individuals under 21 as long as they meet the definition of a child under Title 22, CCR, Section 50033.
- The State-funded Breast and Cervical Cancer Treatment Program (BCCTP) – Breast cancer treatment for 18 months; cervical cancer treatment for 24 months for those individuals who are not eligible for the federal BCCTP.

**NOTE: A domestic partner who is known to have breast and/or cervical cancer may be eligible for the federal BCCTP. (See “2. Situations Involving Medi-Cal Only Determinations”)**

## **County Actions**

Counties must determine Medi-Cal eligibility for RDP for the above State-only programs as described on the following pages.

### **1. SITUATIONS INVOLVING THE CalWORKs PROGRAM**

CalWORKs has more latitude than Medi-Cal does in applying AB 205, since CalWORKs funding is through block grants. The Department of Social Services will issue an All County Letter with RDP instructions for CalWORKs. 3S is the new aid code designated for RDPs who only qualify for CalWORKs cash aid, but who do not qualify for CalWORKs-linked Medi-Cal. Use of 3S ensures that RDPs are not inappropriately claimed as cash-linked Medi-Cal beneficiaries.

The following are CalWORKs scenarios. Note: Some scenarios result in the same eligibility conclusion.

In the following examples, “**parent**” means natural/**adoptive parent**. The other “**RDP**” is not a natural/adoptive parent. We will use two children in each of our examples.

### Scenario 1

The parent, two children, and RDP all fully qualify for CalWORKs. The RDP elects not to be a member of the AU but wants medical assistance. The parent and children are eligible for CalWORKs-based Medi-Cal as an AU of three without the RDP included in the CalWORKs AU.

### CalWORKs Determination

*When the RDP is not the adoptive or biological parent of the child(ren) that person is considered to be a stepparent and therefore has the option of being an essential person.*

*The California Department of Social Services, Manual of Policies and Procedures, Eligibility and Assistance Standards Manual, Section 44-209.3, defines Essential Persons as follows:*

*“.31 An essential person is a stepparent, California domestic partner of the child's parent, or ASP” (alternatively sentenced parent) “who is not an otherwise federally eligible person under .2 and who:*

*.311 Is related to a child determined to be federally eligible under .21, or*

*.312 Is related to a child who is either receiving SSI/SSP or sanctioned by GAIN who would otherwise be federally eligible under .21.”*

The CalWORKs Eligibility Worker (EW) will:

- apply the appropriate CalWORKs federal code that provides automatic Medi-Cal eligibility to the first budget unit, of the parent and children; and
- refer the RDP to Medi-Cal for a separate Medi-Cal determination.

*(Because the RDP is not included in the AU, the CalWORKs EW does not apply the 3S aid code).*

### Medi-Cal Eligibility Determination

Note: The income/assets of the parent do not count toward the RDP's Medi-Cal eligibility since the parent is on CalWORKs.

The Medi-Cal EW will:

- use the information in the CalWORKs case to determine Medi-Cal eligibility for the RDP,
- determine if the RDP qualifies for any federal Medi-Cal program based on his or her own information,
- check for State-Only program eligibility if the RDP does not qualify for a federal Medi-Cal program, and
- upon determination of Medi-Cal eligibility or ineligibility, shall send the appropriate Medi-Cal Notice of Action (NOA).

### Scenario 2

The parent and children are eligible for CalWORKs as an AU of three without the RDP being included in the CalWORKs AU. The RDP wants to be in the AU. Therefore, the parent, two children, and RDP are a four person CalWORKs AU.

While parent and the two children remain eligible for CalWORKs with the RDP, the RDP is a non-parent. Therefore, the RDP does not qualify for CalWORKs-based Medi-Cal.

### CalWORKs Determination

*When the RDP is not the adoptive or biological parent of the child(ren) that person is a stepparent under CalWORKs and, therefore, has the option of being an essential person. However, in this case, the RDP wants to be in the AU.*

The CalWORKs EW will:

- apply the appropriate CalWORKs federal code that provides automatic Medi-Cal eligibility to the first budget unit, of the parent and children
- apply aid code 3S to the second budget computation of the RDP, and
- refer the RDP to Medi-Cal for a separate Medi-Cal determination.

Remember 3S allows CalWORKs but not Medi-Cal.

### Medi-Cal Eligibility Determination

Note: The income/assets of the parent do not count toward the RDP's Medi-Cal eligibility since the parent is on CalWORKs.

The Medi-Cal EW will:

- use the information in the CalWORKs case to determine Medi-Cal eligibility for the RDP,
- determine if the RDP qualifies for any federal Medi-Cal program based on his or her own information,
- check for State-Only program eligibility if the RDP does not qualify for a federal Medi-Cal program, and
- upon determination of Medi-Cal eligibility or ineligibility, the EW shall send the appropriate Medi-Cal NOA.

### Scenario 3

The parent, two children, and the RDP apply for CalWORKs. They all fully qualify for CalWORKs. The RDP in this scenario is also the adoptive parent of the two children.

### CalWORKs Determination

The parent, two children, and RDP/adoptive parent are a four person CalWORKs AU.

The CalWORKs EW will:

- apply the appropriate CalWORKs federal code to the parents and children that provides automatic Medi-Cal eligibility, and
- no referral to Medi-Cal is necessary.

### Scenario 4

The parent and two children are not eligible for CalWORKs based on excess income. The household includes a RDP (non parent). The RDP wants to be included in the AU. Including the RDP makes the AU income eligible for CalWORKs.

**NOTE:** Theoretically, in the above scenario, the parent, two children, and RDP would need a separate Medi-Cal-only determination and the CalWORKs EW would report the entire family as aid code 3S, which would give them CalWORKs without

CalWORKs-based Medi-Cal and make a referral to the county's Medi-Cal EW.

However, the CalWORKs EW can immediately place the biological or adoptive parent and children (referred to in this explanation as the federal family) in the 1931(b) program aid code of 3N when the federal family is income eligible for CalWORKs only when the RDP is included as a family member in the AU.

The first budget computation would have included the parent and two children, resulting in a three person CalWORKs AU, but they are ineligible for CalWORKs based on excess income. The second budget computation would have included the parent, two children, and RDP, resulting in a four person CalWORKs AU. All would now be income eligible for CalWORKs.

#### Theoretical CalWORKs Determination

CalWORKs EW would have:

Computed the two budgets.

- The first computation would indicate no eligibility for CalWORKs based on income for the parent and the two children.
- The second computation including the RDP in the case establishes that the AU is now income eligible for CalWORKs.

NOTE: Because the natural parent and the two children are not income eligible for CalWORKs without including the RDP in the AU, they would not be eligible for CalWORKs-based Medi-Cal.

- All persons in that case would have received CalWORKs under aid code 3S, which does not provide Medi-Cal.
- The CalWORKs EW would have to refer the case to the county's Medi-Cal program for a Medi-Cal determination.

#### Medi-Cal Eligibility Determination

The Medi-Cal EW would have:

- used the information in the CalWORKs case to determine Medi-Cal eligibility.
- determined if the parent and children qualify for any federal Medi-Cal program.
- determined if the RDP qualifies for any federal Medi-Cal program based on his or her own information.
- if the parent and children did not qualify for any federal Medi-Cal program,

the EW would have checked for State-Only program eligibility, (see “2. Situations Involving Medi-Cal Only Determinations” below).

- if the RDP did not qualify individually for a federal Medi-Cal program, the EW would have checked for State-Only program eligibility, (see “2. Situations Involving Medi-Cal-Only Determinations” below).
- upon determination of Medi-Cal eligibility or ineligibility, the EW would send the appropriate Medi-Cal NOA.

Reason/Basis/Rational For Placing The Biological Or Adoptive Parent And Children In The 1931(B) Program Aid Code Of 3N

- A. The CalWORKs income standard is based on the Minimum Basic Standard of Adequate Care (MBSAC) that varies according to family size.
- B. The income test for Section 1931(b)-only applicants is based on the federal poverty level for the size of the Medi-Cal family budget unit (MFBU).
- C. Medi-Cal uses the poverty level test, or may use a test based on the highest MBSAC used in CalWORKs with income deductions similar to, but slightly higher than, those of CalWORKs if earned income exists.
- D. The amounts established for the MBSAC levels used in CalWORKs are less than the 100 percent of poverty level (*income test for Section 1931(b)*) for the same size family.
- E. Furthermore, the MBSAC amount used by CalWORKs for any family size is always less than the poverty level amount for an MFBU family that is one individual smaller. For example, the MBSAC level amount for a federal family of three is less than the MFBU federal poverty level amount for a family size of two.
- F. Therefore, a CalWORKs income limit for a family size of X+1 will always be less than the 1931(b) income limit for a family size of X.

Actual/New CalWORKs Determination:

The CalWORKs EW will:

- place the parent and children in the 1931(b) aid code 3N, and
- refer the RDP to Medi-Cal for a Medi-Cal determination.

### Medi-Cal Eligibility Determination

The Medi-Cal EW will:

- use the information in the CalWORKs case to determine Medi-Cal eligibility for the RDP,
- determine if the RDP qualifies for any federal Medi-Cal program based on his or her own information,
- check for eligibility within the State-Only programs if the RDP does not qualify for a federal Medi-Cal program, and
- upon determination of Medi-Cal eligibility or ineligibility, the EW shall send the appropriate Medi-Cal NOA.

### Scenario 5

The parent, two children, and the RDP/adoptive parent are not eligible for CalWORKs based on excess income. The RDP is a parent and must be in the AU. The parent, two children, and RDP/adoptive parent make a four person CalWORKs AU and all are income ineligible for CalWORKs.

### CalWORKs Determination

CalWORKs EW will:

- refer all four for a Medi-Cal eligibility determination.

**Remember although the second parent is an adoptive parent, for federal reporting purposes, Medi-Cal does not recognize RDPs. Therefore, there is a need for the following Medi-Cal determination.**

### Medi-Cal Eligibility Determination

The Medi-Cal EW will:

- use the information in the CalWORKs case to determine Medi-Cal eligibility,
- determine eligibility for both parents as an unmarried couple with mutual children, and
- upon determination of Medi-Cal eligibility or ineligibility, the EW shall send the appropriate Medi-Cal NOA.

## **2 SITUATIONS INVOLVING MEDI-CAL ONLY DETERMINATIONS**

Each RDP shall establish his/her own federal Medi-Cal eligibility without considering the presence of the other RDP. If either of the RDPs has breast or cervical cancer, or if one or both is/are also the natural or adoptive parents, then the child(ren) may serve as linkage to the parent(s) as described above without regard to their RDP. If there is no such federal eligibility, treat the RDPs as spouses and see if they are eligible for one of the State-only programs described above.

If one RDP is applying for Medi-Cal and is in an LTC facility and he/she is not federally eligible (e.g., aged, blind or disabled), then he/she should be placed in the state-only LTC program for Medically Indigent Adults if otherwise eligible (aid code 53 with/without a share-of-cost (SOC)). If his/her RDP is not an inpatient in a medical institution of nursing facility, then the Medi-Cal EW shall apply the spousal impoverishment provisions as if the RDP is a community spouse (see ACWDL 91-28). If the institutionalized RDP later turns 65 or is determined to be disabled, then he/she can no longer be eligible under the state-only LTC program and spousal impoverishment would no longer apply. Because the Community Spousal Resource Allowance is determined for the initial month for which Medi-Cal is being requested, the property transferred to the community RDP becomes the property of the community RDP and is not counted again. The spousal income allocation will no longer be deducted from the income of the institutionalized RDP.

If an application is made for two institutionalized RDPs, then the spousal impoverishment provisions would not apply and the division of community property rules would apply.

Two RDPs in board and care would not be eligible under state-only LTC because state-only LTC provides coverage only when the individual is in an intermediate or skilled nursing facility, not board and care. Therefore, Medi-Cal EWs will have to determine eligibility for two RDPs in board and care as individuals under federal law or determine whether eligibility might exist for one of the other state-only programs.

Access to Medi-Cal applications and eligibility determinations that are appropriate to a spouse shall also be provided to RDPs. The Medi-Cal EW must treat the addition of an RDP to the household of a beneficiary just as they would treat the addition of a new spouse to the household of a beneficiary. The Medi-Cal EW shall review the case to determine whether treating the RDP as a spouse is beneficial, or if it results in an adverse action. If an adverse action results, the county must provide a ten-day Medi-Cal NOA.

If a county becomes aware of any RDP case that was, on or after January 1, 2005:

- denied or discontinued due to excess property based on the failure to treat the RDP as a spouse, or
- where the SOC was too high based on the failure to treat the RDP as a spouse,

the county shall rescind the NOA, reinstate the case as a State-only case if eligible, and/or retroactively calculate the SOC as appropriate.

If you have any questions regarding this letter, please contact Ms. Sherilyn Walden, of my staff, at [Sherilyn.Walden@dhcs.ca.gov](mailto:Sherilyn.Walden@dhcs.ca.gov) or at (916) 552-9502.

Original Signed By

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