



JENNIFER KENT
Director

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



GAVIN NEWSOM
Governor

June 20, 2019

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 19-15
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: Registered Domestic Partner Eligibility
(Reference: All County Welfare Directors Letters 09-03, 12-36, and 18-19)

Introduction/Purpose

The purpose of this letter is to clarify instructions for counties regarding Registered Domestic Partners (RDPs) following the United States v. Windsor, 570 U.S. (2013) (Windsor), and Obergefell v. Hodges, 576 U.S. (2015) (Obergefell) United States Supreme Court decisions. This letter clarifies and updates instructions from both All County Welfare Director's Letter (ACWDL) [09-03](#) and [12-36](#).

Background

Effective January 1, 2005, Assembly Bill (AB) 205 extended the rights and responsibilities of a spouse under state law to RDPs. By its terms, the law did not amend or modify federal laws or the benefits, protections, and responsibilities provided by these laws (Family Code, Section 297.5). The Department of Health Care Services (DHCS) released instructions for determining eligibility for RDPs in ACWDL [09-03](#) on February 9, 2009.

On December 10, 2012, DHCS released ACWDL [12-36](#). ACWDL [12-36](#) implemented AB 641 (Feuer-Chapter 729, Statutes of 2011) which added Welfare and Institutions Code, Section 14015.12, effective January 1, 2012. AB 641 extended the full array of spousal protections available to married, opposite-sex couples, to same-sex spouses and RDPs by specifying that an undue hardship exists when certain transfers of property and income are made between same-sex spouses or RDPs that would, otherwise, have resulted in a period of ineligibility for nursing facility level of care or a share-of-cost (SOC). This change permitted same-sex spouses and RDPs to retain, largely, the same amount of income and property permitted for opposite-sex spouses to

retain when one of the spouses is an institutionalized spouse and the other spouse is a community spouse, pursuant to ACWDLs [90-01](#) and [90-03](#). Additionally, DHCS released ACWDL [18-19](#) which extends the policy and procedures for applying Spousal Impoverishment provisions to households containing a Home and Community Based Services (HCBS) RDP and a community RDP.

The United States v. Windsor, 570 U.S. (2013) (Windsor), and Obergefell v. Hodges, 576 U.S. (2015) (Obergefell) United States Supreme Court decisions rendered the treatment of same-sex spouses equivalent to the treatment of opposite-sex spouses. The court decisions applied to spouses only, they did not apply to RDPs in California. RDPs are not considered married under federal law. Counties are still to use the instructions in ACWDL [12-36](#) and ACWDL [18-19](#) when determining Medi-Cal eligibility of institutionalized or HCBS RDPs who have a community RDP.

Policy Summary for RDPs

Counties shall accept the information individuals provide regarding their RDP status if individuals provide that information under penalty of perjury, just as the information is accepted for married couples. Counties may ask clarifying questions if the information is inconsistent but must not ask for additional verification even if the RDPs do not meet the definition in California law. For instance, when individuals state, on one part of the Single Streamlined Application (SSApp), that their status is married but in another part relating to Parent/Caretaker Relative status, they state they are RDPs. In this situation, the county contacts the individuals to clarify the relationship regardless of their age or whether it is a same-sex or opposite-sex couple. Counties must follow established procedures for applications or continuing cases if the county is unsuccessful in contacting the applicant/beneficiary. Please remember, counties must apply the Medi-Cal hierarchy described in ACWDL [17-03](#) when determining Medi-Cal eligibility. To avoid discrepancies in reported information, beginning with the 19.6 release, California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS) will require an individual's RDP status to match on both the relationship and marital status pages before the individual can submit the application.

Linkage

Counties are to evaluate households where there is linkage to the Parent/Caretaker group, as described below, under Modified Adjusted Gross Income (MAGI). For linkage purposes, parent RDPs (those who are the natural, adoptive parent or who are listed on the child's birth certificate) are treated as parents when determining Medi-Cal eligibility. RDPs not meeting the parent RDP status as described above can be linked to the MAGI

Parent/Caretaker group as a caretaker relative and for Aid to Families with Dependent Children (AFDC) Medically Needy (MN) if the RDP has primary responsibility for the child. Primary responsibility for a child may include claiming the child as a tax dependent but may also be evidenced by other indications, such as the RDPs mutually or singly make day-to-day decisions about such things as where the child attends school, etc.

A parent or caretaker relative and an RDP may be linked to the eligible child at the same time. This linkage continues even when the domestic partnership has been dissolved; however, the RDP must still live with and remain primarily responsible for the child. Counties must accept attestations from RDPs signed under penalty of perjury regarding whether the RDP has primary responsibility for a child for linkage purposes unless there is conflicting information. This includes attestations made on the SSApp or other accepted Medi-Cal applications.

NOTE: Remember that linkage no longer requires deprivation of a child for the parent/caretaker relative to be linked. The only requirement is that the parent or caretaker relative live with and have primary responsibility for the child (see ACWDL [14-28](#) for more information and the definition of a child for MAGI and AFDC MN).

MAGI

MAGI rules follow Internal Revenue Services (IRS) rules. The IRS has a specific set of rules for RDPs in community property states (California is a community property state). Although RDPs may not file jointly under tax law, like married couples (see note below for an exception), community income will be divided equally between the two RDPs and count in the tax filings of each RDP. Therefore, to ensure that income is fully included and accurately divided, both RDPs must be included on the Medi-Cal application and also for purposes of other program eligibility determinations. IRS Publication 555 contains more information on community property and IRS rules and can be located in [IRS Publication 555](#).

General Rules for Community and Separate Income

Community Income

- Earned Income

Earned income consists of salaries, wages, or pay for services of one or both RDPs during their registered domestic partnership while living in a community property state. This includes self-employment.

- Retirement and Pension Income

Income from 401(k) plans, 403(b) plans, and other types of pensions may be a mix of separate and community income. Counties are to assume 401(k), 403(b) and other pension plans are community income unless the applicant/beneficiary provides information showing the plans are partially or entirely separate income. If counties encounter retirement income plans that are a mix of separate and community property see instructions in the next paragraph.

Distributions from a retirement plan other than an individual retirement account (IRA), "will be characterized as community or separate income depending on the respective periods of participation in the pension while married and domiciled in a community property state" ([IRS Pub 555](#), page 5). The county will develop a ratio based on the time the individual participated in a retirement plan or pension while married and/or while living in a community property state. If counties still cannot determine a ratio please contact the analysts listed at the end of this letter to provide technical assistance in making that determination.

- Income from Community Property

Community property income is any income produced by property the couple purchased or acquired together. This could be a variety of resources, such as income from real property such as rent, interest/dividends from investment accounts, certificates of deposit, or stocks and bonds.

Separate Income

- Retirement and Pension Income

Income from IRAs and IRA-based plans such as Simplified Employee Pension-IRAs and Savings Incentive Match Plan for Employees -IRAs are always separate income and allocated to the spouse who owns the IRA.

- Social Security benefits

Social Security benefits (Retirement, Survivors, and Disability Insurance) are always separate income and allocated to the spouse who receives the benefits.

- Income from Separate Property

Income from separate property is any income produced by property the couple purchased or acquired separately, prior to obtaining RDP status. This could be a variety of resources, such as income from real property such as rent, interest/dividends from investment accounts, certificates of deposit, or stocks and bonds.

Regardless of source, income for RDPs is verified the same way as all other income. For MAGI households, counties shall accept the attestation of the household and submit the information to the hub. If the information cannot be e-verified, the county shall seek paper documentation in accordance with current policies.

General Rules for Counting Income and Configuring MAGI Households with RDPs

RDPs are treated, in most situations, as single individuals filing separately (except as noted below). In situations where the RDP is a natural or adoptive parent, or is listed on the child's birth certificate, the RDP may be treated as a parent instead of a caretaker relative. Whether RDPs filing separately are in one another's household will depend on the situation. If one RDP is claiming the other as a dependent, the RDP claiming the other RDP may have both RDPs in their household. The RDP that is claimed will be in their household without the other RDP because they then meet the exception for the application of the non-filer rules. Whether the RDPs are in the household of any dependent children will depend on several factors. In situations such as when both RDPs are considered parents because one RDP has adopted the natural child of the other RDP or where both RDPs jointly adopt a child, both RDPs may be in the child's household. There also may be situations that default to the non-filer rules. Enclosed in this letter are examples of different possible household configurations for situations involving RDPs.

CalHEERS now uses this methodology for both Advanced Premium Tax Credit determinations and for MAGI Medi-Cal cases containing RDPs as well. For tax households or when applying non-filer rules to households that contain RDPs, treat each RDP as a single individual, except as described in the Note below. See flowcharts page on the DHCS website for more information: [Household Size Flowchart](#) and [Whose Income Counts Flowchart](#).

NOTE: Counties should treat MAGI RDPs who state they are filing jointly with another individual just like single MAGI individuals who are not RDPs who state that they are filing jointly with another single individual as their tax status and send the information to the hub for verification. Counties will submit the stated income information to the federal hub for verification to see if it is compatible.

NON-MAGI

Aged, Blind and Disabled (ABD) Medi-Cal Programs, MN and Long Term Care (LTC)

For non-MAGI ABD Medi-Cal Programs, RDPs are treated the same as unmarried couples for almost all Medi-Cal programs. The exceptions are MN LTC, Program for All Inclusive Care for the Elderly, or Home and Community Based Services (HCBS) Waivers where spousal impoverishment rules are applied. When determining Medi-Cal eligibility for LTC or HCBS Waivers where spousal impoverishment rules are applied, follow the instructions in ACWDL [12-36](#) for applying undue hardship rules to transfers of property between RDPs. Counties shall also permit the spousal income allocation in the same manner as allowed in ACWDL [90-03](#). When determining RDPs with potential HCBS waiver eligibility, please see the instructions in ACWDL [17-25](#).

AFDC MN and Medically Indigent (MI)

For AFDC MN or MI cases, RDPs may establish linkage through a minor child. Please see the "Linkage" paragraph above regarding linkage of RDPs through a minor child. The RDPs will be treated the same as an unmarried couple or a non-parent caretaker relative as dictated by the individual situation in terms of Medi-Cal Family Budget Unit (MFBU) construction and will follow the SNEEDE/GAMMA rules for unmarried couples or non-parent caretaker relatives, as outlined in Medi-Cal Eligibility Procedures Manual Article 8D and 8F.

Situations Involving the California Work Opportunity and Responsibility for Kids (CalWORKs) Program

Generally RDPs are eligible for CalWORKs, however if situations arise where one RDP opts out of CalWORKs, but may qualify for Medi-Cal only, counties are to follow the instructions below. Example 7 in the enclosure may also be helpful. Counties must conduct a separate Medi-Cal determination in these situations. Counties must divide any shared income among the RDPs when completing the MAGI determination, even if the share allocated to the RDP in CalWORKs is not counted in the CalWORKs case.

All County Welfare Directors Letter No.: 19-15
Page 7
June 20, 2019

Counties may list members of the CalWORKs Assistance Unit (AU) when constructing the Tax Household but CalWORKs AU members should not receive Medi-Cal under MAGI.

Counties shall conduct any Medi-Cal evaluation of the RDP or the assistance unit according to the Medi-Cal hierarchy, as described in ACWDL [17-03](#). Further instructions, regarding CalWORKs, including the transition discontinuances to Medi-Cal only, will be issued in a future ACWDL.

STATE-ONLY MEDI-CAL PROGRAMS

As described in ACWDL [09-03](#), RDPs will be treated the same as married couples for determining Medi-Cal eligibility for State-Only Medi-Cal programs. ACWDL [09-03](#) provides a list of State-Only Medi-Cal programs. Please refer to the list and instructions in that letter for more information.

If you have questions regarding this letter, please contact Leanna Pierson at (916) 345-7775 or by email at Leanna.Pierson@dhcs.ca.gov, or Eric Sweeney at (916) 327-0412 or by email at Eric.Sweeney@dhcs.ca.gov.

Original Signed By

Sandra Williams, Chief
Medi-Cal Eligibility Division

Enclosure

Example 1: MAGI

A couple states that they are Registered Domestic Partners (RDPs). They both have primary responsibility for one child, age five, who is the natural child of RDP2, and all live together. RDP1 has \$1,000 per month earned income and RDP2 has \$800 Social Security Disability Income (SSDI). The RDPs file taxes separately and RDP1 (who has the earned income) claims the child as a dependent.

Linkage

RDP1 and RDP2 are linked as Parent/Caretaker Relatives. The child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	RDP1 and Child	\$500 (earned income share)	\$500	Parent/Caretaker Relative
RDP2	RDP2	\$500 (earned income share) and \$800 SSDI	\$1,300*	New Adult*
Child	Child and RDP 2 due to non-filer rules	\$500 (RDP2's earned income share) \$800 from RDP2	\$1,300	Mandatory Children's Group

* RDP 2 is not eligible to the Parent/Caretaker Relative group because his/her household income total is over the 109% FPL limit.

Example 2: MAGI

Same as MAGI example 1 except RDP1 adopted RDP2's child.

Linkage

RDP1 and RDP2 are linked as Parent/Caretaker Relatives. The child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	RDP1 and Child	\$500 (earned income share)	\$500	Parent/Caretaker Relative
RDP2	RDP2	\$500 (earned income share) and \$800 SSDI	\$1,300*	New Adult*
Child	Child, RDP1, and RDP2 due to non-filer rules	\$500 (RDP1's earned income share) \$800 from RDP2 \$500 (RDP2's earned income share)	\$1,800	Mandatory Children's Group

* RDP 2 is not eligible to the Parent/Caretaker Relative group because his/her household income total is over the 109% FPL limit.

Example 3: Medi-Cal Mixed Case

A couple states they are RDPs. RDP1 is over 65, receives \$900 Social Security retirement benefits and a \$100 pension monthly. RDP1 wishes to apply for non-MAGI and is not a Home and Community Based Waiver participant. RDP2 is 55 and has one natural child, age 17. All live together. RDP2 has \$2,000 earned income per month and claims the child on her taxes. RDP1 does **not** have primary responsibility for RDP2’s child. The RDPs file taxes separately and RDP2 does not claim RDP1 on her taxes. RDP1’s countable property is under the Property Limit for one.

Linkage

RDP1 has linkage because of age (over 65). RDP2 is a linked as Parent/Caretaker. The child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	Not Applicable	Not Applicable	Not Applicable	Not Applicable
RDP2	RDP2 and Child	\$1,000 (\$1,000 is allocated to RDP1)	\$1,000	Parent/Caretaker Relative
Child	Child and RDP2	\$1,000 (RDP2’s earned income share)	\$1,000	Mandatory Children’s Group

NON-MAGI
RDP1 MFBU
Self
Income
\$900 Social Security
\$100 Pension
Deductions
-\$20 any income deduction
Household Income Total
\$980
Program Eligibility
ABD FPL

Example 4A: MAGI

A couple states they are RDPs. RDP1 is aged 62 and receives \$900 of Social Security Early Retirement Benefits per month. RDP2 is 55 and has earned income of \$1,000. Both RDPs state they have primary responsibility for their child, aged 5. RDP2 is the child's natural parent. All live together. RDP1 claims the child on his taxes and RDP2 files separately. This is an opposite sex couple. The county accepts the couple's statement on the application (signed under penalty of perjury) that they are RDPs even though they do not meet the definition in California law.

Linkage

RDP1 and RDP2 are linked as Parent/Caretaker Relatives. The child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	RDP1 and Child	\$900 Social Security \$500 (earned income share)	\$1,400	Advanced Premium Tax Credit*
RDP2	RDP2	\$500 (earned income share)	\$500	Parent/Caretaker Relative
Child	Child and RDP2 due to non-filer rules	\$500 (RDP2's share of earned income)	\$500	Mandatory Children's Group

*RDP1 could request Non-MAGI determination.

Example 4B: Medi-Cal Mixed Case SNEEDE

Same scenario as MAGI example 4A except that RDP1 requests a non-MAGI determination. RDP1's countable property is under the Property Limit for one.

Linkage

While both RDPs and the child also have linkage for Non-MAGI AFDC-MN, only RDP1 requests a non-MAGI determination. RDP2 is eligible for the MAGI Parent/Caretaker Relative group and the child is eligible for the Mandatory Children's Group. RDP2 is not in the MFBU because RDP1 is a non-parent caretaker relative (is not listed on the birth certificate and has not adopted the child) so the RDPs would be in separate MFBU's.

Non-MAGI
RDP1 MFBU
Self
Child
Income
\$900 Social Security
Household Income Total
\$900
Maintenance Level
-\$750 (Maintenance Level for 2)
Program Eligibility
AFDC MN with \$150 SOC

Because there is an SOC, the case is evaluated for SNEEDE/GAMMA as the case contains a SNEEDE/GAMMA class member (caretaker relative). The case is evaluated for SNEEDE/GAMMA because RDP1 is a caretaker relative and there is a SOC. Because the RDP is a non-parent caretaker relative the RDP is in an MBU alone and is not able to allocate to any other family members because there is no spouse or natural/adoptive children in the MBU.

Non-MAGI SNEEDE /GAMMA Determination
RDP1 MFBU
Self
Child
MBU
Self
Income
\$900 Social Security
Household Income Total
\$900
Maintenance Level
-\$600 (Maintenance Level for 1)
Program Eligibility
AFDC MN with a \$300 SOC

Example 5:

Both RDPs are age 30, and are a same sex couple. They have one five-year-old mutual child (both RDPs are listed on the birth certificate) and both state they are primarily responsible for the child's care. All live together. RDP2 is the natural parent of the child. RDP1 has earned income of \$2,000 and claims both RDP2 and the child as dependents on their taxes. RDP2 has no other income and does not expect to file taxes or be required to file.

Linkage

Both RDP1 and RDP2 are linked through the child. The child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	RDP1, RDP2, and Child	\$1,000 (earned income share)	\$1,000	Parent/Caretaker Relative
RDP2	RDP2 and child due to non-filer rules	No eared income share because RDP2 is RDP1's tax dependent	\$0	Parent/Caretaker Relative
Child	Child, RDP1, and RDP2 due to non-filer rules	\$500 (RDP2's share of earned income)	\$500	Mandatory Children's Group

Example 6: CalWORKS

A family consisting of a same-sex RDP couple applies for CalWORKS. The couple has one five-year-old child. All live together. Both RDP1 and RDP2 are primarily responsible for the child. RDP2 is the natural parent of the child. RDP1 has not adopted the child and is not listed on the child's birth certificate. All family members, including RDP1 want CalWORKS. RDP1 is the primary-wage-earner (PWE) and is unemployed. No family member has income.

CalWORKs Linkage

Both RDP1 and RDP2 are linked as parents for the CalWORKs AU because the child is deprived because of the unemployment of the PWE.

MAGI Linkage

Both RDPs are linked because they are both responsible for a minor child. Since this is true, there is no need for a separate MAGI determination and the family receives Medi-Cal through CalWORKs eligibility.

Example 7: CalWORKS

A family consisting of a same-sex RDP couple applying for CalWORKs. The couple has one five-year-old child. All live together. Both RDP1 and RDP2 are primarily responsible for the child. RDP2 is the natural parent of the child. RDP1 has not adopted the child and is not listed on the child's birth certificate. Only RDP2 and the child want CalWORKs, RDP1 wants to opt out and apply for Medi-Cal Only. RDP1 has earned income of \$1,000 per month, files taxes and claims RDP2 and the child.

CalWORKs AU

RDP2 and child, both eligible to Medi-Cal through CalWORKs.

MAGI Medi-Cal Linkage

Both RDP1 and RDP2 are linked as Parent/Caretaker Relatives and the child is linked as a child.

Household Member	MAGI Household Composition	Income	Household Income Total	Program eligibility
RDP1	RDP1, RDP2, and Child	\$500 (earned income share)	\$500	Parent/Caretaker Relative
RDP2	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Child	Not Applicable	Not Applicable	Not Applicable	Not Applicable

Example 8: Non-MAGI

ABD Couple (not in LTC)

An RDP couple, aged 60 and 55 are both on SSDI and Medicare. RDP1 receives \$1,000 SSDI and a pension of \$220. RDP2 has \$900 SSDI and \$385 earned income. Because they are not married they are in separate MFBUs.

Linkage

Both are linked because of disability.

NON-MAGI	
RDP1 MFBU	
Self	
Income	
\$1,000 Social Security	
\$220 Pension	
Deductions	
-\$20 any income deduction	
Household Income Total	
\$1,200	
Program	
Aged Blind or Disabled (ABD) Federal Poverty Level (FPL)	

NON-MAGI	
RDP2 MFBU	
Self	
Income	
\$900 Social Security	
\$385 Earned Income	
Deductions	
-\$20 any income deduction	
-\$65	
- 1/2 of the remainder of the earned income	
Household Income Total	
\$1,050	
Program Eligibility	
ABD FPL	

Example 9: Non-MAGI- LTC

ABD Couple, One spouse in LTC

An RDP couple are both over 65. The RDPs attest to their RDP status on the application under penalty of perjury (they meet the provisions of ACWDL 12-36). RDP1 is in LTC and RDP2 lives at home. RDP2 does not want Medi-Cal. RDP1 has \$1,000 Social Security Retirement benefits and a \$900 pension. RDP2 has \$800 in Social Security Retirement benefits. RDP1 has resources under the Medi-Cal property limits. RDP1 wishes to allocate income to RDP2.

Linkage

Both RDPs are linked because of age (over 65)

NON-MAGI
RDP1 MFBU
Self
Income
\$1,000 Social Security
\$900 Pension
Deductions
-\$35
Household Income Total
\$1,865
Income Available for Allocation to Community Spouse
-\$1,865 (see below for allocation determination)
Program Eligibility
ABD MN LTC, no SOC

NON-MAGI Spousal Impoverishment Allocation
RDP2 MFBU
N/A
At Home Spouse Income
\$800 Social Security
Deductions
-\$135.50 RDP2's Medicare Part B premium payments (2019 amount)
Household Income Total
\$666
Community Spouse Maintenance Need
\$3,161 (2019 amount)
Maximum Allocation Amount
\$2,495
Amount Actually Allocated
\$1,865

