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



EDMUND G. BROWN JR.
Governor

July 31, 2017

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 17-27
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: Same-Sex Marriages and Medi-Cal Eligibility Following the Windsor and Obergefell Decisions
(Reference: All County Welfare Directors Letters, 09-04 and 12-36)

Introduction/Purpose

The purpose of this letter is to provide instructions for counties in implementing the United States v. Windsor, 570 U.S. ___ (2013) (Windsor), Hollingsworth v. Perry, 570 U.S. ___ (2013) (Hollingsworth) and Obergefell v. Hodges, 576 U.S. ___ (2015) (Obergefell) United States Supreme Court decisions.

Background

Prior to Windsor and Obergefell, states followed state law regarding same-sex marriages and Registered Domestic Partners (RDP). On May 15, 2008, the California Supreme Court held that the constitutional right to marry, protected by the California Constitution, applied to same-sex couples as well as to opposite-sex couples. This decision became final and effective at 5:00 p.m. on June 16, 2008.

In November 2008, voters approved a change to the State Constitution, by passing 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. This meant that for same-sex couples that married between June 16, 2008, and November 5, 2008, Medi-Cal eligibility for State-Only benefits could be determined as a married couple (see All County Welfare Directors Letter (ACWDL) [09-04](#)). The Department of Health Care Services (DHCS) also recognized RDPs as having the same rights as married couples for State-Only Medi-Cal programs (see below and ACWDL [09-03](#)).

In terms of federal benefits, both members of a same-sex couple could be linked through a child living in the home. However, the couples were treated as an unmarried couple for purposes of Medi-Cal Family Budget Unit construction. Same-sex spouses were allowed spousal protections under the undue hardship rules of the spousal impoverishment provisions if one spouse was institutionalized or in a Home and Community Based Services (HCBS) waiver program.

In 2013, Windsor struck down part of the Defense of Marriage Act (DOMA) as unconstitutional. DOMA, among other provisions, defined a marriage for the purposes of federal benefits and federal tax status, as a marriage between one man and one woman. Windsor struck Section 3 of DOMA and allowed couples who were married in states that recognized same-sex marriages to receive certain federal benefits, such as Social Security and Medicaid. Following the Windsor decision, the Internal Revenue Service revised the tax code to allow same-sex couples to file taxes jointly as married couples, thus changing the policy for Medi-Cal determination/evaluation of Modified Adjusted Gross Income (MAGI) individuals. The Social Security Administration (SSA) also published rules for the Supplemental Security Income/State Supplemental Payment (SSI/SSP) programs that expanded SSA's definition of a married couple to include same sex spouses. SSI/SSP program rules direct the eligibility policy for Medi-Cal Non-MAGI programs for aged, blind and disabled individuals. Also in 2013, the Hollingsworth decision restored an earlier federal district court ruling that overturned California's Proposition 8 as unconstitutional. This decision allowed same-sex couples in California to marry. In the 2015 Obergefell decision, the U.S. Supreme Court held that same-sex marriages are valid, regardless if state law recognizes them.

New Policy Summary for Same-Sex Spouses

All Medi-Cal Cases

Counties will now treat same-sex spouses the same as married opposite-sex spouses regardless of where the couple was married. If the same-sex spouses attest under penalty of perjury they are legally married, the county must use that information without requiring any additional verification. Below is the policy for both MAGI and Non-MAGI Medi-Cal determinations for same-sex spouses.

MAGI

Counties will use the tax filing status, or anticipated tax filing status, of the same-sex spouses in determining MAGI eligibility in the same manner as opposite-sex spouses. Accordingly, the county shall not request documentation of tax filing status unless the attested information is unclear. Remember that spouses living together are in the same tax household regardless of tax filing status or whether one spouse claims the other as a tax dependent.

Non-MAGI

For Non-MAGI cases, the same rules and policies used for opposite-sex spouses will apply to same-sex spouses. This will include all spousal impoverishment provisions described in ACWDLs [90-01](#) and [90-03](#), as well as other policy regarding spouses and long-term care or HCBS waiver programs in other ACWDLs, Title 22 California Code of Regulations, or the Medi-Cal Eligibility Procedures Manual, that may apply. The instructions in ACWDL [12-36](#) for applying undue hardship rules to transfers of property between same-sex spouses no longer applies. Should same sex spouses have individual circumstances that require evaluation of undue hardship provisions, counties shall follow the instructions in [ACWDL 90-01](#).

Effective Date

The instructions in this letter are effective immediately for all new cases. Any cases the county identifies at redetermination, fair hearing, or any time the case is brought to the county's attention, must be reviewed to see if the rules in this letter would affect Medi-Cal eligibility retroactive to June 26, 2013, for non-MAGI and January 1, 2014, for MAGI.

These Supreme Court decisions do not affect the policy for RDPs. DHCS will clarify policy for RDPs in a separate ACWDL that will be released soon.

If you have questions regarding this letter, please contact Leanna Pierson at (916) 327-0408 or by email at Leanna.Pierson@dhcs.ca.gov.

Original Signed By

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