



Health Care Practice Tip September 2017

Using the broader Spousal Impoverishment rule to become eligible for Medi-Cal and Home & Community-Based Services (HCBS)

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The Affordable Care Act (ACA) expanded the definition of “institutionalized spouse” to clarify broader Medi-Cal eligibility rules for married couples. This past summer, after [Medi-Cal beneficiaries and applicants](#) filed [Kelley v. Kent](#), the California Department of Health Care Services (DHCS) released [All County Welfare Director Letter \(ACWDL\) 17-25](#) finally incorporating the expanded definition into Medi-Cal eligibility. This practice tip provides a road map for thinking about how the new rule may apply in your cases and how to make sure your county and clients are using the rule correctly.

What is Spousal Impoverishment and when does it apply?

To qualify for Medi-Cal using the spousal impoverishment rules, the individual must be in a HCBS Waiver, a HCBS Waiver waitlist, or in the IHSS Community First Choice Option (CFCO) program. For those in a HCBS Waiver or HCBS Waiver waitlist, a doctor must complete a county form certifying the individual would need at least 30 consecutive days of nursing facility level care if she does not have in-home care and support services.

Pursuant to the guidance, a spouse who needs HCBS, like In-Home Support Services (IHSS), may use spousal impoverishment rules to access Medi-Cal. These rules allow the couple to have up to *\$3023 a month in countable income and up to \$120,900 in countable assets* and access no share of cost Medi-Cal for the spouse needing HCBS. If the countable income is over \$3023, the individual may still qualify for Medi-Cal with a share of cost.

As part of the ACA, this rule became effective January 1, 2014. It has taken California more than three years to implement this provision and questions remain about implementation, including retroactive application of the rule.

See the resources section below for more information on the waiver programs and their eligibility rules.

How can you help? Practice Tips:

Even with an advocate’s help, the application process for a couple trying to use the spousal impoverishment rule can be very difficult, and we know much training and guidance is needed both for eligibility staff and community advocates. While that is being developed we have outlined some practice tips for you to get started.

1. Look at your client’s case. If she is married, could she benefit from the new rules?

- Has your client been given a Share of Cost that could be reduced or eliminated by the new rules?
- Has your client paid out of pocket for expenses that Medi-Cal should have covered under the new rules?

- Does your client qualify for a HCBS Waiver service, an HCBS waitlist, or IHSS CFCO program? These include but are not limited to:
 - Multipurpose Senior Services Program (MSSP) waitlist
 - Nursing Facility Waiver waitlist
 - Community-Based Adult Services (CBAS) or CBAS waitlist
 - Assisted Living Waiver (ALW) waitlist
 - Program of All-Inclusive Care for the Elderly (PACE) waitlist
 - See DHCS' [HCBS Program Eligibility Chart](#)

2. Help complete an application.

- Complete a Medi-Cal application
 - Write explicitly on the application that the: "Applicant is applying for Medi-Cal using the Home and Community-Based Services and spousal impoverishment provisions outlined in ACWDL 17-25."
- Show proof of being on a waitlist or enrollment in HCBS (IHSS, CFCO, or CBAS)
 - If not currently on waitlist, enroll in a waitlisted program
- Submit the Doctor Verification form for HCBS ([Form MC 604 MDV](#))

3. Eliminate or reduce Medi-Cal share of cost for married couples.

- One spouse may qualify for Medi-Cal using spousal impoverishment rules
- Contact the Medi-Cal eligibility worker and ask to apply spousal impoverishment rules
 - Individuals on IHSS CFCO may use spousal impoverishment rules immediately
 - Individuals on HCBS waitlists, like nursing facility waiver waitlist, must submit Doctor Verification for HCBS form as outlined in ACWDL 17-25
- If eligibility worker is unfamiliar with rule, go up the chain of command

4. Talk to your county. Some counties have a dedicated unit or office for long-term care or aged, blind and disabled cases. Other counties have eligibility workers that handle every type of case. Regardless of how your county handles cases, they must implement ACWDL 17-25 and apply the expanded definition of "institutionalized spouse." When you talk to your county establish the following:

- Is your county currently processing cases under ACWDL 17-25?
- How does your county handle cases affected by ACWDL 17-25?
- What plans does your county have to train eligibility workers on the expanded rules?
- Who is the contact at your county to whom you can escalate cases that aren't getting the ACWDL 17-25 rules correctly applied?
- Does your county's existing advocate inquiry or case complaint system account for the special handling these cases may require?

If you do not have a county liaison that you work with on these matters, contact **Cori Racela at the Western Center** (cracela@wclp.org) and we will help you find a contact in your county Medi-Cal program or DHCS to help.

5. Troubleshooting cases. As with all cases, the individual facts make eligibility determinations unique and sometimes challenging. When working your spousal impoverishment cases, keep in mind these common pitfalls:

- Retroactive eligibility: The ACWDL 17-25 rules goes back to January 1, 2014. Is the county assessing the eligibility correctly for the entire applicable time?
- Counties may be unfamiliar with the new rules. You may need to educate county workers on the rules.

If you are having trouble understanding how the eligibility rules might apply in your client's case, send your question to **Cori Racela at** cracela@wclp.org.

6. Be prepared for a hearing. In the event you are unable to resolve your eligibility problem through county advocacy, your client may need to exercise her rights through a state fair hearing. The administrative law judges should be aware of ACWDL 17-25, but be prepared to argue the merits of it. Don't forget to observe the guidelines for aid paid pending, hearing request deadlines, good cause, and expedited hearings. For more information on the rules of hearings, see [Western Center's Health Care Eligibility Guide, Chapter 6.B](#) on Due Process Rights and Medi-Cal eligibility appeals (p. 267).

7. Resource materials.

- [ACWDL 17-25](#)
- DHCS' [HCBS Program Eligibility Chart](#)
- Bet Tzedek: [2017 Medi-Cal Program \(Non-MAGI\) for Older/Disabled Adults at a Glance](#)
- Disability Rights California:
 - [Medi-Cal Programs to Help You Stay in Your Own Home or Leave a Nursing Home](#)
 - [HCB Alternatives Waiver: The Basics](#)
- CANHR's [IHSS Fact Sheet](#)
- [Multipurpose Senior Services Program](#) (MSSP)
- DHCS
 - [website for CBAS](#)
 - [website for Assisted Living Waiver](#)
 - [website for PACE](#)

Stay tuned for more information and trainings on waiver programs.
Good luck with your cases and please let us know about your questions, challenges, and successes using ACWDL 17-25 for your clients!

Cori & Kim

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