Medi-Cal Program Guide Letter 683

July 01, 2009

Subject	IMPLEMENTATION OF THE DOMESTIC PARTNERS RIGHTS AND RESPONSIBILITIES ACT 2003 AND TREATMENT OF SAME SEX MARRIAGES IN DETERMINING MEDI-CAL ELIGIBILITY
Effective Date	Upon receipt
Reference	ACWDL 09-03 and 09-04; CR 5161
Purpose	To provide staff with instructions on how to determine Medi-Cal eligibility for applicants/beneficiaries who are registered domestic partners (RDP) or who are spouses of the same sex.
Background	RDP Signed by the Governor in September 2003, California Assembly Bill (AB) 205, titled The Domestic Partners Rights and Responsibilities Act of 2003, extends the rights and responsibilities of a spouse to registered domestic partners. The Act, however, does not amend or modify federal laws or the benefits, protections, and responsibilities provided by these laws. Same Sex Marriages On May 15, 2008, the California Supreme Court ruled that the constitutional right to marry under the California Constitution applies to same sex couples as well as to opposite sex couples. The decision became final and effective at 5:00 PM on June 16, 2008. In November 2008, voters approved Proposition 8, which amended the State Constitution by eliminating the right of same sex individuals to marry in California. Proposition 8 became effective November 5, 2008. RDP and marriages between individuals of same sex are not recognized by the federal government and therefore, no federal reimbursement for Medi-Cal cost may be claimed. However, the rights and responsibilities of RDP provided under AB 205 do apply to state-only funded programs. Moreover, these rights and responsibilities shall also extend to spouses of same sex marriages.

Highlighted Change

At present, federal law does not recognize registered domestic partnerships. Additionally, it does not provide federal reimbursement for any Medicaid (Medi-Cal in California) expenditure based on these partnerships. However, with AB 205, state law does recognize registered domestic partnerships.

Therefore, RDP shall be treated as:
- Unmarried individuals for the purpose of determining eligibility to any federal Medi-Cal programs.
- Married couples for the purpose of determining eligibility to **state-only funded Medi-Cal** programs.
- Children with deprivation shall continue to link the parent(s) to Medi-Cal.

Per MPG Article 1 Section 1, a "parent" is defined as the natural or adoptive parent of child. Parentage may also be established when the name of both RDPs appear on the child's birth certificate.

Required Action

The following procedures shall be used in determining Medi-Cal eligibility for applicant(s)/beneficiaries who are RDPs. The same procedures shall apply to spouses of the same sex and who were legally married and whose marriage has not been dissolved or annulled. Legally married is defined as:
- Married in California on or after 5:00 PM on June 16, 2008 and before November 5, 2008; OR
- Married outside of California as long as they are current residents of California.

Step	Action
1	Determine if the RDP qualifies for any federal Medi-Cal program based on his/her own information.

If RDPs...	Then
do not have child(ren)	• Treat RDPs as unmarried adults
have mutual or adopted child(ren)	• Treat RDPs as unmarried parents • Both parents shall be responsible for mutual child(ren) • Children with deprivation may continue to serve as linkage for the parents
have separate child(ren)	• Treat RDPs as unmarried parent(s) • Each RDP shall be responsible for his/her natural/adopted child(ren) • Children with deprivation may continue to serve as linkage for the parents

2	If there is no eligibility to federal Medi-Cal programs, check for eligibility within the state-only programs and treat RDPs as spouses.
3	Send appropriate Medi-Cal notices upon determination of Medi-Cal eligibility or ineligibility.

Additionally, when staff becomes aware of any applicants/ beneficiaries who were, on or after January 1, 2005 1) denied or discontinued due to excess property or 2) where the SOC was inaccurate based on the failure to treat the RDP as spouse for state-only programs, he/she shall rescind the NOA, reinstate the case as a state-only case if eligible and/or retroactively calculate the SOC.

State-Only Programs

The following are state-only programs:
- Dialysis program (Aid Code 71)
- Total Parenteral Nutrition (TPN) program (Aid Code 73)
- Medically Indigent Adults in Long-Term-Care (LTC) program (Aid Code 53)
- Minor Consent program (Aid Code 7M, 7M, 7P, 7R)
- State funded Breast and Cervical Cancer Treatment (BCCTP) program

K. Situations Involving CalWORKs

When one of the RDP is not the parent of the children
- The non-parent RDP shall be evaluated for eligibility to federal and state-only Medi-Cal program based on his/her own information.
- The income or property of the CalWORKs eligible parent RDP shall not be counted in the non-parent RDP Medi-Cal evaluation.
- Aid code 3S shall be used for member of the CalWORKs AU who qualify for CalWORKs, but do not qualify for CalWORKs-linked Medi-Cal.
- When the non-parent RDP must be included in the CalWORKs AU for the parent RDP and children to be income eligible for CalWORKs, then the parent RDP and children must be granted CalWORKs under aid code 3S and Medi-Cal under aid code 3N.

When both RDP are the parents of the children
1. If all are income ineligible for CalWORKs, a separate Medi-Cal evaluation must be completed with the RDP parents as an unmarried couple with mutual/adopted children.

Refer to Appendix A of Article 8 Section 6 for examples.

Automation Impact

Current CalWIN functionality does not support the Medi-Cal regulation which requires RDPs and same sex spouses to be treated as an

unmarried couple for federal Medi-Cal programs and as a married couple for state-only funded Medi-Cal programs. Until CalWIN is reprogrammed, workers will:

1. Complete the Household Relationship screen in CalWIN as follows:
   - Identify the RDP relationship to the other RDP as 'Domestic Partner.'
   - Identify the same sex spouse of the other same sex spouse as 'spouse.'
   - Identify the children's relationship with the non-parent RDP/same sex spouse as 'unrelated.'
   - Identify the children's relationship to parent the same as you would to record when an individual is the natural/adoptive parent/child.
2. Once EDBC is run, the worker must review and determine if the eligibility results in CalWIN are in accordance with this Letter. If no, the worker will complete a manual evaluation and contact the CalWIN HD to request a bottom-line override.

Forms Impact   None.

Quality Assurance Impact   Beginning with August review month, QA will cite the appropriate error when the requirements in this material have not been followed.

Summary of Changes   The table below shows the updates to the MPG with this Letter.

Section	Summary of Changes
Article 8 Section 6 and 7	Added Section 6 and 7 for registered domestic partnerships and same sex marriages

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Article 8 Section 6 – Registered Domestic Partnerships

Table of Contents

08.06.01 Registered Domestic Partners (RDP)

A. General

This section contains information for establishing the MFBU of registered domestic partnership cases in accordance with the California Domestic Partner Rights and Responsibilities Act of 2003 [Assembly Bill (AB) 205]. Effective January 1, 2005, AB 205 extends the rights and responsibilities of a spouse to RDP under state law.

ACWDL 09-03

B. Definition of Registered Domestic Partnership

A registered domestic partnership exists when one of the following conditions is met.

Condition	Description
A	Two individuals of the same sex file a notarized Declaration of Domestic Partnership (DDP) with the Secretary of State.
B	Two individuals of the opposite sex file a notarized DDP with the Secretary of State and one or both of the individuals: • is/are over the age of sixty-two); AND • meets the Social Security Act eligibility requirement for Title II old-age insurance benefits or Title XVI for aged individual.
C	Legal union between two persons of the same sex, other than marriage, that was validly formed in another state.

C. Verification of Registered Domestic Partnership

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

D. Case Processing

Access to Medi-Cal applications and eligibility determinations that are appropriate to a spouse shall also be provided to RDP. The addition of an RDP to the household of a beneficiary shall be treated the same as that of adding a new spouse to the household of a beneficiary. Adequate and timely notice must be provided for any adverse action.

E. Medi-Cal Eligibility Impact

At present, federal law does not recognize registered domestic partnerships. Additionally, it does not provide federal reimbursement for any Medicaid (Medi-Cal in California) expenditure based on these partnerships.

Therefore, RDPs shall be treated as:
• Unmarried individuals for the purpose of determining eligibility to

any federal Medi-Cal programs.
- Married couples for the purpose of determining eligibility to **state-only funded Medi-Cal** programs that are not based on federal law.
- Children with deprivation shall continue to link the parent(s) to Medi-Cal.

F. State-only funded Medi-Cal programs

State-only funded Medi-Cal programs not based on federal law are limited to:
- Dialysis program (Aid Code 71)
- Total Parenteral Nutrition (TPN) program (Aid Code 73)
- Medically Indigent Adults in Long-Term-Care (LTC) program (Aid Code 53)
- Minor Consent program (Aid Code 7M, 7M, 7P, 7R)
- State funded Breast and Cervical Cancer Treatment (BCCTP) program

G. MFBU Composition

- Each RDP shall establish his/her own federal Medi-Cal eligibility without considering the presence of the other RDP.
- If one or both of the RDP is/are also the natural or adoptive parents, then the child(ren) may serve as linkage to the parent(s) without regard to their RDP status.
- When there is no federal eligibility, treat the RDPs as spouses and evaluate if they are eligible for one of the state-only funded Medi-Cal programs.
- Per MPG Article 1 Section 1, a "parent" is defined as the natural or adoptive parent of child. Parentage may also be established when the name of both RDPs appear on the child's birth certificate.

H. Eligibility Determination

The following procedures shall be used in determining Medi-Cal eligibility for applicant(s)/beneficiaries who are RDPs. For the table below, references to "parent" means natural/adoptive parent of child(ren). Parentage may also be established when the name of both RDPs appear on the child's birth certificate.

Step	Action
1	Determine if the RDP qualifies for any federal Medi-Cal program based on his/her own information.

If RDPs…	Then
Do not have child(ren)	• Treat RDPs as unmarried adult male or female
have mutual or adopted child(ren)	• Treat RDPs as unmarried parents • Both parents shall be responsible for mutual child(ren)

			• Children with deprivation may continue to serve as linkage for the parents
		have separate child(ren)	• Treat RDPs as unmarried parent(s) • Each RDP shall be responsible for his/her natural/adopted child(ren) • Children with deprivation may continue to serve as linkage for the parents
	2	If there is no eligibility to federal Medi-Cal programs, check for eligibility within the state-only programs and treat RDP as spouses.	
	3	Send appropriate Medi-Cal notices upon determination of Medi-Cal eligibility or ineligibility.	

I.
Long Term Care

A RDP in LTC with no federal linkage (i.e. aged, blind or disabled) will have his/her eligibility determined under state-only Medically Indigent Adults in Long-Term-Care (LTC) program (Aid Code 53), with or without a SOC. If his/her RDP is not in LTC, spousal impoverishment provisions shall apply. The RDP who is not in LTC shall be considered the community spouse.

When the institutionalized RDP turns 65 or is determined to be disabled:
- the RDP in LTC is no longer eligible to the state-only LTC program;
- spousal impoverishment will no longer apply;
- property transferred to the community RDP shall not be counted again because Community Spouse Resource Allowance (CSRA) is determined for initial month only and property transferred to community RDP becomes the property of the community RDP; and
- spousal income allocation will no longer be deducted from the income of the institutionalized RDP.

In situations where both applicants are institutionalized RDPs, then the spousal impoverishment provisions shall NOT apply and the division of community property rules will apply.

J.
Board and Care

Individuals who reside in a board and care facility are not eligible under the state-only LTC program. Workers will determine eligibility for two RDPs in board and care as individuals, or determine whether eligibility exists for one of the other state-only programs.

K. Situations Involving CalWORKs

When one of the RDP is not the parent of the children
- Non-parent RDPs shall be evaluated for eligibility to federal and state-only Medi-Cal programs based on his/her own information.

- The income or property of the CalWORKs eligible parent RDP shall not be counted in the non-parent RDP Medi-Cal evaluation.
- Aid code 3S shall be used for the CalWORKs AU members who only qualify for CalWORKs but do not qualify for CalWORKs-linked Medi-Cal.
- When the non-parent RDP must be included in the AU for the parent RDP and children to be income eligible for CalWORKs, then the parent RDP and children must be granted CalWORKs under 3S aid code and Medi-Cal under 3N aid code.

When both RDPs are the parents of the children
- If all are income ineligible for CalWORKs, a separate Medi-Cal evaluation must be completed with the RDP parents as an unmarried couple with mutual/adopted children.

- Refer to Appendix A of Article 8 Section 6 for examples.

APPENDIX A. SITUATIONS INVOLVING CALWORKS PROGRAM

General

The following are CalWORKs scenarios. References to "parent" means natural/adoptive parent. Parentage may also be established when the name of both RDPs appear on the child's birth certificate.The other "non-parent RDP" is not a natural/adoptive parent.

For CalWORKs, 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.

Example 1

Scenario: Non-Parent RDP Excluded from CalWORKs AU
The parent, two children, and non-parent RDP. The non-parent 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 non-parent RDP included in the CalWORKs AU.

CalWORKs Determination
The worker will:
- apply the appropriate CalWORKs federal code that provides automatic CalWORKs linked Medi-Cal eligibility the parent and children; and
- refer the non-parent RDP to Medi-Cal for a separate Medi-Cal determination.

Medi-Cal Only Determination
The worker will:
- Not count the income/assets of the parent toward the non-parent RDP's Medi-Cal eligibility since the parent is on CalWORKs.
- use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP.
- utilize SB 87 in determining Medi-Cal eligibility;
- determine if the non-parent RDP qualifies for any federal Medi-Cal program based on his or her own information.
- check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program, and
- upon determination of Medi-Cal eligibility or ineligibility, send the appropriate Medi-Cal Notice of Action (NOA).

Example 2

Scenario: Non-parent RDP included in CalWORKs AU

The parent and children are eligible for CalWORKs as an AU of three without the non-parent RDP being included in the CalWORKs AU. The non-parent RDP wants to be in the AU. Therefore, the parent, two children, and non-parent RDP are a four person CalWORKs AU. While the parent and the two children remain eligible for CalWORKs with the RDP in the AU, the RDP is a non-parent. Therefore, the non-parent RDP does not qualify for CalWORKs-linked Medi-Cal.

CalWORKS Determination
The worker will:
- apply the appropriate CalWORKs federal code that provides automatic CalWORKs-linked Medi-Cal eligibility to the parent and children; and
- refer the non-parent RDP to Medi-Cal for a separate Medi-Cal determination.

Medi-Cal Determination
- Do not count the income/assets of the parent toward the non-parent RDP's Medi-Cal eligibility since the parent is on CalWORKs;
- use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP;
- utilize SB 87 in determining Medi-Cal eligibility;
- determine if the non-parent RDP qualifies for any federal Medi-Cal program based on his or her own information;
- check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program; and
- upon determination of Medi-Cal eligibility or ineligibility, send the Medi-Cal Notice of Action (NOA).

Example 3 Scenario: Both parents RDPs included and CalWORKs Eligible
The parent, two children, and the RDP apply for CalWORKs. The RDP in this scenario is also the adoptive parent of the two children. The parent, two children and RDP/adoptive parent are a four person CalWORKs AU. They all qualify for CalWORKs and CalWORKs linked Medi-Cal.

CalWORKs Determination
The worker will:
- apply the CalWORKs federal code to the parents and children that provides automatic Medi-Cal eligibility, and
- no referral to Medi-Cal is necessary.

Example 4 Scenario: Non-parent RDP included in CalWORKs AU
The parent and two children are not eligible for CalWORKs based on

excess income. The household includes **a non-parent RDP**. The RDP wants to be included in the AU. Including the RDP makes the AU income eligible for CalWORKs.

CalWORKs Determination
The worker will:
- Compute two budgets as follows:
  1. Include parent and children only – not income eligible to CalWORKs
  2. Include parent, children and non-parent RDP – income eligible to CalWORKs
- Place the CalWORKs eligible parent and children on:
  1. 3S aid code for CalWORKs which would give them CalWORKs without CalWORKs-linked Medi-Cal
  2. 3N aid code for Medi-Cal

- Refer the non-parent RDP to Medi-Cal for a Medi-Cal determination.

Medi-Cal Determination
- Do not count the income/assets of the parent toward the non-parent RDP's Medi-Cal eligibility since the parent is on CalWORKs;
- use the information in the CalWORKs case to determine Medi-Cal eligibility for the non-parent RDP;
- utilize SB 87 in determining Medi-Cal eligibility;
- determine if the non-parent RDP qualifies for any federal Medi-Cal program based on his or her own information;
- check for state-only program eligibility if the non-parent RDP does not qualify for a federal Medi-Cal program; and
- upon determination of Medi-Cal eligibility or ineligibility, send the Medi-Cal Notice of Action (NOA).

Reason/Basis/Rational For Placing The Parent And Children In The 1931(B) Program Aid Code Of 3N
- The CalWORKs income standard is based on the minimum Basic standard of Adequate Care (MBSAC) that varies according to family size.
- 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).
- 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.
- The amounts established for the MBSAC levels used in CalWORKs

are less than the 100 percent of federal poverty level (income test for Section 1931(b)) for the same size family.
- Furthermore, the MBSAC amount used by CalWORKs for any family size is always less than the federal 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 for a family size of two.
- 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.

Example 5   Scenario: Both parents RDP and not CalWORKs eligible
The parent, two children, and the RDP/adoptive parent are <u>not</u> 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
The worker 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 registered domestic partnership. Therefore, there is a need for the following Medi-Cal determination.

Medi-Cal Eligibility Determination
The worker will:
- use the information in the CalWORKs case to determine Medi-Cal eligibility;
- utilize SB 87 in determining Medi-Cal eligibility;
- determine eligibility for both parents as an unmarried couple with mutual children; and
- upon determination of Medi-Cal eligibility or ineligibility, send the appropriate Medi-Cal NOA.

Article 8 Section 7 –   Same Sex Marriages

08.07.01 Same Sex Spouses

A. General

On May 15, 2008, the California Supreme Court ruled that the constitutional right to marry under the California Constitution applies to same sex couples as well as to opposite sex couples. The decision became final and effective at 5:00 PM on June 16, 2008.

ACWDL 09-04

In November 2008, voters approved Proposition 8, which amended the State Constitution by eliminating the right of same sex individuals to marry in California. Proposition 8 became effective November 5, 2008.

Similar to registered domestic partnerships, marriages between individuals of same sex are not recognized by the federal government and therefore, no federal reimbursement for Medi-Cal cost may be claimed. However, the rights and responsibilities of provided under California Domestic Partners Rights and Responsibilities Act of 2003 for state-only funded programs shall also extend to spouses of same sex marriages.

B. Case Processing

The procedures used in determining eligibility to Medi-Cal for RDP (MPG 08.06.01) shall also apply to spouses of same sex who were married legally and whose marriage has not been dissolved or annulled. Legally married is defined as:
- Married in California on or after 5:00 PM on June 16, 2008 and before November 5, 2008; or
- Married outside of California as long as they are current residents of California.