

Using California's Spousal Impoverishment Rule for Home and Community Based Services

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

This fact sheet may be useful to California residents seeking Medi-Cal benefits to cover the cost of in-home caregiving or other services at home. Medi-Cal is California's version of the federal Medicaid program, providing health insurance to low-income or low-asset individuals. In addition to paying for nursing home care, Medi-Cal also covers the cost of in-home caregiving, assistance with household chores, and other home-based services, in certain situations. Unfortunately, many Medi-Cal beneficiaries have difficulty accessing these benefits due to a high monthly Share of Cost;¹ others may be ineligible for Medi-Cal entirely due to excess assets.

If you are interested in obtaining Medi-Cal to assist with in-home care expenses, but are worried that your income or assets may be too high, the "Spousal Impoverishment Protections" described below may help you.

What are "Spousal Impoverishment Protections"?

A. Spousal Impoverishment Protections for Nursing Home Residents: Since 1988, federal law has included protections to prevent the impoverishment of an at-home spouse when one spouse² enters a nursing home on Medi-Cal. Under spousal impoverishment, Medi-Cal allows the at-home spouse, or community spouse, to retain additional income and assets, while still paying for the other spouse to receive care in a nursing home. In 2018, the at-home spouse is permitted to retain a "Community Spouse Resource Allowance" (CSRA) of \$123,600 in countable assets, in addition to the \$2,000 in countable assets the nursing home spouse may retain.

Example: John and Mary have \$50,000 in joint savings. John enters a nursing home in February 2018. John can be eligible for Medi-Cal immediately. Under the spousal impoverishment law, Mary can keep all of the \$50,000 since it is below the \$123,600 limit.

In addition to the CSRA, the at-home spouse is permitted to retain additional income without having to contribute it all to Share of Cost. The at-home spouse may retain all income in his/her own name and, if that income is less than \$3,090 (the Minimum Monthly Maintenance Needs Allowance, or MMMNA, for 2018), he/she may receive an allocation from the nursing home spouse's income to reach \$3,090.

Example: John is in a nursing home and Mary lives at home. John receives a pension of \$2,500 per month. Mary receives a pension of \$500 per month. Since Mary is allowed to retain at least a minimum income of \$3,090 per month, Mary can keep her \$500 and receive all \$2,500 per month from John's income, to bring her income up to \$3,000, which is below the threshold of \$3,090.

¹ A Share of Cost functions like a deductible. It is the amount of money you must pay out of pocket each month towards your healthcare costs, before you start receiving covered services through Medi-Cal.

²Spousal impoverishment protections apply to same sex spouses, opposite sex spouses, and registered domestic partners in California.

B. Spousal Impoverishment for Individuals at Home: In 2014, the Affordable Care Act (ACA) broadened the definition of “institutionalized spouse” to apply not only to Medi-Cal beneficiaries in nursing homes, but also to Medi-Cal beneficiaries living at home or in the community and receiving Home and Community Based Services (HCBS). This broadened definition means that many individuals will be eligible for Medi-Cal with the more generous income and asset rules under spousal impoverishment, enabling them to access services at home and avoid premature placement in a nursing home.

California did not implement the expanded spousal impoverishment protections until 2017, when Medi-Cal beneficiaries filed a lawsuit called *Kelley v. Kent*. Finally, in July 2017, the California Department of Health Care Services released All County Welfare Director’s Letter 17-25, outlining California’s implementation of the expanded spousal impoverishment protections for Medi-Cal beneficiaries receiving Home and Community Based Services (HCBS). You can read the full letter here: <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/ACWDL2017/ACWDL17-25.pdf>

What are Home and Community Based Services?

Home and Community Based Services (HCBS), sometimes called “Medi-Cal Waivers,” are programs that offer an alternative to nursing homes. HCBS programs offer a package of services and supports to Medi-Cal beneficiaries who would otherwise require care in a nursing home, but who prefer to remain at home. Some of the benefits offered through HCBS programs include: caregiving (“personal care services”), assistance with chores and meal preparation, protective supervision, in-home nursing care, case management, and home modifications. Availability of HCBS programs varies from county to county, and the services offered through each program vary as well. HCBS programs in California include:

- Community First Choice Option (CFCO) - *part of the IHSS program*
- The Multipurpose Senior Services Program (MSSP)
- The Home and Community Based Alternatives Waiver (HCBA)
- The Assisted Living Waiver (ALW)
- Program for All Inclusive Care for the Elderly (PACE)
- California Community Transitions Program (CCT)
- Community Based Adult Services (CBAS)
- Home and Community Based Services for Persons with Developmental Disabilities
- Pediatric Palliative Care
- Self-Directed Services for Persons with Developmental Disabilities

For more information about individual programs visit <http://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-CalWaiversList.aspx>

How do I apply for Medi-Cal to pay for HCBS?

To apply for Medi-Cal to pay for HCBS, and to ensure that the spousal impoverishment protections are properly applied to your case, you must first indicate on your Medi-Cal application that you are interested in HCBS. On the Single Streamlined Application, you would answer “yes” to the question on Page 7 that asks: “*Does this person need help with long term care or home and community based*

services?” You can download the Single Streamlined Application here:

http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/2014_CoveredCA_Applications/ENG-CASingleStreamApp.pdf

Second, you must establish that you meet the clinical eligibility requirements for HCBS, meaning you must demonstrate that you require nursing facility level of care. To do this, you have two options:

1. Have your doctor complete a Doctor’s Verification Form, which the Medi-Cal office should send as soon as you indicate that you are interested in HCBS. (You can also download the Doctor’s Verification Form online at www.dhcs.ca.gov/formsandpubs/forms/Forms/MC604MDV.pdf.) After your doctor completes the form, she must send it directly to the county Medi-Cal office.

OR

2. Contact an HCBS program (i.e., one of the programs listed above) to begin the application process. The HCBS program will complete a needs assessment to determine whether you meet the clinical criteria for nursing home care. Once the needs assessment is complete, the HCBS program staff should communicate directly with your county Medi-Cal office to verify that you meet the clinical criteria for enrollment.

How do I contact an HCBS program to begin the application process?

Each HCBS program has a different intake and application process. The first step is to call the HCBS provider serving your county to initiate an intake. Phone numbers for some HCBS providers, by county, can be found below.

1. Multipurpose Senior Services Program (MSSP):
<http://www.aging.ca.gov/ProgramsProviders/MSSP/Contacts/>
2. California Community Transitions Project (CCT):
http://www.dhcs.ca.gov/services/ltc/Documents/CCT_LO_Contact_Info_8-17-17.pdf
3. Program for All Inclusive Care for the Elderly (PACE):
http://www.canhr.org/factsheets/misc_fs/html/fs_PACE.html (scroll to bottom)

What if I Already have Medi-Cal?

If you are already enrolled in Medi-Cal, and you are **not** currently enrolled in one of the HCBS programs described above, you may contact an HCBS provider to begin the application process. Once you begin the application process for HCBS, and demonstrate you meet the clinical eligibility for HCBS (either by completing the HCBS needs assessment, or by having your doctor complete a verification form) the spousal impoverishment protections should be applied to your Medi-Cal case.

If you are already enrolled in Medi-Cal, and you are also already enrolled in one of the HCBS programs listed above, you are entitled to spousal impoverishment protections retroactive to January 1, 2014. If you believe you are entitled to retroactive spousal impoverishment, please call CANHR at (800) 474-1116 and ask to speak with an advocate.

I am an In-Home Supportive Services (IHSS) recipient. Is this considered an HCBS Program?

A large percentage of people enrolled in IHSS are also enrolled in the Community First Choice Option (CFCO), which is an HCBS program. If you are an IHSS recipient, you can call your county Medi-Cal office to verify whether you are also enrolled in CFCO. If you are enrolled in CFCO, you are entitled to the spousal impoverishment protections.

What if the desired HCBS program has a waitlist?

Spousal impoverishment protections apply to HCBS applicants on waitlists, regardless if the wait is two months, two years or more.

Example: John and Mary live at home, and John has ALS. John needs a lot of care but wants to remain at home with Mary for as long as possible. John receives a pension of \$2,500 per month. Mary receives a pension of \$500 per month. They have savings of \$50,000.

John applies to Medi-Cal and indicates he is interested in HCBS. He calls the Multipurpose Senior Services Program (MSSP) serving his county and begins the application for MSSP. The MSSP program staff complete a needs assessment demonstrating John meets the clinical eligibility criteria, and John's Medi-Cal is approved under the spousal impoverishment protections. John has no Share of Cost, because John and Mary's combined income is under \$3,090.

Unfortunately, the MSSP program in John's county has a waitlist. Even though John is on the waitlist for MSSP, he is still entitled to Medi-Cal with the spousal impoverishment protections. He can now use his Medi-Cal benefits to apply for IHSS and receive in-home caregiving with no Share of Cost.

Do you have any other tips?

The application process for a couple trying to use the spousal impoverishment protections for HCBS can be very difficult, and staff at many Medi-Cal offices and HCBS programs may not yet be familiar with the expanded spousal impoverishment protections. You may want to write explicitly on your Medi-Cal application, **"Applicant is applying for Medi-Cal using the Home and Community Based Services and spousal impoverishment provisions outlined in ACWDL 17-25."** Contact an advocate at CANHR at (800) 474-1116 for assistance with the application process.