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GOVERNOR

March 28, 2016

ALL COUNTY LETTER NO. 16-13

TO: ALL COUNTY WELFARE DIRECTORS
ALL CaWORKs PROGRAM SPECIALISTS
ALL COUNTY CALFRESH COORDINATORS
ALL COUNTY REFUGEE COORDINATORS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CaWORKs): RULING BY THE U.S. SUPREME COURT REGARDING SAME-SEX MARRIAGES AND REMINDER REGARDING SAME-SEX REGISTERED DOMESTIC PARTNERSHIPS

REFERENCES: [ALL COUNTY LETTER \(ACL\) NO. 09-05](#); (ASSEMBLY BILL (AB) 205 (Chapter 421; Statutes of 2003): [ALL COUNTY WELFARE DIRECTORS LETTER \(ACWDL\) NO. 09-03](#), [ACWDL No. 09-04](#); AND MPP SECTIONS 63-402.143; 42-711.413; 42-709.231; 42-711.412; 42-709.22; 42-709.221(a); 42-708.53; 42-708.41 AND 42-708.3

The purpose of this ACL is to provide policy direction regarding eligibility of same-sex married spouses and registered domestic partners (RDPs) to the CaWORKs, CalFresh and Refugee Cash Assistance programs.

Background on Same-Sex Spouses

Marriages between individuals of the same sex are treated the same by both state and federal law, and in all state and federal programs.

Marriages in California between two people of the same sex are valid if the marriages occurred during two time periods. The first time period was between June 16, 2008, and November 4, 2008. In June 2008, the California Supreme Court ruled *In Re Marriage Cases* that it was a violation of the California state constitution to discriminate between same sex and opposite sex couples on the right to marry. In November 2008, voters passed Proposition 8, amending the state constitution to prohibit marriages between individuals of the same sex.

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties

In June 2013, the Ninth Circuit Court of Appeals dissolved the injunction in *Perry v. Brown* prohibiting same-sex couples from marrying, following the U.S. Supreme Court ruling in *Hollingsworth v. Perry*. All otherwise valid marriages of same-sex individuals performed in California on or after June 13, 2013, are legal.

In light of the U.S. Supreme Court decision, same-sex marriages performed in other states, valid in the state at the time in which the marriage was performed, are recognized as valid in California, regardless of the date on which the marriage took place.

Same-sex spouses married during one of the periods described above are extended the same rights and responsibilities as other spouses in the CalWORKs program. They are step-parents to the other spouse's children, unless they are the natural or adoptive parent of the child(ren). In that case, they shall be treated like every other parent.

Background on Registered Domestic Partners

Division 2.5 Domestic Partner Registration Act was added to the Family Code beginning at Section 297 by California state statutes in 1999. The Domestic Partner Registration Act has subsequently been revised a number of times, most significantly by chapter 421 (AB 205), statutes of 2003. Among other requirements, the individuals must be of the same sex, or at least one partner must be over the age of 62.

AB 205 broadened the legal definition of RDPs to extend to RDPs the same rights and responsibilities that are granted and imposed upon a married couple. In California, a RDP is an individual who has a declaration of domestic partnership registered with the California Secretary of State. AB 205 also extended these rights and responsibilities to a member of a legal union validly formed in another jurisdiction that is equivalent to a RDP in California. RDPs have the same rights and responsibilities as step-parents of the children of their partners.

As a reminder, when an RDP is a parent of a child in the assistance unit (AU), the RDP is treated as any other parent of an aided child. When the RDP is not a parent of an aided child, the RDP is treated as a step-parent with respect to that child. Former RDPs also have the rights of former step-parents. The regulatory changes that implement provisions of AB 205 are found in chapter 80 of the Manual of Policies and Procedures (MPP) and are available on the California Department of Social Services (CDSS) web site at <http://www.dss.cahwnet.gov/ord/PG302.htm>.

Since RDPs are not recognized in federal law as having a relationship different than other unmarried adults, their rights in other federal programs are not always the same as spouses would otherwise have. This letter is going to address how RDPs are treated in a number of different programs.

CalWORKs

Registered domestic partnership is a state-recognized relationship, which allows for registered domestic partners to be treated like spouses in the CalWORKs program. The federal TANF program allows states to define who is in an assistance unit. The federal TANF program allows states to define who is in an assistance unit. Since Family Code §297.5 (a) and (b) gives current and former registered domestic partners the same rights and responsibilities as current and former spouses, partners are treated like spouses and former spouses.

Welfare to Work

The CalWORKs Welfare-to-Work (WTW) program requirements were not changed as a result of AB 205. If the RDP/same-sex spouse has not adopted the child(ren), he or she is treated as a step-parent and the family would be considered a single-parent AU (with only one aided natural or adoptive parent) for the determination of WTW participation requirements. Single-parent AUs with a child under six are subject to an average weekly requirement of 20 or 30 hours to meet CalWORKs minimum standards, dependent on whether there is a child under six or a second adult is in the home (MPP section 42-711.413). Single-parent AUs with an RDP/same-sex spouse are subject to an average weekly requirement of 30 hours, 20 of which must be in core activities, to meet CalWORKs federal standards, regardless of whether there is a child under six in the home (MPP section 42-709.231). State law does not provide that the average weekly participation requirement of 20 or 30 hours can be shared among two adults; therefore, one adult (either the parent or the optional RDP/same-sex spouse) in the AU must fulfill the 20 or 30 hour requirement. If the RDP or same-sex spouse has adopted the child(ren), the family is considered a two-parent AU and subject to the hourly participation requirements described in MPP sections 42-711.412 and 42-709.22. Two parent AUs with a 35 hour requirement may have hours shared between the two aided adults pursuant to MPP section 42-711.412(a)(1) and 42-709.221(a).

As a reminder, the WTW 24-Month Time Clock provides a cumulative 24-month period to each aided adult during which he or she has flexibility in choice of activities, while subject to CalWORKs minimum standards. Any month(s) in which an AU meets CalWORKs federal standards will stop the month(s) from counting toward the WTW 24-Month Time Clock. For single-parent AUs, either the parent or step-parent may participate to meet the AU's WTW participation requirements. Like a natural or adoptive parent, if the step-parent participates to meet the AU's requirement under CalWORKs minimum standards, months will count toward the step-parent's WTW 24-Month Time Clock (MPP section 42-708.53). Each adult in a two-parent AU has his or her own individual WTW 24-Month Time Clock and months will count toward the WTW 24-Month Time Clock for each adult participating to meet CalWORKs minimum standards (MPP section 42-708.41). MPP section 42-708.3 provides the conditions that shall make a month not count toward the WTW 24-Month Time Clock for single-parent and two-parent AUs.

Childcare

Eligibility requirements for Stage One child care services are based on a client's participation in required WTW activities. The client is not eligible for subsidized childcare when there is an able and available parent, legal guardian or adult member of the AU in the home. The same rules that are applied to step-parents in determining membership in the AU will be applied to RDPs who are not the parent and who do not adopt the eligible child(ren). In these cases, the CalWORKs parent will have the option, as they do with step-parents, to include or exclude the RDP or same-sex spouse in the AU, which could impact the eligibility of Stage One child care. If an RDP adopts the eligible child(ren), the RDP or same-sex spouse will be considered a parent and a member of the AU, so the same eligibility requirements for two-parent families will be applied.

CalFresh

For the CalFresh Program, individuals who customarily purchase and prepare meals together continue to define a CalFresh household. RDPs are not recognized as being anything other than unmarried; however, CalFresh is primarily a federal Supplemental Nutrition Assistance Program (SNAP), so CalFresh rules regarding spouses will not apply to RDPs. Categorical eligibility rules continue to require that households in which all members receive or are authorized to receive CalWORKs cash aid or General Assistance benefits are considered categorically eligible for CalFresh.

Refugee Cash Assistance (RCA)

For eligibility purposes, the RCA program has the same requirements as CalWORKs. RDPs have the same eligibility rules for RCA as married couples. [Individuals that have an immigration status of refugee, asylee, Cuban/Haitian entrant or medical professional, Amerasian, certified victim of human trafficking or a Special Immigrant Visa (SIV) holder, are eligible to receive RCA program benefits. Individuals certified as victims of a severe form of trafficking by the federal Office of Refugee Resettlement, and eligible family members of a certified trafficking victim that have a Derivative T-Visa are eligible to receive RCA program benefits. Eligibility for RCA benefits is limited to a maximum of eight months, with the exception of SIV holders from Afghanistan whose eligibility is limited to a maximum of six months].

Medi-Cal Eligibility

Medi-Cal has both state-only funded programs and state-federally funded programs. RDPs are not eligible for federal Medi-Cal benefits unless they are a natural or adoptive parent of a child in the AU, the RDP's name appears on the child's birth certificate, or they can establish eligibility on their own behalf (e.g. by being aged, blind, disabled, pregnant, etc.). The RDP may be eligible for specific state-funded Medi-Cal programs because he or she is treated as a spouse under state law.

When the RDP is not the natural or adoptive parent of a child in the AU, but he or she is eligible for CalWORKs, a separate Medi-Cal determination must be made for that RDP and in some instances for the rest of the family. Two separate aid codes must also be used.

Aid code 3S has been established for those who are eligible for CalWORKs but who will not receive automatic CalWORKs-based Medi-Cal. Use of aid code 3S ensures that RDPs are not inappropriately considered or claimed as cash-linked Medi-Cal recipients. Since Medi-Cal is no longer categorical to CalWORKs, there are times when a separate Medi-Cal determination must be made for the entire AU. Department of Health Care Services (DHCS) has issued an [ACWDL No. 09-03](#) with additional instructions regarding this Medi-Cal eligibility determination process and will issue further instruction as policy is developed. Due to the *United States v. Windsor* and subsequent U.S. Supreme Court decisions, the [ACWDL No. 09-04](#) is no longer valid regarding same-sex spouses, but is still applicable for RDPs.

CalWORKs Forms

CalWORKs forms were revised to add the term "registered domestic partner," and to add "domestic partnership" as a marital status when asked on a form.

Aid Codes for RDP Families

There are no changes to the current CalWORKs aid code designations and reporting processes unless, the RDP is a natural parent of one or more of the children or becomes an adoptive parent of one or more of the children; otherwise, the RDP would still be a step-parent for the purposes of CalWORKs. If the RDP adopts one or more of the child(ren) in the AU, the case would be considered a two-parent family case and reported under aid code 35.

As a step-parent to his or her partner's child(ren), the RDP is related to the children as a step-relative within the fifth degree, even after the RDP has been terminated by death or dissolution. If either the parent or the RDP is otherwise ineligible for aid (e.g., they are receiving Supplemental Security Income (SSI), are undocumented non-citizens, etc.) the county shall assign the appropriate aid code to designate that case.

Fiscal Claiming and Data Reporting

The current assistance and county expense claim processes remain unchanged. Allowable grant, administrative and service costs for eligible RDPs should be claimed as any other allowable CalWORKs All Other Families (aid code 30) case. There are no changes to the current data report forms. Data collection for eligible RDPs should be reported as any other individual within the CalWORKs All Other Families caseload.

Contacts

If you have any questions or need further information, please contact the following programs:

Program	Office	Contact Information
CalWORKs	CalWORKs Eligibility Bureau	(916) 654-1322
CalFresh	CalFresh Branch	(916) 651-9915
Child Care	Child Care Programs Bureau	(916) 657-2144
Data Reporting	Data Systems and Survey Design Bureau	(916) 653-1800
Fiscal Claiming	Fiscal Policy Bureau	(916) 657-3440
Medi-Cal	California Department of Health Care Services	(916) 327-0408
Refugee Programs	Refugee Programs Bureau	(916) 654-4356
Welfare to Work	Employment Bureau	(916) 654-1322

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division

c: CSAC
CWDA