2025: What's Happening with Medi-Cal?

- Case Study Client
- The End of the Asset Test
- Income Rules, Trust Rules, Recovery Rules
- Review Summary Charts:
  - Medi-Cal Programs
  - OBRA Trust & Non-OBRA Trusts
- Solutions for our Case Study Client

Questions from John and Jane Doe (Case Study)

John Doe (85) and Jane Doe (83)

Background:

- John is needs care now, but will need higher level of care in the next 1-2 years.
- One major asset (home) – worth roughly $1.5 million (after 189k mortgage etc., likely worth $1.2 million).
- Both receive social security – John $2600 Social Security / Jane $1700 Social Security
- John and Jane have 2 "revocable" trusts: one in both names and one in wife's name only (inheritance)
- Although they have 1.3 million in various accounts and investments they feel they will run out of money for long-term care and living expenses

Their Concern:

If one spouse ends up needing extensive long-term care, Medi-Cal may take their house – leaving the other spouse with no home, less savings and less income

Their Objective:

Our main objective is to understand how to protect our real estate asset and marital income

To understand what their options are when it comes to protecting their home and marital income– while allowing the other spouse to avoid impoverishment

<u>Common Client's Questions</u>:

1. **How long is the Medi-Cal look-back period in California?**
   - Are there different look-back periods for different asset types?
   - Is it 30 months for cash and 5 years for real estate?
   - Is the look-back period being phased out in California?

2. **Some people say it will be phased out in June 2026, is this accurate?**
   - If there is a phase out - what asset types will it apply to?

3. **Is there a path to eliminate or reduce the look-back period for real estate?**
   - Does transferring a real estate asset from a "revocable" to an "irrevocable" trust protect us from the Medi-Cal look back?

<u>Client's Questions (continued)</u>:

4. **Does transferring a real estate asset into a life estate protect from us from the Medi-Cal look-back?**
   - If placed in an "irrevocable" trust/life estate, what is the possible impact of property tax reassessment and increase for our two adult children as successor trustees?

5. **Are assets held separately by one spouse (Jane's "revocable" trust consisting of her inheritance (Rental Property) considered community property for purposes of the Medi-Cal look-back?**

Medi-Cal Programs (Partial List)

PROGRAM	ELIGIBILITY	INCOME	ASSETS	OTHER INFO
Magi (Modified Adjusted Gross Income)	19-64 Cannot have Medicare	-Individual must have less than $1,732 in <u>countable income</u> -<u>No Share of Cost</u> -Cannot use deductions to reduce gross income	No asset limit	-Common program for low-income adults. -No transfer penalties
Aged, Blind and Disabled Federal Poverty Level (ABD FPL) - ALWP (Assisted Living)	65 or older, or blind, or disabled (FLP=Federal Poverty Level)	-$1,732 single, $2,352 couple -Supplemental health insurance can lower countable income	Beginning 2024 No asset limit	-No transfer penalties -Some couples may be eligible for additional income protection -IHSS with NO Share of Cost -ALWP (waiting list)
Medically Needy	65 or older, or blind, or disabled, over ABD FPL income	-Beneficiaries must pay monthly share of cost before Medi-Cal coverage begins -IHSS Hourly Rate	Beginning 2024 No asset limit	-No transfer penalties -Some couples may be eligible for additional income protection -IHSS with Share of Cost
Long Term Care --- SSI	No age restrictions as long as applicant is in skilled nursing facility ------ Any age	-Beneficiaries pay almost all of their income as a share of cost, and keep a small Personal Needs Allowance ----- $1,182 Single/ $2,022 Couple	Beginning 2024 No asset limit -------- Asset Test	-Some couples may be eligible for additional income protection -Priority to ALWP -------- Transfer Penalties

OBRA Trust & Non-OBRA Trusts

OBRA Trust	1st Party SNT	Third Party	Pooled 1st Party SNT	Testamentary Trust
3-Prong Test 1. Established Individual/Spouse 2. Funded by Individual/Spouse 3. Other than by Will	Countable, but subject to special rules	Not Countable because fails Test(s) 1 and 2.	Countable, but subject to special rules	Not countable because fails Test 3.
Revocable Trust* Income does not count as accrued, but may** count at distribution (distributed principal may** count as income)	**Revocable Trust** Income accrued counts as unearned income for eligibility.	**Revocable Trust** Income does not count as accrued, but may** count at distribution (distributed principal may** count as income)	N/A	**Revocable Trust** Income does not count as accrued, but may** count at distribution (distributed principal may** count as income)
Irrevocable Trust* *Same as Revocable Trust **Chart Caveat:** Mandatory vs. Discretionary **In-Kind Support: Housing, Utilities, Food	**Irrevocable Trust** Funds distributed from principal don't count. Funds distributed from trust income may** count as unearned income	**Irrevocable Trust** Income does not count as accrued, but may** count at distribution (distributed principal may** count as income)	**Irrevocable Trust** Funds distributed from principal don't count. Funds distributed from trust income may** count as unearned income	**Irrevocable Trust** Income does not count as accrued, but may** count at distribution (distributed principal may** count as income)

Asset Elimination Overview

- **Assembly Bill 133** (Chapter 143, Statutes of 2021) was signed into law by the Governor on July 27, 2021. This law included a two-phased approach to eliminating the asset test used to determine eligibility for Non-Modified Adjusted Gross Income (Non-MAGI) Medi-Cal Programs.
- **Phase I**, implemented on **July 1, 2022**, increased asset limits for all Non-MAGI programs to **$130,000** per individual and **$65,000** for each additional household member (up to 10).
- **Phase II**, effective on **January 1, 2024**, will eliminate the asset test entirely for Non-MAGI Medi-Cal programs, including Long-Term Care and Medicare Savings Programs.

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Non-MAGI Populations

- Non-MAGI Medi-Cal is made up of a variety of programs targeted at specific groups of people with certain attributes and income levels.
- Some people who do not qualify for MAGI Medi-Cal may qualify for a Non-MAGI Medi-Cal program.
- The following individuals may be eligible for Non-MAGI Medi-Cal:
  - Persons under 21 years of age, or 65 years of age and older
  - Individuals who are blind or disabled
  - Individuals residing in long term care facilities or nursing homes
  - Families with children under the age of 21 who have too much income to qualify for MAGI Medi-Cal
  - Pregnant women

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Individuals with Supplemental Security Income

- The Social Security Administration (SSA) administers the Supplemental Security Income (SSI) program.
- SSI recipients are automatically eligible for Medi-Cal.
- The Elimination of Assets **does not apply** to individuals who receive their Medi-Cal through the SSI program, as SSI uses **federal** criteria for program eligibility.

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Retroactive Medi-Cal

- Medi-Cal applicants can request retroactive Medi-Cal coverage for up to three months prior to the month of application.
- Individuals who apply for Non-MAGI Medi-Cal programs prior to January 1, 2024, will be subject to the current asset rules.
  - Current asset limit is **$130,000** for an individual.
  - An additional **$65,000** is added for each additional household member (up to 10).

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Stakeholder Engagement

- DHCS is using existing stakeholder engagement forums to discuss and provide updates on Asset Elimination implementation, including but not limited to:
  - Asset Elimination Stakeholder Workgroup;
  - The Consumer-Focused Stakeholder Workgroup;
  - County Welfare Directors Association of California (CWDA) meetings.

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Estate Recovery

- Policy guidance is located in MEDIL I 23-39.
- There are **no changes** to the Estate Recovery program or process due to the elimination of assets.
- DHCS will **continue** to seek repayment from the estates of deceased Medi-Cal members who meet the criteria under federal and state laws.
- Counties **will not** request asset information from applicants or Medi-Cal members for purposes of Estate Recovery.
- Recovery: First Party SNT and Non-SNT Assets
- For specific questions regarding Estate Recovery, please reach out to the **DHCS Third Party Liability and Recovery Division.**
  - **Website:** Estate Recovery (ca.gov)
  - **Email:** ER@dhcs.ca.gov
  - **Phone:** (916) 650-0590

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Income-Producing Assets

- Policy guidance is located in ACWDL 23-20, ACWDL 23-21, and ACWDL 23-22E.
- **Assets that produce income are:**
  - Annuities
  - Individual Retirement Arrangements (IRAs)
  - Retirement Plans for Self-Employed Individuals (formerly known as Keoghs)
  - Work-Related Pension Funds
  - Income from Rental Property
  - Interest and Dividends
  - Trusts (Mandatory Distributions)

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Annuities

- Effective January 1, 2024, the **undistributed balance** of an annuity is no longer considered in the Non-MAG Medi-Cal eligibility determination.
- Any payments received from an annuity will continue to **count** as **unearned income**, per 22 CCR § 50507.
- Individuals are **no longer required** to take periodic distributions from the annuity as a condition of Medi-Cal eligibility.

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IRAs, Retirement Plans for Self-Employed Individuals, Work-Related Pension Plans

- As of **January 1, 2024**, the cash value of these plans are no longer a factor for the Non-MAGI Medi-Cal eligibility determination.
- Any payments received from these funds will continue to count as **unearned income**, per 22 CCR § 50507.
- Individuals are **no longer required** receive periodic payments from these funds as a condition of Medi-Cal eligibility.
- These funds are **not** considered unconditionally available income.

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Income from Rental Property

- As of January 1, 2024, **property utilization requirements** under 22 CCR §50416 and §50427 are **no longer required**, as the underlying property is no longer a factor in the Medi-Cal eligibility determination.
- The **net income** received from the rental of real property will continue to count in the Medi-Cal eligibility determination and is calculated in accordance with 22 CCR §50508.

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Interest & Dividend Income

- Effective **January 1, 2024**, there is **no change** to the treatment of payments of interest & dividend income for purposes of Non-MAGI Medi-Cal eligibility.
- Interest & dividend income is **unearned income** under 22 CCR § 50507(a)(19-20), unless there is a specific exclusion.
- For additional information regarding interest and dividend income, please refer to ACWDL 23-21.

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Treatment of Trusts

- Effective **January 1, 2024**, trust principal is disregarded for purposes of Medi-Cal eligibility.
- **Income rules** regarding trusts have not changed.
- For additional information regarding the treatment of trust income, please review ACWDL 23-22E.

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Spousal Impoverishment

- Effective January 1, 2024, the **Community Spouse Resource Allowance** (CSRA) will no longer apply.
- **Income eligibility** for the SI provisions will remain unchanged.
  - DHCS will continue to publish annual guidance regarding the **Minimum Monthly Maintenance Needs Allowance** and the **Average Private Pay Rate.**
- For individuals seeking the application of SI provisions **prior to January 1, 2024**, current SI property policies shall apply.
- For more information regarding Spousal Impoverishment provisions, please refer to ACWDL 23-16.

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Transfers of Assets on or after January 1, 2024

- Transfers of assets made **on or after January 1, 2024**, will not be reviewed for purposes of Medi-Cal eligibility.
- Counties will not request verification of transfers or calculate any periods of ineligibility.

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Transfers of Assets Prior to January 1, 2024

- Transfers of assets made prior to January 1, 2024, will still be **subject to the transfer of asset rules**, including periods of ineligibility.
- Transfers of assets made by an individual applying for Long-Term Care (LTC) or a current Medi-Cal member or their spouse seeking LTC services will continue to be reviewed in the look-back period **prior** to January 1, 2024.

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Case Study

Benefits Charts and Case Study

Amending Common Trust Income provisions

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<u>**Client's Questions (continued)**</u>**:**

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5. Are assets held separately by one spouse (Jane's "revocable" trust consisting of her inheritance (Rental Property) considered community property for purposes of the Medi-Cal look-back?

The treatment of trust income is defined in All County Welfare Director's Letter 23-22E. In order to make income generated by the trust not countable towards share of cost, the trust should be amended to make income distributions discretionary and not mandatory.

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Section 2.2 on page three states - Separate Property. During the joint lifetimes of the Settlors, the Trustee shall pay to or apply for the benefit of the Settlor whose separate property was transferred to the Trust the net income of that Settlor's separate estate in monthly or more frequent installments. Similarly, if the Trustee considers the net income of the separate property insufficient, the Trustee shall pay to or apply for the benefit of the Settlor whose separate property was transferred to the Trust, as much of the principal of the Settlor's separate estate as is necessary, in the Trustee's discretion, for the proper health, education, support and maintenance, of that Settlor and his or her spouse, in accordance with their accustomed manner of living at the date of this instrument.

29

Amend to state - Separate Property. During the joint lifetimes of the Settlors, the Trustee has discretion to pay to or apply for the benefit of the Settlor whose separate property was transferred to the Trust the net income of that Settlor's separate estate. Similarly, if the Trustee considers the net income of the separate property insufficient, the Trustee has discretion to pay to or apply for the benefit of the Settlor whose separate property was transferred to the Trust, as much of the principal of the Settlor's separate estate as is necessary, in the Trustee's discretion, for the proper health, education, support and maintenance, of that Settlor and his or her spouse, in accordance with their accustomed manner of living at the date of this instrument.

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Section 6.1 on page 17 states – Income and Principal – Marital Trust. From the time of death of the Deceased Spouse, the Trustee shall pay to or apply for the benefit of the Surviving Spouse all of the income of the Survivor's Trust and the Marital Trust in quarter-annual or more frequent installments. If the trustee considers such payments insufficient, the Trustee shall also pay to or apply for the benefit of the Surviving Spouse such sums of out the principal of either Trust, as the Trustee in the Trustee's discretion shall consider necessary for the Surviving Spouse's proper health, support, maintenance, and education, in accordance with his or her accustomed manner of living as of the date of this instrument.

31

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SUMMARY:

1. If the beneficiary does not receive SSI, a revocable trust may suffice.
2. Trustee Records are important. You will need to identify what payments were for-- support and non-support items.
3. The rules for irrevocable and revocable trust are similar.
4. Since we eliminated the Asset test, Medi-Cal beneficiaries can now use trusts to manage the share of cost via trust income provisions.

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