



Lessons from California

HCBS Payments to Caregivers and MAGI March 2016

THE ISSUE:

In January 2014, the Internal Revenue Service (IRS) issued [guidance](#) announcing that payments received by in-home, individual care providers under Medicaid Home and Community-Based Services (HCBS) waiver programs can be treated as “difficulty of care” payments, which are non-taxable and thus excluded from gross income. Excluding these payments impacts the caregiver’s eligibility for MAGI-based healthcare programs, including Medicaid and subsidies for Marketplace coverage.

ADDITIONAL RESOURCES

[News article](#) with more details about CA’s situation

In California, the state’s In-Home Supportive Services (IHSS) program is not a HCBS waiver program; rather it operates under a Medicaid State Plan Amendment (SPA). In 2015, the IRS released an updated [Q&A](#) indicating that caregiver payments from non-HCBS waiver programs may be excluded from gross income depending “on the nature of the payments and the purpose and design of the program.” However, the IRS did not expressly state that caregiver payments under non-waiver programs should also be treated as non-taxable “difficulty of care payments.” (See NHeLP’s [Fact Sheet](#) on the updated IRS Q&A).

STRATEGY AND ACTIONS:

Due to the lack of clarity in the IRS guidance, IHSS provider wages were considered countable income, therefore decreasing the care provider’s likelihood of being eligible for MAGI-based Medi-Cal (CA’s Medicaid program).

Despite urging from advocates, thus far, the IRS has not issued additional clarifying guidance regarding payments from non-waiver programs. Instead, the IRS requires individuals and states to seek a Private Letter Ruling (PLR) to determine if caregiver payments from non-waiver HCBS programs are taxable. The cost for a PLR is \$28,300. (See Appendix A in [IRS Rev. Proc. 2016–1](#)).

California submitted a PLR request last year and recently received a [response from the IRS](#), which concluded that IHSS payments to caregivers could be treated as “difficulty of care” payments. The California Department of Social Services [announced](#) that as a result, wages received by caregivers who live with the recipient of those services will not be included in the caregiver’s gross income.

While the IRS letter applies only to California, the legal analysis in the letter may help inform the correct tax treatment in similar situations. If your state operates a non-waiver HCBS program you should check whether the payments to caregivers should be non-taxable.

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