STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320

May 12, 1994

TO: All County Welfare Directors
All County Adminsitrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 94-42

NON-PROFIT AGENCIES ACTING AS AUTHORIZED REPRESENTATIVES (AR)

The purpose of this All County Welfare Directors Letter (ACWDL) is to clarify the role that certain non-profit agencies may take in regard to applying for Medi-Cal benefits for incompetent persons.

BACKGROUND

This ACWDL is in response to a question submitted by San Bernardino County concerning the appropriateness of a Regional Center for Developmentally Disabled applying for Medi-Cal on behalf of its incompetent clients. The Regional Center was also completing the Statement of Facts and participating in the face-to-face interview in lieu of the incompetent applicants.

Subsequently, when the Regional Center's budget limited its ability to continue these activities, the Regional Center sub-contracted with the Salvation Army to take over these functions for a nominal fee.

California Code of Regulations (CCR), Title 22, Sections 50143 (a) (3) and 50163 (a) (3) (B) authorizes "a public agency representative" to file an application for Medi-Cal and complete the Statement of Facts when an applicant is incompetent, in a comatose condition, or suffering from amnesia, if the applicant has no spouse, conservator, guardian, or executor to act on their behalf.

A "public agency" is defined in Title 22, Section 50077 as:

> "....an administrative division of local, state or federal government, or an organization that has a contract to act in behalf of the local, state or federal government."

QUESTIONS

Specific questions posed, and the responses, are:

Question #1: Can a Regional Center for the Developmentally Disabled be viewed as a "public agency" for the purpose of acting for incompetent persons in the Medi-Cal application process when the individuals have no family or friends to assist them?

Answer: The State Department of Developmental Services (DDS), per Welfare & Institutions (W&I) Code, Section 4416, is responsible for the enactment of laws relating to the care, custody, and treatment of developmentally disabled individuals. Part of this responsibility includes the establishment and operation of regional centers to provide for needed services. These services are viewed by the Legislature to be of

such a special nature that they cannot be satisfactorily performed by State agencies and that private, nonprofit agencies must be utilized for the purpose of operating regional centers.

Under Medi-Cal Regulations (Title 22, Section 50077), regional centers may be regarded as "public agencies" since they have a contract with DDS to provide services for the developmentally disabled.

Additionally, under W&I Code Section 4659 (a) (1), these regional centers are required to pursue Medi-Cal benefits for the individuals in their care.

The representative from the Regional Center completing the Statement of Facts should be aware that he/she is liable for the declarations made on behalf of the disabled person.

Question #2: Does an "AR" form need to be completed by the agency representative?

Answer: No. No written authorization is necessary for a "public agency representative" to apply for Medi-Cal on behalf of incompetent individuals. In fact, if an individual is viewed as "incompetent" (herein referring to having a substantial handicap which includes mental retardation, cerebral palsy, autism, and other conditions closely related to mental retardation), the individual is presumably unable to select or designate an "AR".

Question #3: Is there a distinction made in the Medi-Cal application process between individuals declared incompetent by the court and those viewed, without legal adjudication of their condition, as mentally incompetent?

Answer: Yes. If an individual is legally determined to be "incompetent", then the legal guardian, custodian or conservator would be required to complete the Medi-Cal application process. If no such determination is made by the courts then a public agency representative may act on behalf of the individual.

However, someone with a developmental disability may still be capable of understanding and participating in the Medi-Cal process. These persons are guaranteed, under CCR, Title 17, Section 50510, the same rights, protections, and responsibilities as all other persons under the law.

Question #4: May a public agency, such as a Regional Center for the Developmentally Disabled, sub-contract with another nonprofit agency, such as the Salvation Army, to act on behalf of incompetent individuals to obtain Medi-Cal benefits?

Answer: Yes. W&I Code, Section 4651, mandates that regional centers find economical methods to achieve goals and provide services for the developmentally disabled. Regional centers are also authorized under W&I Code, Section 4648 (b), to purchase any needed services for individual program needs from any individual or agency that will best serve the program plan of the incompetent person.

As an agent of the Regional Center, the Salvation Army is a representative of a public agency and may act in that capacity.

If you have any further questions concerning this issue please direct them to Gary Varner of my staff, at (916) 654-5321.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch