STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY PETE WILSON, Governor

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

Letter No.: 94-70

AUTHORIZED REPRESENTATIVES WITH DURABLE POWERS OF ATTORNEY

Over the past year, the Department of Health Services (DHS) has become aware of individuals who have obtained Durable Powers of Attorney (DPA) to enable them to act as Authorized Representatives (AR) for Medi-Cal applicants. These individuals present the DPA document to the Eligibility Worker (EW) and state their intent to act in lieu of the applicant/beneficiary to complete the face to face interview and to complete and sign the Statement of Facts as well as other documents.

This letter sets forth DHS' policy, based on California law, in regard to this practice.

The nature, complexity and seriousness of DPAs has resulted in Senate Bill (SB) 1907 (Campbell) which attempts to institute a comprehensive Power of Attorney law. This bill is a result of a recommendation by the California Law Revision Commission that found present laws to be an "incomplete and disorganized collection of power of attorney statutes currently located with other agency rules in the Civil Code".

I. DEFINITIONS

A **power of attorney**, as defined in SB 1907, is "a written instrument, however denominated, that is executed by a natural person having the capacity to contract and that grants authority to an attorney-in-fact. A power of attorney may be durable or nondurable". A durable power of attorney contains a clause which states that it will not be affected by the incapacity of the principal (person who appoints the attorney-in-fact who is the individual acting on the principal's, or applicant's, behalf), or it may state that the DPA will become effective at the time the principal becomes incapacitated (Civil Code Section 2400).

There are two forms of DPA:

A. Durable Power of Attorney for Property Management (DPAP) which authorizes an attorney-in-fact to handle an individual's financial affairs; and

B. Durable Power of Attorney for Health Care (DPAHC) which empowers an attorney-in-fact to make health care decisions for the principal.

For purposes of obtaining Medi-Cal benefits the DPAP would be used. Civil Code Section 2475, subsection (k), allows the appointed attorney-in-fact to obtain "benefits from social security, medicare, medicaid, other governmental programs, or civil or military service"

The DPAP may become effective immediately upon its execution or it may be a "springing" DPAP which does not become effective until the principal becomes incompetent. If it does become effective immediately, the applicant/principal does not relinquish his or her own authority. In this case either the applicant/principal or the attorney-in-fact may act on the principal's behalf. However, Civil Code Section 2304 states:

> "An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention."

It should be noted that anyone having the power to contract may appoint such an agent (Civil Code Section 2296). For a DPAP to be valid it must have been executed by a competent adult. Civil Code Section 1556 prohibits a DPA from being executed by minors, persons of unsound mind, or persons deprived of civil rights (incarcerated or institutionalized).

II. POWERS OF AN AUTHORIZED REPRESENTATIVE WITH A DPAP

While any competent adult may designate an AR, with or without a DPAP document, to assist him or her in the Medi-Cal process, that assistance is limited in scope. This AR may complete the initial application for benefits, SAWS 1, and may assist the applicant in the interview and in obtaining verifications. However, neither federal or state law allow for the AR to act in lieu of the applicant. As stated in Civil Code Section 2304, the applicant, referred to as the principal in a DPAP document, must still act on his own behalf in those instances whereby he "is bound to give his personal attention. " Those specific acts are designated in Title 22, Section 50163 and 50157:

A. Completion and signing the Statement of Facts (Section 50163 (a); and

B. Participation in the face-to-face interview (Section 50157).

Additionally, the applicant maintains ongoing responsibility for reporting any changes to his/her circumstances that may affect Medi-Cal eligibility.

The act of designating an AR or an attorney-in-fact holding a DPAP document does not excuse the applicant from meeting his or her personal responsibility to appear at the face-to-face interview if capable of doing so.

The possession of a DPA does not confer any additional authority to act on an individual's behalf for the purpose of obtaining Medi-Cal benefits. Additionally, the time period in which the AR, with or without a DPAP document, may act on behalf of the applicant does not change from what was stated in All County Welfare Directors Letter No. 93-84:

> Authority to act on behalf of the applicant/recipient expires either;
>
> 1. At the granting of benefits;
> 2. At the conclusion of the redetermination process;
> 3. After the time limit expires for the requesting of a fair hearing; or
> 4. At the conclusion of the fair hearing process.

Applicants should be made aware that the DPA is a very powerful document and may be used inappropriately by unscrupulous persons, especially since the DPA eliminates the need for court-supervised conservatorship. The DPA should be reserved for situations where it is determined that the principal can safely and properly grant the desired authority to a trusted agent.

County welfare departments must continue to require competent persons to attend the face-to-face interview, complete and sign the Statement of Facts, and to otherwise participate in the eligibility determination process.

ARs must be allowed to assist the applicant wherever necessary but are not entitled to act in lieu of the applicant.

If you have any additional questions, 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