DEPARTMENT OF HEALTH SERVICES
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October 30, 1998

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

Letter No.: 98-48

RECISION OF ALL COUNTY WELFARE DIRECTORS LETTER 97-06 (RESIDENCY OF HOLDERS OF BORDER CROSSING CARDS AND TEMPORARY VISAS)

The purpose of this All County Welfare Directors Letter is to notify counties that, effective immediately, All County Welfare Directors Letter 97-06 is rescinded and without effect.

On August 11, 1998, the California Court of Appeal ordered "the trial court . . . to issue a peremptory writ of mandate directing respondents [the Department of Health Services (DHS)] not to utilize, enforce or attempt to enforce the regulation set forth in ACL 97-06 unless and until the requirements of the APA [Administrative Procedures Act] are met." (Latino Coalition for a Healthy California v. Belshé et al., California Court of Appeal No. A081229.)

In compliance with the appellate court ruling, counties are instructed not to apply All County Welfare Directors Letter 97-06 in determining the residency of Medi-Cal applicants or beneficiaries. However, counties must still apply the requirements of Title 22, California Code of Regulations (CCR) section 50320 (f) which provides that:

> "A person's declaration on the MC210 Statement of Facts (Medi-Cal), or on the SAWS 2 Statement of Facts, together with the evidence required in Section 50320.1, shall be accepted for purposes of establishing residence unless there is evidence to the contrary." (Emphasis added.)

In addition, all evidence of residency and verification requirements of Title 22 CCR sections 50320.1 and 50320.2 still apply.

In reviewing the residency of a person with a valid and current border crossing card or short-term visa, counties must follow the requirement of Title 22 CCR section 50320.2 (e) which provides that:

"The county may determine that the claim on the MC 210 Statement of Facts (Medi-Cal), or on the SAWS 2 Statement of Facts is supported, and that the applicant is a resident of California if a preponderance of the credible evidence produced by the applicant supports a finding that the applicant is a resident of California. If a preponderance of the credible evidence produced by the applicant does not support the finding that the applicant is a resident of California, the applicant shall be determined not to be a resident of California, shall be denied eligibility for Medi-Cal benefits, and shall be afforded all notification and fair hearing rights provided to any person denied eligibility for Medi-Cal."

In determining whether a Medi-Cal applicant or beneficiary meets the California residency requirement, county welfare departments must consider all available evidence, including evidence that supports a claim of California residency as well as evidence that contradicts a claim of residency. In order to overcome the evidence of nonresidency in California that a border crossing card or short-term visa represents, the applicant or beneficiary needs to submit other evidence which supports a finding that despite possessing one of those documents, the Medi-Cal applicant or beneficiary meets the Medi-Cal residency requirements.

If, after reviewing all the evidence presented, a county determines that a person with a border crossing card or short-term visa is a resident of California, the basis for that finding shall be documented in the case file. If, after reviewing all of the evidence presented, the county is unable to determine whether or not an applicant or beneficiary meets the Medi-Cal residency requirements, the county should request an investigation of the facts of the case or seek assistance from DHS Medi-Cal Eligibility staff prior to making a final eligibility determination.

If you have any questions about this letter, please call John Zapata of my staff at (916) 657-0725.

Sincerely,

ORIGINAL SIGNED BY

ANGELINE MRVA, Chief
Medi-Cal Eligibility Branch