STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

EDMUND G. BROWN JR., Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
SACRAMENTO, CA 95814
)16) 445-1912

December 18, 1980

To: All County Welfare Directors

Letter No. 80-48

IMPLEMENTATION OF SB 30 (RIGHT TO STATE HEARING)

Revised Regulations

Senate Bill 30, signed by the Governor on December 4, 1980, amends Welfare and Institutions Code, Section 10950 so that a Medi-Cal eligible no longer has a right to a state hearing or aid paid pending (APP) for an adverse action, when the "sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients."

Due to this recent amendment to state law, Title 22, CAC, Sections 50179 (d)(6)(A) and 50951 (a) are no longer in complete compliance with state statute. Attached for your information is a copy of proposed regulations revisions to achieve compliance. Until such time as these revised regulations are filed, this letter is to confirm that, with regard to a person's right to a state hearing, amended Welfare and Institutions Code, Section 10950 takes precedence to the extent that it conflicts with current Title 22 regulations. This letter is also to describe how SB 30 will affect the Notice of Action and state hearing process, and to describe the Department's steps to implement SB 30.

January Maintenance Needs/Special Deduction Reduction

The decrease in the maintenance need levels and special deduction levels that is effective January 1, 1981, is a change required by state law and therefore a beneficiary has no right to a state hearing if the only reason for requesting a hearing is to contest the new levels. The Department has prepared a stuffer notice to explain this law change. Except for aid codes 13, 23, and 63, persons whose names appear on the November CID tapes will receive this notice informing them of the change. A copy ofthis notice, to be mailed this month, is attached.

Notice of Action Forms Revision

We are working with the Department of Social Services to develop common wording to be used to notify persons of the change in their right to a state hearing. Notice of Action (MC 239) forms will then be revised to include this new language on an ongoing basis. Until the new forms are available, the current Notices of Action should be supplemented by including a modifying stuffer or by printing the new language on the front of t..e Notice of Action. A copy of the appropriate wording is attached.

Note: A stuffer is not needed to accompany January maintenance need/special deduction change notices because of the Department's special mailing described above.

The Department is having stuffers printed with revised ongoing wording, for use until the MC 239 is revised. If your county wishes to use the stuffer approach, rather than computer-printing modifying wording on the front of MC 239 forms, contact your Medi-Cal Program Consultant. Be sure to specify the number of stuffer notices you need, for a four month supply.

Requests for Hearing Despite SB 30

The Office of Chief Referee (OCR) will screen all state hearing requests. When the sole issue is clearly an automatic change required by state or federal law, a state hearing will not be scheduled. Rather, the state will send the beneficiary a standard letter, stating that there is no right to a hearing unless there is some other issue, such as the correctness of the share-of-cost computation, that the person wants to challenge. If the beneficiary then notifies OCR that another issue is involved, a hearing will be scheduled. The original request date will be used to determine whether aid paid pending the hearing is appropriate.

Aid Paid Pending

If an individual requests a state hearing for a reason other than an automatic change, and the request is timely, aid paid pending will still be granted. However, if an automatic change in protected income amounts occurred at the same time, any share of cost pending a hearing will be determined using the new protected income level. In particular, state hearing requests due to actions, effective January 1 will have shares of cost computed using the January 1, 1981 maintenance need levels during any aid paid pending period. Example: In December, a person requests a state hearing to contest an increase in his/her share of cost due to an increase in income. The request is filed within 10 days of the date the Notice of Action was mailed. The share of cost pending the hearing is to be computed using the income considered prior to the proposed action. However, the maintenance need level to be used is the January 1, 1981 amount.

When a state hearing request is received and the reason for the request is not clear, a state hearing will be scheduled. If, at the hearing, the hearing officer determines that the sole issue is an automatic change required by state or federal law, the claim will be dismissed. However, a county position statement is still required in these instances.

Revised MFBU Regulations

The MFBU regulation revision package, scheduled to be effective February 1, 1981, also will result in adverse actions to some continuing cases. The cases come within the "automatic change" category because the eligibility recomputations implement state statutory changes in eligibility. Therefore, affected clients will not be entitled to appeal the action unless they feel an error has been made in the recomputation. State OCR is being notified of these changes so that hearing requests can be properly screened. Counties do not have to take any special steps for these cases, other than including the ongoing revised Notice of Action wording in MC 239s.

If you have any questions regarding the instructions in this letter please contact your Medi-Cal program consultant.

Sincerely,

Original signed by

Barbara V. Carr, Acting Chief
Medi-Cal Eligibility Branch

Attachment

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: June 30, 1981

New Wording to be Included on Notice of Action

A state hearing and aid paid pending described on the back of this Notice will not be available if the only action you object to is an automatic change in your eligibility which is required by state or federal law. Hearing officers cannot change the county's action in this situation. This denial of a state hearing is required by California's Welfare and Institutions Code, Section 10950.

50951. Right to State Hearing (a) Applicants or beneficiaries shall have the right to a State hearing if dissatisfied with any action or inaction of the county department, the Department of Health Services or any person or organization acting in behalf of the county or the Department relating to Medi-Cal eligibility or benefits, except as provided in (1) below.

(1) There is no right to a State hearing where the sole issue is one of a change in State or federal law that requires a reduction in Medi-Cal entitlement for some or all beneficiaries.

(b) The right to a State hearing shall be governed by the provisions of Sections 10950 through 10965, Welfare and Institutuions Code.

DRAFT

MEDI-CAL
NOTICE OF ACTION
CHANGE IN SHARE OF COST

If you received a notice from your county eligibility worker which explained that your Medi-Cal share of cost has changed effective January 1, 1981 due to a change in state law which reduces the Medi-Cal maintenance need level, then this additional Notice of Action applies to you.

The first Notice of Action explains that your share of cost has changed due to a change in state law. That information still applies to you. On the back of that first Notice, you were told that you had a right to a state hearing. This information is no longer correct because the Legislature recently amended the state law so that *STATE HEARINGS WILL NOT BE AVAILABLE WHEN MAINTENANCE NEEDS ARE REDUCED BY STATE LAW.* Therefore, if the only reason for requesting a state hearing concerns the change in your share of cost due to the reduction in the maintenance need levels, you are not entitled to a state hearing. This change is based on Welfare and Institutions Code, Section 10950.

If, for some other reason you believe the county incorrectly determined your share of cost, you may request a state hearing within 90 days of the effective date of the action. You may receive aid paid pending if you request a hearing within 10 days of the date of the first Notice of Action. Aid paid pending will be based on the new maintenance need level.

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MEDI-CAL
AVISO DE ACCION
CAMBIO EN PARTE DEL COSTO

Si Ud. recibió un aviso de su trabajador de elegibilidad del condado explicándole que su parte del costo de Medi-Cal había cambiado a partir del 1° de enero de 1981 debido a un cambio en la ley del estado que reduce las pensiones a los necesitados, entonces este Aviso de Acción adicional corresponde a usted.

El primer Aviso de Acción le indicó que su parte del costo había cambiado debido a un cambio en la ley estatal. Esa información corresponde a Ud. todavía. En el reverso del primer Aviso, se le indicaba que Ud. tenía derecho a una audiencia estatal. Esta información no es correcta ahora porque la Legislatura recientemente enmendó esa ley estatal en el sentido que las *AUDIENCIAS ESTATALES NO SERAN DISPONIBLES CUANDO LAS PENSIONES SON REDUCIDAS POR LEY ESTATAL.* Por lo tanto, si la única razón para solicitar una audiencia estatal se refiere al cambio en su parte del costo debido a la reducción en la pensión que Ud. recibe, entonces Ud. no tiene derecho a una audiencia estatal. Este cambio se basa en el Código de Bienestar e Instituciones, Sección 10950.

Si, por alguna otra razón Ud. cree que el condado incorrectamente determinó su parte del costo, Ud. puede solicitar una audiencia estatal dentro de los 90 días de la fecha de la acción. Usted puede recibir ayuda pendiente de pago si Ud. solicita una audiencia dentro de los 10 días de la fecha del primer Aviso de Acción. Ayuda pendiente de pago será basada en la nueva pensión que Ud. recibirá.