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

August 7, 1992

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

Letter No.: 92-48

SUBJECT: Presumptive Eligibility for Full-Scope Benefits for Alien Applicants and Current Recipients

REFERENCE: ACWDLs 88-66, 88-68, 89-84, 91-19

The purpose of this letter is to notify counties of the requirements of the court-ordered permanent injunction in the Ruiz v. Kizer lawsuit. This permanent injunction affects Medi-Cal policy, as enunciated in previously issued All County Welfare Directors' Letters (ACWDLs), regarding presumptive eligibility for full-scope benefits for alien applicants and current recipients.

PERMANENT INJUNCTION

On October 1, 1991, the United States District Court ruled in the Ruiz v. Kizer lawsuit that Medi-Cal policy, as set forth in ACWDL Nos. 88-66, 88-68, 89-84, and 91-19, violates the Social Security Act (42 U.S.C. § 1320b-7), and therefore is invalid. The policy contained in these ACWDLs instructed counties to withhold full-scope Medi-Cal benefits from alien applicants and current recipients who were determined otherwise eligible, pending submission of documents evidencing satisfactory immigration status (SIS) and pending verification of SIS by the Immigration and Naturalization Service (INS). In light of its ruling that the former Medi-Cal policies were invalid, the court ordered that Medi-Cal, as administered by the counties, must:

- not delay, deny, reduce, or terminate full-scope Medi-Cal benefits to alien applicants and current recipients who are otherwise entitled to full-scope benefits and who declare under penalty of perjury that they have SIS, but who have not had a reasonable opportunity to obtain documents;

- not delay, deny, reduce, or terminate full-scope Medi-Cal benefits to alien applicants and current recipients who are otherwise entitled to full-scope benefits on the basis that INS has not verified that the individual has SIS; and

- grant full-scope Medi-Cal benefits to alien applicants and current recipients who are otherwise entitled to full-scope

Medi-Cal benefits at the time the respective county department would otherwise determine eligibility pursuant to the requirements of the Medi-Cal program, even if the reasonable opportunity period has not yet expired or if INS verification has not yet been received.

CURRENT STATE REGULATION

The appropriate Medi-Cal policy to be followed is, in large part, already contained in a current State regulation (Title 22, California Code of Regulations (CCR), Section 50301.5). Section 50301.5 states that:

- alien applicants for full-scope Medi-Cal benefits must present documents from INS, or an order issued by the District Director of INS, the Executive Office of Immigration Review, or a federal court, which serve as reasonable evidence of SIS for Medi-Cal purposes; and

- alien applicants shall have thirty (30) calendar days, or the time it actually takes the county to process their Medi-Cal applications, whichever is longer, to submit such documents.

The 30-day period begins at the time the alien applicant or current recipient submits a completed form MC 13 containing a declaration in writing, made under penalty of perjury, which attests to his or her status as an alien having SIS.

However, the above stated provisions, as well as Sections 50301.3, 50301.6, and 50302, do not address either (1) PRUCOL categories such as No. 16 (42 C.F.R. § 435.408(b)(16)) which can be grounded on evidence not reflected in a formal INS document; or, (2) presumptive eligibility requirements.

PRUCOL CATEGORY NO. 16

To claim SIS on the basis of PRUCOL Category No. 16, alien applicants and current recipients must produce evidence that addresses the two elements of PRUCOL 16: (1) the alien is living in the United States with the knowledge and permission of INS, and (2) INS does not contemplate enforcing the departure of that person.

For the present, the county should, in accordance with the following sections of this ACWDL, take the applicant's or current recipient's evidence and submit it with the G-845 to the INS for verification. Notwithstanding, e.g., 22 C.C.R. Section 50301.3(s) and ACWDL 89-84, PRUCOL category 16 immigrants do not have to have

an INS document or be receiving long term care or kidney dialysis. Form G-845 must be annotated to specify that a PRUCOL response is being requested. This can be accomplished by writing in the "other" portion in Box #8 (benefits)--"PRUCOL Response Requested."

(NOTE: The Department is studying the possibility of exercising its discretion under 42 United States Code Sections 1320b-7(d)(4)(B) and 1320b-7(d)(5). Under these sections, a state may determine whether the applicant's evidence constitutes reasonable evidence indicating satisfactory immigration status, and if the state determines that the person is not in a satisfactory immigration status, the state may deny or terminate the individual's eligibility. Counties will be advised if, and when, the Department makes a decision as to whether to implement such a process.)

ALIEN PRESUMPTIVE ELIGIBILITY PROCEDURES

If the county determines the alien applicant who has completed form MC 13 to be otherwise eligible within the 30-day period, but before he or she has submitted documents evidencing SIS, the county shall grant full-scope benefits pending submission of the documents within the 30-day period. Because the current recipient is already otherwise eligible, the county shall grant full-scope benefits pending submission of the documents within the 30-day period. If the alien applicant or current recipient submits the documents within the 30-day period, the county shall forward form G-845 (Document Verification Request) to INS and continue to grant full-scope benefits pending INS verification of SIS. If the alien applicant or current recipient does not submit the documents within the 30-day period, the county, following the normal Notice of Action (NOA) procedure, shall discontinue the grant of full-scope benefits and reduce to restricted benefits.

If the county does not determine the alien applicant who has completed form MC 13 to be otherwise eligible within the 30-day period, the alien applicant has the time period it actually takes the county to determine eligibility to submit documents evidencing SIS. If the alien applicant submits the documents before the county determines that the alien applicant is otherwise eligible, the county shall grant full-scope benefits if and when it does so. The county shall continue to grant full-scope benefits pending INS verification of SIS.

If the county does not determine the alien applicant (who has completed form MC 13) to be otherwise eligible within the 30-day period, and if the alien applicant does not submit documents evidencing SIS within the time period it actually takes the county

to determine eligibility, the county shall deny the application for failure to cooperate and issue restricted benefits if otherwise eligible.

INVALIDATED PORTIONS OF PRIOR ACWDLs

Portions of prior ACWDL Nos. 88-66, 88-68, 89-84, and 91-19 have been invalidated by the permanent injunction. Certain provisions set forth in these ACWDLs are inoperative and must be disregarded. Accordingly, the counties should review the prior ACWDLs and attachments, and replace all copies with the attached corrected versions (invalidated paragraphs and sentences have strikeouts, new insertions are in bold print and underlined). (See attached copies of ACWDLs.) Also, there are significant omissions in these prior ACWDLs in regard to PRUCOL documentation and presumptive eligibility, and for their affirmative duties in these areas, counties must look to this ACWDL as well.

Should you have any questions regarding the above letter, please contact either Renee Toirac, Manager, IRCA/OBRA Unit at (916) 657-2952 or Marlene King, Staff Analyst, IRCA/OBRA Unit at (916) 657-0134.

Sincerely,

ORIGINAL SIGNED BY,

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Attachments

To obtain enclosure, call the Release desk at (916) 653-8584.