STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

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

Letter No.: 93-84

AUTHORIZED REPRESENTATIVES (ARs)

Ref.: ACLs 86-37, 86-42, 91-98

This letter is the first in a series addressing the A/R and to provide additional clarification of Department of Health Services (DHS) policy. This letter will focus on who an A/R can be, how the A/R is designated, what authority the A/R has and when the A/R may intercede on behalf of the applicant/recipient.

Future letters will focus on competent vs. incompetent applicants/recipients, long-term care (LTC), appropriate authorization forms, special circumstances that occur, and organizations which attempt to become an A/R.

As counties try to meet the needs of the growing elderly/disabled populations, many now needing Medi-Cal benefits, it has become evident that interactions with "A/Rs" are becoming more common. It is also evident, due to the number of questions received by DHS, that counties are experiencing difficulty with A/Rs and that clarification of DHS policy is required.

Currently the regulations and procedures are being reviewed and will be revised as appropriate.

Q. What is an "A/R"?

A. An A/R, as defined in MPP 22-010.3 and Title 42 CFR section 435.908, is an individual or individuals specifically designated in writing by an applicant to accompany, assist and represent the applicant in the Medi-Cal application process. However, as long as the applicant has the capacity to discharge his/her responsibilities, the applicant is responsible for participating in the application process. The designated A/R may not appear or act in lieu of a competent applicant.

Q. Who may be an A/R?

A. The A/R may be anyone that the applicant chooses. The A/R shall not (emphasis added) be entities such as an organization, law firm or a group. Any authorized form which names an organization, law firm or group cannot be accepted. However, an **individual** (emphasis added) from the organization, law firm or group may be designated as the A/R.

Q. If an individual from a group or firm is designated as the A/R, what happens when that person no longer works for the law firm, group or organization?

A. A new A/R form must be completed and signed by the applicant/recipient designating another individual as his/her A/R.

Q. Can the A/R be changed without a new authorization form?

A. No. The A/R may not redelegate the A/R authority without written consent of the applicant/recipient. To obtain written consent of the applicant/recipient, he or she must complete a new authorization form.

Q. Who may change a designated A/R once a form is on file?

A. Only the applicant/recipient who completed the A/R form may change the designated A/R. This is completed by filling out another A/R form and signing it, naming another individual as the A/R.

Q. After completing the A/R form, what actions may the A/R take on behalf of the applicant/recipient?

A. (1) The A/R may complete and file the SAWS 1, the initial application for Medi-Cal. It should be noted that if the SAWS 1 is completed "by someone other than the applicant, or by a county worker on the applicant's behalf, the application must be countersigned by the applicant at the first opportunity, unless the applicant is deceased, mentally incompetent, or physically incapable of signing" (ACWDL 91-98).

(2) The A/R may also assist the applicant in obtaining needed verifications, accompany the applicant to the face-to-face interview or redetermination. On-going case management activities **shall not** (emphasis added) be within the realm of authority of the A/R when the applicant/recipient is competent or when a spouse is able (even if assistance is needed) to handle the applicant's affairs. The authority to act on behalf of the applicant is limited to the receipt of benefits.

Q. Can A/Rs complete and sign the Statement of Facts (MC 210)?

A. No. Only the following persons may perform this function:

(1) The applicant or applicant's spouse.

(2) A conservator, guardian or executor (Title 22 section 50163).

Q. What if the applicant is incompetent and there is no spouse, conservator, guardian or executor?

A. If the applicant is incompetent, comatose or suffering from amnesia, and there is no spouse, conservator, guardian or executor, the county welfare department (CWD) must evaluate the applicant's condition to determine if a need for protective services is required. If not, a relative, a person with real, personal, and specific knowledge of the applicant's circumstances (such as a friend), or a representative of a public agency or a county department may complete and sign the Statement of Facts (Title 22 section 50163).

These individuals may have on-going case management responsibilities.

Q. Can the client's Medi-Cal cards be mailed or given to the A/R?

A. No. The Medi-Cal card shall be mailed to the recipient who must sign and date the card. This does not apply to persons in a LTC facility. (Title 22 sections 50731, 50732). LTC residents may have their Medi-Cal cards issued to the facility where they reside or to a spouse or other family member who has applied for them.

Q. What responsibility does the CWD have toward the A/R?

A. If the county has a signed A/R form on file, the county shall issue copies, on an "as requested" basis, of all Notices of Action and other correspondence issued to the applicant during the application or fair hearing process.

The county must allow the designated representative to be present during the face-to-face interview but should be reminded that the A/R **cannot** (emphasis added) take the place of the applicant or spouse for the face-to-face interview if they are competent.

If the applicant/recipient is incompetent and no competent spouse exists to handle the applicant's affairs, whomever completed the MC 210 Statement of Facts must complete the face-to-face interview.

Q. Are the face-to-face interviews required when an individual has an A/R?

A. Yes. The only exception is an applicant/recipient with a governmental representative, such as the public guardian. These individuals are not required to have a face-to-face interview for the application process or redetermination of Medi-Cal eligibility. [Title 22 section 50157 (d) (2)].

Q. If the Medi-Cal application is denied due to action or inaction by the A/R, does the client have to accept responsibility for the denial?

A. Yes. The applicant should be aware that if they designate someone to act on their behalf, the applicant must take responsibility for the A/R's actions.

Q. How long can the A/R act on the applicant's behalf when the applicant is competent or has a spouse?

A. The authority to act on behalf on 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) If a fair hearing was requested timely, until the conclusion of the fair hearing process.

Q. Does this limitation also apply to persons in LTC or who are incapacitated?

A. No. These limitations are reserved for applicants/recipients **who are not** incapacitated or otherwise unable to handle their own affairs. Family members or other persons, such as friends, who are applying on the behalf of someone who is in a LTC facility or comatose in a hospital, are allowed on-going case management authority as long as it has been determined by county staff that the public guardian or other protective services do not need to assume control.

Q. What verification is needed to establish an individual as the designated A/R?

A. A written authorization form, signed by the applicant, which designates a named individual, must be obtained and kept in the case file. In order to meet the letter and spirit of the law (20 CFR 416.1507), the authorization form must also have an "Acceptance of Appointment" section which is signed by the designated representative, agreeing to be the claimant's A/R.

Additionally, the county should obtain verification of the identification of the A/R defined in Title 22 section 50167 (6) (California driver's license, DMV identification card or any other document which appears to be valid and establishes the person's identity).

If the applicant is incompetent, the CWD should obtain a copy of the court order designating the public guardian or other persons to be the conservator of the applicant. This will also satisfy residency verification exemption requirements for adults or children in the care of a government agency located in California (see the May 13, 1993 All Medi-Cal Program Specialists/Liaisons letter on the subject of Final Draft Regulations and Procedures for Verification of Residency Implementation).

Q. When an A/R is designated to act on the applicant's/recipient's behalf, do the requirements to verify eligibility factors change?

A. No. All other verifications remain. The county should also carefully examine the possibility that the authorized representative may have a shared or controlling interest in the applicant's resources. Any resource that is held by the A/R for the applicant must be claimed on the Statement of Facts and verified.

Counties may allow the A/R additional time to assist the applicant to obtain verifications if there are valid reasons why the applicant cannot gain access to them.

As additional questions are received, further ACWDLs will be issued. These policies will be incorporated into procedures as they are revised.

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

Sincerely,
ORIGINAL SIGNED BY

FRANK S. MARTUCCI, CHIEF
Medi-Cal Eligibility Branch