

DEPARTMENT OF HEALTH SERVICES

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January 12, 2000

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

Letter No.: 00-02

GUIDELINES FOR DETERMINING WHETHER AN INDIVIDUAL IS SELF-EMPLOYED

This All County Welfare Directors Letter (ACWDL) provides counties with assistance in determining whether an individual is self-employed for purposes of determining his or her eligibility for the Medically Needy and Section 1931 programs. While generally it is clear whether an individual is self-employed, there are occasional instances where it can be difficult to determine whether the individual is self-employed or working for another person or entity. For example, an individual may be working at a "job" that has characteristics of both self-employment and being in another's employ, such as certain real estate agents or consultants. Counties must exercise their judgment in these matters. To assist counties in making this judgment, several "indicators" of self-employment are listed below.

INDICATORS OF SELF-EMPLOYMENT

- The individual defines for himself or herself the scope and nature of his or her work and daily work activities, including work-duration; and such activities are not supervised or determined by another person (except pursuant to a limited term, contractual arrangement.*)
- Applicable to individuals "selling" services (as opposed to individuals selling goods): The relationship between the "contractor" (the beneficiary) and the contractee is contractual, and changes in the definition or extent of the services provided by the contractor require changes in the contractual agreement. The individual (contractor) exercises a pattern of entering into contractual arrangements* with multiple "contractees", simultaneously, or in succession, and of providing bargained-for, contractually defined services pursuant to an explicit (oral or written) agreement between the individual and the "contractee."
- Others assume no, or only limited liability, for the individual's work and for the individual during the course of his or her work (or, if others do assume liability, it is pursuant to an indemnity agreement or other contractual arrangement.*)

All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
All County Public Health Directors
All County Mental Health Directors
Page 2

- The individual does not work at another's facility nor makes substantial use of another's capital; (or, if he or she does, it is pursuant to a limited-term, contractual arrangement).
- The individual's employment requires that he or she own substantial equipment, which is subject to depreciation, and the individual "bargains-for", and receives, compensation which reflects the cost of such depreciation.
- The person or entity providing compensation to the individual for his/her services does not (and will not) deduct Social Security taxes or federal taxes from the compensation payment.
- * Contractual arrangement: Provision of goods or services by the individual (a contractor) to another (the "contractee") are contractual if provided pursuant to a "bargained for" agreement in which the individual undertakes to do a specific piece of work, or produce a specified product (as specified in the agreement), for an agreed upon price, within a specific, and limited time period.

It is possible for these indicators to provide conflicting measurements. For example, an individual may not have Social Security or withholding taxes deducted from his or her compensation and yet the individual is working on another's premises, under another's supervision, subject to another's directions. This scenario may occur where the employment is "under the table." Generally, such an individual would not be considered self-employed.

The county should give consideration to each of the above indicators in conjunction with any other factors that may be pertinent to an individual's job situation. In the case of conflicting measurements, the county must weigh all the indicators and exercise its best judgment. The indicators above are arranged in order of importance.

If you have questions or comments regarding this ACWDL, please phone Dave Rappolee of my staff at (916) 657-0163.

ORIGINAL SIGN BY

Angeline Mrva, Chief
Medi-Cal Eligibility Branch