STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
SACRAMENTO, CA 95814

March 19, 1984

To: All County Welfare Directors Letter No. 84-6

STATE AND FEDERAL FISCAL SANCTIONING PROVISIONS

The following information is provided in response to counties' requests for a written summary of the current status of state and federal sanctioning provisions.

STATE SANCTION PROVISIONS

All County Welfare Directors Letter 82-56, October 26, 1982, explained the general provisions of the sanction amendment to Welfare and Institutions Code (W&IC), Section 14016(e) contained in AB 799 and SB 2012. Basically, this legislation mandated the Department of Health Services to:

- Establish a state Medi-Cal dollar error rate standard and impose sanctions on counties which exceed this standard.
- Pass on federal fiscal sanctions.
- Recoup additional costs caused when a county department contravenes state regulations and written instructions.

Regulations implementing the state dollar error rate and state sanction provision were filed in July 1983. While these regulations are contained in Title 22, California Administrative Code, they have not yet been added to the Medi-Cal Eligibility Manual. We expect the manual to be updated in the next two to three months.

Regulations to implement the other two provisions of the statute have not been promulgated. Once regulations are drafted, we expect that the normal process of distributing them for comments will be followed. Both at that time and at the public hearing, counties will have the opportunity for comment.

FEDERAL SANCTIONING PROVISIONS AND THEIR EFFECT IN CALIFORNIA

Michel Amendment:

As a result of Congressional concern over fraud, abuse, and waste in the Medicaid and AFDC programs, Representative Michel (R. Ill.) introduced an amendment to the 1980 Labor-HEW Appropriations Act (P.L. 96-123) which established Department of Health and Human Services' (DHHS) authority to sanction states which had excessively high payment error rates. The Michel Amendment was effective with the October 1980 - September 1981 Fiscal Year (FY).

The Michel Amendment provided that a state's dollar error rate must be reduced over a three year period in increments of one-third from its initial base to no more than four percent. If a state exceeded its yearly target, it would be subject to fiscal sanctions. However, the Tax Equity and Fiscal Responsibility Act (TEFRA) voided the third and subsequent Michel review periods.

The effect of the Michel Amendment in California is as follows:

	Review Period	Target	Actual	Status
1.	Oct. 1980 - Sept. 1981	6.395%	5.7608%	No sanction.
2.	Oct. 1981 - Sept. 1982	5.35%	4.9489%	Appears no sanction. No formal notification from DHHS.
3.	Oct. 1982 - Sept. 1983 and ongoing	4%	Not applicable	Voided by TEFRA. See below.

TEFRA Sanctions:

Under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 effective October 1982 (Public Law 97-248), a national tolerance level for the Medicaid payment error rate was set at three percent. TEFRA sanctions take the form of disallowances and withholds. That is, Federal Financial Participation (FFP) is to be disallowed for states exceeding the three percent tolerance level. In addition, before a state's actual payment error rate is known and a disallowance taken, FFP is to be prospectively withheld from a state's quarterly grant award for medical assistance. The amount to be withheld from the award is based on the difference between the three percent tolerance level and the federally determined anticipated payment error rate.

Both interim and final federal regulations were promulgated. Both sets of regulations have the same disallowance provisions, but have different provisions to determine a State's anticipated error rate for withholding purposes.

Interim regulations were effective from April - December 1983. Final regulations were effective on January 3, 1984.

A. TEFRA Disallowance Activity:

Both interim and final regulations provide for a disallowance of FFP based on an annual assessment period (October - September) except that the first assessment period is from April - September 1983.

	Disallowance Review Period	Target	Actual	Status
1.	Apr. - Sept. 1983	3%	Not available	Data for computing disallowance should be available by October 1984.
2.	Oct. 1983 - Sept. 1984	3%	Not available	Data for computing disallowance should be available by October 1985.

B. TEFRA Withholding Activity:

The interim and final regulations have different methods to determine the anticipated payment error rate. The impact of each set of regulations is as follows:

Interim Regulations:

(Effective for the April - December 1983 period.)

The quarterly withholding is to be based on the weighted average of the actual error rates from the two most recent Quality Control (QC) review periods. However, this federally determined prospective error rate may be reduced by the estimated impact of the state's corrective action activities. In California, the effect of the interim regulations is as follows:

	Affected Quarter	Target	Anticipated Payment Error Rate	Status
1.	Apr. - June 1983	3%	3.8774%*	Anticipated error rate reduced to 2.9887 by corrective action. No withhold.

	Affected Quarter	Target	Anticipated Payment Error Rate	Status
2.	July - Sept. 1983	3%	3.8774%*	Anticipated error rate reduced to 3.0697 by corrective action. Withhold of $210,630.
3.	Oct. - Dec. 1983	3%	4.9489%**	Not known, pending lawsuit of some states against HCFA.

* This is based on actual error data for the April - September 1981 and October 1981 - March 1982 review periods.

** This is based on actual error data for the October 1981 - March 1982 and April - September 1982 review periods.

Final Regulations:

(Effective for quarters beginning January 3, 1984.)

The quarterly withholding is based on the lower of either: (1) the weighted average of the two most recent QC review periods; or (2) the most recent review period. States may provide alternate data to rebut the federally determined projected error rate. In California, the effect of the final regulations through September 1984 is as follows:

	Affected Quarter	Target	Anticipated Payment Error Rate	Status
1.	Jan. - Mar. 1984	3%	4.9489%*	On December 29, 1983, California requested that HCFA use alternate error rate of 1.1%. HCFA approved request.

	Affected Quarter	Target	Anticipated Payment Error Rate	Status
2.	Apr. - June 1984	3%	1.1%**	No withhold.
3.	July - Sept. 1984	3%	1.1%**	No withhold.

* This is based on actual error data for the October 1981 - March 1982 and April - September 1982 review periods.

** This is based on actual error data for the October 1982 - March 1983 review period.

We will attempt to keep you informed of future developments. Additionally, because of the complexity of this subject, should you or your staff have any questions, please call me or Marlene Ratner of my staff at (916) 445-1912.

Sincerely,

Original signed by

Caroline Cabias, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants