

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET

O. BOX 942732

SACRAMENTO, CA 94234-7320



June 1, 1993

Letter No.: 93-31

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

SUBJECT: IMPLEMENTATION OF THE MANDATORY REFERRAL OF MEDICALLY
NEEDY ONLY (MNO) CASES TO THE FAMILY SUPPORT DIVISION

The purpose of this letter is to transmit a copy of the final regulations as approved by the Office of Administrative Law and signed by the Secretary of State. Also enclosed is a copy of the revised procedures on Medical Support Enforcement for county Medi-Cal Program Specialists/Liaisons.

All IV-D agencies will be sent more specific information on the Medically Needy Only (MNO) Referral Process via a separate Family Support Division letter in May 1993.

The regulations are effective as of April 16, 1993. Implementation of the MNO Referral Process by the County Welfare Departments, County Family Support Divisions and the County District Attorneys will commence on July 1, 1993.

If you have any questions regarding the Family Support Division's responsibilities in the MNO Referral Process, please contact your Child Support Program Improvement Analyst. If you have any questions regarding the Medi-Cal Medical Support Procedures or regulations, please contact Elena Lara at (916) 657-0712.

Sincerely,

ORIGINAL SIGNED BY

Leslie L. Frye, Chief
Office of Child Support
Department of Social Services

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch
Department of Health Services

Enclosures

INFORMATIVE DIGEST

The federal Deficit Reduction Act of 1984 (Public Law (P.L.) 98-369), the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), and the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) amended Sections 1902 and 1912 of the Social Security Act (Sections 1396(a) and 1396(k), Title 42 of the United States Code (USC)). Title 42, Code of Federal Regulations (CFR) Sections 433.135 through 433.138, 433.146 through 433.148, and 435.604; 45 CFR Parts 232, 234, and 235; and 45 CFR Parts 301, 302, 303, and 304 implement those changes in the law by requiring, as a condition of eligibility, that Medicaid (Medi-Cal) applicants and beneficiaries:

(1) Assign to the state their rights to any medical support and to third-party payments for medical care;

(2) Cooperate with the county and district attorney in establishing paternity for children under the age of eighteen years for the purpose of securing medical support or payments for a child born out of wedlock; and

(3) Cooperate in identifying and providing information to assist the state in pursuing any third party, including an absent parent, who is or may be liable to pay for medical coverage, care, services, or support payments.

Should the applicant or beneficiary be found to meet the good cause criteria for refusing to cooperate, these noted federally mandated cooperation requirements, as conditions of eligibility, shall be waived. These requirements are similar to those in the Aid to Families With Dependent Children (AFDC) program, whereby applicants and recipients must cooperate in securing child support payments.

Assembly Bill 1422 (Chapter 806, Statutes of 1988) added Section 14008.6 to the Welfare and Institutions Code (W&IC) to adopt, on a state level, the federal requirements cited above.

This regulation package adopts Sections 50060.6 and 50771.5; and amends Sections 50101, 50157, 50175, 50185, 50227, 50351, and 50379 of Division 3, Title 22 California Code of Regulations (CCR) to implement, interpret, and make specific Section 14008.6 W&IC.

INITIAL STATEMENT OF REASONS

This emergency regulation package adopts Sections 50060.6 and 50771.5; and amends Sections 50101, 50157, 50175, 50185, 50277, 50351, and 50379, Title 22, California Code of Regulations (CCR).

These changes are needed to: comply with federal law (Sections 1396(a), 1396(k), Title 42, United States Code (USC); Title 42, Code of Federal Regulations (CFR) Sections 433.135 through 433.138, 433.145 through 433.148, and 435.604; 45 CFR, Parts 232, 234 and 235; 45 CFR, Parts 301, 302, 303, and 304.

In addition, these regulations implement, interpret, and make specific state law (Section 14008.6 of the Welfare and Institutions Code (W&IC)) by controlling errors, preventing potential loss of federal financial participation, and satisfying the consistency standards of Government Code Sections 11349(d) and 11349.1(a)(4).

Specific necessity for these changes is discussed below.

Section 50060.6

This regulation is added to define the term "medical support," as it is used in Chapter 2, Division 3, Title 22, CCR and is consistent with Title 45, Code of Federal Regulations, Section 301.1. "Medical support" could entail different levels of services. The State is using the definition as used in Title IV-D of the Social Security Act relating to the child support enforcement program.

Section 50101 (b)

Section 50101 enumerates the responsibilities of the county department. Subsection (b) is amended to include the actions that the county shall take when an applicant or individual applies for Medi-Cal on behalf of a child under eighteen years of age who has an absent parent. (Under authority of W&IC Section 14008.6.)

Section 50157 (f) (12), (13), (14), and (g)

Existing Subsection (f)(12) is renumbered to (f)(14).

Existing Subsection (f) requires the county representative conducting the Medi-Cal interview to advise the applicant or the person completing the Statement of Facts of certain programs, rights, and responsibilities. Subsection (f)(12) is added requiring the county to inform the parent, caretaker relative, or individual applying on behalf of the applicant, of the responsibility to assign to the state all rights to medical support and payments. Subsection (f)(13) is added requiring the county to inform the individual of the responsibility to cooperate in the identification and location of an absent parent, in the establishment of paternity for a child for whom Medi-Cal is requested, in obtaining medical support and payments,

change is required to: comply with federal regulation 42 CFR Section 433.147 and implements W&IC Section 14008.6.

Section 50185

Existing Section 50185 enumerates the specific responsibilities of the applicant, beneficiary, or individual filing on his/her behalf.

Subsections (a)(9), (a)(10), and (a)(11) are added to require the applicant, beneficiary, or other individual to:

(1) Assign to the state all rights to medical support and payments (42 CFR Secs. 433.135-138, 433.145-146, and 435.604; W&IC Sec. 14008.6.);

(2) Cooperate in providing information to establish paternity for a child under eighteen years of age born out of wedlock for whom Medi-Cal is requested unless the applicant/beneficiary is a pregnant woman, at the end of the 60-day postpartum period (42 CFR Secs. 433.135-138, 433.147-148, and 435.604; W&IC Sec. 14008.6); and

(3) Cooperate in obtaining medical support and payments unless the applicant/beneficiary is a pregnant woman, at the end of the 60-day postpartum period (42 CFR Secs. 433.135-138, 433.147-148, and 435.604; W&IC Sec. 14008.6).

These Subsections also require the applicant, beneficiary, or individual to cooperate by identifying and providing information concerning any third party who is or may be liable to pay for medical care and services. These amendments reflect that pregnant women are exempt from these requirements until the end of their 60-day postpartum period. These changes are required to comply with federal regulations, 42 CFR Sections 433.135 through 433.138, 433.146 through 433.148, and 435.604, and implements Section 14008.6 of the W&IC. Minor editorial changes were made to provide clarity.

Section 50227

Existing Subsection (d) is renumbered to (e).

A new Subsection (d) is added to specify that a person on public assistance is ineligible for Medi-Cal if he/she fails to assign to the state his/her rights (or the rights of individuals for whom he/she may legally assign rights) to medical support, and/or fails to cooperate in identifying or providing information regarding any other coverage or any third party who is or may be liable for medical support. This section is necessary to: comply with federal regulation 42 CFR Section 435.604 and implements Section 14008.6 W&IC.

- (3) Referral to District Attorney (CA 371 (3/93))
- (4) Statement of Facts (Medi-Cal) (MC 210 (3/92))
- (5) Important Information for Persons Requesting Medi-Cal (MC 210 Coversheet (9/91))
- (6) Child Support Enforcement Program Notice (CS 196 (12/92))

These forms are not duplicated in Title 22, CCR, because it would be cumbersome, costly, inconvenient, confusing, and impractical to do so. They are available from the local county welfare offices.

STATEMENTS OF DETERMINATION

No alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

These changes in regulations do not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

FINDING OF EMERGENCY

The Department of Health Services (DHS) finds these regulations necessary for the immediate preservation of the public peace, health and safety, and general welfare of the public. The State will help caretaker parents to obtain child and medical support for their children, and therefore become less dependent on the AFDC and Medi-Cal programs.

DHS is promulgating emergency regulations in order to comply with mandatory provisions of Sections 1902 and 1912, Title XIX of the Social Security Act (Section 1396(a) and 1396(k), Title 42, United States Code; 45 CFR Parts 301, 302, 303, and 304; 45 CFR, Parts 232, 234 and 235; 42 CFR, Parts 433, 435, and 436.)

A joint review (3/9/92 memo from DSS - Part One, Factor G) by the federal Health Care Financing Administration and the Family Support Administration's Office of Child Support Enforcement has indicated the state is out of compliance in the area of medically needy only cases for medical support enforcement. The county welfare departments and the District Attorney offices were unable to implement the program without proper financial incentives and start-up funding. State legislation was sought, and SB 485 was signed by the Governor on September 14, 1992. This bill became effective immediately as an urgency statute.

The County Welfare Departments and the District Attorneys have requested the medical support enforcement regulations be effective as soon as possible. This would assure that the Departments of Health Services and Social Services, the county welfare departments, and the District Attorneys will be well prepared to provide child and medical support enforcement services to Aid to Families with Dependent Children (AFDC) and Medi-Cal applicants and beneficiaries.

STATEMENTS OF DETERMINATION

No alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

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FISCAL IMPACT STATEMENT

The direct annual cost of this program to the state is \$4,900,500, of which \$2,450,250 is direct cost to the General Fund and \$2,450,250 to federal government.

1994-95

Fiscal effect on State government: \$2,450,250

Fiscal effect on Federal government: \$2,450,250

IMPACT ON BUSINESSES

These regulations will have no significant adverse economic impact on businesses because the only persons affected are Medi-Cal beneficiaries.

ADVISORY GROUP OR OTHER AGENCY COMMENT, CONSULTATION, AND/OR APPROVAL

The Department of Social Services' Child Support Management Bureau states:

Public Law 100-203, effective December 22, 1987 requires State Child Support Enforcement Agencies to provide enforcement services to families receiving Medicaid Only benefits. California is currently out of compliance with Federal law and regulations due to its failure to provide these enforcement services. These regulations are necessary to bring the State and County Child Support Enforcement Agencies into compliance with the Federal law and regulations. California is in jeopardy of losing Federal child support funding for failing to implement these requirements.

(1) Adopt Section 50060.6 to read:

50060.6. Medical Support.

Medical support is any liability or payment for the purpose of medical care available under a court or administrative order, including but not limited to health insurance, specific dollar amounts for medical purposes, and payments for medical care from any third party.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 14008.6, 14023 and 14024, Welfare and Institutions Code; 42 CFR, Section 301.1.

(2) Amend Section 50101 by adding Subsection (b) to read:

(b) The county department shall take the following actions whenever an applicant or beneficiary, who is applying for or receiving Medi-Cal on behalf of a child under eighteen years of age who was born out of wedlock or who has an absent parent, meets his/her responsibilities as specified in Section 50185 (a) 10.

(1) As soon as possible after the applicant's or beneficiary's opportunity to claim good cause as specified in 50771.5, and not later than two working days after approval of eligibility, the county shall provide to the district attorney the following forms, whether or not the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice and Agreement) has been completed:

(A) A completed Referral to District Attorney (CA 371, Revised (12/92))

(B) A Child Support Questionnaire (CA 2.1 Q Support Questionnaire, Revised (3/93)), if one has been completed;

(C) Child Support Endorsement Program Notice (CS 196, Revised (12/92))

(D) Any other forms or information requested by the district attorney.

(2) If the referral described in (1) above has previously been provided to the district attorney, the county shall promptly report to the

district attorney whenever good cause has been claimed. The district attorney will suspend all activities to establish paternity or secure medical support until notified of a final determination of good cause by the county.

(3) The county shall promptly report to the district attorney all cases in which it has been determined that there is or is not good cause for refusal to cooperate as specified in Section 50771.5. The district attorney will not undertake to establish paternity or secure support if there has been a finding of good cause unless there also has been a determination by the county that the district attorney may proceed without the participation of the parent or caretaker relative. If there has been such a determination, the district attorney may undertake to establish paternity or secure support but may not involve the parent or caretaker relative.

(4) If the county determines that the applicant or beneficiary and the child on whose behalf the application was filed are not eligible, the applicant or beneficiary shall be informed that he/she may go to the district attorney for help in locating the absent parent(s) of the child, collecting child and medical support for the child, and establishing paternity.

(5) The county shall provide the district attorney with any information requested concerning medical support cases and shall advise the district attorney in writing if any of the following circumstances arise:

(A) A person is added to or deleted from the MFBU.

(B) The child ceases living with the person who is receiving Medi-Cal on his/her behalf.

(C) A child moves out of foster care and begins living with a parent or relative.

(D) A child has been accepted for adoption by a public or private adoption agency or such an acceptance has been terminated.

(E) Medi-Cal benefits have been discontinued.

(6) If the district attorney notifies the county that the applicant or beneficiary has not cooperated, the county shall verify the facts, determine whether he/she had good cause for failure to cooperate pursuant to Section 50771.5, and notify the district attorney of the determination.

(7) Prior to making a final determination of good cause for refusing to cooperate, the county shall:

(A) Afford the district attorney the opportunity to review and comment on the findings and basis for the proposed determination;

(B) Consider any recommendation from the district attorney and from any witnesses on behalf of the applicant in any hearing that results from an

applicant's or beneficiary's appeal of any county action relating to
establishing paternity or securing medical support.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 10000, 10058, 10747, 10800, 10963, 11000, 11490, 14008.6 and 14016, Welfare and Institutions Code.

(3) Amend Section 50157 to read:

50157. Face-to-Face Interview.

(a)-(e) No change.

(f) The representative of the agency conducting the interview shall verbally advise the applicant, beneficiary, or the person completing the Statement of Facts, in detail of the:

(1)-(11) No change.

(12) Assignment of Rights Requirements as follows:

(A) Assignment to the state by an applicant, beneficiary, caretaker relative, or individual applying on behalf of an applicant, of all rights to medical support and to payments for medical care from a third party is a condition of eligibility.

(B) Receipt of Medi-Cal benefits shall constitute an assignment by operation of law except as provided below. This means that receipt of Medi-Cal benefits shall constitute automatic assignment of these rights that the individual may assign on his/her own behalf, or on behalf of any other family member for whom he/she has the legal authority to assign such rights, as required in Section 50185.

(C) The county shall advise the individual that he/she has the right to refuse to assign these rights on behalf of himself/herself or the child on whose behalf application is made.

(D) An applicant, beneficiary, parent, or caretaker relative who does not wish to assign his/her rights or the rights of a person for whom he/she can legally assign rights to medical support and payments shall be given the opportunity to withdraw his/her Medi-Cal application, as specified in Section 50155.

(E) Refusal of the individual to assign these rights shall result in his/her denial or discontinuance of Medi-Cal eligibility.

(13) Responsibility of the applicant, beneficiary, parent, caretaker relative, or individual applying on behalf of the applicant, to cooperate in:

(A) Identifying and locating the absent parent.

(B) Establishing paternity for a child born out of wedlock for whom Medi-Cal is requested.

(C) Obtaining medical support and payments.

(D) Identifying and providing information concerning any third party who is or may be liable for medical care and services.

Failure of the applicant, beneficiary, parent, caretaker relative, or individual acting on behalf of an applicant to comply with the above shall result in denial or discontinuance of his/her eligibility unless good cause exists for not cooperating, as specified in Section 50771.5. If the applicant/beneficiary is a pregnant woman, cooperation with Sections (A), (B), and (C) above is waived until the end of the 60-day postpartum period.

(12) (14) Applicant's or beneficiary's responsibilities as specified in Sections 50185 and 50187 which include but are not limited to:

(A) Responsibility to report to the county department when Medi-Cal may be billed for health care services received by the beneficiary as a result of an accident or injury caused by some other person's action or failure to act.

(B) Responsibility to report any changes in circumstances which may affect eligibility or share of cost within 10 calendar days following the date the change occurred.

(C) Requirement Responsibility to furnish Social Security account numbers for all persons for whom Medi-Cal is requested.

(D) Requirement Responsibility to apply for Medicare, if eligible, and furnish the Health Insurance Claim Number.

(g) During the interview, the representative of the agency conducting the interview shall complete and explain the contents of the following forms if the forms were not completed during screening:

(1) Important Information for Persons Requesting Medi-Cal (MC 210 Coversheet (9/91)) Rights-of-Persons-Requesting-Medi-Cal-form-and-the-Medi-Cal Responsibilities-Checklist-if-the-forms-was-not-completed-and-explained-during screening-;

(2) Statement of Facts (Medi-Cal) (MC 210 (3/92))

(3) Child Support Questionnaire (CA 2.1 Q Support Questionnaire (3/93)) and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89));

(4) Child Support Enforcement Program Notice (CS 196 (12/92)); and

(1)(h) The applicant person-being-interviewed shall sign and date the forms: referenced in subsection (g).

(2)(i) The original of each-form the Important Information for Persons Requesting Medi-Cal (MC 210 Coversheet (9/91)), and a copy of the Child Support Questionnaire (CA 2.1 Q Support Questionnaire (3/93)), and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89)) shall be placed in the case file.

(3)(j) A copy of each relevant form referenced in i shall be given to the person being interviewed and the originals of the Child Support Questionnaire (CA 2.1 Q (3/93)) and the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice of Agreement (12/89)) shall be forwarded, within two working days, to the district attorney.

(h)(k) An informational pamphlet on the CHDP program shall be given to the applicant, if there are persons under 21 years of age in the family.

(i)(l) The representative of the agency conducting the interview shall document by a notation on the Statement of Facts that the requirements of the CHDP program, as specified in (f)(4) and (h)(k) and Section 50184(b), have been met.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 11004, 14000, 14001, 14005, 14005.4, 14008.6, 14010, 14011, 14012, 14023, 14088.3, 14100.2 and 14124.91, Welfare and Institutions Code; and Section 1902(a) of the Social Security Act ; Title 42, United States Code, Section 1786(b); 42 CFR, Subpart M, 431.635.

(4) Amend Section 50175(a) and (c) to read:

(a) The application shall be denied or eligibility shall be discontinued under any one of the following circumstances:

(1) - (6) No change.

(7) The applicant or beneficiary:

(A) Refuses to assign to the state all rights to medical support and payments as specified in Section 50185(a)(11).

(B) Fails to cooperate with the state, county department, and the district attorney's office, without good cause, as specified in Section 50771.5 in:

(1) Providing information to establish paternity for a child under eighteen years of age born out of wedlock for whom Medi-Cal is requested;

(2) Obtaining medical support and payments; and

(3) Identifying and providing information to assist the state, county, or district attorney in pursuing any third party who is or may be liable to pay for medical care, services, or support.

In the case of a refusal to assign rights or to cooperate in (B) above.

the parent or caretaker relative will be given the opportunity to withdraw his/her application. Refusal to withdraw the application shall result in his/her ineligibility as specified in Section 50379.

(c) For purposes of this section good cause includes, but is not limited to:

(1) - (4) No change.

(5) Failure of the county to properly process properly the submitted Statement of Facts or status report form.

(6) Unavailability of transportation to the county department for the face-to-face interview.

(7) A determination by the county department that the applicant or beneficiary (1) failed to cooperate in obtaining medical support and payments for himself/herself and for any other individual for whom he/she is applying; in identifying and providing information to assist the state, county, and/or district attorney in pursuing any third party who is or may be liable to pay for medical care, services, and support; and in establishing paternity, but (2) met the good cause criteria specified in Section 50771.5.

NOTE: Authority Cited: Sections 10725, 10740 and 14124.5, Welfare and Institutions Code.
Reference: Section 11004, 11050, 14001, 14008.6, 14011, 14012, 14014 and 14016, Welfare and Institutions Code; and 42 Code of Federal Regulations 435.955(c)(2).

(5) Amend Section 50185 to read:

50185. Applicant Applicants' and Beneficiary Beneficiaries' General Responsibility Responsibilities.

(a) As a condition of eligibility, Applicants and beneficiaries ~~whose-eligibility-is-determined-by-the-county-department-or~~ and persons acting on behalf of such applicants or beneficiaries, shall:

(1) - (5) No change.

(6) Report, apply for, and utilize all other health care coverage available to the individual or family group in accordance with Section 50763.

(7) - (8) No change.

(9) Cooperate with the state, county department, and the district attorney's office in all of the following:

(A) Establishing paternity for a child under eighteen years of age born out of wedlock for whom Medi-Cal is requested;

(B) Obtaining medical support and payments; and

(C) Providing all of the information requested by the state, county

department, and district attorney's office, which is necessary to identify, locate, and pursue any third party, including an absent parent, who is or may be liable for medical care and services or support.

(10) In the case of a woman who is pregnant, or a child who was born out of wedlock or whose parent is absent from the home, at the conclusion of the 60-day postpartum period:

(A) Complete the Child Support Questionnaire (CA 2.1 Q Support Questionnaire, Revised 3/93), the Child/Spousal and Medical Support Notice and Agreement (CA 2.1 Notice and Agreement, Revised 12/89), the Child Support Enforcement Program Notice (CS 196, Revised 12/92), and any additional forms specified by the district attorney and approved by the Department of Health Services:

(B) Appear at the county department and at the office of the district attorney to provide information, when requested:

(C) Provide to the county department and to the district attorney all information which is relevant to the case.

(D) Appear as a witness in court or in other hearings and proceedings relating to (9) and (10) above.

(11) Assign to the state all rights to any medical support and

to payments for medical care from any third party, as specified in Section 50157.

(b) Applicants and recipients whose eligibility is determined by the Social Security Administration shall, as a condition of eligibility, comply with subsections (a)(9), (a)(10), and (a)(11) above, and report to the Department and utilize all other health care coverage available to them in accordance with Section 50763.

(c) - (d) No change.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 10740, 11004(a) and (b), 11053, 14001, 14008.6, 14011, 14016(a) and 14100.1, Welfare and Institutions Code.

(6) Amend Section 50227 to read:

50227. Public Assistance Cash Grant Program.

(a) No change.

(b) Except as provided in (d) and (e) below, persons receiving a cash grant under any one of the programs specified in (a) shall automatically receive a Medi-Cal card for each month in which they receive the cash grant.

(c) Except as provided in (d) and (e) below, persons not currently in receipt of a cash grant under one of the programs specified in (a), shall automatically receive a Medi-Cal card for each month in which they are ineligible for the cash grant because of either of the following reasons:

(1) - (2) No change.

(d) Persons who (1) fail to assign to the state their rights or the rights of individuals for whom they can legally assign rights to medical support and/or (2) fail to cooperate, without good cause, in identifying and providing information regarding any other coverage or any third party who is or may be liable to pay for medical coverage, care, services, or support payments (including individuals required to cooperate in the establishment of paternity) shall be ineligible for Medi-Cal.

(d)(e) Persons shall not be considered Public Assistance recipients for purposes of Medi-Cal eligibility when the following conditions exist. The person is both:

(1) Age 21 or older.

(2) Receiving AFDC for which federal financial participation is not obtainable or EA as part of an unemployed parent family.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87, Chapter 1594, Statutes of 1982, SB 2012.

Reference: Sections 11250.5, 11406.5, 14005.1; and 14008.6, Welfare and Institutions Code.

(7) Amend Section 50351 to read:

50351. Responsible Relatives.

(a) - (b)(1) No change.

(2) If one or both of the spouses is in LTC or board and care, the spouses income and property shall be considered available in determining each other's eligibility and share of cost in accordance with the MFBU composition provision of Section 50377.

(b)(3) - (c)(2) No change.

~~(d) --- A Medi-Cal applicant or beneficiary shall not be required, as a condition of eligibility, to cooperate with a referral to or attempt by an agency to collect support from a responsible relative.~~

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 87(c), Chapter 1594, Statutes of 1982.
Reference: Sections 14008, 14008.6 and 14010, Welfare and Institutions Code; Sections 25.9 and 34.7, Civil Code.

(8) Amend Section 50379(a)(7) and (a)(8) to read:

(7) Refusal by a parent or caretaker relative to assign to the state all rights to medical support and payments for medical care from any third party.

(8) Refusal by a parent or caretaker relative, without good cause as specified in Section 50771.5, to cooperate in establishing paternity for a child under eighteen years of age born out of wedlock for whom Medi-Cal is requested and in obtaining medical support and payments, and in identifying and providing information concerning any third party who is or may be liable to pay for medical care or support.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 87(c), Chapter 1594, Statutes of 1982; and Section 14, Chapter 1447, Statutes of 1984.

Reference: Sections 14005.4, 14005.7, 14005.8, 14005.12, 14008, and 14008.6, Welfare and Institutions Code.

(9) Adopt Section 50771.5 to read:

50771.5. Determination of Good Cause for Refusal to Cooperate.

(a) Good cause exists when cooperation is against the best interest, as specified in (b) and (c) below, of an applicant, beneficiary, or child for whom application is made or Medi-Cal received. These regulations shall not preclude the county welfare department from contracting with the district attorney for assistance in the investigation of good cause claims.

(b) Good cause exists if the applicant's or beneficiary's cooperation in securing medical support and payments, establishing paternity, identifying and providing information concerning liable or potentially liable third parties is reasonably anticipated to result in serious physical or emotional harm:

(1) To the child for whom support is to be sought;

(2) To the parent or caretaker relative with whom the child is living as specified in (d) below.

(c) The county believes that proceeding to secure medical support or establish paternity would be detrimental to the child for whom such support would be sought because at least one of the following circumstances exists:

(1) The child for whom such support is sought was conceived as a

result of incest or forcible rape;

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) The applicant or beneficiary is currently being assisted by a public or licensed private social service agency to resolve the issue of whether to keep the child or relinquish him/her for adoption, and the discussions have not gone on for more than three months.

(d) Serious physical or emotional harm as it relates to the parent or caretaker relative means substantial reduction of the capacity of the parent or caretaker relative to care for the child adequately. The mere belief of the parent, caretaker relative, applicant, or beneficiary that cooperation could or would result in harm shall not be a sufficient basis for finding good cause.

(e) A finding of good cause for emotional harm shall be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning. The county shall consider the following when determining emotional harm:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm:

(3) The intensity and probable duration of the emotional impairment:

(4) The degree of cooperation to be required; and

(5) The extent of the involvement of the individual in the paternity establishment or support enforcement activity to be undertaken.

(f) An applicant, beneficiary, parent, or caretaker relative who claims to have good cause for refusing to cooperate shall have the burden of proof in establishing the existence of good cause. The individual shall be required to:

(1) Specify the circumstances described in (b) above that the individual believes provides sufficient good cause for not cooperating;

(2) Provide sufficient information (such as the putative father or absent parent's name and address, if known) to permit an investigation pursuant to (1) below; and

(3) Provide corroborative evidence as described in Section 50771.5 (g) within 20 days from the day the claim of good cause was made. In exceptional cases, where the county determines the individual requires additional time because of the difficulty of obtaining corroborative evidence, a reasonable

additional period of time shall be allowed upon request of the individual and approval by county supervisory personnel.

(g) Good cause may be corroborated by:

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape;

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(3) Court, medical, criminal, child protective services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child, parent, or caretaker relative;

(4) Medical records which indicate emotional health history and the present emotional health status of the parent, caretaker relative, or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the parent, caretaker relative, or the child for whom support would be sought;

(5) A written statement from a public or licensed private social service agency that the applicant or beneficiary is being assisted by the

agency to resolve the issue of whether to keep the child or relinquish him/her for adoption:

(6) Statements under penalty of perjury from individuals, other than the applicant or beneficiary, with actual knowledge of the circumstances which provide the basis for the good cause claim.

(h) The county shall examine the corroborative evidence supplied by the applicant, beneficiary, parent, or caretaker relative to ensure that it actually verifies the good cause claim.

(i) If, after examining the corroborative evidence submitted by the individual, the county wishes to request additional corroborative evidence which is needed to justify a determination of good cause, the county shall:

(1) Promptly inform the applicant or beneficiary that additional corroborative evidence is needed; and

(2) Specify the type of evidence which is needed.

(j) Upon request, the county shall:

(1) Advise the applicant or beneficiary how to obtain the necessary evidence.

(2) Make a reasonable effort to obtain specific information which the applicant or beneficiary is not reasonably able to obtain without assistance.

(k) Where a claim is based on the individual's anticipation of physical harm as defined in (d) above, and corroborative evidence is not submitted in support of the claim:

(1) The county shall make reasonable efforts to examine, review, and evaluate the good cause claim when it believes that:

(A) The claim is credible without corroborative evidence; and

(B) Corroborative evidence is not available.

(2) Good cause shall be found if the claimant's statement and the investigation which is conducted satisfy the county that the individual has good cause for refusing to cooperate.

(3) A determination that good cause exists shall be reviewed and approved or disapproved by county supervisory personnel and the county's findings shall be recorded in the case record.

(1) In the course of determining whether good cause exists, the county shall not contact the absent parent or putative father from whom support would be sought unless such contact is determined to be necessary to establish the good cause claim.

(1) Prior to making contact with the absent parent or putative father, the county will inform the applicant or beneficiary that the absent parent or putative father may be contacted unless the applicant or beneficiary:

(A) Presents additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary;

(B) Withdraws the application for assistance or requests discontinuance.

(2) The county shall inform the applicant or beneficiary that he/she may request the good cause claim be denied. If the applicant or beneficiary makes this request, the county shall send the appropriate Notice of Action.

(m) Prior to making a final determination of good cause for refusing to cooperate, the county shall:.

(1) Afford the district attorney the opportunity to review and comment on the findings and basis for the proposed determination;

(2) Consider any recommendation from the district attorney; and

(3) Give the district attorney the opportunity to participate as a witness in any hearing (under the Department of Social Services Manual of Policies and Procedures (DSS-MMP) Chapter 22-000) that results from an

applicant's or beneficiary's appeal of any county action relating to establishing paternity or securing medical support.

(n) The county shall determine whether or not good cause exists, based on the applicant's or beneficiary's statement, together with the corroborative evidence, if the statement and evidence provide a sufficient basis for making a determination. The county may further verify the good cause claim through an investigation if necessary.

(o) The determination of whether or not good cause exists shall be made within 45 days from the day the good cause claim is made. This time standard may be exceeded only where the case record documents that the county needs additional time because:

(1) The information required to verify the claim cannot reasonably be obtained within 45 days; or

(2) The applicant or beneficiary did not provide corroborative evidence within the period required by (f)(3).

(p) The applicant or beneficiary shall be notified on the appropriate Notice of Action form of the final determination that good cause does or does not exist. If good cause does not exist, the notice shall also specify that:

(1) The applicant or beneficiary will be afforded an opportunity to

cooperate, to withdraw the application for assistance, or to have the case closed; and

(2) Continued refusal to cooperate will result in ineligibility for the applicant or beneficiary who refuses, in accordance with Section 50379; however, eligibility will be granted for the other members of the MFBU, if otherwise eligible.

(q) If good cause exists, the county shall determine whether medical support enforcement may proceed without unreasonable risk of harm to the child, parent, or caretaker relative if the caretaker relative does not participate in these medical support activities.

(1) This determination shall be in writing, shall contain the county's findings and basis for the determination, and shall be entered into the case record.

(2) If the county determines that good cause exists and that the district attorney may proceed to establish paternity and enforce medical support, the county shall notify the applicant or beneficiary to enable such individual to withdraw his/her application or to have the case closed.

(3) Prior to making this determination, the county shall afford the district attorney an opportunity to review and comment on the findings and basis for the proposed determination and shall consider any recommendation from the district attorney.

(r) Good cause may be denied if the individual fails to meet his/her responsibilities as specified in (f) above.

(s) If the district attorney determines that a beneficiary has failed or refused to cooperate within the meaning of Section 50185(a)(9) and (a)(10), the district attorney will provide the county with a statement which specifies the circumstances of the beneficiary's failure or refusal. The county shall take action to terminate Medi-Cal to the beneficiary only when it has verified on the basis of all available evidence that the beneficiary failed or refused to cooperate without good cause.

(t) The failure of a foster parent or caretaker relative who is not requesting Medi-Cal as part of the child's MFBU, to comply with this requirement shall not affect eligibility for the MFBU members. In foster care situations, the child's natural parent and the placing agency shall be asked to cooperate to the extent possible.

NOTE: Authority cited: Section 10725 and 14124.5, Welfare and Institutions Code.

Reference: Sections 11477 and 14008.6, Welfare and Institutions Code.