

DEPARTMENT OF HEALTH SERVICES

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March 1, 1993

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

Letter No.: 93-14

SUBJECT: IMPACT OF THE IMMIGRATION ACT OF 1990, FAMILY UNITY
PROVISIONS, ON MEDI-CAL ELIGIBILITY

The purpose of this letter is to provide counties with information regarding the treatment of aliens covered by the family unity provisions in Section 301 of the Immigration and Nationality Act (INA) of 1990.

BACKGROUND

Section 301 of the INA, effective October 1, 1991, provides that the spouses and unmarried children of an alien legalized under the Immigration Reform and Control Act (IRCA) are "eligible immigrants" and, pursuant to Section 301, may be granted a stay of deportation pending adjustment of immigration status. This section further provides that, for purposes of eligibility for programs such as Medicaid, these "eligible immigrants" will be ineligible for public welfare assistance in the same manner and for the same period as the legalized alien.

Section 301 defines legalized alien as an alien lawfully admitted for temporary or permanent residence under INA, Sections 245(h) and 210(f). Only family members of those aliens who have been granted lawful temporary resident (LTR) or lawful permanent resident (LPR) status under IRCA may receive benefits under the family unity provisions. Eligible immigrant family members have the same status as the legalized alien and are eligible to the same level of benefits.

DOCUMENTATION

The primary documentation used as verification of alien immigration status is either the form I-94 (Arrival and Departure Record) showing "voluntary departure" status and coded with family unity immigration codes, LB 1,2 or LB 6,7, which indicate new arrivals and adjustments respectively; or the INS I-551 (Permanent Resident Alien Registration Card) coded LB 1,2 or LB 6,7.

For Medi-Cal entitlement purposes, Title 22, California Code of Regulations, Section 50301.3 (k) states that "aliens granted voluntary departure, whose departure INS does not contemplate enforcing", and who have an INS Form I-94 showing this status or "Alien Voluntary Departure" are considered permanently residing under the color of law (PRUCOL).

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Example: An alien granted lawful temporary residence under Section 245A of the INA is not aged, blind, or disabled, or under 18, but otherwise is eligible for Medi-Cal; therefore, he/she may receive emergency and pregnancy-related services. The "eligible immigrant" family members of such a lawful temporary resident alien who have been granted a stay of deportation under Section 301 may receive the same limited services, if they are otherwise eligible for Medi-Cal. Even though these aliens are PRUCOL, they are subject to the five-year moratorium which limits services to the LTR alien. If the legalized alien spouse or parent of an "eligible immigrant" is aged, blind, or disabled, no limitation on services applies. In either case, these "eligible immigrant" family members are also subject to having their immigration status verified through SAVE.

REDUCING BENEFITS

Counties should review those cases where family members were added to the MFBU and granted full-scope benefits under the family unity provisions. If you have granted full-scope benefits to an "eligible immigrant" family member whose connecting LPR has not completed the five-year moratorium, it will be necessary to reduce the benefit level to restricted until the disqualification period ends.

OVERPAYMENTS

If the Program Review Section analysts, through their review, determine that certain beneficiaries should only be entitled to restricted benefits and not full-scope, the analyst will cite these cases as an "Eligible with Ineligible Services" error. Additionally, all errors in this particular area will be "State Assumed". After receipt of this All County Welfare Directors Letter (ACWDL), Program Review staff will cite errors against the counties for not following instructions contained in this ACWDL.

If you have further questions relating to the family unity provisions and the level of benefits to which "eligible immigrant" family members are eligible for, please contact Marlene King of my staff at (916) 657-0134.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch