

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET

BOX 942732

SACRAMENTO, CA 94234-7320

(916) 657-2941



October 24, 1995

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

Letter No. 95-63

SAWYER POLICY AND PROCEDURES: IMPLEMENTATION

Ref.: All County Welfare Directors (ACWDL) Letter No. 94-49

SECTION I INTRODUCTION

History of the Sawyer Litigation: Since the inception of the Medi-Cal program, the Department of Health Services (DHS) has interpreted federal Medicaid law as requiring Worker's Compensation temporary disability indemnity (TDI) payments to be counted as unearned income. These payments will be referred to throughout these instructions as Temporary Worker's Compensation payments (TWC). In 1994, the Sawyer lawsuit was filed against DHS and the Department of Social Services (DSS) for the purpose of changing DHS and DSS policy to one of counting TWC payments as earned income. During the pendency of this litigation, the federal Aid to Families with Dependent Children (AFDC) administrator reinterpreted its AFDC-eligibility rules to require that TWC be counted as earned income in those instances where the TWC recipient continued to be employed by the employer for whom he/she was working when the injury was incurred. In accordance with federal law, which requires the application of many of the AFDC eligibility rules to certain categories of Medi-Cal eligibles, Medi-Cal is applying this AFDC earned-income rule to its AFDC-linked/MI persons.

The Sawyer Prospective Remedy: Beginning January 1, 1996, the effective date for the Sawyer prospective remedy, new cases which meet the requirements of the Sawyer prospective remedy set forth in this ACWDL will have their TWC payments counted as earned income. In addition, ongoing cases as of January 1, 1996 which meet these requirements will have their TWC payments received during or after January 1, 1996 counted as earned income. Counties will evaluate the applicability of the four AFDC-linked/MI earned income disregards to these TWC payments, and, when the applicable earned income disregards reduce the countable income of these cases, will recompute the case budget and lower these cases' share of cost (SOC).

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Counties have several months to complete the rebudgeting of these ongoing cases under the Sawyer Prospective remedy. As a result, some of these cases will not have their budgets converted to reflect the treatment of TWC as earned income for up to several months after the January 1, 1996 effective date for the prospective remedy. Counties will need to rebudget such cases, lowering the SOC as necessary, for all previous months back through January 1996 in which the case received qualifying TWC. These cases will receive a reimbursement check from DHS for these months. The TWC payments of these ongoing cases received in months beginning January 1, 1996, and potential SOC reductions for these months, will be evaluated under the rules applicable to the Sawyer Prospective Remedy.

The Sawyer Retroactive Remedy: Previous to the application of the Sawyer policy of counting qualifying TWC payments as earned income to a Medi-Cal case, these payments were counted as unearned income to that case, precluding the application of the Medi-Cal earned income disregards to such income.

For cases discontinued previous to January 1, 1996 and for ongoing cases as of this date, which meet the requirements of the Sawyer Retroactive Remedy, counties will count TWC payments received between July 1992, through December 1995, as earned income. Certain of these cases meeting specified conditions will have their TWC counted as earned income back through January, 1991 (see the definition for "Qualified Case," below). Counties will evaluate the applicability of the \$90 earned income deduction to these TWC payments, then recompute the SOC for those months which should have had a lower SOC as a result of the application of this deduction to the TWC payments. Upon notification by the counties, the Medi-Cal program will issue checks to certain persons in these SOC-adjusted cases to reimburse them for those months during the retroactive Sawyer period in which the cases' SOC had been met and its SOC had been too high.

Implementation Period: Counties shall have a four-month period, commencing January 1, 1996 and extending through April 30, 1996 to evaluate and recompute SOC under the Sawyer Prospective and Retroactive Remedies.

Two Part Implementation of the Sawyer Retroactive Remedy: This ACWDL implements the Sawyer Prospective Remedy in its entirety, and the majority of the Sawyer Retroactive Remedy. The portion of the Sawyer Retroactive Remedy which applies to a small number of cases which may not be identified from the list of flagged cases or from the QSR and redetermination documents discussed in this ACWDL will be implemented through a later ACWDL. Under this forthcoming ACWDL, the Sawyer Retroactive Remedy will be applied to cases not reimbursed under this ACWDL which are identified through applications for this Retroactive Remedy

submitted by persons responding to a Sawyer notice posted at certain locations. Due to limitations imposed by the Sawyer settlement agreement, DHS is not able to implement this part of the Retroactive Remedy at this time.

SECTION II DEFINITIONS

Target Case: For purposes of this ACWDL, a target case is a Medi-Cal case in which the person who receives the TWC payments: 1) is not a ABD-linked MN person, 2) is either an AFDC-linked/MI MN person or is in the same MFBU with a AFDC-linked/MI MN person, and 3) has had his/her income counted in the Medi-Cal case budget. A target case will be eligible for a recomputation of the case budget (case conversion), and possible lowering of the SOC, according to the instructions below, once it is an identified target case, has met the requirements of a qualified case (see definition below), and is determined to have qualifying temporary worker's compensation payments.

Identified Target Case: Is a target case which either was flagged per the instructions in ACWDL No. 94-29, or is a target case which the Quarterly Status Report or redetermination documents indicate has qualifying TWC.

Qualifying Temporary Worker's Compensation Payments: Under the terms of the settlement agreement, TWC qualifies as earned income when the following two requirements are met: 1) the TWC is received by a person described in the "Target Case" paragraph above, and 2) this person continues to be employed by the employer for whom he/she was working when the injury giving rise to the TWC payments was incurred. TWC received by a person is not qualifying TWC for any month(s) subsequent to the month in which the county becomes aware 1) that the person was notified in writing by the employer that the employer will no longer be able to offer employment to that person or that employment was being terminated, 2) that the person notified the employer, orally or in writing, that the person does not intend to resume employment with that employer, or 3) that there is other evidence indicating that the employer-employee relationship no longer exists.

Qualified Case: For purposes of the Sawyer Prospective Remedy for ongoing cases, an identified target case is a qualified case for any month from January 1, 1996 onwards in which it has verified, qualifying TWC.

For purposes of the Sawyer Retroactive Remedy for discontinued and ongoing cases, an identified target case is a qualified case in any month from July 1992 through December 1995 (retroactive period no. 1) in which it had verified, qualifying TWC, and was certified as having met its pre-Sawyer SOC. If a case qualifies for a reimbursement for any month in retroactive period no. 1, it is also a qualified case for any month from January 1991 through June 1992 (retroactive period no. 2) in which it has verified, qualifying TWC and met its pre-Sawyer SOC. Only

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identified target cases can be qualified cases and only cases which qualify for a reimbursement in retroactive period no. 1 can be considered for reimbursement in retroactive period no. 2.

Furthermore, to qualify for relief during retroactive period no. 2, all necessary documentation for determining eligibility to such relief, including the amount of TWC received, must already be present in county case files. Qualified cases will have their budgets converted to reflect the change in treatment of their TWC payments to earned income.

Case Conversion (also Converted Case): Case conversion means calculating, or recalculating, the qualified case's budget to reflect that the case's qualifying TWC payment(s) is earned income by applying the applicable Medi-Cal earned income disregards (per the instructions in this ACWDL) to the case's qualifying TWC payments and adjusting the case's SOC as necessary.

New Case: The term "new cases" refers to potential Medi-Cal cases for which the county is in the process of making an eligibility determination on or after January 1, 1996 as a result of a Medi-Cal application submitted to the county. New Medi-Cal applications, Medi-Cal applications submitted after a break in eligibility, and Medi-Cal applications submitted by a person transferring from a cash-assistance program or from a no-SOC continuation program such as Transitional Medi-Cal (TMC) or Edwards, initiate new cases, and such cases remain new cases until the case's budget has been computed and the SOC amount has been entered into the Medi-Cal Eligibility Data System system.

Ongoing Case: A case which was a continuing case as of January 1, 1996.

Discontinued Case: A case which was discontinued previous to January 1, 1996.

Sawyer Retroactive Period: This period extends from January 1, 1991 through December 31, 1995. For months within this period, the Sawyer Retroactive Remedy will be applied to identified target cases in those months in which such cases have qualifying TWC, as described in this ACWDL.

Qualifying Individual: The person in a qualified case who received the qualifying TWC.

SECTION III APPLYING THE SAWYER PROSPECTIVE REMEDY TO NEW MEDI-CAL CASES

For all MFBU (MBU) budget determinations (or posting of SOC) undertaken on, or after, January 1, 1996, as part of an eligibility-determination for a new case, regardless of the application date for the case, treat the verified, qualifying TWC payments of any new case which meets the requirements for a target case (see definition of target case, above) as earned income

and apply the four earned-income deductions (see below) to these TWC payments, to the extent applicable given the facts of the case. See Section XI for instructions regarding the verification of TWC. The Sawyer Retroactive Remedy does not apply to new cases.

SECTION IV IDENTIFYING DISCONTINUED AND ONGOING TARGET CASES FOR THE SAWYER RETROACTIVE AND PROSPECTIVE REMEDY

The following cases are "identified cases" for purposes of the Sawyer retroactive and prospective remedies: 1) cases flagged per the instructions in ACWDL No. 94-49 which instructed counties to maintain records of cases receiving TWC payments, and 2) cases for which inspection of QSRs and redetermination documents received by the county from January 1, 1996 through March 31, 1996 shows reported TWC. Counties will examine these identified (ongoing and discontinued) cases to determine whether they are target cases and then evaluate these identified target cases to determine whether they are qualified cases with verified, qualifying TWC.

DHS is aware that there is an extensive overlap in cases identified under the two identification methods described above. The target cases identified from inspection of QSRs for reported TWC will be the same cases flagged under ACWDL No. 94-49. To avoid duplicative identification of target cases and wasted effort in identifying cases, counties may elect to utilize either the list of flagged cases as the primary means for identifying target cases, or may elect to utilize QSRs as the primary means of identifying cases. DHS anticipates that many counties will wish to utilize their list of flagged cases as the primary method for such identification because this list will provide a complete list of potential target cases by January 1, 1996, the beginning date for the implementation of the Sawyer Prospective and Retroactive Remedies. For counties using their list of flagged cases as the primary method for identifying target cases, the QSR review process will serve primarily to augment the counties' list of flagged cases. Counties which elect to utilize the QSR review as the primary means for identifying target cases must compare the list of QSR-identified target cases with their list of flagged cases toward the end of the three-month conversion period and add those target cases from the list of flagged cases not yet identified through the QSR review to the list of cases to evaluate for Sawyer retroactive and prospective eligibility. In short, the intent of these two methods is to ensure that all discontinued and ongoing cases potentially eligible for Sawyer benefits will be evaluated for such benefits by the counties.

In addition, in the next several months an additional method for identifying target cases will be implemented as mandated by the Sawyer settlement agreement: DHS and DSS will post notices informing beneficiaries that they may submit applications for a retroactive Sawyer reimbursement to the appropriate county staff. Many of the applications counties will receive from persons responding to this notice will correspond to cases which have already been identified as a flagged case, or identified through the QSR process, and which have had their budgets converted and the head-of-the-household reimbursed under this ACWDL. Maintaining a log of cases identified

under this ACWDL should facilitate screening future Sawyer applications and prevent revisiting those cases identified via the future Sawyer applications which have already been identified and evaluated under this ACWDL.

SECTION V CONVERTING THE ONGOING CASE BUDGET UNDER THE SAWYER PROSPECTIVE REMEDY

Converting The Ongoing Case Budget: Under the Sawyer Prospective Remedy, effective January 1, 1996, qualifying TWC will be treated as earned income when determining the Medi-Cal SOC of qualified cases. Counties are not expected to convert all ongoing Sawyer-eligible cases during January 1996. Counties will have four months, from January 1, 1996 through April 30, 1996, to convert the case budgets of qualified ongoing cases. After converting the budget of the qualified ongoing case for the current month, the county must convert the case's budget for all previous months back to January 1, 1996 in which the case was a qualified case.

When converting the ongoing case budget under the prospective remedy, counties will apply the four earned income deductions (see below), to the extent that they are applicable given the facts of the case, to the case's qualifying TWC, reducing the case's SOC and calculating the reimbursement as appropriate following the instructions in Section VII, below. As indicated above, counties must complete this conversion for all qualified ongoing cases within the four-month implementation period from January 1, 1996 and April 30, 1996. For months previous to January 1996, in which one of these cases may have received qualifying TWC, the Sawyer Retroactive Remedy will apply. Section VI, below, discusses the Sawyer Retroactive Remedy.

Ongoing Cases Discontinued During the Prospective Remedy's Four Month Conversion Period: Some cases may be ongoing cases as of the January 1, 1996 effective date of the Sawyer Prospective Remedy, and yet are discontinued prior to being evaluated by the county for eligibility for the Sawyer Prospective Remedy. Counties must inspect such cases to determine whether any such cases are qualified cases in any month during the four-month implementation period up through the month in which the case was discontinued, and, if so, must convert the case budget and evaluate the case for reimbursement under this Section for those months.

Case Conversion: Although the conversion of the case budget under the Sawyer Prospective Remedy means treating the qualified case's qualifying TWC as earned income and applying the four earned income deductions (see Section X) as appropriate to that TWC, it is possible that this "conversion" will have no impact on the case's SOC. Some of the earned income deductions, for

example the \$90 work deduction, allow only a limited amount to be disregarded and this limited deduction may have already been fully applied to other earned income of the individual receiving the TWC payments. Other earned income deductions may not apply.

SECTION VI CONVERTING THE ONGOING CASE BUDGET UNDER THE SAWYER RETROACTIVE REMEDY

Retroactive Sawyer Conversion For Ongoing Cases: Both the Sawyer retroactive remedy and prospective remedy may apply to a case which was an ongoing case as of the January 1, 1996 beginning implementation date for the Sawyer remedies, the prospective remedy being applicable to months from January 1, 1996 onward, and the retroactive remedy being applicable to months previous to January 1996, going back through January 1991.

When converting the budget of an ongoing case for the Sawyer Prospective Remedy, counties must also convert the budget of that case for the Sawyer Retroactive Remedy. The Sawyer Retroactive Remedy requires the application of the \$90 work expense deduction, to the extent not previously applied to the TWC recipient's other earned income, to his/her qualifying TWC in those months from January 1991 through December 31, 1995 (the Sawyer retroactive period) in which the case was a qualified case. As stated in the above definition for a qualified case, a case can only be a qualified case during the January 1991 through June 1992 period if it qualified for a Sawyer retroactive reimbursement during the July 1992 through December 1995 period. Only the \$90 work expenses deduction is applicable for case budget conversions for the Sawyer retroactive period. Furthermore, the retroactive remedy is only available in retroactive period months in which the pre-Sawyer SOC had previously been met.

The objective of this conversion is to calculate the reimbursable amount, the difference between the "pre-Sawyer" and "post-Sawyer" SOC, for those months within the retroactive period that the case was a qualified case. This reimbursable amount will generally be equal to the portion of the \$90 deduction which is applicable to the case's qualifying TWC. The method for calculating the reimbursable amount is discussed in the next section.

SECTION VII DETERMINING THE REIMBURSEMENT FOR ONGOING CASES CONVERTED UNDER THE SAWYER PROSPECTIVE AND RETROACTIVE REMEDIES

After converting the budget of the qualified ongoing case under the Sawyer Retroactive and Prospective Remedies per the above instructions, counties will take the following steps to calculate the total Sawyer reimbursement:

1. Adjust the case's SOC on MEDS starting the month after the month in which the county performed the case conversion;
2. Prospective Remedy Reimbursement: For the months within the period from January 1996 through the month in which the county performed the case conversion, in which the case has a lower SOC as a result of the Sawyer prospective remedy conversion, inspect the "SOC Case Make-Up Inquiry Request Screen" (SOCR screen) to determine which of these months the case was certified as having met its pre-Sawyer SOC, and to determine which of these months the case had incurred medical expenses in excess of the revised, post-Sawyer SOC. Counties not on the BIC system will use MC 177s in place of the SOCR screen. For those months within this period in which the case was certified as having met its pre-Sawyer SOC, calculate the amounts by which the pre-Sawyer SOC exceeds the post-Sawyer SOC, then add these amounts together to produce subtotal 1. For those months within this period for which the SOCR screen (or MC 177) shows that the case was not certified but had medical expenses (determined by subtracting the SOC-balance-remaining shown on the screen from the pre-Sawyer SOC shown on the screen) in excess of the post-Sawyer SOC, calculate the amount by which the medical expenses exceeded the post-Sawyer SOC, and add these amounts together to produce subtotal 2;
3. Retroactive Remedy Reimbursement: For months from January 1991 through December 1995, in which the qualified case has a lower SOC as a result of the Sawyer retroactive remedy conversion, calculate the difference between the pre-Sawyer SOC and post-Sawyer SOC for every month in which the case's pre-Sawyer SOC was met, and add these amounts together to produce subtotal 3;
4. Counties will add subtotals 1, 2, and 3 to calculate the total reimbursement due the ongoing case and will provide this total on the "Sawyer Reimbursement Request" form (see Exhibit A) which counties will submit to DHS. This Reimbursement Request form is discussed in the Section XIII.
5. Finally, for months for which the case budget was converted, from the month in which the county performed the conversion back through January 1996, counties will adjust the SOC on MEDS to the post-Sawyer SOC (or for counties without MEDS access, cause to have this SOC adjusted) as follows: (i) for those months in which the case's incurred medical expenses do not exceed the post-Sawyer SOC, lower the SOC on MEDS to the post-Sawyer SOC; (ii) for those months in which the case's incurred medical expenses exceed the post-Sawyer SOC, lower the SOC only to the level of the medical expenses incurred so that the cases will be certified for the month. There is no adjustment for any of

these months in which the cases were previously certified as the MEDS system will not accept such adjustment. The SOC adjustment for past months ensures that, in the infrequent event that some of the case's incurred medical expenses incurred in one of these months are not yet registered on the SOCR screen (or the MC 177 has not yet been submitted in a non-BIC county) for a past month, these medical expenses will be applied toward the lower post-Sawyer SOC when submitted.

SECTION VIII CONVERTING THE CASE BUDGET AND DETERMINING REIMBURSEMENT UNDER THE SAWYER RETROACTIVE REMEDY FOR DISCONTINUED CASES

For identified target cases which were discontinued previous to January 1996, convert the case budget by applying the \$90 work expense deduction, to the extent not previously applied to the case's TWC recipient's other earned income, to his/her qualifying TWC in those months from January 1991 through December 31, 1995 (the Sawyer retroactive period) in which the case was a qualified case which met its pre-Sawyer SOC. Only the \$90 work expenses deduction is applicable for case budget conversions for these months. For each such month, calculate the post-Sawyer SOC and subtract the post-Sawyer SOC from the pre-Sawyer SOC to determine the SOC reduction. The total of these SOC reductions is the case's reimbursable amount under the Sawyer retroactive remedy.

The county will transmit to DHS these SOC reduction totals and other pertinent case information (see the Sawyer Retroactive Reimbursement Request, Exhibit A), according to the instructions provided in Section VIII, below. DHS will use this information to issue Sawyer reimbursement checks.

The Sawyer retroactive remedy is the only remedy applicable to cases which were terminated previous to the January 1, 1996.

SECTION IX MEDI-CAL EXPENSES FROM SAWYER-REIMBURSED CASES NOT APPLICABLE TO SOC UNDER HUNT

Unpaid medical expenses incurred in any month for which the Medi-Cal case was reimbursed under a Sawyer remedy may not be applied toward SOC in any later month under the Hunt v. Kizer old medical bill remedy because such bills have already been reimbursed under the Sawyer remedies, or, were used to certify SOC for purposes of providing such reimbursement.

SECTION X REVIEW OF THE EARNED INCOME DISREGARDS POTENTIALLY APPLICABLE TO TWC PAYMENTS

The four AFDC MN/MI earned-income deductions, and instructions for their application, are summarized below. Instructions regarding which of these deductions may be applied to a qualified case are provided elsewhere in this ACWDL.

1. **\$90 Work Expense Deduction (Title 22, California Code of Regulations (CCR), Section 50553.1).** This deduction may be applied to qualifying TWC payments only to the extent not previously applied to the other earned income of the TWC recipient.
2. **Student Exemption (Title 22, CCR, Section 50543).** Apply to qualifying TWC only when warranted by the facts in the case record.
3. **\$30 and 1/3 deduction.** Apply to qualifying TWC payments only to the extent warranted by the information in the case record.
4. **The Dependent Care Deduction at Title 22, CCR, Section 50543** will generally not be applicable, (because the TWC recipient will generally be available to care for the children) except when there is no other family member able to care for the dependent children and the TWC recipient is so disabled as to be unable to care for the children. If the TWC recipient states that he/she is unable to care for the children because of his/her employment, and this employment is with an employer other than the employer with whom he/she was employed when the injury was incurred, the county must determine whether this other employment indicates that the person's employment relationship with the employer for whom he/she was employed when the injury was incurred has been terminated and therefore the TWC payments are not qualifying TWC. In such instances, contact Dave Rappolee of my staff at (916) 657-0163.

SECTION XI VERIFICATION OF TEMPORARY WORKER'S COMPENSATION

Before converting the case budget or adjusting SOC under the Sawyer remedies, counties must verify 1) that the payments in question are qualifying TWC payments, and 2) the months in which such payments were received. Issuance of a TWC award letter from the insurance company or other entity making the TWC payment, which letter will identify that the payment is a temporary disability indemnity payment (temporary disability indemnity payment is the term-of-art used to

denote a TWC payment), the amount of the payment due, and the duration and schedule of payments, is required by workers compensation law. An outline of a sample TWC award letter is enclosed as Exhibit B. This award letter provides sufficient verification of the TWC payment amount and of the date the TWC payments began. A TWC check or check stub for a month is sufficient verification that TWC payment was received in that month if the check or check stub clearly states that the payment is a TWC payment. The check or check stub is not verification that TWC was received in previous months. Notations in the case record establishing the months and amounts in which TWC was received are sufficient verification of the months in which TWC was received. In the absence of verification that a payment received in a month is a TWC payment, and the amount of that payment, the case is not eligible for Sawyer benefits in that month.

The first TWC payment may contain a lump sum component to cover the period between the TWC recipient's application for worker's compensation and the determination of the recipient's eligibility for TWC. A TWC award letter should separately identify this retroactive TWC component by amount and indicate the retroactive period it is intended to cover. The portion of the total TWC payment paid in a month that is attributable to the lump sum payment is not income because it is considered to be property pursuant to Title 22, CCR, Section 50455. Ongoing TWC payments are paid bimonthly.

TWC is paid for temporary partial or total disability arising from a work-related injury. The TWC recipient's injury is considered temporary while the treating physician believes his/her condition may improve. At the point where the disability is classified as "permanent and stationary," TWC payments should terminate and permanent disability payments begin. Permanent disability payments continue to be treated as unearned income for Medi-Cal purposes.

Customarily, permanent disability payments are also frequently paid bimonthly. Permanent disability payment amounts paid bimonthly are usually considerably less than the TWC payments. While the TWC recipient must report when his/her TWC payments change to permanent worker's compensation payments, a reduction in income for a case in which TWC is being received should alert counties to a possible transition of TWC payments to permanent disability payments. Counties may require beneficiaries to corroborate TWC at any time by submitting a check stub from the TWC payor which matches the TWC award letter amount.

For ongoing cases in which TWC is the only earned income in the case, and to which none of the earned income deductions would have applied previous to Sawyer, counties should be especially alert to the necessity of verifying that payments are "qualifying" TWC payments.

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SECTION XII IDENTIFICATION OF THE SAWYER REIMBURSEMENT RECIPIENT

The Sawyer reimbursement recipient is the person in the case MFBU who during Sawyer reimbursement period is, or was, an eligible or ineligible member of the MFBU and the head-of-the-household within that MFBU. The reimbursement recipient's address will be the mailing address for the case. When completing the "Sawyer Reimbursement Request," described below, counties will include the name and address of the reimbursement recipient. DHS will issue the Sawyer reimbursement in the name of the reimbursement recipient to the case address. Occasionally DHS may issue the reimbursement to another person in the MFBU, if appropriate. DHS reimbursement to any person in the case MFBU fulfills DHS' liability for Sawyer reimbursement for the case.

SECTION XIII COMPLETION AND TRANSMITTAL OF THE "SAWYER REIMBURSEMENT REQUEST"

The "Sawyer Reimbursement Request" (see Exhibit A) is the vehicle which DHS will use to issue Sawyer reimbursement checks. Counties will complete a "Sawyer Reimbursement Request" form for each case which the county has determined qualifies for a Sawyer reimbursement. The county should complete this form in the month in which the determination is made. At the end of such month, or within the first week of the following month, the county should mail the completed "Sawyer Reimbursement Request" form for all cases converted in that month to the DHS at the address provided at the end of this section. Counties must have completed the Reimbursement Requests forms for all qualified cases, and have sent these forms to DHS, no later than May 31, 1996.

Mail the Sawyer Reimbursement Requests to:

Sawyer Retroactive Reimbursement
Mr. Seymour Reed
Clerical Unit
Medi-Cal Eligibility Branch
Department of Health Services
714 P Street, Room 1719
Sacramento, CA 95814

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SECTION XIV MAINTAINING RECORDS OF CASES WHICH QUALIFIED FOR RETROACTIVE SAWYER REIMBURSEMENT

For the purpose of settling potential disputes regarding Sawyer benefits, counties must maintain records of the calculations used to determine the post-Sawyer SOC for all cases which qualified for Sawyer reimbursement checks. Counties must keep copies of all Sawyer related documents issued to, or received from, the beneficiary. Counties must also compile and maintain a log of cases which have qualified for retroactive Sawyer reimbursement, that is, cases included in the "Sawyer Reimbursement Request" sent to DHS. A sample log form is provided in Exhibit C. The records and logs must be maintained for three years starting from May 31, 1996.

SECTION XV PROVISION OF NOTICE REGARDING APPROVAL/DENIAL

For each case which is a continuing case in the month in which the county performs the case conversion under the Sawyer Prospective Remedy, counties will issue one of two alternative Sawyer Notices of Action (NOA). One of these notices informs the beneficiary that his/her SOC has been lowered as a result of treating the cases TWC payments as earned income; the other notice informs the beneficiary that the Sawyer conversion of his/her case budget did not affect the case's SOC. Medi-Cal does not expect that the SAWS version of these forms will be ready by the January 1, 1996 beginning implementation date for Sawyer. Until the SAWS Sawyer notices are ready, counties will issue copies of these NOAs. These NOAs are enclosed with this ACWDL as Exhibit D.

SECTION XVI MODIFICATION OF THE FLAGGING REQUIREMENT

ACWDL No. 94-49 required counties to flag existing and new Medi-Cal cases with TWC in any month from May 1994 onwards. The flagging requirement established in ACWDL No. 94-49 expires January 1, 1996, the date for which counties will begin to treat qualifying TWC of new cases as earned income. Although as of this date counties will no longer flag new cases, counties must maintain their lists of previously flagged cases.

SECTION XVII STATISTICAL REPORTING

By July 15, 1996, counties will submit the following statistical information to DHS on the form provided in Exhibit E: 1) a tally of the number of cases which qualified for a retroactive reimbursement under Sawyer for any months beginning January 1991 through December 31, 1995, and the total number of months which these cases qualified for retroactive reimbursement under Sawyer for the period January 1991 through December 31, 1995. Counties will send these tallies to:

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Mr. Dave Rappolee
Medi-Cal Eligibility Branch
Department of Health Services
714 P Street, Room 1650
P.O. Box 942732
Sacramento, CA 94234-7320

If you have questions regarding the subject matter of this ACWDL, please contact Dave Rappolee of my staff at (916) 657-0163.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

EXHIBIT A

DHS Address: Attn: Sawyer Retro Reimbursement
Seymour Reed
Clerical Unit
Department of Health Services
Medi-Cal Eligibility Branch
714 P Street, Room 1719
Sacramento, CA 95814

Issuing County (Address)

SAWYER REIMBURSEMENT REQUEST

To: Pat Kinney
Medi-Cal Accounting Section
8/1143

From: Medi-Cal Eligibility Branch
8/1650

This is to advise you that the following individual qualifies for a reimbursement under the Sawyer v. Belshé, et. al. settlement agreement pursuant to the settlement agreement for the Sawyer v. Anderson, Belshé, et. al. litigation, U.S. District Court, Northern District of California, case #CIVS-94-0028 GEB JFM. Please prepare and issue a reimbursement check for the amount shown below to the address provided.

TO BE COMPLETED BY THE COUNTY - PLEASE PRINT

Reimbursee (MFBU/Household Head) Name: _____ SSN _____

Address: _____

Reimbursement Total: _____ = (Retro period amt _____ + Conversion Period amt _____)
1/91 thru 12/95 1/96 thru month of conversion

Beginning and Ending Months
to which this Reimbursement Applies _____
month/year to month/year

Case ID Number _____ Case Number _____

Signature of County Preparer: _____ Date: _____

Phone Number: _____ Title: _____

FOR STATE USE ONLY

Certified by: _____ Date: _____

Authorized M.E.B. Reviewer

Phone Number: _____

EXHIBIT B

Sections pertinent
to Sawyer
are circled, and
marked
with an
asterisk *

Quick Reference--General Information & TD Indemnity

Quick Reference to Notice Contents

Benefit Notice Letters

§9810(c)

- Benefit notice letters may be produced on claims administrators letterhead.

General Benefits Information Pamphlet

§9810(d)

- A general information pamphlet shall be sent with first notice of benefits.

* * * Temporary Disability Indemnity Notices * * *

§9812(a)(1) Notice of First Temporary Disability Indemnity Payment -- Required elements:

- Amount of TD indemnity due
- How it was calculated
- Duration and schedule of payments
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: No later than the 14th day after the employer's date of knowledge of injury and disability.

§9812(a)(2) Notice of Delay in Any Temporary Disability Indemnity Payment-- Required elements:

- That there will be a delay
- The reasons for it
- The need, if there is one, for additional information required to make a determination
- When a determination is likely to be made
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: Within 14 days of the date of knowledge of injury and disability.

Additional Notice(s) of Delay in Any TD Indemnity Payment--Required elements:

- That there will be a further delay
- The reasons for it
- The need, if any, for additional information required to make a determination
- When a determination is likely to be made
- The employee's remedies

When to send: Within 5 days after the determination date specified in the prior delay notice.

§9812(a)(3) Notice of Denial of Any Temporary Disability Indemnity Payment--Required elements:

- That liability for a period of claimed TD has been denied
- Reasons for it
- The employee's remedies

When to send: Within 14 days after the determination to deny is made.

* * * Notices of Resumption, Change, and Ending of Benefits * * *

§9812(b) Notice of Resumed Benefit Payments (TD, SC, PD, VRTD/VRMA)--Required elements:

- Amount of indemnity due
- Duration and schedule of payments
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: Within 14 days after the employer's date of knowledge of the entitlement to additional benefits.

§9812(c) Notice of Changed Benefit Rate or Schedule (TD, SC, PD, VRTD/VRMA)--Required elements:

- Amount of the new benefit rate or description of new benefit payment schedule
- Reason why the rate is being changed, if applicable
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: Before or with the new payment.

Quick Reference--Resumption, Change, Ending & PD Notices

312(d) Notice that Benefits Are Ending (TD, SC, PD, VRTD/VRMA)--Required elements:

- That benefit payments are ending
- Reason for it
- Accounting of all benefits paid in that species of benefit, including dates and amounts paid and any related penalties
- The employee's remedies

When to send: With the last payment of TD, SC, PD, VRTD/VRMA. If the decision to end payments is made after the last payment, within 14 days of the last payment.

Permanent Disability Notices

3812(e)(1) Injury Before Jan. 1, 1991 and Existence and Extent of Permanent Disability is Known--Required elements:

Amount of the weekly PD indemnity payment
How it was calculated
The duration and frequency of payments
Total amount to be paid
The employee's remedies if he or she disagrees

When to send: Within 14 days after the claims administrator knows that the injury has caused permanent disability and its extent.

3812(e)(2) Injury Before Jan. 1, 1991 and Existence of Permanent Disability is Known, Extent is Uncertain--Required elements:

Amount of the weekly PD indemnity payment
How it was calculated
The duration and schedule of payments
Reasonable estimate of the amount of PD indemnity to be paid
That the employee's medical condition will be monitored until the extent of PD can be determined and that PD payments will be revised then, if appropriate
That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: Within 14 days after the last payment of TD indemnity or, if there was no compensable TD, within 14 days after knowledge that the employee's injury has resulted in PD.

§9812(e)(3) Injury Before Jan. 1, 1991 and Existence of Permanent Disability is Uncertain--Required elements:

- That the claims administrator cannot yet determine whether the injury will cause PD
- Reasons for the delay in this determination
- The need, if any, for additional information required to make a determination
- When a determination is likely to be made
- If the reason for the delay is that the employee's medical condition is not permanent and stationary, that the employee's medical condition will be monitored until it is P&S, at which time an evaluation will be performed to determine the amount of PD indemnity, if any, that is due
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: Within 14 days after the last payment of TD indemnity or, if the claims administrator paid no TD indemnity, within 14 days of receiving a claim or medical report alleging the existence of PD.

§9812(e)(4) Injury Before Jan. 1, 1991--Notice That No Permanent Disability Exists--Required elements:

- That the injury has caused no PD
- The employee's remedies

When to send: Within 14 days after the claims administrator makes the determination.

§9812(f)(1) Injury in 1991-1993, Condition Not Permanent and Stationary, May Cause PD, Monitoring Until P&S Date--Required elements:

- That PD is or may be payable but the amount cannot be determined
- That the employee's condition will be monitored until P&S, at which time a medical evaluation will be performed to determine the existence and extent of permanent impairment and need for continuing medical care
- Estimated date when this determination is likely to be made
- The employee's remedies

When to send: Together with the last payment of TD indemnity

Injury in 1991-1993, Condition Still Not Permanent and Stationary, Additional Notice(s)--Required elements:

- That there will be a further delay in determining existence and extent of PD
- Same as required for original such notice

When to send: Within 5 days after the determination date last specified.

Quick Reference--PD Notices

§9812(f)(2) Injury in 1991-1993, Condition Becomes P&S, May Cause Permanent Disability--Notice of QME Procedures--Required elements:

- That the employee's condition is permanent and stationary
- Procedures for evaluating PD and need for continuing medical care
- The employee's remedies

When to send: Within 5 working days after receiving information indicating that the employee's condition is P&S and has caused or may have caused permanent disability.

§9812(f)(3) Injury in 1991-1993, Notice of Permanent Disability Advances--Required elements:

- That the employee will receive a weekly PD indemnity payment
- How it was calculated
- The duration and schedule of payments
- The claims administrator's reasonable estimate of PD indemnity to be paid
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

When to send: When the claims administrator knows that the employee has sustained permanent disability: within 14 days after the last payment of TD indemnity, or within 14 days after knowledge that the injury has resulted in PD, whichever is later.

§9812(f)(4) Injury in 1991-1993, Notice That No Permanent Disability Exists--Required elements:

- That no PD indemnity is payable
- Process to obtain a formal medical evaluation to contest the determination that the employee has no PD
- The employee's remedies

When to send: Within 14 days after the claims administrator determines that the injury has caused no PD.

§9812(g)(1) Injury on or after Jan. 1, 1994, Condition Not Permanent and Stationary, May Cause PD--Notice of Monitoring Until P&S Date--Required elements:

- That PD indemnity is or may be payable but the amount cannot yet be determined
- That the employee's condition will be monitored until it is P&S, at which time a medical evaluation will be performed to determine the existence and extent of permanent impairment and need for continuing medical care

Quick Reference—PD Notices

- Estimated date when a PD determination is likely to be made
- Mandatory language of §9812(g) which the claims administrator may preface with the statement:
"Even though you're represented by an attorney, State Law requires us to advise you of the following."

When to send: With the last payment of TD indemnity, if the injury may result in PD but the employee's condition is not P&S.

Condition Still Not P&S—Additional Notice(s)—Required elements:

- That there will be a further delay in the PD determination
- All other elements included in the original notice
- The employee's available remedies

When to send: No later than 5 days after the determination date last specified.

§9812(g)(2)(A), (B), and (C) Injury on or after Jan. 1, 1994, Condition P&S, Causes PD, Notice of QME Procedures to Unrepresented Employee—Required elements:

- The claims administrator's determination of the amount of PD indemnity payable
- Basis for the claims administrator's determination of that amount
- Whether there is need for continuing medical care
- Statement that if either party disagrees with the treating physician's report, the employee must request a comprehensive medical evaluation from a QME panel
- Indication of whether or not the claims accepts the treating physician's evaluation of PD
- QME panel request form
- Statement that the employee may contact an Information and Assistance Officer to have the treating physician's evaluation rated by the Disability Evaluation Unit, if the claims administrator is not requesting a rating from the DEU
- Statement that the employee will be receiving a DEU rating on the treating physician's evaluation, if the claims administrator is requesting such a rating
- Mandatory language of §9812(g)
- The employee's other available remedies

When to send: Together with the last payment of TD indemnity or within 14 days of determining the amount of PD indemnity payable.

Quick Reference--PD Notices

§9812(g)(2)(D) Injury on or after Jan. 1, 1994, Condition P&S, Causes PD, Notice of QME Procedures to Represented Employee--Required elements:

- The claims administrator's determination of the amount of PD indemnity payable
- Basis for the claims administrator's determination of that amount
- Whether there is need for continuing medical care
- That the employee may obtain an additional medical evaluation by an Agreed Medical Examiner
- That if no agreement can be reached on an AME, he or she may obtain an evaluation by a Qualified Medical Evaluator of the employee's choice, and that the arrangements for such an evaluation should be discussed with his or her attorney
- Indication of whether or not the claims administrator disputes the treating physician's evaluation of the employee's permanent disability
- Mandatory language of §9812(g), which the claims administrator may wish to preface with the statement:
"Even though you're represented by an attorney, State law requires us to advise you of the following."
- The employee's other available remedies

When to send: Together with the last payment of TD indemnity or within 14 days of determining the amount of PD indemnity payable.

§9812(g)(3)(A), (B), and (C) Injury on or after Jan. 1, 1994, Notice to Unrepresented Employee That No Permanent Disability Exists--Required elements:

- That no PD indemnity is payable
- That if the employee disagrees with the treating physician's report on which the claims administrator made its determination, he or she may request a comprehensive medical evaluation by a QME panel physician
- Advice regarding the procedure for requesting a QME panel
- QME panel request form
- That the employee may contact an Information and Assistance Officer to have the treating physician's report rated by the Disability Evaluation Unit
- That the employee will be receiving a DEU rating on the treating physician's report, if the claims administrator has requested such a rating
- Mandatory language of §9812(g)
- The employee's other available remedies

When to send: Together with the last payment of TD indemnity or within 14 days after the claims administrator determines that there is no permanent disability.

§9812(g)(3)(D) Injury on or after Jan. 1, 1994, Notice to Represented Employee That No Permanent Disability Exists--Required elements:

- That no PD indemnity is payable
- That an additional evaluation may be obtained from an Agreed Medical Evaluator
- That if no agreement can be reached on an AME, the employee may obtain an additional evaluation by a Qualified Medical Evaluator of his or her choice, and that arrangements for such an evaluation should be discussed with the employee's attorney
- Indication of whether or not the claims administrator disputes the treating physician's evaluation of the employee's permanent impairment
- Mandatory language of §9812(g), which the claims administrator may preface with the statement:
"Even though you're represented by an attorney, State law requires us to advise you of the following."
- The employee's other available remedies

When to send: Together with the last payment of TD indemnity or within 14 days after the claims administrator determines that there is no permanent disability.

§9812(g)(4) Injury on or after Jan. 1, 1994, Notice of PD Indemnity Advances--Required elements:

- That the employee will receive a weekly PD indemnity payment
- How it was calculated
- Duration and schedule of payments
- The claims administrator's reasonable estimate of PD indemnity to be paid
- Mandatory language of §9812(g) which the claims administrator may preface with the statement:
"Even though you're represented by an attorney, State law requires us to advise you of the following."

When to send: Within 14 days after the last payment of TD indemnity, or within 14 days after knowledge that the injury has resulted in PD, whichever is later.

Notices in Death Cases

§9812(h)(1) Notice of Benefit Payment Schedule to Dependents in Death Case--Required elements:

- Amount of the death benefit payable
- How it was calculated
- Duration and schedule of payments
- That additional information may be obtained from an Information and Assistance Officer of the Division of Workers' Compensation

EXHIBIT C

A large, empty rectangular box with a thick black border, likely a placeholder for a drawing or image.

County Address and Identification Number

[illegible]

EXHIBIT D

(NOAINSTR)

INSTRUCTIONS FOR COPYING AND ISSUING SAWYER NOTICES OF ACTIONS (NOAs)

When copying, and before issuing, these NOAs, please ensure that the "NA BACK 7" form, which provides beneficiaries the means for requesting a fair hearing, is on the reverse side.

NOTICE OF ACTION

COUNTY OF:

State of California
Health And Welfare Agency
Department of Social Services

County Name and
Address Block

Notice Date:

Case Name:

Case Number:

Worker Name:

Telephone:

Address:

Addressee:

Questions? Ask your worker.

State Hearing: If you think this action is wrong you can ask for a hearing. The back of this page tells how. Your benefits may not be changed if you ask for a hearing before this action takes place.

The county has determined that your share of cost has not changed as a result of the fact that Medi-Cal now counts your case's temporary workers compensation payments as earned income.

We did not lower your share of cost because:

- ☐ You already received the earned income deductions.
- ☐ Your TDI is not considered earned income because your employment has ended.
- ☐ Other (specify):

See: These rules apply; you may review them at your welfare office: 50653.5(B), 50781, 50782, 50783.

NOTICE OF ACTION**COUNTY OF:**

State of California
Health And Welfare Agency
Department of Social Services

County Name and
Address Block

Notice Date:**Case Name:****Case Number:****Worker Name:****Telephone:****Address:****Addressee:****Questions? Ask your worker.**

The county has determined that your share of cost has decreased as a result of the fact that Medi-Cal now counts your case's temporary workers compensation payments as earned income.

Your share of cost has been changed to \$
from \$ for

Your new share of cost was determined as follows:

Gross income	\$ _____
Net nonexempt income	\$ _____
Maintenance need	\$ _____
Excess income	\$ _____
Share of cost	\$ _____

State Hearing: If you think this action is wrong you can ask for a hearing. The back of this page tells how. Your benefits may not be changed if you ask for a hearing before this action takes place.

Rules: These rules apply; you may review them at your welfare office: 50653.5(B), 50781, 50782, 50783.

EXHIBIT E

SAWYER STATISTICS REPORTING FORM

By July 15, 1996 please submit this form, summarizing the statistics for all converted cases, to the Department of Health Services at the following address:

Dave Rappolee
Medi-Cal Eligibility Branch
Department of Health Services
714 P Street, Room 1650
P.O. Box 942732
Sacramento, California 95814

County Name _____

1. Number of cases which qualified for a Sawyer retroactive reimbursement for any months from January 1991 through December 1995 (the Sawyer retroactive period):

2. The total number of months in which beneficiaries qualified for retroactive reimbursement from January 1991 through December 1995 _____

Name of Person Completing Form (Print/Typed) _____

Signature of Person Completing Form _____

Date _____ Phone Number _____