Law Offices of Public Advocates, Inc. 25 years

John T. Affeldt, Managing Attorney
B. Patricia Barrera, Director of Policy
Sandra Camacho, Project Coordinator
Maria Chang, Support Staff
Margie Chung, Office Manager
April Dawn Hamilton, Support Staff
Martha I. Jiménez, Managing Attorney
Clifford Lee, Support Staff
Wosen Mengiste, Support Staff
Carlos Rodriguez, Project Coordinator
Mark Savage, Managing Attorney
Michael Shiro, Chief Financial Officer

August 12, 1998

PRESS RELEASE

Contact: John Affeldt & Mark Savage, Public Advocates, (415) 431-7430

APPELLATE COURT STRIKES DOWN UNDERGROUND REGULATION DENYING EMERGENCY & PRENATAL CARE TO CERTAIN UNDOCUMENTED RESIDENTS

The California Court of Appeal just issued a decision further exposing the Wilson administration's unlawful efforts to deny critical health care to thousands of immigrants across California. Last year, the State Department of Health Services issued an All County Letter (No. 97-06) instructing all counties to deny emergency and prenatal care to anyone possessing a Border Crossing Card, even if the person can prove California residency and is otherwise entitled to such restricted Medi-Cal benefits. Ruling for the Latino Coalition for a Healthy California, a leading statewide advocacy organization on health care for California's 9 million Latinos, the Court of Appeal held that the Department's All County Letter was an underground regulation which the State had failed to subject to California's Administrative Procedure Act. The APA imposes such fundamental requirements as full public notice and opportunity for comment, and requires as well that any proposed regulation be consistent with state and federal law. As the Court of Appeal noted, current federal and state statutes require emergency care even for undocumented residents.

John Affeldt, Managing Attorney at Public Advocates and lead counsel for the Latino Coalition, highlighted the importance of the court's decision. "Emergency and prenatal care are critical to the health and well-being of all California residents. Pursuant to the Department's illegal directive, counties throughout the state have been improperly denying benefits to low-income residents who have lived here for years, based on their immigration status. Today's appellate decision halts the state's unlawful efforts to deny critical health care to undocumented residents."

Martha Jiménez, Executive Director of the Latino Coalition for a Healthy California, applauded the decision. "The Court's decision affirms that California's undocumented residents are entitled to equal dignity and respect under the law. Notwithstanding Wilson's personal agenda, Congress and the California Legislature have provided emergency care to undocumented residents, like all other residents, because as a fundamental matter of public health it makes good sense for California and the nation."

A Border Crossing Card is a federal Immigration and Naturalization Service document that permits a non-resident to enter no more than 25 miles into the United States for a duration of no longer than three days at a time. BCCs are either generally valid for

substantial periods of time or incorporate no expiration date. For example, the evidence illustrated the case of a woman who had a Border Crossing Card have subsequently became a resident of California, marrying a U.S. citizen. Even though she was a resident of California, she was initially denied prenatal care solely because of her Border Crossing Card.

The First Appellate District of the California Court of Appeal filed and mailed its unpublished decision on August 11, 1998, and the parties received it August 12, 1998. The Court of Appeal reversed the decision of the San Francisco Superior Court and ordered it to issue a writ prohibiting the Department of Health Services from using or enforcing the All-County Letter.

Law Offices of Public Advocates, Inc. 25 years

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Margie Chung, Office Manager
April Dawn Hamilton, Support Staff
Clifford Loo, Support Staff
Daisy Muhammad, Support Staff
Carlos Rodriguez, Development Coordinator
Michael Shiro, Chief Financial Officer
Mark Savage, Managing Attorney

PAGES TO FOLLOW: _____

DATE: _____ TIME: _____

FAX

TO: Dennis Hayashi

FROM: ☐ _____

☐ John Affeldt	☐ April Dawn Hamilton
☐ Margie Chung	☑ Mark Savage
☐ Mina Kim	☐ Clifford Loo
☐ Michael Shiro	☐ Maria Cheng

If transmission is incomplete, please call 415/431-7430(o); 415/431-1048(f).

COMMENTS: _____

_____

STATE CAPITOL
95814
(916) 445-0503

DISTRICT OFFICE
363 EL CAMINO REAL, #205
SO SAN FRANCISCO, CA 94080
(415) 952-5666

California State Senate

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

November 13, 1996

Ms. Kimberly Belshe', Director
California Department of Health Services
714/744 P Street
Sacramento, CA 95814

RE: Prenatal Care for Undocumented Women

Dear Director Belshe':

I write on a matter of great concern to numerous constituents and me.

I understand that the Department plans to write persons it believes are undocumented or illegal aliens and recipients of MediCal prenatal care benefits, advising each of them that the benefit will no longer be publicly available after December 1, 1996. The purpose of my letter is not to argue the benefits of prenatal care or my concerns with the inconsistency between the denial of the benefits and existing state law. Rather, I write to urge that you refrain from sending such notifications and instead allow each county to notify its clients of the possible pending change in benefits as is required by law.

Several concerns with the State's proposed letter to prenatal recipients exist, as follows:

1. The simple fact of receiving the notification is likely to have an adverse effect on recipients, *some of whom are here legally*. As the Department states in its all-county letter of November 1, 1996, the notifications will be sent to recipients in certain MediCal aid categories which include persons here legally and persons who qualify for one of the immigration categories protected by the federal welfare reform bill. In sum

the letter would undoubtedly have an adverse effect on women who are legally entitled to prenatal care services as well as to undocumented women.

2. The letter is unnecessary. It does not provide legal notice of termination of benefits; current law requires that counties send such notices. Therefore, the letter serves no requisite purpose, and in fact will have adverse consequences.

3. The letter will interfere with the proper referrals of women to other providers. The transition period will be critical for women with high-risk pregnancies.

4. The issuance of the emergency regulations establishing a transition date of December 1, 1996 is being challenged in court. It would be imprudent for the State to presuppose the outcome of this lawsuit and prematurely advise clients of the pending loss in benefits.

5. The entire issue of prenatal care is one that the Legislature aims to address after it reconvenes. In my view, any action by the Department without proper legislative action would be injudicious.

Sincerely yours,

QUENTIN L. KOPP

QLK:tb
cc: Hon. Willie L. Brown, Jr.

Torres & Torres
POLICY CONSULTANTS
926 J STREET, SUITE 1016
SACRAMENTO, CA 95814
(916) 442-2207

Arnoldo Torres

Rodrigo Torres

Memorandum

To: Steve Warnuth, Domestic Policy Council/The White House
Michael Myers, Staff, Senator Kennedy

From: Arnoldo S. Torres, Policy Consultant
California Hispanic Health Care Association (CHHCA)

RE: Additional Information on Pre-Natal Care for Undocumented Mothers

Date: 11-1-96

You requested additional information on the broader but direct consequences of denying pre-natal care for undocumented mothers to communities at large throughout California and other localities with high concentrations of undocumented persons.

Mr. Rodolfo Diaz informed you that the consequences of not providing pre-natal care to undocumented mothers were not isolated to poor-birth deliveries and the costs associated with medical conditions requiring treatment beyond delivery. The consequences were reflected concretely one month before Proposition 187 was approved and until January/February 1995. Specifically, Mr. Diaz experienced the following:

1.) Prior to October 1994, Mr. Diaz' clinic averaged 10,000 medical encounters monthly. From October to February 1995, the monthly encounters were reduced by 80% to 2,000 per month. These medical encounters cover the full spectrum of primary medical care services, including dental, mental health and optometry services,

2.) Even more pronounced was the reduction in immunizations. Community Health Foundation of East Los Angeles (CHFELA) was providing 1,000 immunizations per month up through September 1994. From October 1994 to February 1995, CHFELA provided 83 immunizations per month during this time,

3.) This data underscores that undocumented mothers will not bring in there children (even if they are citizen children) for children health services due to their fear that they will be identified and as a consequence there family will be separated. It took four to five months of intense outreach after the passage of Prop. 187 to inform this population that they were eligible for health care services. Issuing notices on December 1 informing mothers of the repeal of pre-natal services will be the second time that such an official message would have been circulated. It is our considered opinion that this will casue irreparable damage to the outreach efforts taken before and after 187. This will bring about a great deal more medical consequences to the greater society,

4.) Many of the undocumented mothers are part of a blended family in which there are legal residents, citizens and undocumented members. These various immigration status cause the fear and anxiety which result in undocumented mothers not bringing in their children unless it is a medical emergency. Under these circumstances, the cost of providing care escalate significantly as well the threat to the public health,

5.) While other states may argue that they will not have the same consequences as California, it is important to remember that with the exception of California, no other state has had a state law providing pre-natal care services to undocumented mothers and no other state has invested the amount of resources to reach out to this population in order to serve their pre-natal needs,

6.) In communities where there are high numbers of uninsured persons and undocumented persons, such as throughout the State of California, this action will place in serious jeopardy (over a period of a year) the public health. Large segments of communities will not seek health care until there are medical crisis if at all. The idea that these individuals will all return to their country of origin will not materialize due to the reality that they have blended families. Their medical conditions will be allowed to worsen and increase the serious medical consequences.

Governor's Fiscal Projections:

Lastly, you requested clarification on how the Governor estimates the cost to the state for providing state funded pre-natal care services to undocumented mothers. According to the data submitted by the Governor's office to the State Office of Administrative Law, he contends that the cost to the state is an estimated $69.3 million. This number has not changed significantly since the Governor first proposed to eliminate this program four years ago.

In addition, what we have reviewed of the Governor's data reflects that he is including all women who identify themselves requesting these services which includes pregnant mothers from other adjacent states entering California. In fact, SB 485, the state budget trailer bill in 1993-94 carried provisions designed to provide greater scrutiny of U.S. citizen women entering California from other states requesting pre-natal care services under this program for undocumented mothers.

The Governor's data does not provide for a distinction between these two types of persons receiving this service, nor other women who claim this services but are U.S. citizens but only seek pre-natal care services.

Conclusion:

I hope that this data responds appropriately to your requests for additional information. Furthermore, the broader consequences we describe occurring with CHFELA in Los Angeles County also took place in such counties as Ventura, Santa Clara, Kern, San Francisco, Orange, San Diego and Fresno. This will repeat itself in these and others counties throughout California. Should you have any further questions or need other data, please feel free to contact me at your earliest convenience.

Due to the Governor moving last week to submit his regulations to the State Office of Administrative Law and requesting that they be issued as emergency regulations, we are in urgent need to revisit this issue with you and other decision makers as soon as possible. We appeal to those of you at the White House to not lose sight of the urgency this matter carries to not only the undocumented mothers and their citizen children, but also the results the denial of pre-natal care can bring about to communities throughout the state and nation.

Thank you for your attention to this matter and for meeting with us. I will follow-up mid week.

Torres & Torres
POLICY CONSULTANTS
926 J STREET, SUITE 1016
SACRAMENTO, CA 95814
(916) 442-2207

Arnoldo Torres

Rodrigo Torres

Memorandum

To: Rodolfo Diaz, Executive Director
CHFELA

From: Arnoldo S. Torres
Policy Consultant

RE: Prenatal Care Lawsuit

Date: 11-13-96

I am very happy to report to you that Richard just informed me of the following positive results:

1.) Judge accepted our complaint and agreed that he would hear our arguments requesting a Temporary Restraining Order (TRO) against the denial of prenatal care services for undocumented mothers on November 22, 1996. The Governor intended to issue notices to individual mothers on November 21, 1996 in order for the repeal of these services to begin December 1, 1996. Should the court rule in favor of the State, pre-natal care services could not be terminated until January 1997. 10 days must elapse after notice is issued in order for regulations to become effective. As a result of the case being heard on November 22, 1996 the State has not allowed for ten days for implementation on December 1, 1996.

2.) Richard feels relatively comfortable that our chances of winning our argument are excellent based on the comments made by the Judge hearing the case. The judge stated that he did not understand how these regulations could be deemed emergency regulations when they do not meet the state standards for "emergency regulations". This issue is a major point in our arguing against the Governor's action. Richard will focus a great deal on this matter when he makes his oral argument on Friday of next week.

3.) Richard appears to feel comfortable with the other attorney's which represent the Western Center on Law and Poverty, and the City/County of San Francisco Department of Health. Richard will probably take a larger role during oral arguments because we are representing providers and the medical consequences of not providing these services which need to be considered and heard in full blown administrative hearings on these regulations. Should we win next week, it would take another 6 to 8 months before the state could terminate these services.

STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY
PETE WILSON, Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320
(916) 657-2941

November 1, 1996

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

Letter No.: 96-62

THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (P.L. 104-193)

Ref. All County Welfare Directors Letters (ACWDL) Nos. 91-99 and 94-60

INTRODUCTION

On August 22, 1996, President Clinton signed into law "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 ("PRAWORA"). This law revises the provision of welfare benefits and the services available to specific aliens. Emergency regulation package R-60-96E will implement PRAWORA by eliminating state-only funded nonemergency pregnancy-related services from the restricted scope benefits available to aliens who are not described in federal law as qualified to receive such services.

In 1988, California enacted legislation which authorized Medi-Cal to use state-only funds to provide nonemergency pregnancy-related services to alien women without satisfactory immigration status. (Welf. & Inst. Code section 14007.5 and Stats. 1988, ch. 1441, § 1, subd. (g).)

With the enactment of PRAWORA, federal law prohibits states from providing state and local public benefits, including, but not limited to, state-only funded nonemergency pregnancy-related services for aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA), or aliens paroled into the United States for less than one year under Section 212 (d) (5) of the INA. These regulations only address state-only funded nonemergency pregnancy-related services for aliens who are not within the classes of aliens defined in federal law as qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA. (See section 50302.1 of the attached Emergency Regulation package R-60-96E for a complete description of aliens who are designated as qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA. This regulation is subject to change and approval by the Office of Administrative Law.)

EFFECTIVE DATE

This letter is to inform counties that effective December 1, 1996, only alien women who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA are eligible for entitled to receive state-only funded nonemergency pregnancy-related benefits. With the passage of the PRAWORA, those aliens who are unable to document that they are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA will only receive medical assistance under Title XIX of the Social Security Act for care and services that are necessary for the treatment of an emergency medical condition (including emergency labor and delivery) and that are not related to an organ transplant procedure.

It is the expectation of the Department of Health Services (DHS) that county systems will be changed to accommodate the new aid codes and that training for staff will occur no later than December 1, 1996. It is important that county changes are made expeditiously to avoid disruption in services to those individuals eligible for state-only funded nonemergency pregnancy-related services.

As authorized under federal law, eligibility process and procedures remain unchanged.

NOTICE TO BENEFICIARIES

A notice will be sent to all beneficiaries in affected aid codes instructing them to contact their eligibility worker immediately if they believe they are eligible to receive state-only funded nonemergency pregnancy-related services because they are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA. It will be necessary for counties to flag all cases when individuals come into the county office and identify themselves as being eligible under federal law to receive state-only funded nonemergency pregnancy-related services. At the December renewal, all aliens in aid codes 48, 58, 7C, and 5F will automatically be converted to new aid codes, as described below. After the December renewal, in instances where the individual indicates that she is eligible to receive state-only funded nonemergency pregnancy-related services, those flagged cases must be converted back to the original aid code.

SYSTEMS CHANGES

Effective for eligible months beginning December 1996 or later, all aliens who currently are in or would have been determined eligible for aid code 58 will be placed into aid code 5G. If the alien is a qualified alien, nonimmigrant alien under the INA, or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, the alien remains eligible for state-only funded nonemergency pregnancy-related services and will be returned to aid code 58.

Effective for eligible months beginning December 1996 or later, any alien who currently is in or would have been determined eligible for aid code 5F will be placed in aid code 5N. If an alien woman is able to document that she is a qualified alien, nonimmigrant alien under the INA or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, she will be returned to aid code 5F.

Effective for eligible months beginning December 1996 or later, any alien in aid code 48 will be placed into new aid code 5H. If an alien woman is able to document that she is a qualified alien, nonimmigrant alien under the INA or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, she will be returned to aid code 48.

Effective for eligible months beginning December 1996 or later, any alien who currently is in or would have been determined eligible for aid code 7C will be placed in new aid code 5M. If an alien is able to document immigration status as a qualified alien, nonimmigrant alien under the INA or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, the alien will be returned to aid code 7C.

In implementing these regulations, DHS will do some special processing on MEDS. At renewal for December month of eligibility (MOE), DHS will automatically convert any December eligible on MEDS from the old aid code to the corresponding new aid code if counties have not already made the change for their ongoing eligible population. This will allow counties to focus first on making the changes necessary for reporting the new aid codes for new eligibility determinations.

CHANGES IN BENEFITS FOR CERTAIN AID CODES

AID CODES INVOLVING PREGNANT UNDOCUMENTED WOMEN

Aid Code 58

Aid code 58 currently identifies those beneficiaries who are eligible for restricted scope Medi-Cal benefits with or without a share of cost. Infants, children, men and pregnant/nonpregnant women are in this aid code. It includes aliens who are undocumented, as well as nonimmigrant aliens lawfully admitted for a temporary period, such as aliens who are present in the United States under certain visitor and student visas (who can meet residency requirements). Some of these aliens may be qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA. In these cases, the alien will remain eligible for state-only funded nonemergency pregnancy-related services.

Through November 30, 1996, aid code 58 beneficiaries receive restricted scope Medi-Cal benefits, emergency care including labor and delivery, and state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, all applicants/beneficiaries who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA, as well as undocumented men and children, are only eligible to receive emergency services and will be placed in new aid code 5G. Aliens in aid code 5G are eligible for restricted scope Medi-Cal benefits with or without a share of cost (emergency care, including emergency labor and delivery). New aid code 5G does not include state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, only those applicants/beneficiaries who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA will be placed in aid code 58. These applicants/beneficiaries are eligible for restricted scope Medi-Cal benefits with or without a share of cost. These services include state-only funded nonemergency pregnancy-related services as well as emergency care, including emergency labor and delivery.

Aid Code 5F

Aid code 5F was established as a means to separately identify those undocumented pregnant women who are otherwise eligible for aid code 58 with or without a share of cost. Counties were previously instructed to begin implementation of 5F on October 1, 1994 as eligible undocumented pregnant women applied for Medi-Cal. We did not require counties to move all pregnant women immediately from aid code 58 into aid code 5F. Only those identified at redetermination were required to be changed.

Aid code 5F currently provides the same restricted Medi-Cal services as aid code 58, including emergency and state-only funded nonemergency pregnancy-related services.

Through November 30, 1996, aid code 5F beneficiaries receive restricted scope Medi-Cal benefits, emergency care including labor and delivery, and state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, applicants/beneficiaries who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA are only eligible to receive emergency services and will be placed in new aid code 5N. Aliens in new aid code 5N are eligible for restricted scope Medi-Cal benefits with or without a share of cost (emergency care, including emergency labor and delivery). New aid code 5N does not include state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, only those applicants/beneficiaries who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA will be placed in aid code 5F. All aliens in aid code 5F are eligible for restricted scope Medi-Cal benefits with or without a share of cost. These services include state-only funded nonemergency pregnancy-related services as well as emergency care, including emergency labor and delivery.

Aid Code 7C

This is the federal poverty level (FPL) program aid code for certain children born after September 30, 1983, who have not attained age 19 and whose family income does not exceed 100 percent of the FPL. Services covered under this aid code are emergency services, including labor and delivery, and state-only funded nonemergency pregnancy-related services.

Through November 30, 1996, aid code 7C beneficiaries receive restricted scope Medi-Cal benefits, emergency care including labor and delivery, and state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, all applicants/beneficiaries who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA are only eligible to receive emergency services and will be placed in new aid code 5M. Aliens in new aid code 5M are eligible for restricted scope Medi-Cal benefits without a share of cost (emergency care, including emergency labor and delivery). New aid code 5M does not include state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, only those applicants/beneficiaries who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA will be placed in aid code 7C. These aliens are eligible for restricted scope Medi-Cal benefits with or without a share of cost. These services include state-only funded nonemergency pregnancy-related services as well as emergency care, including emergency labor and delivery.

Aid Code 48

Aid code 48 provides family planning, pregnancy-related, and postpartum services for any age female if family income is at or below 200 percent of the FPL.

Through November 30, 1996, aid code 48 beneficiaries receive restricted scope Medi-Cal benefits, emergency care including labor and delivery, and state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, all applicants/beneficiaries who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA are only eligible to receive emergency services and will be placed in new aid code 5H. Aliens in new aid code 5H are eligible for restricted scope Medi-Cal benefits (emergency care, including emergency labor and delivery). New aid code 5H does not include state-only funded nonemergency pregnancy-related services.

Effective December 1, 1996, only those applicants/beneficiaries who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA will be placed in aid code 48. These aliens

are eligible for restricted scope Medi-Cal benefits. These services include state-only funded nonemergency pregnancy-related services as well as emergency care, including emergency labor and delivery.

Aid Code 76 (Postpartum)

Aid code 76 identifies the 60-Day Postpartum program. Under the PRAWORA all undocumented alien women who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA are not entitled to state-only funded nonemergency postpartum services. Counties may place only alien women who are qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA in aid code 76 on or after December 1, 1996.

RIGHT TO A HEARING

If an alien was made eligible to receive state-only funded nonemergency pregnancy-related services for the month of November 1996 and on or after December 1, 1996, is no longer qualified to receive such services because the alien is not a qualified alien, nonimmigrant alien under the INA or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, the alien has the right to request a hearing on the issue of immigration status.

NOTICES OF ACTION (NOA)

Counties must revise current NOA language before December 1, 1996, to indicate that state-only funded nonemergency pregnancy-related services are no longer provided to applicants or beneficiaries who are not qualified aliens, nonimmigrant aliens under the INA, or aliens paroled into the United States for less than a year under Section 212 (d) (5) of the INA. If an alien was made eligible to receive state-only funded nonemergency pregnancy-related services for the month of November 1996 and on or after December 1, 1996, is no longer qualified to receive such services because the alien is not a qualified alien, nonimmigrant alien under the INA or an alien paroled into the United States for less than a year under Section 212 (d) (5) of the INA, the alien has the right to request a hearing on the issue of immigration status.

RETROACTIVE ELIGIBILITY

Up to three months of retroactive coverage continues to be available under the aid codes 58, 5F, 7C, 48, and 76, as provided in Title 22, CCR, Section 50710. Benefits for those retroactive months occurring prior to December 1, 1996, will include state-only funded nonemergency pregnancy-related benefits.

COMPLETING THE SUPPLEMENTAL DECLARATION OF ALIENAGE AND IMMIGRATION STATUS (MC 13 S)

To implement the requirements of PRAWORA on December 1, 1996, please use the attached MC 13 S to determine which aliens are eligible for state-only funded nonemergency pregnancy-related services. The Department intends to make the necessary revisions to the MC 13 as soon as possible and will eliminate the MC 13 S at that time. In the meantime, all alien applicants are required to complete the MC 13 S.

SECTION A

All alien applicants for Medi-Cal are required to complete SECTION A to indicate their alien status. Categories 1 through 7 in Section A (and a category for visa holders similar to category 8) are currently included on the MC 13. Aliens in categories 1 through 7 are still eligible for full scope Medi-Cal benefits.

Aliens in category 8 remain eligible for state-only funded nonemergency pregnancy-related services in accordance with established Medi-Cal policies and procedures. However, beginning on December 1, 1996, counties will be required to verify the alien status of aliens in category 8 using the established secondary Systematic Alien Verification for Entitlement (SAVE) system procedures.

Aliens in category 9 only qualify for emergency services, including emergency labor and delivery. Aliens in category 9 will remain eligible for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. Aliens in category 9 may still be eligible to receive state-only funded nonemergency pregnancy-related services if they answer yes to section B for themselves or for their child(ren).

In addition, until further notice from the Medi-Cal Eligibility Branch, all aliens who indicate that they are in any of the 16 Permanently Residing in the United States Under

Color of Law (PRUCOL) categories included on the MC 13 remain eligible for full scope Medi-Cal if they meet all other eligibility requirements.

SECTION B

Under federal law, battered aliens who meet certain specific requirements may still be eligible to receive state-only funded nonemergency pregnancy-related services even though they indicate that they are in category 9 in section A of the MC 13 S. (See section 50302.1 (b) (7) and (8) of the attached Emergency Regulation package R-60-96E for a complete description of battered aliens who are designated as qualified aliens.)

If an applicant or beneficiary answers "yes" to the question in Section B, counties are required to flag the case until further notice from the Medi-Cal Eligibility Branch. The counties will receive further instruction regarding the new alien categories if, and when, the United States Attorney General issues an opinion or guidelines that would qualify an applicant for state-only funded nonemergency pregnancy-related benefits for such services.

SECTION C

All aliens applying for Medi-Cal are required to complete Section C of the MC 13 S.

If you have any further questions regarding this letter, please contact the appropriate analyst listed below:

Pregnancy	Marge Buzdas	(916) 657-0726 or (916) 255-0983
Alienage	Marlene King	(916) 657-0134 or (916) 255-0930

MC 13 S

John Zapata (916) 657-0725 or (916) 255-0929

Sincerely,

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, DC 20510

November 19, 1996

The Honorable Janet Reno
Attorney General
Department of Justice
Washington, DC 20530

Dear Attorney General Reno:

As you know, the new welfare reform law contains numerous restrictions on the ability of immigrants to obtain government-funded assistance. I sponsored a provision in that law (Section 401(b)(1)(E)), which gives you the authority to waive assistance restrictions on immigrants for programs and activities that you find are "necessary for the protection of life or safety."

My provision was adopted by the Senate without objection in September 1995 and was retained in every version of welfare reform adopted by Congress over the past year. Congress recognized that it was impossible to itemize every program or activity that should be exempted from the broad restrictions on immigrant benefits contained in the legislation. My amendment contained a few examples to provide guidance in exercising your waiver authority, including soup kitchens, shelters, and crisis intervention programs. But it was clear there would be other circumstances for which the bill's restrictions should be waived. My amendment was viewed as a safety valve to permit flexibility in addressing these situations without having to seek remedial legislation each time, and I urge you to use the authority as Congress intended.

One such case involves the important role of community health centers and clinics in providing pre-natal care. As you know, some states have interpreted the new welfare law as authorizing them to decline this important care to mothers regardless of their immigration status, even though their infants will be American citizens at birth. This pre-natal care is a lifesaver, for without it, the risks to mothers and children rise dramatically. The clinics may charge a sliding fee based on the income of their patients, but they generally do not condition the provision of their assistance on their patients' incomes, thereby meeting another requirement of my amendment.

I urge you to use your authority to exempt pre-natal care and other life-saving care. If I may assist in further clarifying the amendment's intent in any way, please let me know.

Sincerely,

Edward M. Kennedy

To : Andrew D. Hyman@OGC.IO@OS.DC
Cc : Moya Thompson@AOA.ASA@OS.DC, Irene Bueno@ASL@OS.DC
Bcc :
F: : Harry Posman@AOA.POD@OS.DC
Su ct : AG List
Date : Tuesday, October 8, 1996 at 12:36:20 pm EDT
Attach :
Certify : N
Encrypt : N

Why we should not give a list of programs or services to DOJ:

o the AG specification is applicable to section 411: state and local public benefits. It makes no sense listing federal programs in an Order that applies to state and local programs.

o in real life services are bundled to deal with the condition of a client; for instance, home-delivered meals for the elderly (necessary for the protection of life and safety according to AG Order, section 3(d)) are bundled with homemaker aide, and/or home modifications, etc. Are all the bundled services now exempt?

o there is a serious conceptual problem. The nature of the service does not determine whether we are dealing with life or safety. The same service may be provided to a client in extremis and as a preventive service; to a client or to relieve strain on a caregiver (e..g. , daycare).

o there is a problem in inadvertent omission of programs or services; e.g., in AG [redacted]ler section 3(e) why limit to medical (shouldn't this be health?) and public health services? and not include personal assistance (e.g., assistance with eating, toiletting, etc.).

The American College of Obstetricians And Gynecologists
Women's Health Care Physicians

District II / NYS
152 Washington Avenue
Albany, New York 12210
(518) 436-3461
FAX: 518-426-4728

Dear Faye

We have met with you in the past and would appreciate your help on this.

The NYS office of the US Attorney General's office needs to be contacted to withdraw their motion to vacate the Grinker Case, as described below. NYS policymakers have told us they support continued maternity services to NYS undocumented women.

Those women, their children & NY hospitals will suffer greatly if this is not corrected.

Thank you

Mary III

Prenatal Care for New York State Undocumented Aliens

Court Determines Undocumented Entitled to Prenatal Care In New York

After more than a decade of legislation, the Second Circuit Court of Appeals in *Lewis v. Grinker* (1992) held that undocumented aliens in New York State were eligible for Medicaid coverage for prenatal care. Because the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) does not repeal the federal Medicaid entitlement for low-income citizens and because *Lewis* continues eligibility for non-citizen pregnant women, all pregnant women in New York are entitled to prenatal care as long as *Lewis* remains in effect.

Motion to Vacate Court Order

On February 26, 1997, the U.S. Attorney's Office filed a motion to vacate the federal court's order in the case of *Lewis v. Grinker*. The motion contends that the original order was based on an interpretation of statutory language that is no longer relevant. In the 1992 decision, the Second Circuit held that statutory language then at issue in OBRA, which expressly limited Medicaid coverage for undocumented aliens to emergency services, should not be read as applying to non-emergency prenatal care in the absence of some indication in the legislative history that Congress intended that result. The government now asserts that the language in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as well as the legislative history of the Act, makes it clear that Congress intended to deny Medicaid coverage for non-emergency prenatal care to undocumented aliens. The government asserts that the order must be vacated because the legal theory on which it was based is no longer tenable in light of the changes in the underlying statutory law.

Repercussions of Motion to Vacate

If the government wins this motion, undocumented pregnant women may be denied vital services necessary for healthy babies. In addition, hospitals and clinics will lose reimbursement for the cost of providing prenatal care to a significant percentage of their patient base.

Irene — what do you know about this? Urgent Moynihan inquiry

No final order
U.S. Attorney wanted to file
we didn't like to see 2 briefs, reverse to.
Central Station.
Obligation - felt we had an order