

## Judge Halts California Cutoff of Prenatal Care to Illegal Aliens

By The New York Times

SAN FRANCISCO, Nov. 27 — Less than a week before thousands of illegal immigrants in California were to start losing state money for prenatal care because of an order by the Governor, a San Francisco Superior Court judge has blocked the plan, saying the state could not support ordering a cutoff on an emergency basis.

Judge William Cahill, ruling on Tuesday in a suit brought against Gov. Pete Wilson by plaintiffs including the City of San Francisco, issued a preliminary injunction against the Governor's emergency order that

money for new applicants to the state's prenatal care program be stopped on Dec. 1. Current recipients would have been cut from the program as of Jan. 1.

State officials said that in the last fiscal year, California provided prenatal care under a 1988 state law to more than 70,000 undocumented aliens.

Lawyers for the state argued that Governor Wilson's plan, which was announced on Nov. 1, was justified as an emergency under the Federal welfare reform act that passed in August.

That law cuts off money for virtu-

ally all services to illegal immigrants except emergency medical care and public education.

Under California law, emergency regulations can be issued before the often lengthy sessions of public comment and review.

Judge Cahill rejected the argument that there was an urgent need for rewriting state regulations.

"The mere enactment of a new Federal law does not automatically create an emergency here in California," Judge Cahill wrote.

He added that he could not see how the Federal's law passage "suddenly presented California with a crisis of

such magnitude that public input should be barred from the rule-making process."

The judge ordered state officials to follow standard administrative procedures in drafting the new regulations, a process that is expected to take several months. Until those rules can be approved, the state will continue to offer care to illegal immigrants, said Lisa Kalustian, a spokeswoman for the Governor.

Governor Wilson, a Republican, immediately condemned the ruling.

"The decision is totally erroneous," Mr. Wilson said in a written statement. "It takes California out of

compliance with Federal law and will cost California approximately \$25 to \$35 million." He also said the decision would be appealed.

Shortly after President Clinton signed the welfare bill, Mr. Wilson issued an executive order that directed state agencies to assess which programs contrary to the new law were being used by undocumented aliens and to take steps to end those benefits.

One of Mr. Wilson's targets has been prenatal care, which cost the state \$69.3 million in the last year.

Other areas in which Mr. Wilson expected benefits to be revoked were public housing, post-secondary education and professional licensing.

Workers who care for illegal im-

migrants said the decision gave them a chance to work for less severe cutbacks.

"It's a victory in that in that there will be public comment and people might see the mean-spiritedness behind this," said Rodolfo Diaz, the executive director of the Community Health Foundation of East Los Angeles, the state's largest prenatal care provider for undocumented aliens and one of the plaintiffs in the case. "These women will have health care for Christmas."

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appears on pages B20-21.

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## Lithuania Will Share Jewish Books, but How?

To the Editor:

We are grateful for your front-page article Nov. 24 on the priceless treasure of thousands of rare Jewish books in the Lithuanian capital of Vilnius that for decades had been hidden from the Nazis and later from the Soviets.

Lithuania greatly values its multi-cultural tradition and takes pride in the rich history of its Jewish community. We agree that these books should be made more accessible to

scholars, and we regret that Lithuania is unable to provide proper facilities for this collection.

Unfortunately, as your article reports, the Lithuanian National Library is strapped for cash, with only a bare-bones budget for preserving and restoring rare books. Indeed, these valuable Yiddish and Hebrew-language volumes — whose proper safeguarding would run into the hundreds of thousands of dollars — are among many books (in various lan-

guages) faced with dire problems of preservation. This is part of the price Lithuania is paying during a difficult economic transition.

In 1997, the 200-year anniversary of the death of the Gaon of Vilnius, who wrote some of the books in the collection, will be commemorated by a conference in Vilnius. This meeting of scholars will be an excellent opportunity to discuss ways to cooperate in preserving this collection. One idea might be the construction of a separate library. We welcome all suggestions and support from Americans concerned with the fate of this great Lithuanian Jewish cultural heritage.

ALFONSAS EIDINTAS  
Ambassador, Republic of Lithuania  
Washington, Nov. 25, 1996

## How Not to Book Better Math and Science

To the Editor:

Your Nov. 21 news article reports on the average marks of American eighth graders in science



# A Breakthrough

Millions of Americans

## A Cultural Legacy

To the Editor



# County Health Executives Association of California

*D Hayashi is contact.  
Steve*

November 15, 1996

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Donna E. Shalala, Secretary  
Department of Health and Hum...  
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~~To Secretary Shalala~~

Dear Secretary Shalala:

The County Health Executives Association of California (CHEAC) represents county public health officials who are responsible for providing for the public health and welfare of the residents of California. We are concerned about the implications of Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act (Act).

We have noted that Section 411 of the Act does not include a deadline for compliance by States and local governments with its provisions. We also understand that the Act gives the Attorney General discretion to grant exceptions.

We are asking for clarification as to when the Attorney General will be issuing regulations pursuant to this section. Also, we need to know when Section 411 compliance dates for States and local governments will be established. Specifically, is there any deadline by which States or counties must come into compliance?

Any guidance you can give us in this matter would be most appreciated. Given that California's Department of Health Services is moving to implement Section 411 on an emergency basis, a prompt response would be appreciated.

Please call me at (415) 499-3698 if you have any questions.

Sincerely,

Thomas Peters, PhD  
President

c: Bruce Vladeck, Administrator, Health Care Financing Administration

A CSAC AFFILIATE

**ODLCA QUICK FAX**

**(202)358-6030- Voice / (202 358-6074/6075- Fax)**

11/19

**TO:** Diana Fortuna  
Steve Warnath

**FROM:** Judy Chesser

**COVER + 2 pages**

**COMMENTS:**

San Francisco Chronicle

SATURDAY, NOVEMBER 3, 1996

# Wilson Sets Date To End Care for PRENATAL: Benefit Cutoff Pregnant Illegals

## But Bay Area counties refuse to halt benefits

By Greg Lucas and David Tuller  
Chronicle Staff Writers

Sacramento

The state plans to stop providing prenatal care to 70,000 undocumented pregnant women on December 1 under regulations proposed yesterday by Governor Pete Wilson.

State health officials say prenatal care helps keep health costs down by reducing infant mortality and low-weight births, but the Republican governor is arguing that he must end all state aid to illegal immigrants under the new federal welfare law.

"It's my understanding the administration wants to come into compliance (with the new law) as quickly as possible," said Lynda Frost, a spokeswoman for the state Department of Health Services. "This happens to be the first health-related public benefit for which we've completed our review."

County health departments in the Bay Area said they will continue providing prenatal care to undocumented women, though other health services may suffer as a result.

"If the state simply stops the payments, we're still going to deliver the services," said David Kears, director of health care services for Alameda County, which provides prenatal care to some 3,000 undocumented immigrants a

PRENATAL: Page A10 Col. 1

From Page A13

year. "Half the people we see, we don't get payment for anyway."

County officials, doctors and advocates for immigrants and the poor blasted Wilson's move as penny-wise and pound-foolish, saying routine prenatal care can prevent costly complications in emergency room deliveries.

"It's a no-brainer," said Kears. "Why would you not provide prenatal care if you're going to end up paying for the cost of delivery or hospitalization? Why would we not provide something if it will end up costing us more?"

But providing the service will pose other health dilemmas for cash-strapped counties, cautioned Tom Peters, director of Marin County Department of Health and Human Services and chairman of the Association of Bay Area Health Officials.

"The standard outcome is that the triage decisions become more painful, the waits at hospitals and clinics become longer, and the clinical consequences become more severe," Peters said.

Medi-Cal, the state's health program for the poor, now pays about \$88 million a year to cover prenatal care for illegal immigrants. A growing number of the births paid for by Medi-Cal are children born to undocumented aliens. Under the law, the children are U.S. citizens.

For example, in Napa County, 37 percent of Medi-Cal births are the children of undocumented aliens. In Sonoma County, the figure is 25 percent. In San Francisco, it is 29 percent.

The proposed regulations could also cost Californians by driving up malpractice insurance costs for obstetricians and gynecologists, who now pay the lowest rates in the nation, said Charlotte Newhart, chief administrative officer of the American College of Obstetricians & Gynecologists in San

Francisco.

"You could face medical conditions impacting the fetus (in an emergency delivery) that might have been solved in prenatal care, such as syphilis and hepatitis B," said Newhart. "If professional liability costs increase and physician and hospital insurance goes up because of those increased costs and complications, then those costs will be shifted to all patients in California."

Wilson has tried repeatedly to end prenatal care for undocumented women. His budget plans last January and in January of 1995 proposed eliminating the service, but state lawmakers refused.

The governor claimed yesterday that he needed to issue "emergency" regulations to end the state aid, because the federal welfare overhaul signed in August by President Clinton precludes the states from giving illegal immigrants non-emergency health care.

Peters, however, disputed that interpretation. "The federal welfare bill does not mandate this cutoff," he said. "It makes it a state option."

Immigrant advocates, anticipating the new regulations, had already sought a court order blocking the cuts. But U.S. District Judge Mariana Pfaelzer, who has blocked prenatal and other cuts to immigrants under Proposition 187, declined yesterday to issue a new order.

Emergency regulations can take effect faster than normal state regulations, which must go through a lengthy review and 60-day period of public comment.

Eugenie Denise Mitchell, a lawyer for Northern California Lawyers for Civil Justice, said it plans additional challenges to the proposed rules.

"There is no emergency," said Mitchell.

# Judge delays food stamp ban for legal immigrants

## Injunction says state must adopt clear eligibility rules

By Kathleen Holder  
ASSOCIATE PRESS

**SACRAMENTO** — California's first efforts to cut off food stamps to legal immigrants were put on hold by a judge who said the state must first adopt regulations. The state directed county welfare

offices late last month to begin denying new food stamp applications from immigrants as part of the new federal welfare overhaul.

But Sacramento Superior Court Judge John R. Lewis issued a preliminary injunction Thursday against the state directive. The ruling could lead counties to resume accepting applications, at least for the time being.

Lewis sided with welfare rights advocates, who argued the state moved too quickly and failed to adopt clear rules about which im-

migrants would qualify for exemptions.

"This sends a very important message to the state (that) when they're implementing the new reform measure, they have to do so in an orderly fashion," said Curtis Child of Northern California Lawyers for Civil Justice, which sought the injunction.

Gov. Wilson said the ruling would have little effect because the state has submitted fast-track regulations to the state Office of Administrative Law.

"It was kind of a fool's errand for the people who brought the lawsuit, because all they have succeeded in doing is delaying the inevitable by about 10 days," Wilson said, adding the state would appeal.

The federal law cuts off food stamps for legal immigrants, with exceptions for those who are political refugees, veterans, in the armed services or who have worked in the country for at least 10 years.

Child said the rules were so confusing counties were applying them differently and some immigrants who were eligible for food stamps might not get them.

He argued the state was required to go through a formal process of adopting regulations, including holding public hearings. That process takes at least two months.

The state Department of Social Services submitted regulations to an administrative law judge on Oct. 25, and state lawyers argued that was enough to meet legal requirements.

Deputy Attorney General Paul Reynaga argued in court public hearings would not change the food stamp restrictions. "What you see is what they would get," Reynaga said.

11/19/96

Torres

Kenn-Ferstadt

\* What did AG order do? Why not? Is it permissive?  
West Ctr + SF swing too  
187 hit hard

sliding fee scale

just slow it down - 3-8 mos

If lose on Friday, need "reg" by 12/15 (AG?)

1/1 implementation pld be, State

State - "emergency reg" issued  
- no ex for diabetes etc, e/HIV

Other suits - 10th Amdt

Fear Wilson harassment - to clinics

Rel to LA Waiver

Debate on health not illegal

1. AG - <sup>chc</sup> pre-care

2. Counties almost moving - say agr of Fed \$ - no central comm, just regional office said OK if they want

\* state, be pub ben - communicate w/ counties - explore guidance  
w/ letter from us saying we don't yet have plan, or a delay

\* 3. HEFA - rensit Lewis Brinker (Woods, (Bishop)) - sd us - Don't there  
↳ only a few states (4) are affected by this?

Wilson has lost 3x, will deaagogue

Is it appropriate to ~~take~~ what they propose we do, other than the AG order?

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**  
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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 their children (even if they are citizen children) for children health services due to their fear that they will be identified and as a consequence their 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 cause 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 as the threat to the public health,

*Diana*  
*FVZ*  
*S*



May 2021

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## MEMORANDUM

TO: Mike Myers, Staff Director  
Senate Minority Judiciary Committee

FROM: Richard Fajardo

The Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (hereinafter "Welfare Act").  
Proposed regulation to allow Federal Qualified Health Centers to provide certain Health Care Services.

September 10, 1996

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Thus follows our telephone conversation regarding possible regulations implementing exceptions to the Welfare Act which bar public benefits to persons who can not establish that they are U.S. citizens or "qualified aliens." In particular we are most concerned about protecting the ability of Federal Qualified Health Centers ("FQHCs"), both rural and urban, to continue to provide health care services to the indigent and uninsured, irrespective of their immigration status.

### **The Problem: Benefits for Undocumented Aliens**

Right now, section 401 of the Welfare Act prohibits undocumented aliens from receiving federal public benefits. On its face, sec. 401 would appear to prohibit FQHCs from providing prenatal care and other services to clients who are can not establish U.S. citizenship or that they are lawfully residing in the United States. In addition, section 411 prohibits undocumented aliens from receiving state and local benefits, too.

There are some very good arguments that FQHCs can continue to provide some health services to undocumented clients under some of the exceptions provided in the Welfare Act. However, the regulations can be read in several ways. More importantly, the Attorney General's provisional regulations are ambiguous. Thus, CHF seeks clarity on how the federal government seeks to implement the regulations. CHF also seeks to clarify the regulations to allow FQHC to provide health services to non citizens and non qualified aliens (to undocumented aliens).

CHF would like to be able to provide all services to such aliens, and so we will be suggesting regulations which is broad. However, at a minimum the clinic wants to provide prenatal care for undocumented women. This is especially crucial because in many instances FQHCs have successfully reduced infant mortality by encouraging women to get prenatal care. Denying prenatal care to any woman will result in increased infant mortality, increased complications during delivery, and increased potential for disabilities among children born without prenatal and delivery care. This is especially critical since labor and delivery are covered as emergency

Myers  
 to Welfare Act, §§ 401 and 411  
 1996

services under Medicaid, 42 U.S.C. § 1936b(3), and the children born here will be U.S.

### Potential Regulations to Exempt FQHCs and Certain Medical Services from the Provisions of 401 and 411.

401 states that any alien who is not a qualified alien (undocumented aliens) are not eligible for a "Federal public benefit." Sec. 401(a). A Federal public benefit appears to include any benefit for which payments or assistance are given to the individual, household, or family by a U.S. agency or by U.S. appropriation. Sec. 401(c). However, Sec. 401(b) provides several exceptions, including (1) emergency benefits, (3) public health assistance, and (4) programs and services specified by the Attorney General. *See also* sec 411(b)(4)(applying the attorney general's authority to the exclusion of undocumented aliens from state and local public benefits).

Below is a wish list of possible exceptions which could be considered by the DHHS and the Attorney General. The question is whether any of these exceptions are possible, or even likely.

**Blanket exception for FQHCs.** Is it possible to exempt FQHCs under the Attorney general's authority, listed below. Is it possible to exempt FQHCs from the provisions of secs. 401 and 411.

**Emergency Medical Treatment.** First, sec. 401(b)(1)(A) provides for an exception for an "emergency medical condition (as defined in section 1903(v)(3))" which is not an organ transplant. Sec. 1903(v)(3) defines an emergency medical condition to include "any labor and delivery." 42 U.S.C. §1396b(3).

It is possible to carve out an exception for certain high risk pregnant women as being able to obtain certain pregnancy related services due to risky health conditions which may present a danger to the mother or child if left untreated. DHHS could describe certain health conditions, if found in a pregnant woman, would allow her to obtain certain pregnancy services on an emergency basis. Three such conditions which could be included are hypertension, diabetes, and sexually transmitted diseases.

The conference language provides for a narrow reading of the emergency provision,<sup>1</sup> there are no inherent contradictions in the language. For example, the legislative history suggests that certain conditions might be excluded from emergency services, yet the statute clearly provides that emergency deliveries are to be considered as emergency services. 42 U.S.C. §191396(v)(3).

Therefore, there is clear evidence which demonstrates that certain conditions, especially hypertension, can create a life threatening situation for a pregnant woman if left untreated.

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<sup>1</sup>The allowance for emergency medical services under Medicaid is very narrow. "The conferees intend that it be limited to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency department, intensive care unit, or intensive care unit. *The conferees do not intend that emergency medical services include non-emergency medical care or delivery care assistance that is not strictly of an emergency nature as specified herein.*" Personal Conference Report and Work Opportunity Reconciliation Act of 1996, H.R. Conf. Rep. No. 104-725, 104th Cong., 2d Sess. (hereinafter "Conference Report") (Emphasis added).

Myers

Welfare Act, §§ 401 and 411

1996

**Attorney General Exceptions.** The Welfare Act gives the Attorney General the discretion to exempt certain services and assistance from the provisions of sections 401 and 411. Sec. 411(d) and sec. 411(b)(4). The welfare bill provides an exception for "programs, services or assistance . . . specified by the [U.S.] Attorney General . . ." The programs must meet three conditions: (1) deliver in-kind services at community level (including those through non-profit agencies); (2) "not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources;" and (3) are necessary for the protection of life or safety.

Prenatal care could fall under this category. FQHCs provide in-kind services at the community level (prenatal care), and such services are necessary to protect not only the life and safety of the mother, but also of the child, who will be born a U.S. citizen. The question is whether such care meets with the second condition: do FQHC condition the provision, amount or cost of services on the recipient's income or resources?

The simple answer is no. Once a woman is determined to be pregnant, she will receive prenatal care. Neither the provision nor the amount of the services is determined by the woman's income or resources. However, federal and state regulations require all Medicaid and Medi-Cal recipients to be charged for services on a sliding fee scale, which does depend on the recipient's income and resources. However, even here, the provision of the services (prenatal care) is not denied or reduced if the payment is tendered or made. If a woman does not have the fee attributed to her income and resources, she is nevertheless provided the service, and the amount charged is kept on record as a receivable.

Since FQHCs do not feel they condition the provision or cost of services on the recipient's income and resources, the Attorney General's provisional regulations would appear to preclude our interpretation of the statute. Paragraph 3 of the Attorney General's provisional regulations provides, in

Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

\* \* \*

(e) Medical and public health services (including treatment and prevention of diseases and injuries ) and mental health, disability or substance abuse assistance necessary to protect life or safety;

\* \* \*

(G) any other programs, services, or assistance necessary for the protection of life or safety.

Reg. 45,985 (August 23, 1996). While prenatal care is not specifically named within paragraph (e), it is clearly necessary for the protection of the life and safety of both mother and child, especially for high risk pregnancies.

The Attorney General appears, however, to restrict the application of paragraph 3 above, through

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Welfare Act, §§ 401 and 411  
1996

on restricting programs to those open only to individuals without regard to income or  
In particular, Reno provides that:

Programs, services or assistance delivered at this community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification if they condition (a) the provision of assistance, (b) the amount of assistance provided, or (c) *the cost of the assistance provided* on the individual recipient's income or resources.

eg. At 45,986. Since federal and state regulations currently require FQHCs to require a sliding fee scale to all health care recipients, including women receiving prenatal care, appear that the cost of the prenatal services depends on the income and resources of the recipient.

### Recommendations

There would appear to be three alternative ways of dealing with this issue. First, is for the Community General to simply eliminate item (c). A second related alternative is to clarify the language of (c) to all FQHCs practices to fall within the exception.

A third alternative is to have DHHS change its regulation related to the provision of prenatal care (and other services), such that undocumented pregnant women (or other undocumented women) be exempted from the regulations requiring sliding fee charges for services.

Diaz  
A. Torres

DATE: 11/18/96

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REMARKS

*Info on Prenatal meeting.*



# County Health Executives Association of California

November 15, 1996

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Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Shalala:


The County Health Executives Association of California (CHEAC) represents county public health officials who are responsible for providing for the public health and welfare of the residents of California. We are concerned about the implications of Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act (Act).

We have noted that Section 411 of the Act does not include a deadline for compliance by States and local governments with its provisions. We also understand that the Act gives the Attorney General discretion to grant exceptions.

We are asking for clarification as to when the Attorney General will be issuing regulations pursuant to this section. Also, we need to know when Section 411 compliance dates for States and local governments will be established. Specifically, is there any deadline by which States or counties must come into compliance?

Any guidance you can give us in this matter would be most appreciated. Given that California's Department of Health Services is moving to implement Section 411 on an emergency basis, a prompt response would be appreciated.

Please call me at (415) 499-3696 if you have any questions.

Sincerely,  
  
Thomas Peters, PhD  
President

c: Bruce Vladeck, Administrator, Health Care Financing Administration

A CSAC AFFILIATE

**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.

Nov-14-96 04:23P Richard P. Fajardo

(213) 259-0434

P.07

LAW OFFICES OF RICHARD P. FAJARDO  
 119 1/2 NORTH AVENUE 56, LOS ANGELES, CALIFORNIA 90042  
 TELEPHONE (213) 259-4550, FACSIMILE (213) 259-0434, PAGER (213) 917-9015

## MEMORANDUM

To: Enrique Valensuela, c/o CHFELA  
 Rudy Diaz, CHFELA Executive Director  
 Arnold Torres, Policy Consultant

From: Richard Fajardo

Re: Update on TRO Hearing  
 Prenatal Care Emergency Regulations.

Date: November 14, 1996

On Wednesday, November 13, 1996 a hearing was held in department 8, Judge William H. Cahill presiding.

## THE PARTIES.

Two cases have been filed, with numerous lawyers: *Carmen Doe, et al., v. Wilson, et al.*, (filed November 13, 1996) Case No. 582521, and *CHFELA, et al. v. Wilson, et al.*, (filed November 13, 1996) Case No. 582521.

In essence, there are three groups of plaintiffs. The Carmen Doe plaintiffs include:

*Individual beneficiaries.* Carmen Doe plaintiffs include undocumented women<sup>1</sup> for whom the state will seek to terminate prenatal care benefits as of December 1, 1996. This case is filed as a class action. These plaintiffs are represented by a number of attorneys, the primary counsel is Bob Newman, Western Center on Law and Poverty.

*San Francisco City and County.* The county provides prenatal care services and other public health services to undocumented aliens, among others. This plaintiff is represented by Jean Frasier, S.F. City Attorney's Office.

CHFELA plaintiffs:

*CHFELA:* CHF is a Federally Qualified Health Clinic, plaintiffs in this action also include doctors working at the Clinic. This is not a class action case.

The California Medical Association (CMA) will seek *Amicus Curiae* status, which the court said

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<sup>1</sup> There are some legal resident women who have been included in "SN" codes who would also be cut off from benefits which are included in the action.

Nov-14-96 04:24P Richard P. Fajardo

(213) 259-0434

P.03

Prenatal Care Case Team  
Re: Emergency Medical Conditions  
October 24, 1996  
Page 2

would grant.

### PROCEDURAL MOTIONS

CHFELA filed a motion to consolidate the cases into a single action. The state attorney general agreed to the consolidation, and a stipulation was signed to that effect.

### TRO HEARING

The defendant made a number of representations in open court.

Defendants have agreed not to implement the regulations any earlier than December 1, 1996.

Defendants have agreed not to send out any notices to beneficiaries or providers regarding the termination of prenatal care until after a hearing on the Preliminary injunction.

Defendants agreed to send an E mail message by the end of the day (November 13) to all counties indicating that the counties have no obligation to send out notices terminating prenatal benefits until after the preliminary injunction hearing.

The court, relying on these representations, denied the TRO as premature and unnecessary at this time. A hearing on plaintiffs application for a preliminary injunction will be held on Friday, November 22, 1996, at 11:00.

## GOVERNMENT ADDRESS

State Capitol  
Sacramento, CA 95814  
(916)445-8253

## DISTRICT OFFICE

455 Golden Gate Avenue  
State Building, Suite 2202  
San Francisco, CA 94102  
(415) 557-2253

# Assembly California Legislature

**JOHN BURTON**  
MEMBER OF THE ASSEMBLY  
Twelfth District

CHAIRMAN:  
RULES

COMMITTEES:  
HEALTH  
WAYS AND MEANS



November 12, 1996

Kimberly Belshe, Director  
California Department of Health Services  
714/744 "P" Street  
Sacramento, California 95814

RE: Prenatal Care for Undocumented Women

Dear Director Belshe:

We are writing on a matter of great concern to each of us, and to our respective districts.

It is our understanding that your Department is planning to write to persons that you believe are undocumented, and recipients of Medi-Cal prenatal care benefits, advising each of them that the benefit will no longer be publicly available after December 1. The purpose of our letter is not to argue over the proven benefits of prenatal care, nor our concerns with the inconsistency between the denial of the benefits and existing state law. Rather, we write to urge that you refrain from sending these notifications and instead allow each of the counties to notify their clients of the possible pending change in benefits, as is required by law.

We have concerns with the State's proposed letter to prenatal recipients:

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 Medi-Cal aid categories which include persons here legally and persons who fall into one of the immigration categories that are protected by the federal welfare reform bill. In sum, the letter would undoubtedly have a chilling 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 useful purpose, and in fact will have adverse consequences.
3. The letter will interfere with the proper referrals of women to providers willing to provide services without state reimbursement.
4. The issuance of the emergency regulations allowing for a cutoff date of December 1 is being challenged in court. It would be irresponsible for the State to presuppose the outcome of the lawsuit, and prematurely advise clients of the pending loss in benefits. A proper transition period is critical for women with high-risk pregnancies.
5. The entire issue of prenatal care is one that the Legislature plans to address when it reconvenes. In our view, any action by the Administration without proper legislative action and consultation would be ill-advised.

Peace and friendship,



John Burton  
Assemblyman John Burton

Carole Migala  
Assemblywoman Carole Migala

Barbara Lee  
Assemblywoman Barbara Lee

Jackie Speier  
Assemblywoman Jackie Speier

Martin Gallegos  
Assemblyman Martin Gallegos

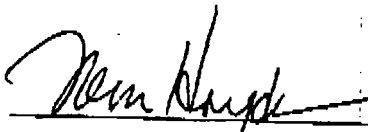
Tom Bates  
Assemblyman Tom Bates

Teresa P. Hughes  
Senator Teresa Hughes

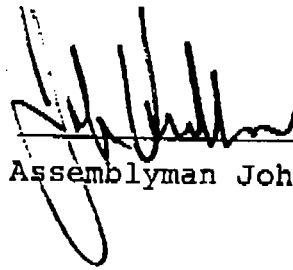
Richard Polanco  
Senator Richard Polanco

Shelia Kuehl  
Assemblywoman Shelia Kuehl

Martha Estutia  
Assemblywoman Martha Estutia



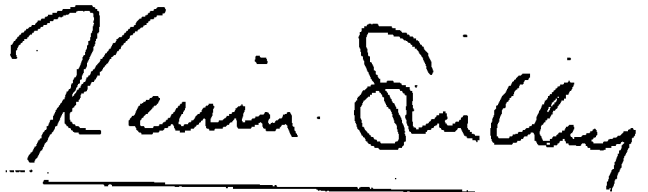
Senator Tom Hayden



Assemblyman John Vasconcellos



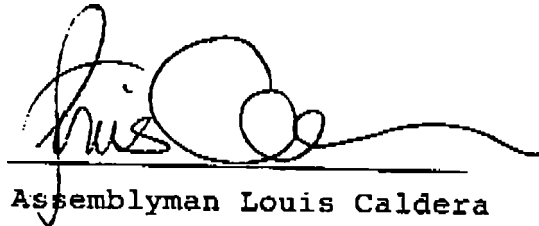
Michael Honda  
Assemblyman Elect



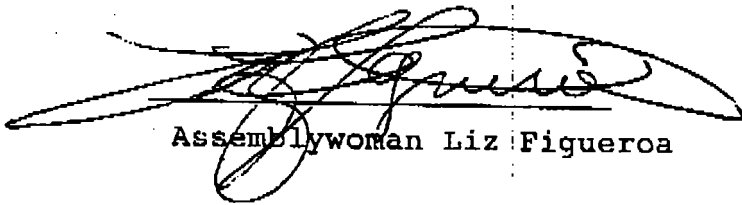
Kevin Shelley  
Assemblyman Elect



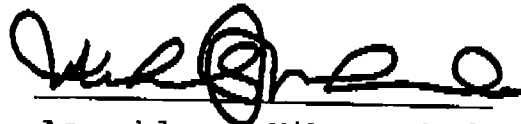
Assemblywoman Diane Martinez



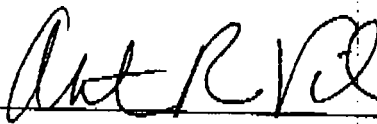
Assemblyman Louis Caldera



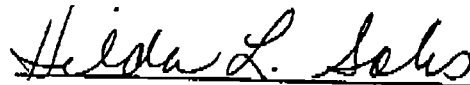
Assemblywoman Liz Figueroa



Assemblyman Mike Machado



Assemblyman Antonio Villaraigosa



Senator Hilda L. Solis



Assemblyman Mike Sweeney

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STATE CAPITOL  
95814  
(916) 443-0503

# California State Senate



STATE SENATOR  
**QUENTIN L. KOPP**

EIGHTH SENATORIAL DISTRICT  
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

STANDING COMMITTEES  
TRANSPORTATION - CHAIRMAN  
AGRICULTURE & WATER  
RESOURCES  
BUDGET AND FISCAL REVIEW  
CRIMINAL PROCEDURE  
HOUSING AND LAND USE  
LOCAL GOVERNMENT  
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SELECT COMMITTEES  
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STATE GOVERNMENT -  
CHAIRMAN  
DEFENSE BASE CLOSURES  
MARITIME INDUSTRY  
NORTHBRIDGE EARTHQUAKE  
STATE PROCUREMENT AND  
EXPENDITURE PRACTICES  
VOTING PRACTICES AND  
PROCEDURES

SUBCOMMITTEES  
BUDGET SUBCOMMITTEE  
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ENVIRONMENTAL  
PROTECTION AND  
JUDICIARY - CHAIRMAN

JOINT COMMITTEES  
JOINT COMMITTEE ON RULES

DISTRICT OFFICE  
363 EL CAMINO REAL, #205  
SO. SAN FRANCISCO, CA 94080  
(415) 952-5668

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.

## United States Senate

WASHINGTON, DC 20510

November 19, 1996

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

*What did  
or did do?*

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