STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
(916) 322-5387

October 15, 1981

ALL-COUNTY INFORMATION NOTICE I-132-81

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT:

REFERENCE:

The following is the text of a telegram the department received October 8, 1983 1981 from Secretary Schweiker concerning our request for a waiver of the October 1, 1981 effective date of those provisions in Public Law 97-35 which we believed could not be implemented because they were inconsistent with existing state law.

"Marion Woods, Director
Department of Social Services
State of California
Sacramento, CA

This is in response to your telegram of 9-18-81 requesting a waiver of the 10-1-81 effective date of those provisions in the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) which the state believes it cannot implement on that date by reason of state law.

We have reviewed your cited sections - Welfare and Institutions Code Sections 11004, 11155, 11157, 11158, 11159, 11253, 11255, 11257, 11261, 11308, 11310, 11403, 11450, Civil Code Section 5127.6 and Unemployment Insurance Code Section 5087.5 - and have concluded that, with the exception of Section 11159, they are inconsistent with the applicable sections of federal P.L. 97-35.

Section 11003 of the Welfare and Institutions Code provides, however, that a code provision becomes inoperative to the extent that it is not in conformity with federal requirements if the Department of Health and Human Services issues a formal ruling that the provision cannot be given effect without causing the state's plan to be out of conformity with federal requirements. We also note that Section 11346.1 of the California Government Code would permit the state to implement all of the mandatory provisions of P.L. 97-35, including those not affected by state law impediments, by emergency regulation.

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This telegram constitutes our formal ruling that California Welfare and Institutions Code Sections 11004, 11155, 11157, 11158, 11253, 11255, 11257, 11261, 11308, 11310, 11403, and 11450 cannot be given effect without causing the state's plan to be out of conformity with federal requirements, since they do not comport with several provisions of P.L. 97-35. Accordingly, to the extent that the code provisions are inconsistent with federal requirements, this ruling makes them inoperative, and they thus raise no obstacles to implementing P.L. 97-35. This ruling implicitly covers Civil Code Section 5127.6 and Unemployment Insurance Code Section 5007.5 as well, since the former provision essentially duplicates Welfare and Institutions Code Section 11261 and the latter provision is incorporated by reference into Section 11308 and 11310. Section 11159, which was cited in your telegram, is in our view not inconsistent with P.L. 97-35, because it only precludes California from adopting a discretionary, not mandatory, aspect of P.L. 97-35.

Therefore, your request for a waiver of the effective date for these provisions based on Section 2321(B) of P.L. 97-35 is not approved. By virtue of the ruling in this telegram California may fully implement all of the mandatory provisions of P.L. 97-35. Failure to do so will result in the state being out of conformity with federal law and subject to potential loss of federal matching.

Richard S. Schweiker Secretary
Department of Health and Human Services Washington D.C."

Accordingly, proposed regulations to implement the balance of the federal regulations were filed with the Office of Administrative Law on October 9, 1981. That office has ten days to rule on our request for adoption of emergency regulations. In the meantime, the present regulations are still in force and you should continue to apply them until notified otherwise.

Sincerely,

Kyle S. McKinsey

KYLE S. McKINSEY
Deputy Director

cc: CWDA