

December 12, 2007

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Krystal Paris  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "California Real ID Act of 2008" (A.G. File No. 07-0074 Amendment #1S). The measure would (1) require recipients of California Work Opportunity and Responsibility to Kids (CalWORKs) and the California Medical Assistance Program (Medi-Cal) to show passports or alien registration cards in order to receive benefits, (2) make citizen children of undocumented parents ineligible for CalWORKs benefits, and (3) create a new type of birth certificate for the U.S. born children of undocumented parents.

## **Background**

*Birth Certificates.* A birth certificate is issued by a county office and is generally based on birth registration information submitted by hospitals and birthing centers, or parents after a home birth. Under current law, the parents of a child are not required to provide proof of their citizenship status in order to register a birth and there is only one type of birth certificate.

*CalWORKs.* The CalWORKs program provides cash benefits and welfare-to-work services to low-income families with children. In order to receive CalWORKs benefits, recipients must be citizens or legal noncitizens. Although undocumented parents are not eligible for benefits, any of their children born in the U.S. are citizens and therefore eligible for benefits. Recipients can prove their identity and citizenship status through multiple means including the presentation of a photo identification, birth certificates, a U.S. passport, or other Immigration and Naturalization documents. If applicants do not have the necessary documents, such as a birth certificate, counties are required to assist applicants in obtaining the necessary documents, including the payment of fees.

*State and Local Health Care Programs.* In California, the federal Medicaid program is administered by the state as Medi-Cal. Medi-Cal provides a wide range of health care

services to welfare recipients and other qualified low-income persons (primarily children and their parents and the aged, blind, and disabled). Undocumented immigrants currently receive a limited range of health care services through Medi-Cal, including prenatal care, long-term care, and emergency care.

Under federal law, states are required to verify the citizenship status and personal identity of most Medi-Cal applicants before granting new or ongoing eligibility for the program. Passports are one form of acceptable documentation, but combinations of other documents, such as a birth certificate and a driver's license, are also acceptable. When county workers perform eligibility determinations, they verify that applicants have the required documents. However, some persons are exempted from certain federal documentation requirements, including the aged, blind, or disabled, who are automatically enrolled in Medi-Cal through an automated process when they are determined by the federal Social Security Administration (SSA) to be eligible for cash assistance through the federal Supplemental Security Income program.

The state also operates the Access for Infants and Mothers (AIM) program for pregnant women and the Healthy Families Program (HFP) for infants or children in families that require families to pay modest premiums or other payments for health services. The HFP and AIM programs permit the enrollment of participants with family incomes moderately higher than those permitted by Medi-Cal. Applicants for HFP and AIM are not required to present passports as a condition of eligibility.

Numerous county and local government agencies in California operate a variety of health care facilities and programs that provide health benefits to low-income persons, including in some cases undocumented immigrants.

## **Proposal**

This measure makes several changes to the CalWORKs and Medi-Cal programs and the issuance of birth certificates.

*General.* This measure creates Government Code Section 27 which would make any "public benefit right or privilege" contingent upon showing either a U.S. passport or an alien registration card. Section 27 would apply to any benefit right or privilege where proof of citizenship or legal status is required and when statute specifically requires the application of Section 27. Because this measure makes specific reference to CalWORKs and Medi-Cal, Section 27 would apply to these programs. No other programs would be subject to Section 27 unless the Legislature enacts subsequent legislation referencing Section 27.

*Creates Two Types of Birth Certificates.* Effective January 1, 2009, the measure creates two types of birth certificates. A "Type 1 Birth Certificate" would be issued to a child born to parents either of whom is a citizen or national of the U.S. or an alien lawfully admitted for permanent residence whose residence is in the U.S. A "Type 2 Birth Certificate" would be issued to a child born to parents who do not provide the required documentation to obtain a Type 1 Birth Certificate.

This measure requires the county registrar's office to determine which type of birth certificate should be issued. To do this, the registrar would inspect (and maintain a copy of) the documentation necessary to determine citizenship status. Additionally, if a Type 2 Birth Certificate must be issued, the registrar is required under the measure to fingerprint and photograph the birth mother prior to issuance. Finally, this measure imposes criminal sanctions on any official who fraudulently issues a birth certificate to an individual who is not a citizen or legal permanent resident of the U.S.

*CalWORKs.* The proposed measure has two impacts on CalWORKs. First, as discussed above (pursuant to new Section 27 of the Government Code), all adult applicants and recipients must present either a U.S. passport or an alien registration card to receive benefits. These requirements would take effect by September 1, 2009. Second, the measure provides to the extent permitted by federal law, citizen children with undocumented parents or guardians would be ineligible for CalWORKs benefits.

*Medi-Cal.* Beginning March 1, 2009, the measure also requires all recipients (including children) of Medi-Cal benefits to provide a U.S. passport or alien registration card. Certain Medi-Cal recipients and applicants who currently are not required to show passports or legal resident cards for Medi-Cal eligibility would need to obtain and present these documents.

The measure specifically prohibits the state from paying for prenatal care services or other nonemergency medical services unless the recipient meets the documentation requirements described above.

The measure exempts from these documentation requirements the recipients of mental health services, developmental disability services, long-term care services, or nursing home care services who applied for benefits prior to March 1, 2009.

### **Fiscal Effects**

*Birth Certificate Costs.* This measure would result in unknown local government costs, potentially in the tens of millions of dollars annually, to administer the issuance of two types of birth certificates instead of one. The increased costs include (1) photography and fingerprinting equipment and operations, (2) additional personnel and facility space, and (3) data storage services. In addition, this measure would result in unknown, but probably minor, state costs to provide technical assistance to counties on how to administer the issuance of two types of birth certificates.

Finally, there could be unknown, but probably minor, local and state law enforcement costs to the extent state or local employees are charged with issuing a fraudulent or false birth certificate, a new crime created by this measure. These costs would likely be partially offset by revenue from the collection of the fines that can be imposed under this measure on violators.

**County CalWORKs Costs.** This measure is likely to result in initial costs of about \$45 million for providing existing CalWORKs adult recipients with passports. This is because current law requires counties to assist CalWORKs recipients and applicants in obtaining eligibility documents, including the payment of any required fees. In each subsequent year, the annual costs would be about \$15 million for CalWORKs applicants. Although it is possible that some recipients would not seek a passport and forgo eligibility for cash and other benefits, we think virtually all recipients would continue to seek CalWORKs, especially considering the county financial assistance in obtaining passports. (There is no corresponding state requirement for county financial assistance for Medi-Cal recipients.)

The measure also would make citizen children with undocumented parents ineligible for CalWORKs benefits. If this eligibility restriction were enforceable, it would result in annual savings of about \$400 million. However, it is unlikely that this provision can be enforced because there does not appear to be a legitimate basis for discriminating against citizen children, with respect to the provision of public services, based on the citizenship status of their parents. Among other precedents, the U.S. Supreme Court has ruled that although states may attempt to control costs for public services, they cannot do so by making “invidious distinctions between classes of its citizens” in violation of the equal protection clause of the U.S. Constitution.

**Health Care Programs Costs and Savings.** It is possible that the courts would determine that some or all of this measure’s requirements with respect to Medi-Cal are not allowed by federal law. In particular, it is likely that the state would still be required under federal law to provide emergency services to undocumented immigrants. If the measure’s other Medi-Cal requirements are federally permissible, however, the measure could have the following fiscal effects for Medi-Cal and other state and local health care programs:

- **Medi-Cal Eligibility Administrative Costs.** Some persons are currently enrolled in Medi-Cal through an automated enrollment process operated by the state in cooperation with the federal SSA, which may not be permissible following implementation of this measure. Shifting the processing of eligibility reviews from the federal SSA to the state for the *existing* beneficiaries in this group could result in one-time state costs of up to the low hundreds of millions of dollars. There also could be other relatively minor one-time and annual administrative costs.
- **Short-Term Medi-Cal Cost Reductions for Services to Citizens.** To the extent that persons are temporarily denied eligibility for Medi-Cal while seeking the documents required under this measure, there would be one-time unknown state savings potentially totaling up to the low hundreds of millions of dollars.
- **Shift of Medi-Cal Spending to Other State Programs.** Certain persons whom this measure would prohibit from receiving Medi-Cal services, such as pregnant women and children without passports, could potentially enroll and ob-

tain similar services in other state programs such as AIM or HFP. The increased costs incurred by the state under these programs could offset to an unknown extent any Medi-Cal cost reductions for these persons.

- ***Reduction in Medi-Cal Costs for Services to Undocumented Immigrants.*** The measure would likely result in ongoing reduced costs up to the tens of millions of dollars annually because the state would no longer provide prenatal care and other nonemergency health care services to undocumented immigrants.
- ***Increased Costs for County Health Services.*** Any persons who are unable to obtain eligibility in Medi-Cal because of a lack of documentation required by this measure may seek health care from a health care facility or program operated by a county or other local government agency. Thus, the measure could result in unknown ongoing increases in county health care costs.

### **Summary of Fiscal Effects**

- ***Birth Certificate Costs.*** Unknown local government costs, potentially in the tens of millions of dollars annually, to administer two types of birth certificates instead of one.
- ***CalWORKs Costs.*** One-time county costs of approximately \$45 million and annual ongoing costs of about \$15 million for assisting CalWORKs recipients in obtaining passports.
- ***Health Program Costs and Savings.*** Unknown one-time net state savings or costs, depending on whether temporary benefit reduction savings exceed new eligibility administrative costs. Ongoing state savings up to the tens of millions of dollars annually resulting from reduced costs for health care benefits for undocumented immigrants, plus potential unknown ongoing increases in annual local government health costs.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance