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Wisconsin Waiver - Welfare [3]

WISCONSIN



W-2

WORKS

CHAPTER XII.
BUDGET

Fiscal Effect

This section presents information on the fiscal effect of the Wisconsin Works program. The Department of Health and Social Services' fiscal note prepared to accompany the legislation creating Wisconsin Works is enclosed. The Department subsequently worked with the Legislative Fiscal Bureau to adjust the estimates in a number of areas.

The W-2 Fiscal Table, outlines the estimates for the 1997-98 and 1998-99 fiscal years, the first biennium in which the W-2 program would be implemented, as well as descriptions of the assumptions used in preparing these figures. A complete description of the fiscal impact of the W-2 program may be found in the enclosed Legislative Fiscal Bureau analysis of Wisconsin Works (see pp. 118 to 136).

The Department's fiscal note indicated that sufficient revenues should be available from current general purpose revenue (GPR) funding sources and federal block grants to cover the costs of W-2. The Legislative Fiscal Bureau agreed that, in general, available data indicate that the Department's fiscal note is a reasonable approximation of the costs of the W-2 program.

However, the Wisconsin Works proposal is an expansive and complex modification to the state's existing welfare programs. In many areas, data is not available to precisely estimate program expenditures and a number of assumptions must be made to arrive at a fiscal estimate. Modest changes in assumptions regarding employment placements for W-2 participants and usage rates for health care and child care could significantly alter the fiscal effect. Projected federal funding for the 1997-99 biennium is not certain. Along with federal funding, a number of factors including economic fluctuations, differences in actual compared to projected utilization, behavioral changes and market forces could affect the cost of the W-2 program in future years.

The most recent fiscal estimates for the W-2 program are shown in the W-2 Fiscal Table.

Fiscal Table
Wisconsin Works Revenues and Expenditures
(In Millions)

W-2 REVENUES	<u>1997-98</u>	<u>1998-99</u>
Federal Block Grants	\$653.0	\$653.0
Federal Food Stamp Employment and Training	7.0	7.0
State Base Year GPR	400.0	400.0
Carryover from Previous Fiscal Year	<u>31.1</u>	<u>0.0</u>
Total W-2 Revenues	\$1,091.1	\$1,060.0
W-2 EXPENDITURES		
Subsidized Employment	\$228.3	\$181.3
Wage Subsidies	237.3	188.5
Less Sanctions	-9.0	-7.2
W-2 Health Care	\$445.5	\$475.2
Child Care	\$158.5	\$180.2
Children of SSI Parents	\$24.5	\$24.5
Benefit Costs	11.1	11.1
Medical Costs	13.4	13.4
DVR Assessments	\$12.7	\$3.3
Net Child Support Impact	-\$3.1	\$2.3
W-2 Office Costs*	\$124.3	\$106.8
Employment Skills Advancement	\$1.0	\$1.0
Job Access Loans	\$6.9	\$0.7
NLRR/Teen Parents/Kinship Care	\$38.0	\$41.2
Foster Care NLRR Payments	1.2	1.2
Kinship Care Payments	24.6	26.9
Medical Costs	12.2	13.1
Children First	\$1.3	\$1.3
Emergency Assistance	\$3.3	\$3.3
Burial Costs	\$3.3	\$3.3
State Administration	<u>\$18.8</u>	<u>\$18.6</u>
Total Expenditures*	\$1,063.4	\$1,042.9
NET W-2 SURPLUS	\$27.7	\$17.1

*Excludes food stamp administration which would be part of the W-2 office costs; however, funding for these activities would be provided from a separate federal block grant and the current GPR appropriation.

FISCAL ESTIMATE
DOA-2048 (R 11/90) ORIGINAL
 CORRECTED UPDATED
 SUPPLEMENTALSubject
Wisconsin Works (W-2)

Fiscal Effect

State: No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No Decrease CostsLocal: No local government costs
 1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

 3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

 5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts VTAE Districts

Fund Sources Affected

 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.435(4)(cn), (d), (dc), (df), (dg)

Assumptions Used in Arriving at Fiscal Estimate

This bill permits the Department to implement the Wisconsin Works (W-2) program, starting July 1, 1996, provided Wisconsin has received enabling federal waivers or legislation. Wisconsin Works replaces the Aid to Families with Dependent Children (AFDC) and Job Opportunities and Basic Skills Training (JOBS) programs. Under the W-2 program, eligible recipients must work off their grants and a time limit is placed on how long benefits are available.

The implementation of W-2 will involve increased administrative costs, including costs for training and computer systems modification. An intensive effort will be made during the 1995-97 biennium to reduce the AFDC caseload prior to full implementation of W-2. The bill immediately changes some JOBS benefits in preparation for full W-2 implementation.

The fiscal note assumes that W-2 begins full implementation in state fiscal year 1998 (SFY 98). The attached tables summarize projected funding levels and expenditures for each year.

Demographics

Under W-2 eligible custodial parents must engage in work activities to receive benefits. On July 1, 1997, the Department projects that 53,200 former AFDC recipients will be eligible for the W-2 program. The estimate is derived by subtracting the estimated number of Supplemental Security Income (SSI) cases (5,400) and the estimated number of non-legally responsible relative (NLRR) cases (5,600) from the projected total July 1997 AFDC caseload of 64,200. These SSI and NLRR cases are removed from the eligible W-2 population because they lack a casehead who can enroll in the W-2 work components.

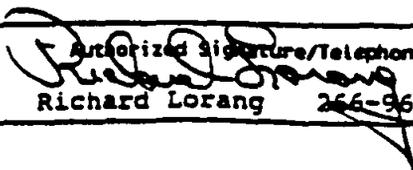
It is estimated that these former AFDC recipients will enroll in the W-2 program and that they will be placed into employment categories based on the following assumptions:

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

DHSS/OPB James Johnston 266-9359

Authorized Signature/Telephone No.


 Richard Lorang 266-9622

Date

11/14/95

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R 11/90)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
AB 591

Amendment No.

Subject
Wisconsin Works

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:

A. State Costs by Category	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)	()	()
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$	\$
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	
FED		
PRO/PRS		
SEG/SEG-S		
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues		

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ See Narrative	\$ See Narrative
NET CHANGE IN REVENUES	\$ See Narrative	\$

Agency/Prepared by: (Name & Phone No.)
DHSS/James Johnston 266-9359

Authorized Signature/Telephone No.
Richard Lorang 266-9622

Date
11/14/95

25% in W-2 Transitional (W-2 T) category (13,300 cases);
 50% in Community Service Jobs (CSJ) (26,600 cases);
 10% in Trial jobs (5,320 cases); and
 15% in Unsubsidized employment (7,980 cases).

The fiscal note assumes that 2,300 new applicants to the W-2 program will be accepted during the first month of program operations. During the first two years of the program, the number of new cases will gradually reduce to 1,900 per month and will remain at this level. It is estimated that these new cases will be placed into the employment categories based on the following assumptions:

10% in W-2 Transitional (W-2 T) category;
 35% in Community Service Jobs (CSJ);
 15% in Trial jobs; and
 40% in Unsubsidized employment.

The bill establishes maximum time limits participants can receive benefits in each employment category. These maximum time limits can be extended based on W-2 agency review. The fiscal note estimates the longest and average length of stay for actual participation in each employment category. The assumed length of stay in each employment category is used to determine the attrition rate per employment category. The assumed maximum length of stay per employment category is:

36 months for the W-2 T category (attrition rate, 2.78% per month);
 24 months for the CSJ category (attrition rate, 4.17% per month);
 18 months for the Trial category (attrition rate, 5.56% per month); and
 60 months total overall eligibility for W-2 subsidized employment categories.

The fiscal note assumes that the initial W-2 caseload, composed of former AFDC cases, and new W-2 cases will move from one employment category to another employment category at the same rate. In addition, it is assumed that 5% of the caseload will leave the program each month for "other" non-work related reasons; such as moving out of state or leaving because the youngest child reaches age 18. Based on the attrition rate for each job category, it is assumed that some cases will transition to a different job category every month. The following table summarizes the assumed movement among employment categories for both former AFDC cases and new W-2 cases. The following table shows the projected movement for the proportion of cases that move each month (based on the monthly attrition rates) from one W-2 category to another.

MOVING FROM	TO:				
	W-2 T	CSJ	Trial	Unsub.	Other
W-2 T	--	55%	30%	10%	5%
CSJ	5%	--	30%	60%	5%
Trial	0%	5%	--	90%	5%
Unsub.	0%	0%	0%	--	100%

Work Subsidies

The maximum monthly grant for the W-2 Transitional category is \$519; the maximum monthly grant for the CSJ category is \$555; and the Department will reimburse private employers 80% of the wages for Trial job recipients. Under W-2, work program participants are docked for every hour they fail to participate in their assigned activities. The fiscal note assumes that W-2 participants will work, on average, 35 hours per week for a total of 1,820 hours on an annual basis. Using this assumption, W-2 work program participants are projected to receive about 87% of the maximum monthly grant amounts.

In addition to the wage subsidy, participants will be eligible for other programs that provide additional cash or in-kind income. Participants in W-2 Transitional and CSJ employment positions are eligible for the federal food stamps program; Trial job participants are eligible for food stamps and federal and state earned income tax credits (EITC); and participants in unsubsidized work may retain eligibility for food stamps and the EITC, depending on their income.

Work Subsidy Sanctions

The Department will impose sanctions for the following violations:

- 1) recipient's children who do not attend school (Learnfare sanction);
- 2) recipient refusal to participate three times in any W-2 employment position is ineligible to participate in that component; and
- 3) recipient refusal to cooperate with the establishment of a child support order.

The W-2 sanction rate is assumed to be about 3.5% of the caseload based on sanction experience of the current Learnfare, JOBS and child support programs.

Health Care

This fiscal note estimates health care costs by projecting participation rates for each wage category in the caseload and then multiplying the number of participants by the monthly premium to determine total health care costs. The premium contribution by participants is then subtracted from the total cost to determine total government cost.

The bill uses recent AFDC caseload demographics to determine the percentage of one-parent and two-parent families, as well as the estimated family size ratios. These data permit the calculation of income for each family as a percentage of the federal poverty level (FPL). Family income as measured by the federal poverty level is then used to calculate a participant's premium contribution.

All participants in the three subsidized wage categories (Transitional, CSJ, and Trial Jobs) are required to participate in the W-2 health plan. For those working in unsubsidized jobs, participation is voluntary. Enrollment rates are assumed to be 40% of the entire unsubsidized caseload. An unsubsidized case is ineligible for the W-2 health plan if the participant is offered employer-subsidized health insurance (employer-subsidized health insurance is defined to mean a health plan for which the employer pays over 50% of the cost of coverage for the employee). For participants with incomes at or below 159%

FPL, the premium is set at \$20 per month, with the premium increasing as income rises above that level.

Applicants with incomes above 165% FPL are not eligible to initiate participation in the health care plan. However, once enrolled in the plan participants may continue in the plan until their income exceeds 200% FPL. The maximum premium a participant will be required to pay is \$143.

The health care premium is currently estimated to be \$361/month for CY 95, which is a blended rate of AFDC and Healthy Start Medicaid participants in HMOs in Milwaukee County. These rates are then inflated by the Consumer Price Index for medical services to estimate the health care premium as of July, 1997 (\$399/month). The benefit package will be similar to that offered state employees or private sector employees in medium and large corporations.

Child Care

Child care costs will vary by the income level of W-2 participants and the type of child care chosen by the participant. Family income level determines a participant's co-payment. In addition, family income is used to estimate the likelihood of participation in child care and the type of child care chosen (Center, Family Group, Family Certified, or Family Provisional Certified). Projected demand for each type of care is determined by multiplying the monthly charge for that type of care by the demand for that type of care. The premium contribution by participants is then subtracted from the total cost to determine total government cost.

The fiscal note uses recent AFDC caseload demographics to determine the percentage of one-parent and two-parent families, as well as the estimated family size ratios. These data permit the calculation of income for each family as a percentage of the federal poverty level (FPL). This in turn determines the participant's co-payment.

Child care subsidies are available to any family with an income below 165% FPL with one or more children below the age of 10. There are four child care settings available and three different rate structures based on age (0 and 1 year olds, 2-5, and 6-9). Participation assumptions differ according to age categories.

The total number of eligible families estimated to request child care subsidies is reduced by 40% for families with children between the ages of 0-5 and 62.8% for families with children between the ages of 6-9. This reduction in projected child care usage is based on national child care data showing the percentage of children that do not participate in formal child care regardless of income and by reducing estimated demand to reflect lower participation rates as a family's child care costs increase. The fiscal note uses a weighted statewide average cost for each type of care to calculate the fiscal estimate. This estimate is then inflated to estimate the cost of child care as of July, 1997.

SSI Supplemental Payments

Under the W-2 program, children who previously received an AFDC payment and whose parent(s) received a Supplemental Security Income (SSI) grant, will receive a \$77 grant state SSI supplement and MA medical benefits without any recipient premium costs. This estimate assumes that 12,000 children per month will be eligible for these benefits. The estimated MA costs associated with these cases is \$92.85 per child per month.

DVR Assessments

For most potential W-2 Transitional cases, the Division of Vocational Rehabilitation (DVR) must determine if the casehead is disabled. It is estimated that approximately 2.8% of the new cases will be incapacitated but not disabled, and therefore these cases will not require an assessment. This fiscal note assumes that the cost to perform an assessment is \$1,000 and that vocational counselors will spend approximately 7 hours per assessment.

Child Support Payments

Under current law, when any person applies for or receives AFDC, the right of the parent or any dependent child to support or maintenance from any other person is assigned to the state. Under the W-2 program, all current child support or maintenance collected on behalf of persons participating in the program and those parents on SSI whose children will now receive a supplemental payment in lieu of an AFDC payment will be passed through to the participants in the program. This income will be counted in calculating eligibility for W-2 services. Child support arrearages incurred for AFDC cases prior to the implementation of W-2 will continue to be assigned to the state. These arrearage payments partially offset the costs of the W-2 program.

The budget assumes that the state will pay to the federal government the federal share of child support collections passed through to recipients. Currently, the federal share of collections on AFDC cases is assigned to the state and forwarded to the federal government.

W-2 Office Costs

W-2 office costs include expenses associated with contracting for the provision of services by the Wisconsin Works agencies, including salary and fringe benefits for staff, overhead expenses for operation of the agency, and the cost of case management and services provided to W-2 clients.

W-2 offices will be responsible for eligibility determination for all potential W-2 participants, and non W-2 potential food stamp and Medical Assistance (MA) recipients (including SSI recipients and indigent individuals). At a county's request a W-2 office must allow the county to conduct eligibility determination for indigent individuals, the elderly and disabled county residents seeking food stamp and MA benefits. Funding for these activities would also be transferred from the W-2 office to the county.

Help Desk and Resource Specialists are budgeted based on the number and size of job centers throughout the state. It is assumed that Milwaukee will require six job service areas, with each area served by two job centers. Two job centers will be necessary in the next fourteen large counties and one each in the remaining 57 counties and 5 tribal organizations. Each center will be staffed by one help desk staff person who will direct people through the job center and perform clerical services. The Resource Specialist will determine eligibility and direct the client to the Financial Planner or Social Services Planner based on eligibility.

Caseloads for Social Services Planners are estimated at 300 cases per worker. Caseloads for Financial Planners are estimated to be 55 per worker. Duties for

the Financial Planner include case management, personal financial planning, job search counseling, and private job development for W-2 clients. W-2 agency contracts will be performance based, and agencies will have flexibility to determine the exact staffing levels they need to meet their goals.

Ancillary services include services to W-2 clients for enrollment into the program and assistance in obtaining employment. The ancillary services monthly cost by employment category are estimated to be:

\$83 per month for Trial job participants,
\$100/month for CSJ clients and
\$150/month for W-2 Transitions clients.

Services covered by these ancillary charges include: enrollment, motivation, job readiness, job skill assessment, employment search, special job coaching, costs associated with community work experience or other work experience, transportation, emergency child care and any related costs for W-2 clients. The cost of worker's compensation premiums is included in the ancillary costs for W-2 Transitional and CSJ recipients. Employers will be responsible for paying worker's compensation premiums for trial job participants.

Overhead for the job center is estimated at 30% of program staff salary and fringe costs.

Job Access Loans (Bridge Loans)

The Department will establish rules determining the maximum and minimum size of loans, the method of loan disbursement, the terms of repayment and the allowable interest charged. Job access loans will be available to W-2 recipients for job related purposes. The note assumes these loans are limited to \$1,000 per individual for a maximum loan repayment period of 24 months.

The budget estimate of costs for job access loans include administration costs and costs associated with default. The pool of funds required for loans is included as a cost, and repayments will offset future expenses.

Administration cost information is derived from Federal Reserve Bank (FRB) data collected from member banks. FRB calculated the cost of loan acquisition and of loan maintenance. These are averages of total costs to banks with assets less than \$50 million. The acquisition costs averaged \$124 per loan and the maintenance cost was \$10.78 per payment.

The default rate is based on historical evidence of low-income loan programs (30-40%) and other loan programs such as auto loan programs for high risk borrowers (33%). The fiscal note assumes loan begin to default three months after loan origination.

Demand for loans was estimated at 10% of the total W-2 subsidized employment caseload. Because of a limited loan pool, it is expected that the W-2 agency will limit the disbursement of job access loans to those that have specific and vital needs for obtaining employment.

Kinship Care/Foster Care

Currently 5,600 AFDC cases have a relative who acts as guardians receive AFDC payments while caring for a relative's child or children. Current data shows, on average, payments are made for 9,700 children per month. W-2 will eliminate this AFDC payment and replace it with a per child Kinship Care

payment of \$215 per month. To receive this payment, the home must be considered a safe residence for the child and there must be evidence of a need to place the child outside of the parents' home.

Of the initial NLRR AFDC cases referred for Kinship Care status, it is assumed that 13.5% of the relatives will become certified as Foster Care providers and receive the higher Foster Care payment amount. The fiscal note assumes that 63% of the relatives will request the Kinship care payment. In the remaining cases it is assumed that the relatives will either continue caring for their relative's children without reimbursement or return the children to their parents. For new cases, it is assumed that 82% of the cases will request the Kinship Care payment and 18% will choose to be certified as foster care providers.

The average length of stay in these components is assumed to be 15 months based on turnover of out-of home care placements. Initial assessments for Kinship care are budgeted at \$25 per hour for 3 hours and assessments for Foster Care certification are \$300 based on a 12 hour assessment estimate. Subsequent annual assessments for existing cases are budgeted at \$75 per assessment.

These children will receive medical coverage through the medical assistance program. The current monthly actuarial rate is \$118.68 per child. Also included in this estimate is the budget for medical costs of teen mothers. It is estimated that there will be 100 teen mothers needing medical assistance, at a rate of \$214 per month.

Children First

W-2 will fund a work experience and job training program for noncustodial parents who fail to pay child support or fail to meet the children's needs as a result of unemployment or underemployment. The Department currently has a Children First Program operating in 23 counties, representing approximately 26% of all child support cases. Expanding the program statewide, assuming that the remaining counties have Children First caseloads in the same proportion as the current counties, will require additional funding.

Burial Costs

Under current law the Department reimburses counties for the costs of burying certain recipients of public assistance. This reimbursement is provided under the AFDC appropriation. This fiscal estimate assumes that the Department will continue to provide funding to counties for the costs of burying recipients of public assistance, funded at the current level.

Transitional/Start-up Costs

Transitional costs cover expenses incurred as systems and documentation is changed, personnel are trained on new policies and procedures, and contracts are put out for bid.

Computer Systems Costs

The cost to modify the CARES system for W-2, including the automation of the child care eligibility, is estimated at \$5.5 million. Providing training of State and W-2 agency staff on the new system would cost an additional \$1 million, for a total systems-related cost of \$6.5 million. Because the State

purchased and owns the current CARES equipment, the existing hardware used by counties and JOBS agencies for CARES will be used for the W-2 program.

Training Costs

Costs for training W-2 Agency personnel in W-2 policy are estimated to be \$2.94 million. The budget assumes that the 1,278 direct staff in the W-2 office will all need training on the new policies and procedures. In addition, a factor of 15% was applied to account for management and supervisory staff. This yields a total of 1,470 staff to be trained. The budget assumes a cost of \$2,000 per person for training, which includes direct training costs as well as travel expenses for participants in the training.

State Staff

The fiscal note assumes 18.0 FTE in additional staff will be hired to develop W-2 policy materials, W-2 agency contracts and training materials and to monitor W-2 agency contracts. Eight of the positions are project positions to begin in SFY 96 and ten are permanent positions to begin in SFY 97.

Overlap of Contracts

Starting the new IM and employment program offices will result in some cases in the termination of current county and JOBS agency contracts with the state. The budget assumes that 50% of current providers will continue as W-2 providers. For the other 50% of providers, the Department will have to fully staff the agencies prior to formal transfer of cases to W-2 agencies. Based on current IM and JOBS contracts, the monthly cost to operate these programs is \$5.35 million. The budget assumes that the W-2 agencies will need to be staffed three months prior to W-2 conversion. In addition, the budget assumes an overlap of three months after W-2 implementation where JOBS and IM agencies are phasing down operations.

W-2 Funding

The fiscal note assumes that the federal government will create block grants to states for welfare programs starting in federal fiscal year 1996 (FFY 96). The House of Representative and the Senate have both passed bills which provide block grant funding. Both bills increase federal funding for Wisconsin and provide greater state flexibility to administer public assistance programs.

The House version of the block grant bill provides about \$309 million for Wisconsin, while the Senate bill provides about \$334.8 million. Part of the difference between the two bills is the treatment of child care funding. The Senate bill includes IV-A child care funding in the block grant (\$18.8 million), whereas the House version places IV-A child care funding in a separate block grant. The exact funding level will be determined by a conference committee. The attached chart indicates the range of W-2 funding potentially available based on the alternative block grant bills.

State funding is estimated to remain at SFY 97 funding levels through the next biennium. The W-2 bill combines a number of general purpose revenue (GPR) appropriations to increase the State's flexibility to match state funds to the federal block grant. This consolidation will allow the State to target funding where it is most needed.

The bill combines the following GPR funded public assistance appropriations into one biennial appropriation:

- s. 20.435 (4)(cn) Child Care for Recipients & Former Recipients of AFDC
- s. 20.435 (4)(d) Income Maintenance Payments to Individuals and Counties
- s. 20.435 (4)(dc) Emergency Assistance
- s. 20.435 (4)(de) Income Maintenance County Administration
- s. 20.435 (4)(df) Employment and Training Programs
- s. 20.435 (4)(dg) Services for Learnfare Pupils
- s. 20.435 (7)(b) Community Aids funding for Low-Income Child Care

The combined appropriation contains allocations for each of the listed areas at their previously appropriated funding level. The combined appropriation will allow the Department, with approval from DOA, to transfer up to 30% of an allocation to another allocation within the appropriation. The bill also allows the Department to transfer funds between fiscal years.

The increased federal funding, provided by the federal block grant, combined with the flexibility to target state funds where they are needed will enable the state to begin implementation of W-2 components this biennium within existing GPR appropriation levels. In addition, the increase in federal funding provided by the block grants will enable the state to carry forward federal spending authority into the 1997-99 biennium. The fiscal note assumes that the state will be able to carry over funding from this biennium to offset the costs of the first year of full W-2 implementation. Assuming the final block grant proposal averages the funding provided by House of Representatives and the Senate block grant proposals, the Department will be able to implement the W-2 program within SFY 97 GPR funding levels.

WISCONSIN WORKS EXPENDITURES

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
SUBSIDIZED EMPLOYMENT	\$0	\$261,113,600	\$209,062,000	\$181,816,600	\$138,036,700	\$129,386,700	\$127,266,300
Wage Subsidies	\$0	\$260,963,400	\$217,264,600	\$168,168,200	\$143,453,400	\$134,444,700	\$132,262,100
Less Sanctions	\$0	(\$9,869,800)	(\$8,212,600)	(\$6,352,700)	(\$5,417,700)	(\$5,078,000)	(\$4,995,800)
W-2 HEALTH CARE	\$0	\$426,167,183	\$440,288,343	\$444,009,688	\$461,601,321	\$482,011,902	\$471,762,048
W2 Health Care	\$0	\$341,850,800	\$354,011,400	\$355,507,100	\$361,198,400	\$369,898,000	\$376,481,200
No-Grant MA recipients	\$0	\$84,043,700	\$84,043,700	\$84,043,700	\$84,043,700	\$84,043,700	\$84,043,700
Recipients 165%-200% of FPL	\$0	\$412,683	\$2,231,243	\$4,458,785	\$6,359,221	\$8,072,202	\$11,227,148
CHILD CARE	\$0	\$131,344,900	\$144,113,200	\$181,336,800	\$189,318,600	\$184,898,600	\$169,237,700
CHILDREN OF SSI PARENTS	\$0	\$24,467,945	\$24,467,945	\$24,467,945	\$24,467,945	\$24,467,945	\$24,467,945
Benefit Costs	\$0	\$11,068,000	\$11,068,000	\$11,068,000	\$11,068,000	\$11,068,000	\$11,068,000
Medical Costs	\$0	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945
DVR ASSESSMENTS	\$0	\$12,666,000	\$3,316,600	\$2,706,862	\$2,666,921	\$2,670,724	\$2,676,964
CHILD SUPPORT	\$0	\$64,231,600	\$61,680,900	\$46,491,200	\$46,086,100	\$46,624,800	\$49,661,600
W-2 OFFICE COSTS	\$0	\$133,283,600	\$116,688,200	\$96,416,200	\$88,908,800	\$84,672,700	\$84,696,800
AFDC	\$0	\$119,947,600	\$101,963,700	\$60,996,600	\$70,839,600	\$68,022,400	\$67,569,600
Food Stamps	\$0	\$8,956,500	\$9,822,000	\$10,354,000	\$10,792,200	\$11,162,600	\$11,434,900
MA	\$0	\$4,379,300	\$4,802,500	\$5,062,600	\$5,276,600	\$5,467,700	\$5,591,100
BRIDGE LOANS	\$0	\$6,943,400	\$684,900	\$326,300	\$1,034,400	\$1,041,600	\$1,041,600
NLRR/TEEN PARENTS/KINSHIP CARE	\$0	\$36,933,300	\$41,210,800	\$36,826,800	\$33,331,300	\$33,331,300	\$33,331,300
Foster Care NLRR Payments	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Kinship Care Payments	\$0	\$25,500,900	\$28,929,900	\$22,771,300	\$21,624,700	\$21,624,700	\$21,624,700
Medical Costs	\$0	\$12,232,400	\$13,080,900	\$11,054,500	\$10,506,600	\$10,506,600	\$10,506,600
CHILDREN FIRST	\$0	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200
BURIAL COSTS	\$0	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000
STATE ADMINISTRATION	\$26,423,600	\$18,795,300	\$18,603,600	\$18,607,600	\$18,607,600	\$18,607,600	\$18,607,600
Systems Modifications	\$6,500,000	\$0	\$0	\$0	\$0	\$0	\$0
Transition Costs	15,129,400	\$0	\$0	\$0	\$0	\$0	\$0
State Staff/Training	3,784,100	\$18,795,300	\$18,603,600	\$18,607,600	\$18,607,600	\$18,607,600	\$18,607,600
TOTAL COSTS (excl. Fed FB Admin.)	\$26,423,600	\$1,093,626,628	\$1,044,788,887	\$976,368,761	\$863,761,487	\$861,014,271	\$876,899,888

W-2 REVENUE ESTIMATES

	<u>House Bill</u>		<u>Senate Bill</u>		
AFDC					
Federal Block (FFY 98)		\$311,091,000	Federal Block (FFY 98)	\$316,812,000	
GPR Budget			GPR Budget		
AFDC Payments	\$132,968,700		AFDC Payments	\$132,968,700	
Emergency Assistance	1,659,700		Emergency Assistance	1,659,700	
IM County Admin.	13,336,800		IM County Admin.	13,336,800	
JOBS (Less Child Care)	20,274,100		JOBS (Less Child Care)	20,274,100	
Learnfare Services	1,309,500		Learnfare Services	1,309,500	
State Admin.	2,859,500		State Admin.	2,859,500	
		\$179,508,300		\$179,508,300	
Total Block and GPR Budget		\$490,599,300	Total Block and GPR Budget	\$496,320,300	
Food Stamp E&T		\$7,000,000	Food Stamp E&T	\$7,000,000	
Total Funding Available		\$497,599,300	Total Funding Available	\$503,320,300	
CHILD CARE					
Temporary Assistance Block			Temporary Assistance Block	\$29,631,000	
CCDBG		\$34,870,000	CCDBG	\$16,485,000	
GPR Budget			GPR Budget		
Consolidated	\$6,520,200		Consolidated	\$6,520,200	
JOBS (incl. Self-Int.)	6,236,800		JOBS (incl. Self-Int.)	6,236,800	
Community Aids/At-Risk	5,576,100		Community Aids/At-Risk	5,576,100	
		\$18,332,900		\$18,332,900	
Total Available		\$53,202,900	Total Available	\$34,448,900	
HEALTH CARE (Based on SFY 97 Budget)					
Federal Budget		\$299,107,100	Federal Budget	\$299,107,100	
GPR Budget		\$202,181,700	GPR Budget	\$202,181,700	
Total Available		\$501,288,800	Total Available	\$501,288,800	
TOTAL FUNDING AVAILABLE		\$1,052,071,000	TOTAL FUNDING AVAILABLE		\$1,048,038,000

Current Benefit Cost

The AFDC caseload estimated in this budget is 64,200 at the start of W-2, with 5,400 Non-Legally Responsible Relatives (NLRR) and 5,600 cases with children of parents who receive Supplemental Security Income. AFDC recipients receive a grant based on their current income compared to the State Standard of Need. Attached Table 1 lists the maximum payment allowance for the high population areas of Wisconsin. Area II is 97 percent of the Area I total.

Family Size	Area I Monthly Standard	185% of Monthly Standard	Payment Allowance
1	\$311	\$575	\$249
2	\$550	\$1017	\$440
3	\$647	\$1196	\$517
4	\$772	\$1428	\$617
5	\$886	\$1639	\$709
6	\$958	\$1772	\$766

Total AFDC benefits for the state fiscal year ending June 30, 1995 were \$389,183,600. The total caseload for the year was 73,777 and the average benefit was \$444.

Other benefits for AFDC recipients include food stamp coupons, Medical Assistance and child care. Food stamps issued in the State of Wisconsin for the state fiscal year ending June 30, 1995 were \$217,990,500. Medical Assistance benefits totaled \$2,491,186,800. AFDC recipients are also eligible for Low Income Energy Assistance, which reduces winter home heating costs on a sliding scale according to income.

Child care assistance for all low-income individuals in Wisconsin totaled \$55.5 million. This includes At-Risk Child Care, Transitional and JOBS child care, Child Care and Development Block Grant, and the regular child care program.

The JOBS program provides education and skill development under the AFDC-U program. JOBS enrollees attend classes on job application, search and interview skills for job attainment.

The State reimburses costs of some vocational classes that may be necessary to assist in job attainment. Remedial education and GED classes are also reimbursed. In state fiscal year 1995, \$49,028,000 was spent on JOBS aids, not including child care.

In the current AFDC system, once AFDC recipients are enrolled in a job, they may remain eligible for child care and medical care assistance for up to 12 months following their employment start date.

State and local income maintenance programs administration costs reimbursed by the state and federal government totaled \$59,979,490 for the state fiscal year 1995. These amounts included county administration of the Medical Assistance, food stamp and general relief program, if one existed in the county. Not included in this total are costs for the administration of the JOBS program which totaled \$5,162,818.

COST ESTIMATES

Cost estimates for the Wisconsin Works program cover the wages and wage subsidies paid by the state and federal government, the premium payments for enrollment in the state's managed care W-2 Health Plan, child care services, any job search strategies or other strategies used by the Financial and Employment Planner, and other costs as detailed below.

In developing costs for W-2, estimates were made on various aspects of the program and cases. These assumptions were based on information and data received and are detailed below.

W-2 Budget Assumptions

Initial Caseload

Start with SFY 98 caseload projection	64,200
Reduce for NLRR cases	5,600
Reduce for SSI cases	5,400
TOTAL W-2 Caseload	53,200

New Caseload

The projected caseload for new and returning applications for W-2 is 2,300 per month. This is derived from recent data on new AFDC cases, less NLRR cases and SSI cases.

W-2 Employment Categories

There are four W-2 employment categories. A short description and the estimated enrollment in these categories follows. See the program narrative for more details on each job category.

W-2 Transition provides more extensive education and training for those recipients that have been assessed to have a disability. The assessment will also determine the vocational strengths of the individual, and the training and skill development provided will aim to enhance these skills. These positions will be paid \$518 per month.

Community Service Jobs will be public sector or private non-profit jobs the W-2 enrollee will perform for 30 hours per week. The W-2 agency may require the individual to receive training for up to ten hours per week. These positions will be paid \$555 per month.

Trial Jobs are jobs in the public or private sector. W-2 will reimburse the employer \$300 per month for a 40 hour full-time job provided to a W-2 applicant that cannot yet achieve unsubsidized employment.

Unsubsidized Employment are positions without special conditions or incentives provided to employers for employment of a W-2 recipient.

The estimated initial/ongoing movement into categories for current AFDC cases and new W-2 cases once implemented is as follows:

Job Category	Enrollment of Current AFDC Recipients	Enrollment of new applications after inception of W-2
W-2 Transitions	25%	10%
Community Service Jobs	50%	35%
Trial Jobs	10%	15%
Unsubsidized Employment	15%	40%

For purposes of this estimate, the current AFDC caseload includes long-term cases which are difficult to serve. Therefore, the AFDC cases were weighted towards the job categories which will provide more intense services and more assistance in developing employment skills.

It is estimated that cases will move out of the job categories at an average rate of one half the maximum length of stay allowed in each job category. Cases move out of the job category at a constant rate per month over that maximum length of stay. For example, the time limit (or maximum length of stay) in a community service job is 24 months. New cases will move out of this category at 4.17 percent per month for 24 months. Therefore, the average length of stay in community service jobs will be 12 months.

Job Category	Maximum Length of Stay	State and Federal Share of Monthly Payment
W-2 Transitions	36 months	\$451
Community Service Jobs	24 months	\$483
Trial Jobs	18 months	\$300
Unsubsidized Employment	—	—

Wage Subsidy

Wage subsidy costs are estimated by converting the caseload by W-2 employment category per month into a total wage that the state reimburses W-2 participants and employers of W-2 participants.

The payment for each W-2 employment category is as follows. The W-2 T positions are paid a flat grant of \$518 per month; CSJ positions are paid a flat grant of \$555 per month; and the employers of trial job participants will be reimbursed up to a maximum of \$300 per month for salary costs, i.e., the state will reimburse the employer \$1.735 per hour for a 40 hour work week.

Furthermore, W-2 assumes CSJ positions will work 30 hours per week. The remaining W-2 participants will work, on average, 35 hours per week. This assumption is based on the following: 50 percent of the participants will work a full 40 hour week; 30 percent of the participants will work 35 hours per week; and 15 percent will work 30 hours per week. It is assumed that the remaining five percent of participants fall into the attrition category. The estimate assumes that the Department will also sanction W-2 participants for the following violations: (1) failure to comply with the Learnfare attendance requirements, and (2) failure to complete the work requirements on three separate occasions in a W-2 employment position. The monetary penalty for the Learnfare sanction is \$50 and the monetary penalty for the work

infraction is the state share of the wage subsidy for the W-2-T, CSJ, and trial categories, \$451/month, \$483/month and \$300/month respectively. The assumed failure rate used for this calculation was 3.245 percent which is the current Learnfare non-compliance rate.

Health Care Costs

W-2 estimates health care costs by projecting participation rates for each wage category in the caseload and then multiplying the number of participants by the monthly premium to determine total health care costs. The premium contribution by participants is then subtracted from the total cost to determine total government cost.

W-2 uses recent AFDC caseload demographics to determine the percentage of one-parent and two-parent families, as well as the estimated family size ratios. These data permit the calculation of income for each family as a percentage of the federal poverty level (FPL). This in turn allows the calculation of the participant's premium contribution.

All participants in the three subsidized wage categories are required to purchase health insurance. The participant must enroll in an employer's health plan, if one is offered. For those working in unsubsidized jobs, participation is voluntary. Enrollment rates are assumed to be 40 percent of the entire unsubsidized caseload. This does not include any participants who might be offered employer-subsidized health insurance. For participants with incomes at or below 159 percent FPL, the premium is set at \$20 per month. Add \$3 for each percentage point above 159 percent with the premium increasing as income rises above that level.

Applicants with incomes above 165 percent FPL are not eligible to enroll in the health care plan. However, already-eligible participants may continue in the plan until their income exceeds 200 percent FPL. The maximum premium a participant will be required to pay is \$143, an approximation of the total monthly out-of-pocket costs (premium, deductibles, and/or point-of-service co-payments) typical of the private sector.

The premium for the W-2 Health Plan is estimated to be \$399/month in July 1997, which is a blended rate of AFDC and Healthy Start Medicaid participants in HMOs in Milwaukee. The benefit package will be similar to that offered state employees or private sector employees in medium and large corporations.

Child Care Costs

W-2 estimates child care costs by converting the caseload by wage category to caseload by income. The income determines the participant's co-pay as well as the likelihood of participation

Default costs were estimated at 40 percent. Data from non-profit agencies with similar bridge loan programs experience this rate of default. Also, high-risk commercial auto loans default at a rate of 33 percent.

The funds required to start the job access loan fund were spread across the first 12 months of the program. It is estimated that about \$3.3 million will be necessary to fully fund the loan pool at its peak demand. This would occur about 12 months into the program.

W-2 Agency Administrative Costs

Administrative costs include both the costs for W-2 job offices throughout the State and the costs of program and supportive services for the W-2 participants that will assist them in obtaining employment. These estimates were used as the projected total cost of the contracts that will be signed with the successful bidders of the RFP.

The budget assumes a total of 102 offices around the state. Six service areas in Milwaukee will contain a total of 12 offices. The next 14 largest counties will have two offices each. The smallest 57 counties and five tribes will be served by one office each.

Each office was budgeted a clerical support person and one position to determine initial eligibility for income maintenance programs. Budgeted staff that complete registration for non-W-2 programs such as food stamps and Medical Assistance are based on estimated persons below 165 percent of poverty. It is estimated that these social service planners will serve a caseload of 300 individuals per month. Financial planners, the case managers for the W-2 population, are budgeted based on a caseload of 55. Financial planners must counsel the W-2 clients, develop potential trial and community service jobs, maintain contact with these employers, ensure the W-2 clients are completing their assigned activities under W-2, etc.

Overhead costs for the office are budgeted at 30 percent of salaries. Ancillary costs are those costs necessary to provide employment services to W-2 clients. Costs are budgeted at \$83 per month for trial job participants, \$100 per month for community service job participants, and \$150 per month for W-2 Transition participants. These costs were based on an analysis of current allowable costs incurred by JOBS agencies. The \$150 per month would include any job coaches or special services required by a W-2 Transition participant.

W-2 Administration

State Administration. No additional state staff are in the budget. It is assumed that existing state staff will implement Wisconsin Works

Training Costs. Costs for training W-2 Agency personnel in W-2 policy is estimated to cost \$2.94 million. This includes 1,278 staff increased by a factor of 15 percent for management and supervisory staff. This yields a total of 1,470 staff trained at \$2,000 each for a total of \$2.94 million. These costs include funds for contract trainers, materials for the training, facilities for the training and travel-related costs.

CARES. CARES costs are estimated at \$5.5 million for programming and software costs. Training on the new system is estimated at \$1 million. These costs are based on estimates from Deloitte & Touche and include costs of child care automation and estimated hours required for programming changes.

County Administration. Existing contract levels for JOBS and IM total approximately \$128.4 million on an annual basis, or \$10.7 million per month. There will be a period of time both prior to and after start-up in which the Department will need to fund both the W-2 agencies and the current IM and JOBS agencies. The W-2 budget assumes that 50 percent of the current agencies will remain the administrative agency under W-2. As a result the Department will require approximately \$5.35 million each month beginning three months prior to W-2 start-up to fund the new W-2 agencies, or \$16.05 million. A phase down of the IM and JOBS agencies will begin in the first month of W-2 start-up and continue for six months. The budget assumes that the Department will fund 75 percent of the IM and JOBS contracts in month 1 at a cost of \$4,012,000, 50 percent in month 2 at a cost of \$2,675,000, and 25 percent in month 3 at a cost of \$1,337,500. The total of this overlap is \$24,074,500.

Children First

The Department currently has a Children First Program operating in 23 counties, representing approximately 26 percent of all child support cases. Total funding of \$342,200 (\$171,200 GPR) is provided by the State to counties at \$200 per case for 1,711 cases, based upon the plans submitted by counties detailing their expected Children First caseloads. If we assume that the remaining counties have Children First caseloads in the same proportion as the current counties, total funding needed would be \$1,316,200 (\$658,100 GPR), for 6,581 cases. This is an increase of \$974,000 (\$487,000 GPR) over the current base funding level.

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1 Family Asst Pmts	93.560	\$	\$	\$ 135,727,500	\$ 135,727,500	\$ 271,455,000
2 JOBS	93.561			41,370,000	41,370,000	82,740,000
3 Medical Assistance	93.778			281,419,100	195,562,500	476,981,600
4 Child Care Assistance Administration				73,422,300	73,422,300	146,844,600
				52,155,500	52,155,500	104,311,000
5. TOTALS		\$	\$	\$ 584,094,400	\$ 498,237,800	\$ 1,082,332,200

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Federal Costs	(2) State Costs	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. XXXXX Start-up-State Operations	10,814,700	10,814,700			21,629,400
d. XXXXX Training-State	1,897,050	1,897,050			3,794,100
e. XXXXX State Administration	9,397,650	9,397,650			18,795,300
f. Contractual W-2 Agencies	144,838,600	144,838,600			289,677,200
g. XXXXX Medical Asst. Ben M/a - Administration	278,835,400 2,583,700	193,766,900 1,795,600			472,602,300 4,379,300
h. XXXXX Payments to Individuals	135,727,300	135,727,300			271,454,600
i. Total Direct Charges (sum of 6a - 6h)	584,094,400	498,237,800			1,082,332,200
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

in child care and the type of setting chosen. The total cost is calculated by finding the number of participants by income and setting multiplied by the monthly charge for that setting. The premium contribution by participants is then subtracted from the total cost to determine total government cost.

W-2 uses recent AFDC caseload demographics to determine the percentage of one-parent and two-parent families, as well as the estimated family size ratios. These data permit the calculation of income for each family as a percentage of the federal poverty level (FPL). This in turn allows the calculation of the participant's co-payment

Child care subsidies are available to any family with an income below 165 percent FPL and one or more children below the age of 13. There are four child care settings available and three different rate structures based on age (0 and 1, 2-5, and 6-12). Participation assumptions differ according to age category.

The entire caseload is separated by income and those without children under 12 are subtracted. The remaining number of families is then reduced by 40 percent (ages 0-5), 62.8 percent (ages 6-9), and 90.7 percent (ages 10-12) based on national child care data showing what percentage of children do not participate in formal child care regardless of income and again by an income-sensitive factor reflecting lower participation rates with higher participation costs. The number of families is then multiplied by the average number of children in the family (1.9 for a single parent and 3.1 for a two-parent family) to determine a total number of children eligible to participate. The number of participants, still separated by income, is then divided into the four child care settings, with participation in different settings dependent on participant income. The number of participants in each setting is then multiplied by the monthly cost of that setting to arrive at a total month child care cost. The participant co-payment is then calculated and subtracted from the total cost to determine total government cost.

Job Access Loans

Job access loans are zero-interest loans to be repaid over a 24 month period immediately following the disbursement of the loan. The average loan is estimated to be \$800 (based on a maximum loan of \$1000). It is estimated that 10 percent of the AFDC caseload will request a loan within the first year of W-2. Also, 10 percent of the new W-2 cases will request a job access loan.

Costs of the loan program included administrative costs, default costs, and the loan pool necessary to fund the job access loans. Administrative costs were estimated at 20 percent based on data gathered by the Federal Reserve Bank of Chicago for installment loans made by banks with assets less than \$50 million. The break-even interest rate for a loan of \$2500 with maturities of two years was 18 percent. This was extrapolated to 20 percent for the smaller loan amount.

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. State General Purpose Revenue	\$	\$ 498,237,800	\$	\$ 498,237,800
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$ 584,094,400	\$ 155,557,400	\$ 142,845,600	\$ 142,845,700	\$ 142,845,700
14. NonFederal	498,237,800	134,093,300	121,381,500	121,381,500	121,381,500
15. TOTAL (sum of lines 13 and 14)	\$ 1,082,332,200	\$ 289,650,700	\$ 264,227,100	\$ 264,227,200	\$ 264,227,200

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. Wisconsin Works	\$ 1,028,470,400	\$ 982,181,400	\$ 974,738,000	\$ 986,365,900
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$ 1,028,470,400	\$ 982,181,400	\$ 974,738,000	\$ 986,365,900

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

Columns labelled Title I, Title X, Title XIV and Title XVI are not to be used by State applicants. These columns are only for the use of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

	Title I OAA (2)	Title IVA AFDC (3)	Title IV-D OCSE (4)	Title XX SERVICES (5)	Title X B (6)	Title XIV APTD (7)	Title XVI (8)	Title XIX AAA (9)	TOTAL (10)
A. Part I. Assistance		271,454,600		XXXXXXXXXXXX					271,454,600
B. Regular Federal Share Funds		135,727,300		XXXXXXXXXXXX					135,727,300
C. State Funds		135,727,300		XXXXXXXXXXXX					135,727,300
D. Special Federal Project Funds				XXXXXXXXXXXX					
E. Sub-Total (Sum of lines b, c and d)		271,454,600							271,454,600
F. Part II Services		229,584,900					472,602,300		702,187,200
G. Regular Federal Share Funds		114,792,500					278,835,400		393,627,900
H. State Funds		114,792,400					193,766,900		308,559,300
J. Special Federal Project Funds									
K. Sub-Total (Sum of lines g, h and j)		229,584,900					472,602,300		702,187,200
L. Part III Training		3,794,100							3,794,100
M. Regular Federal Share Funds		1,897,050							1,897,050
N. State Funds		1,897,050							1,897,050
O. Special Federal Project Funds									
P. Sub-Total (Sum of lines m, n and o)		3,794,100							3,794,100
Q. Part IV Administrative Costs LOCAL & STATE		100,517,000						4,379,300	104,896,300
R. Regular Federal Share Funds		50,259,000						2,583,800	52,842,800
S. State Funds		50,258,000						1,795,500	52,053,500
T. Special Federal Project Funds									
U. Sub-Total (Sum of lines r, s and t)		100,517,000						4,379,300	104,896,300
V. Grant Total (Sum of lines c, k, p and u)		605,350,600						476,981,600	**
W. Total Regular Federal Share Funds (Sum of lines b, g, m and r)		302,675,850					281,419,200		584,095,050
X. Total State Funds (Sum of lines c, h, n and s)		302,674,750					195,562,400		498,237,150
Y. Total Special Federal Project Funds (Sum of lines d, j, o and t)									
Z. Number of New Recipients Added by Demonstration Project							**Total for ce	1 Y.10 =	
AA. Number of Recipients with Current Grants/ Services Increased by Demonstration Project								\$1,082,132,200	

WISCONSIN WORKS EXPENDITURES

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
SUBSIDIZED EMPLOYMENT	\$0	\$228,265,700	\$181,286,400	\$134,258,400	\$114,673,900	\$107,617,700
Wage Subsidies	\$0	\$237,325,200	\$188,514,300	\$139,633,800	\$119,263,100	\$111,824,400
Less Sanctions	\$0	(\$9,059,500)	(\$7,227,900)	(\$5,375,400)	(\$4,589,200)	(\$4,306,700)
W-2 HEALTH CARE	\$0	\$447,000,000	\$479,800,000	\$497,400,000	\$511,000,000	\$524,000,000
(LFB w/adjustments)						
W2 Health Care	\$0	\$397,300,000	\$411,500,000	\$415,200,000	\$422,800,000	\$433,400,000
Coverage of Pregnant Women, Child	\$0	\$46,700,000	\$65,400,000	\$79,200,000	\$85,100,000	\$87,600,000
Spend down & Presumptive Elig.	\$0	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
CHILD CARE	\$0	\$146,844,600	\$164,889,600	\$176,246,300	\$185,753,500	\$194,038,500
(FROM CMACAMD3)						
CHILDREN OF SSI PARENTS	\$0	\$24,457,945	\$24,457,945	\$24,457,945	\$24,457,945	\$24,457,945
Benefit Costs	\$0	\$11,088,000	\$11,088,000	\$11,088,000	\$11,088,000	\$11,088,000
Medical Costs	\$0	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945
DVR ASSESMENTS	\$0	\$12,655,000	\$3,316,600	\$2,708,952	\$2,656,921	\$2,670,724
CHILD SUPPORT	\$0	\$54,231,600	\$51,680,900	\$46,491,200	\$45,085,100	\$46,624,800
W-2 OFFICE COSTS	\$0	\$133,283,600	\$116,588,200	\$98,416,200	\$86,908,800	\$84,672,700
AFDC	\$0	\$119,947,800	\$101,963,700	\$80,998,600	\$70,839,800	\$68,022,400
Food Stamps	\$0	\$8,956,500	\$9,822,000	\$10,354,000	\$10,792,200	\$11,182,600
MA	\$0	\$4,379,300	\$4,802,500	\$5,062,600	\$5,276,800	\$5,467,700
EMPLOYMENT SKILLS ADVANCEMENT		\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
BRIDGE LOANS	\$0	\$7,913,100	\$1,543,200	\$999,100	\$1,724,100	\$1,735,900
NLRR/TEEN PARENTS/KINSHIP. CA	\$0	\$38,933,300	\$41,210,800	\$36,025,800	\$33,331,300	\$33,331,300
Foster Care NLRR Payments	\$0	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
Kinship Care Payments	\$0	\$25,500,900	\$28,929,900	\$22,771,300	\$21,624,700	\$21,624,700
Medical Costs	\$0	\$12,232,400	\$13,080,900	\$11,054,500	\$10,506,600	\$10,506,600
CHILDREN FIRST	\$0	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200
EMERGENCY ASSISTANCE	\$0	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000
BURIAL COSTS	\$0	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000
STATE ADMINISTRATION	\$25,423,500	\$18,795,300	\$18,603,500	\$18,507,500	\$18,507,500	\$18,507,500
Systems Modifications	\$8,500,000	\$0	\$0	\$0	\$0	\$0
Transition Costs	15,129,400	\$0	\$0	\$0	\$0	\$0
State Staff/Training	3,794,100	\$18,795,300	\$18,603,500	\$18,507,500	\$18,507,500	\$18,507,500
TOTAL COSTS (excl. Fed FS Admin.)	\$25,423,500	\$1,112,339,845	\$1,082,551,345	\$1,031,072,697	\$1,022,223,066	\$1,035,390,669

SUMMARY OF W-2 COSTS

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	
Benefits	\$271,454,600	\$225,904,300	\$174,717,700	\$153,986,600	\$146,930,400	\$972,993,600.00
Wages	228265700	181286400	134258400	114673900	107617700	0
Child of SSI	11088000	11088000	11088000	11088000	11088000	0
Kinship	\$25,500,900	\$26,929,900	\$22,771,300	\$21,624,700	\$21,624,700	\$0
Emerg Asst	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$0
Burial Costs	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$0
						\$0
Services	\$229,584,500	\$221,017,568	\$219,066,067	\$223,159,985	\$229,768,782	\$1,122,596,903.02
Ancillary	\$60,349,472	\$49,533,113	\$37,124,136	\$30,986,463	\$29,284,098	\$0
Child Care	\$146,844,600	\$164,869,600	\$176,246,300	\$185,753,500	\$194,038,500	\$0
Employment Skills	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$0
Bridge Loans	\$7,419,199	\$982,055	\$670,479	\$1,446,901	\$1,459,260	\$0
DVR Assessments	\$12,655,000	\$3,316,600	\$2,708,952	\$2,656,921	\$2,670,724	\$0
Children First	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200	\$1,316,200	\$0
Administration	\$104,310,500	\$71,595,232	\$62,710,585	\$58,638,036	\$57,522,442	\$354,776,794.55
Office Costs	\$59,597,828	\$52,430,587	\$43,874,464	\$39,853,337	\$38,738,302	\$0
State Admin	\$18,795,300	\$18,603,500	\$18,507,500	\$18,507,500	\$18,507,500	\$0
Transition/Start-up	\$21,629,400	\$0	\$0	\$0	\$0	\$0
Bridge Loans	\$493,901	\$561,145	\$328,621	\$277,199	\$276,640	\$0
Training	\$3,794,100					
Medical Assistance	\$472,602,300	\$506,350,845	\$521,824,445	\$534,876,545	\$547,876,545	\$2,583,530,678
W-2 Health Care	\$447,000,000	\$479,900,000	\$497,400,000	\$511,000,000	\$524,000,000	\$0
Child of SSI	\$13,369,900	\$13,369,945	\$13,369,945	\$13,369,945	\$13,369,945	\$0
NLRR/Teen Parent	\$12,232,400	\$13,080,900	\$11,054,500	\$10,506,600	\$10,506,600	\$0
Admin for Med Asst	\$4,379,300	\$4,802,500	\$5,062,600	\$5,276,800	\$5,467,700	\$24,988,900
SUB-TOTAL	\$1,082,331,200	\$1,029,670,445	\$983,381,397	\$975,937,966	\$987,565,869	\$5,058,886,876
Foster Care	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$0
Child Support	\$54,231,600	\$51,680,900	\$46,491,200	\$45,085,100	\$46,624,800	\$244,113,600.00
TOTAL	\$1,137,762,800	\$1,082,551,345	\$1,031,072,597	\$1,022,223,066	\$1,035,390,669	\$5,303,000,476

W-2 ASSUMPTIONS

Original Caseload

Total AFDC Caseload on 7.1.97	64,200	
Less SSI Population	(5,400)	
Less NLRR	(5,600)	
Subtotal	53,200	Percentage of caseload that "fall off" due to 1) child aged out; 2) recipient initiative; or 3) moved: 5.00%

Total W-2 Caseload		53,200
Transitions	25.00%	13,300
CSJs	50.00%	26,600
Trial	10.00%	5,320
Unsubsidized	15.00%	7,980

Movement from Transitions into:			
CSJs	55.00%	29,260	Ave. Length of Stay (Months): 18
Trial	30.00%	15,960	Attrition Rate (1/36) 2.78%
Unsubsidized	10.00%	5,320	Maximum Stay (Months): 36
Other	5.00%		
Movement from CSJ into:			
Trans	5.00%		Ave. Length of Stay (Months): 12
Trial	30.00%		Attrition Rate (1/24) 4.17%
Unsubsidized	60.00%		Maximum Stay (Months): 24
Other	5.00%		
Movement from Trial into:			
Trans	0.00%		Ave. Length of Stay (Months): 9
CSJ	5.00%		Attrition Rate (1/18) 5.56%
Unsubsidized	90.00%		Maximum Stay (Months): 18
Other	5.00%		
Movement from Unsubsidized into:			
Transitions	0.00%		Ave. Length of Stay (Months): 48
CSJs	0.00%		Attrition Rate (1/96) 1.04%
Trial	0.00%		Maximum Stay (Months): 96
Self Sufficiency	95.00%		
Other	5.00%		

New Cases

Total W-2 Caseload		2,300
Transitions	10.00%	230
CSJs	35.00%	805
Trial	15.00%	345
Unsubsidized	40.00%	920

Movement from Transitions into:			
CSJs	55.00%		Ave. Length of Stay (Months): 18
Trial	30.00%		Attrition Rate (1/36) 2.78%
Unsubsidized	10.00%		Maximum Stay (Months): 36
Other	5.00%		
Movement from CSJ into:			
Transitions	5.00%		Ave. Length of Stay (Months): 12
Trial	30.00%		Attrition Rate (1/24) 4.17%
Unsubsidized	60.00%		Maximum Stay (Months): 24
Other	5.00%		
Movement from Trial into:			
Transitions	0.00%		Ave. Length of Stay (Months): 9
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Movement from Unsubsidized into:			
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CSJs	0.00%		Attrition Rate (1/96) 1.04%
Trial	0.00%		Maximum Stay (Months): 96
Self Sufficiency	95.00%		
Other	5.00%		

<u>Health Care Inflation Rate (annual)</u>		<u>Number of AFDC Cases with no grant yet MA</u>
0.00%		53,993

<u>Child Care Inflation Rate (annual)</u>		<u>Average Health Care Cost per month</u>
0.00%		\$399

<u>Average Family Size</u>	3.076
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TOTAL ESTIMATED FLOW OF CASES THROUGH W-2

		Trans.	CSJ	TRIAL	UNSUB	TOTAL	LESS UNSUB	Annual Total (Less Unsub.)	Monthly Average
FY 1998	1 July	13,216	26,555	5,828	9,785	55,384	45,599		
	2 August	13,113	26,410	6,302	11,629	57,454	45,825		
	3 Sept.	13,010	26,217	6,732	13,511	59,469	45,958		
	4 Oct.	12,906	25,976	7,129	15,432	61,444	46,012		
	5 Novem.	12,802	25,689	7,495	17,392	63,379	45,986		
	6 Decem.	12,698	25,355	7,828	19,391	65,271	45,880		
	7 Jan.	12,587	24,977	8,129	21,429	67,122	45,693		
	8 Febr.	12,469	24,557	8,398	23,506	68,930	45,424		
	9 March	12,344	24,094	8,634	25,623	70,695	45,071		
	10 April	12,210	23,589	8,836	27,780	72,415	44,635		
	11 May	12,069	23,043	9,003	29,976	74,091	44,115		
	12 June	11,919	22,454	9,136	32,212	75,721	43,509	543,709	45,309
FY 1999	13 July	11,762	21,824	9,232	34,488	77,306	42,818		
	14 August	11,596	21,152	9,291	36,803	78,843	42,040		
	15 Sept.	11,423	20,438	9,313	39,159	80,333	41,174		
	16 Oct.	11,241	19,683	9,296	41,554	81,775	40,221		
	17 Novem.	11,052	18,886	9,240	43,989	83,168	39,178		
	18 Decem.	10,854	18,048	9,144	46,465	84,511	38,046		
	19 Jany.	10,649	17,168	9,273	48,980	86,069	37,089		
	20 Febr.	10,435	16,246	9,433	51,230	87,344	36,114		
	21 March	10,213	15,284	9,593	53,481	88,571	35,090		
	22 April	9,984	14,280	9,754	55,732	89,749	34,017		
	23 May	9,746	13,234	9,916	57,983	90,879	32,896		
	24 June	9,500	12,148	10,077	60,233	91,959	31,726	450,409	37,534
FY 2000	25 July	9,247	12,073	10,240	62,483	94,043	31,560		
	26 August	8,929	12,055	10,057	64,058	95,099	31,041		
	27 Sept.	8,604	12,049	9,881	65,603	96,137	30,535		
	28 Oct.	8,271	12,050	9,713	67,118	97,151	30,033		
	29 Novem.	7,930	12,055	9,553	68,603	98,141	29,539		
	30 Decem.	7,581	12,066	9,403	70,057	99,107	29,050		
	31 Jany.	7,224	12,082	9,263	71,480	100,049	28,569		
	32 Febr.	6,861	12,101	9,133	72,872	100,967	28,095		
	33 March	6,492	12,123	9,014	74,233	101,862	27,629		
	34 April	6,116	12,149	8,908	75,560	102,733	27,172		
	35 May	5,734	12,177	8,814	76,855	103,580	26,725		
	36 June	5,345	12,208	8,733	78,117	104,404	26,287	346,234	28,853
FY 2001	37 July	5,320	12,038	8,556	79,309	105,223	25,914		
	38 August	5,289	11,879	8,395	80,458	106,021	25,562		
	39 Sept.	5,251	11,731	8,247	81,558	106,786	25,228		
	40 Oct.	5,243	11,593	8,117	82,614	107,567	24,953		
	41 Novem.	5,247	11,464	8,007	83,625	108,343	24,718		
	42 Decem.	5,244	11,346	7,916	84,591	109,098	24,506		
	43 Jany.	5,245	11,234	7,844	85,511	109,833	24,322		
	44 Febr.	5,245	11,126	7,792	86,384	110,547	24,163		
	45 March	5,246	11,024	7,741	87,228	111,239	24,011		
	46 April	5,247	10,927	7,692	88,043	111,909	23,866		
	47 May	5,248	10,835	7,645	88,829	112,558	23,728		
	48 June	5,250	10,749	7,601	89,585	113,184	23,599	294,571	24,548
FY 2002	49 July	5,251	10,667	7,559	90,311	113,790	23,478		
	50 August	5,253	10,591	7,521	91,007	114,373	23,366		
	51 Sept.	5,255	10,520	7,487	91,673	114,936	23,263		
	52 Oct.	5,257	10,455	7,457	92,308	115,477	23,169		
	53 Novem.	5,259	10,395	7,431	92,911	115,997	23,086		
	54 Decem.	5,262	10,342	7,410	93,483	116,496	23,014		
	55 Jany.	5,264	10,295	7,394	94,022	116,975	22,953		
	56 Febr.	5,267	10,254	7,376	94,535	117,433	22,897		
	57 March	5,269	10,220	7,358	95,022	117,870	22,848		
	58 April	5,272	10,193	7,340	95,482	118,286	22,804		
	59 May	5,275	10,172	7,320	95,915	118,682	22,767		
	60 June	5,278	10,160	7,300	96,321	119,058	22,737	276,382	23,032
FY 2003	61 July	5,281	10,154	7,279	96,700	119,413	22,713		
	62 August	5,284	10,147	7,262	97,054	119,748	22,693		
	63 Sept.	5,287	10,140	7,250	97,385	120,062	22,677		

64 Oct.	5,290	10,133	7,242	97,691	120,355	22,664
65 Novem.	5,293	10,125	7,237	97,974	120,628	22,654
66 Decem.	5,294	10,117	7,236	98,233	120,880	22,647
67 Jany.	5,295	10,111	7,239	98,469	121,114	22,645
68 Febr.	5,297	10,105	7,245	98,682	121,328	22,647
69 March	5,298	10,100	7,254	98,872	121,524	22,652
70 April	5,299	10,096	7,265	99,040	121,701	22,661
71 May	5,301	10,093	7,280	99,186	121,859	22,673
72 June	5,302	10,090	7,297	99,310	121,999	22,688

272,016 22,668

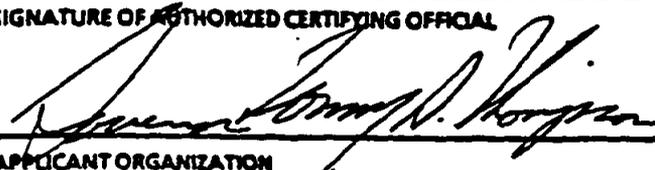
ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 790), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Governor
APPLICANT ORGANIZATION WI Department of Health and Social Services	DATE SUBMITTED May 28, 1996

U.S. Department of Health and Human Services
Certification Regarding
Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and,
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

U.S. Department of Health and Human Services
Certification Regarding
Drug-Free Workplace Requirements
Grantees Who Are Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

**CERTIFICATION REGARDING ANTI-LOBBYING PROVISIONS
(DEC 89) (31 USC SEC 1352)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transition was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Signature

May 28, 1996

Date

Governor

Title

WISCONSIN



W-2

WORKS

CHAPTER XIII.

WISCONSIN STATE LEGISLATION

Public Input

The Wisconsin Works program was developed following a year and a half of discussions with county and tribal human and social services directors, economic support specialists, JOBS program workers, welfare recipients, advocates, educators, employers, and organized labor. During the course of drafting the legislation, further discussions were held with legislators. Prior to the bill creating the W-2 program being introduced in the Wisconsin Assembly on October 2, 1995, and the Wisconsin Senate on October 3, 1995, the Legislature held a public hearing in Milwaukee, Wisconsin's largest city and a city located in the county which has the majority of Wisconsin's AFDC recipients.

Following introduction of the W-2 legislation, further public hearings were held around the state including Appleton, Madison, and LaCrosse. Full public debate of this proposal was accomplished through these public hearings and legislative committee hearings allowing all those who favored or opposed the bill to be heard. Written input was also encouraged and received. Only after a lengthy and public process of examination was the final legislative approval given and the bill sent to the Governor for signature.

Legislation

Enclosed in this section is *1995 Wisconsin Act 289* which was enacted on April 25, 1996. The Governor's veto message is included.

Timeline for Enactment of Wisconsin State Legislation¹

1995

July 31 to August 15	DES staff work with LRB and others to develop statutory language
August 15 to September 25	Finalize statutory language OPB finalize fiscal note
September 19	Legislature begins fall floor period
September 25	Executive Committee reviews and approves statutory language
September 29	Legislative Joint Committee public hearing on W-2 in Milwaukee (Senate Health, Human Services and Aging Committee chaired by Senator Buettner and Assembly Welfare Reform Committee chaired by Representative Gard)
October 2	AB 591 introduced in Assembly by Representative Gard with bipartisan support (50 representatives and 13 senators as co-sponsors)
October 3	SB 359 introduced in Senate by Senate Buettner with bipartisan support
October 6	Assembly Welfare Reform Committee public hearing on W-2 in Appleton
October 9	Assembly Welfare Reform Committee public hearing on W-2 in Madison
October 11	Senate Health, Human Services and Aging Committee public hearing on W-2 in Madison

¹1993 Wisconsin Act 12 included a provision directing the Department to submit by the end of 1995 a proposal for the replacement by December 31, 1998, of the AFDC program.

October 25 Senate Health, Human Services and Aging Committee
public hearing on W-2 in LaCrosse

November 2 Assembly Welfare Reform Committee working meeting to
review proposed changes to AB 591

November 28 Assembly Welfare Reform Committee exec on W-2

1996

January 4 Joint Finance Committee public hearing on W-2 in
Madison

February 29 and March 1 Joint Finance Committee exec on W-2

March 7 Floor debate in Assembly
Bill passed/messaged to Senate

March 13 and 14 Floor debate in Senate
Bill passed and sent to Governor for signature

April 25 Governor signs bill; Wisconsin Works legislation enacted
as 1995 Wisconsin Act 289 with effective date of May 10,
1996; W-2 provisions effective as of July 1, 1996



TOMMY G. THOMPSON

Governor
State of Wisconsin

April 25, 1996

TO THE HONORABLE MEMBERS OF THE ASSEMBLY:

I have approved Assembly Bill 591 as 1995 Act 289 and have deposited it in the Office of the Secretary of State. I have exercised the partial veto in a number of areas.

I am very pleased to sign the country's most significant piece of welfare reform legislation. Through a series of waivers and pilot programs, beginning with Learnfare in 1987, we have established the basic premise that for those who can work, only work should pay, and that everybody should work to the extent of their abilities. Welfare should be used as a temporary last resort, and should provide incentives to promote individuals' efforts to attain self sufficiency. It should provide only as much service as an individual asks for and its fairness should be measured by comparison to working families who are supporting their families without public assistance. This set of principles has been one of the keystones of this administration. It culminates with the signing of this bill.

Several years ago, as a result of those waivers and pilot programs, we had established a foundation which resulted in significant consensus between the executive and legislative branches on the need to move forward to meaningful, comprehensive restructuring of the welfare system. It remained only to determine the design of that reform. AB 591, Wisconsin Works or W-2, is that design. It is the result of many months of concentrated work by both of these branches of government, and I have every confidence that it will change and improve both the lives of those who must rely on some support from their government and the communities in which they live.

Working together to implement the provisions of AB 591, we can change our state forever to one where those who are able to work do so, and where those who are not are given the incentives and supports they need to enable them to do so. We will be a state where all citizens are educated and trained to work and expected to do so, where communities work together to provide temporary help to those who need it, and where the government of the state acts to enable persons to work, instead of simply providing cash to individuals who are not working.

WISCONSIN WORKS PROVISIONS

The Wisconsin Works (W-2) initiative that I proposed in September 1995 is enacted in this legislation. It responds to the directive in 1993 Wisconsin Act 99 to replace the current welfare system by January 1, 1999. That replacement system, as embodied in this legislation, will have the following characteristics for clients:

- For those who cannot immediately enter the workforce, provide 3 levels of employment support:
 - Trial jobs, for which a subsidy is provided to employers for a limited time, to meet the needs of those without a work history;
 - Community Service jobs, for those who need to practice the work habits and skills necessary to be hired by a private business; and
 - W-2 Transition jobs, for those not yet able to perform self-sustaining work, where they can participate in activities consistent with their abilities.

- Provide health care, delivered through managed care providers, to all families with low incomes and low assets who do not have coverage provided by their employers. All families will pay a portion of their health care premium based on income.
- Provide child care for all eligible families with low income and low assets who need it to work. All families will pay a portion of their child care costs based on income.
- Provide educational or training opportunities for those who are in Community Service or W-2 Transition employment, to enable them to increase their earning potential.
- Provide other services that a client needs such as transportation, job access loans and the services of a financial and employment planner for every client who needs assistance in developing a plan for self-sufficiency.
- Assure that child support payments go to whom they belong - working custodial parents and their children.

To underline that W-2 is intended to help people become self-sufficient, not substitute for self-sufficiency, participation in the employment components will be limited to 60 months overall, with some exceptions, and will be limited to shorter periods for each component. To insure that clients receive the assistance they need, W-2 agency contracts will be performance-based, so funds will be channeled to the agencies that are the most successful in placing and keeping people in private sector employment.

Not only does this legislation provide supports to people differently than in the past, it also provides those supports through a different delivery system. The new system is intended to strengthen the ties between people and their communities by creating more support for the needed services at the local level, and to integrate employment programs at the state level. To achieve this the W-2 legislation includes the creation of:

- Local Community Steering Committees, made of up community leaders to oversee the creation of job opportunities; and
- Children's Services Networks, to provide a link from families to a comprehensive array of services such as food and clothing centers, transportation and housing.

In 1995 Wisconsin Act 27, the Department of Industry, Labor and Human Relations (DILHR), the department responsible for other state-level job programs was given responsibility for the current welfare program and, therefore, for its replacement. DILHR, to be renamed the Department of Industry, Labor and Job Development (DILJD), will integrate the W-2 program into its Partnership for Full Employment system. As a result of these programs coming together, W-2 will be able to offer its clients the advantages of "one stop shopping" in areas where the W-2 agency and the Job Center are co-located. It will therefore make the established network between employers and job seekers more accessible to W-2 clients.

W-2 means the end of the automatic welfare check. This comprehensive replacement will demand more of participants, but in the long run it will provide independence and a future. The process of developing this legislation has involved citizens and professionals all over the state. Without that help this dramatic break with the past could not have occurred.

Partial Vetoes

We now face the equally difficult task of implementing W-2. While I am very pleased that AB 591 passed with bipartisan support, I am using the partial veto in a number of areas. I have done so primarily to remove some of the more onerous and unnecessary rule making requirements or to provide increased flexibility for the operation of the program. Both of these are necessary to ensure its success.

W-2 Implementation Date

Section 84 [as it relates to the W-2 program implementation date] specifies that if a federal waiver is granted or legislation passed, DILJD shall implement W-2 statewide no sooner than July 1, 1996 and no later than September 1, 1997. I am exercising the partial veto in this section to remove the specific date in September by which W-2 must be implemented statewide because the department needs one additional implementation month. The original timetable was constructed last summer and assumed passage by fall or early winter.

State as a Provider of Last Resort

Section 85 [as it relates to the state as the provider of last resort] specifies that if no acceptable provider in a geographical area is selected under the competitive or noncompetitive processes outlined in the bill, DILJD shall administer the W-2 program directly for that geographical area. I am exercising the partial veto in this section to strike the word "directly" because DILJD needs more flexibility in this situation to either subcontract the administration of the W-2 program or operate the program itself.

W-2 Contract Requirements

Section 85 [as it relates to requirements for the W-2 agency contracts] requires the department to award the W-2 contracts at least six months before statewide implementation. It also specifies that the W-2 contract may only be terminated by the mutual consent of both parties. I am exercising the partial veto in this section to remove both the six month requirement and the restriction on when a W-2 contract may be terminated because the department will need additional flexibility in the implementation of W-2, which will be a challenging and difficult task. The department may need to adjust timeframes as statewide implementation draws closer. I do recognize, however, that the W-2 agencies must be given sufficient time to prepare, especially in those geographical areas where the county has elected to not participate in W-2. I am, therefore, directing the department to come as close as possible to the six month timeframe, reporting to me if this goal is not achievable. In addition, I am partially vetoing the language regarding the need to have the mutual consent of both parties to terminate a contract to allow the department to terminate the contract of a non-performer.

Rulemaking

Sections 85 [as it relates to rulemaking for W-2 contract components], 88, 94 [as it relates to rulemaking regarding refusal to pay certain child care providers], 95 and 99g all require DILJD to promulgate rules for certain W-2 program components. I am exercising the partial veto in these sections to remove the rulemaking requirement. First, I do not believe that it was necessary to put this much programmatic and operational detail either into the statutes or to require the development of administrative rules on almost every component in W-2. The legislature understandably wants to maintain oversight over this program because it is new and radically different than the current welfare system. However, in order for the department to be able to successfully implement W-2 in the timeframe outlined in AB591, it needs a certain amount of flexibility. The department must focus on the development of federal waivers, the W-2 request for proposals and other critical steps in the transition from AFDC to W-2. Having to promulgate rules for so many parts of W-2 will only consume valuable staff resources that are needed elsewhere. The Legislature will be very involved in the W-2 implementation through upcoming s. 13.10 requests, the 1997-99 biennial budget and, more than likely, follow-up legislation. It is not prudent to impede the department's ability to implement W-2 by requiring it to promulgate rules on matters that can be done either in the W-2 contracts or as part of the administrative handbook and policy clarification memos to the W-2 agencies.

Requirements on Employers

Section 85 [as it relates to requirements for written contracts with trial job employer] specifies that the W-2 agency must enter into a written contract with each trial job employer. The contract terms shall include the hourly wage at which the trial job participant is to be paid, which may not be less than minimum wage. I am exercising the partial veto in this section because it is not necessary to include the requirement to have a written contract in the statutes. Without statutory language directing this, written contracts are already used in the on-the-job (OJT) training programs and will also be used in the W-2 program.

Extensions of the 60 Month Lifetime Limit

Section 86 specifies that the W-2 agency may extend the 60 month overall time limit on participation, if warranted by unusual circumstances, only in 12-month increments. In addition, DILJD must approve each extension. I believe that the W-2 agencies should work intensively with each client who needs to receive an extension of the 60 month time limit. To be able to provide only as much service as needed, their cases should be extended only as needed, not in 12-month increments. These extensions should be determined by the W-2 agency, in accordance with rules promulgated by the department, as the W-2 agencies are the most familiar with the client's case history. I do not believe it is necessary that the department review each and every case, but it will retain the right to review any case in any geographical area. I am therefore exercising my partial veto of this section to remove the specific 12-month increment and the requirement that the department review each extension of the 60 month time limit.

Exemption from Work Requirements for Mothers with Young Children

Section 89 specifies the benefit levels for each of the W-2 employment positions. It also specifies that an eligible custodial parent of a child who is 12 weeks or younger is exempt from the work requirement and may receive a monthly grant of \$555. This section further specifies that this time period is not counted towards the 60 month time limit in certain circumstances. If the child is born not more than 10 months after the date that the participant first became eligible for either Aid to Families with Dependent Children (AFDC) or W-2, the 60 month "clock" stops for up to 12 weeks. For all other cases except in two situations, the clock does not stop. These two situations are 1) if the baby is the result of sexual assault or 2) if the mother has not participated in AFDC or a W-2 employment position for at least six months and the child was born during that period. I do not believe it is appropriate to stop the clock in the second circumstance. I am therefore exercising the partial veto in this section in order to stop the 60 month clock only when the child was born less than 10 months after the person was first determined eligible for AFDC or a W-2 employment position or if the child was conceived as a result of sexual assault. I believe that this eliminates any incentive for a woman to have an additional child while participating in AFDC or W-2, and at the same time does not punish people who are just coming on to the system or who were victims of sexual assault.

Section 89 also uses the word "tolling" to describe the counting of time under the 60 month time limit. Technically, tolling is defined to mean "to suspend". I am therefore exercising the partial veto because the use of the word "tolling" is incorrect. The partial veto in this section will make the bill technically correct and consistent with legislative intent.

Noncustodial Parents and Employment Positions

Section 96 specifies what assistance a noncustodial parent is eligible to receive under W-2. The W-2 agency may provide job search assistance and case management designed to enable an eligible noncustodial parent to obtain and retain work. In addition, AB591 would allow a noncustodial parent to participate in an employment position if he or she and the custodial parent meet the financial eligibility criteria, if the custodial parent is not a W-2 employment position participant and if the noncustodial parent is subject to a child support order. I am exercising the partial veto in this section to restrict access to W-2 employment positions to custodial parents. Expanding access to W-2 employment positions for noncustodial parents will increase the cost of W-2. It will also potentially conflict with the Children First program because under these provisions a noncustodial parent only has to be subject to a child support order, not necessarily making full and timely payments. A person could be in arrears on their child support order and access a paid employment position under W-2 rather than participating in unpaid community work experience as required under Children First.

Eligibility Criteria

Section 86 [as it relates to the participation of more than one individual of a Wisconsin Works group in an employment position] provides that an individual is not eligible for a Wisconsin Works employment position if another individual in the same Wisconsin Works group is participating in an employment position at the time of the determination of eligibility. I am exercising the partial veto in this section

because the policy on this issue needs to be very clear. It is our intent that only one adult in a W-2 group may participate in a trial job, community service job or W-2 transition job at any given time. The partial veto removes the reference to the time of eligibility determination. I am, at the same time, directing the department to review this policy and to determine if it creates a disincentive to marriage and to make recommendations, if it is found to do so.

Child Care Eligibility and Co-payment Schedules

Sections 56, 56c, 56d, 56f, 56g, 94 [as it relates to the child care co-payment schedule] and 279 [as it relates to child care eligibility and co-payment schedules] place the new child care eligibility and co-payment schedules in the statutes. The Legislature maintained an overall eligibility for child care assistance of 165% of the federal poverty line, but made the co-payment schedule more generous than originally proposed. In addition, rather than being effective upon passage of the bill, the new co-payment schedule and income limits for current low income child care recipients would be phased in during FY97. I support the changes made by the Legislature in this area. Having access to affordable child care is a critical element for people leaving the welfare system. The Legislature recognized this and reallocated funds from other W-2 components in response. In addition, while the phase-in of the new eligibility and co-payment schedule for the current low income child care recipients will be administratively complex, I understand and support the idea that these changes should be made gradually in order to allow people to make other satisfactory arrangements. While I support these modifications, I do not believe that it is necessary or desirable to have this level of detail specifically laid out in the statutes. Historically, co-payment schedules have not been included in the statutes and I see no reason to change that precedent. In addition, the 14 day passive review process that was established to allow the Joint Committee on Finance (JCF) to unilaterally modify statutes is not an appropriate role for this committee. I am therefore vetoing these provisions and I am directing the Department of Health and Family Services (DHFS) and DILJD to administratively establish the same child care co-payment schedules and the same phase-in process for current low income child care recipients as in AB591.

Regulation of Child Care Providers

Sections 27 and 74 relate to the regulation of child care providers. Section 27 directs DHFS to maintain the current levels of child care regulatory standards for licensed group centers, licensed family day care, Level I and Level II certified providers. Section 74 places current administrative rules regarding training requirements for Level I certified family day care providers in the statutes. To date, this department has effectively regulated child care providers either through administrative rules and/or guidelines. I am vetoing section 27 and exercising the partial veto in section 74 to remove the specific training requirement because it is not necessary to have these provisions specifically included in the statutes.

Health Care Co-payment Schedules

Section 93 [as it relates to the health care co-payment schedule] establishes in the statutes the monthly premium schedule that an individual who qualifies for the Wisconsin Works health plan will pay. As with child care, having access to affordable health care is a critical element for people leaving the welfare system. AB591 assumes that everyone should contribute to the cost of their health care. The co-payment or cost-sharing premium schedule included in AB591 is very reasonable. Again, however, I do not believe that it is necessary or desirable to have this level of specificity laid out in the statutes. Historically, co-payment schedules have not been included in the statutes and I see no reason to change that precedent. In addition, the 14 day passive review process that was established to allow JCF to unilaterally modify statutes is not an appropriate role for this committee. I am therefore vetoing these provisions and am directing DHFS to administratively establish the same health care premium cost-sharing schedule as in AB591.

Health Care Eligibility Determinations

Section 93 [as it relates to eligibility determination] specifies that the W-2 agency shall make the eligibility determination within two working days and that DHFS or the provider shall issue the health plan membership card to an individual within three working days. I am exercising the partial veto in this section because these timelines are too prescriptive. It is certainly this administration's intent that a person's

application and membership card be processed as quickly as possible. However, these rigid timelines do not allow flexibility to address unforeseen circumstance that could cause a delay. In addition, these issues can be addressed through contracting.

Asset Test for Pregnant Women and Children

Section 93 [as it relates to the asset criteria] specifies the income and asset criteria that a Wisconsin Works group must meet in order to be eligible for the W-2 health care plan. AB591 applies a different asset test to pregnant women and children up to age 12 than to the rest of the W-2 health care plan participants. For this group of people, the W-2 agencies shall exclude all of the resources specified under 42 USC 1382b (a), which is the section of the federal code that enumerates the asset test for the federal Supplemental Security Income (SSI) program. However, the motion made by JCF was to model the asset test after the spousal impoverishment asset test, which is broader than SSI. Even if the spousal impoverishment asset test had been referenced, I believe that it would be confusing and administratively difficult to apply two different asset tests to, in some cases, the same family. I am exercising the partial veto to apply the same asset test to all W-2 health care plan participants.

Health Care Spenddown

Section 93 [as it relates to medically needy individuals] specifies that nonpregnant adults and children ages 12 to 18 years old, who meet the other requirements of the W-2 health care plan, but have income in excess of 165% of the federal poverty level can qualify for the W-2 health care plan if they spend down to 165% of poverty. This group would remain subject to the employer-offered health care rules in AB591. In addition, this section specifies that pregnant women and children under 6 years old with excess income may also spend down to 165% of poverty, but children ages 6 to 12 would have to spend down to 100% of poverty. Neither of these two groups would be subject to the employer-offered health care rules.

Under current law, nonpregnant adults are not eligible under the spenddown program. Children ages 6 to 18 have to spend down to 133.33% of the AFDC grant size, which for a family of three is roughly 65% of poverty. Under the W-2 bill, as it was originally submitted, spenddown was eliminated for all groups. While I understand the Legislature's desire to extend a health care safety net to as many people as possible, especially pregnant women and children, the provisions of AB591 will increase the costs of the W-2 program and go beyond current law eligibility. I am therefore exercising a partial veto of this section to limit spenddown to pregnant women and children up to 12.

Learnfare Sanction Amount

Section 143m specifies that a dependent child in a Wisconsin work group who fails to meet the school attendance requirement under the Learnfare program is subject to a monthly sanction of \$50. The sanction amount for the current Learnfare program is determined by the department by rule. I am exercising the partial veto of this section in order to remove the \$50 from the statutes because I believe that the department should have additional flexibility in the Learnfare program. I am directing the department to continue to determine the amount of the monthly sanction by rule.

Transportation

Section 275 (4m) (b) requires DILJD to identify significant local and regional employment opportunities and identify the residential locations of current and potential W-2 participants. In addition, no later than September 30, 1996, DILJD shall submit, with assistance from the Department of Transportation (DOT), a report to JCF that recommends options that the W-2 agencies could take to facilitate the transportation of W-2 participants to the employment opportunities. The report may not recommend options that would have an adverse impact on existing public transportation systems. I am exercising the partial veto in this section to remove the date that the report must be submitted and to remove the restriction on what options the report can present. First, submitting the report by September 30, 1996 will make the information less current than it might otherwise be for W-2. I am therefore directing the two departments to submit the report no later than the date by which the department must implement W-2 statewide. Second, I do not believe that the report's options should be limited. It is possible that DOT, DILJD and local communities may develop creative transportation solutions that work outside of the public transportation network.

Advanced Earned Income Tax Credit

Sections 21b, 21c, 219m, 225b, 225d, 225f, 225h, 225j, 225L, 225n and 278 (3g) and (3h) provide a mechanism for an advanced payment of the state earned income tax credit (EITC), if both an employee and employer choose to participate. Employers could reduce the amount owed for individual income tax withholding or, if that is insufficient, from unemployment compensation contributions that are due. DILJD would be required to promptly transfer an equal amount from the general fund to the unemployment trust fund, if unemployment compensation is used. Based on the experience of the federal advanced EITC, where only 1% of the eligible population elect to receive it, participation in the voluntary state advanced payment option is likely to be very low. On the other hand, the cost to the state is likely to be high, both in terms of administration and payments to persons eventually found to be ineligible for the EITC. I am vetoing these provisions because benefits are likely to go to only a few EITC recipients, while the cost to the state is relatively high. I am directing the department to require, as part of the W-2 contract, the financial and employment planners of the W-2 agencies to help W-2 participants sign up for the federal advanced earned income tax credit program. If participation in the federal program increases significantly, I believe it would be appropriate to revisit the idea of an advanced payment program for the state EITC.

Retroactive Benefits for Decisions Overturned

Section 92 allows an individual to petition a W-2 agency for a review of certain actions. In addition, the department is required to review a W-2 decision regarding the determination of initial eligibility, if requested to do so by either the W-2 agency or the individual. If the department reverses a decision on initial eligibility the individual will receive benefits retroactive to the date of the original decision to deny benefits. The benefits would be computed as if the person had complied with all the requirements of the W-2 employment position into which they most likely would have been placed. I am exercising the partial veto of this section to eliminate the requirement that a person receive retroactive benefits if the department reverses the W-2 agency decision. It would be very difficult to implement this provision. Assessment of where the person most likely would have been placed is likely to lead to additional disputes between the applicant and the W-2 agency. For example, a person may have been able to be placed in an unsubsidized job. In this situation, it is unclear what retroactive benefit amount the person should receive. At the same time, it may be appropriate for a person to receive some level of compensation if the denial is overturned. I am directing the department to determine the best way to accomplish this goal and to report back to me and Legislature.

Report on Homelessness

Section 84 (as it relates to homelessness) requires DILJD to maintain a record detailing statistics on the homelessness of W-2 participants. I am exercising the partial veto of this section to remove this reporting requirement. I do not believe that this requirement was carefully constructed. It is unclear when or for how long this information should be collected. It will not shed any light on the W-2 program if this information is collected as people come into the W-2 office. If the intent was to see if the W-2 program had an impact on homelessness, it is more helpful to look at information from homeless shelters and transitional housing programs. Data are already being collected and compiled on the people using these services by the Department of Administration's Division on Housing. This Division will be able to compile information on the W-2 population as it is implemented.

Emergency Assistance Program

Section 83e continues the current AFDC Emergency Assistance program after W-2 is implemented with one modification. In addition, DILJD would be required to submit a report to the Legislature within 12 months of the implementation of W-2 on the interaction of the this program with the W-2 program. I am exercising the partial veto in this section to remove the reporting requirement as it is administratively burdensome to the department. I am, however, maintaining the emergency assistance program beyond the start of the W-2 program in order to continue to provide assistance to needy families with dependent children in the cases of fire, flood, natural disaster, homelessness or energy crisis.

Kinship Care and Health Insurance

Sections 70d and 70g specify that DHFS, in consultation with DILJD, shall determine whether a kinship care child is eligible for Medical Assistance (MA) only if no other health care insurance is available to the child. DHFS's intent was to make kinship care children immediately eligible for MA as they do for children in foster care. Just as in foster care, the parents of the kinship care child will still be required to initiate or continue health care insurance coverage for the child as part of their child support obligation. I am exercising the partial veto in these sections to ensure that the kinship care provider does not have to bear any costs related to the child's medical care and to ensure that there is no gap in the child's health care coverage if the parent is not complying with the child support order.

Food Stamp Employment and Training Requirements

Section 79 specifies that the maximum number of hours that an individual may be required to participate in the Food Stamp Employment and Training (FSET) program may not exceed the amount of food stamp benefits divided by the federal minimum wage or 40 hours per week, whichever is less. I am exercising a partial veto of this section to remove the language related to the minimum wage calculation. This language will limit the department's ability to require participation in FSET activities. For example, the maximum food stamp benefit for a single adult is \$119 per month. Using the minimum wage formula would result in this individual only being required to participate for seven hours per week. This minimal level of participation may not lead to self-sufficiency.

Criminal Background Checks

Sections 71d, 71m (as it relates to the petition process) and 75 require criminal background investigations of kinship care providers, certified day care providers, licensed day care providers and any employees or adult residents who live in the homes of the providers. Also specified is a list of the criminal convictions that an applicant cannot have on his or her record if applying for a kinship care payment or day care certification or license. An individual who is denied a kinship care payment, certification or licensure based on the criminal background investigation may petition DHSS for a review of that denial. I am exercising a partial veto of the provisions related to the petition process. The statutes are very clear and explicit regarding an applicant's conviction record. In addition, current statutes already provide due process rights to all licensure applicants under s. 48.715. Certification applicants may take a grievance to the county department under Chapter 62. In addition, I am directing the Secretary of DHFS to recommend the best method for individuals to make appeals for the entire kinship care program, not just for an appeal regarding the criminal background check. This is a larger issue that is not addressed in the W-2 legislation.

Section 71m (as it relates to employees of a day care center) also specifies that the department must complete a background investigation of each employee and prospective employee of a licensed day care center. This language is substantially different from what I proposed or what was in Senate Substitute Amendment 1 to SB24 which states that the applicant or licensee, with the assistance with the Department of Justice, shall conduct a background investigation of each employee or prospective employee of the applicant or licensee. I am partially vetoing this section in order to require the day care applicant or licensee to perform the background investigation of each employee or prospective employee, not the department. The language as written would impose a significant new workload on the department. This should instead be the responsibility of the licensed day care center as part of their licensure.

Nonstatutory Provision on Administrative Rules for W-2

Section 275 (as it relates to rules for the administration of W-2) directs DILJD to promulgate rules on the qualification criteria for the administration of the Wisconsin Works program without the finding of an emergency. I am partially vetoing the words "qualification criteria" in section 275 (3) (title) because the department needs emergency rulemaking authority for the administration of all of the W-2 program. This is primarily a technical correction.

State Supplemental Security Income (SSI) Supplement

Sections 175 and 209 create a separate supplemental payment under the state's SSI program for custodial parents who receive SSI and who have dependent children. The supplement was intended to replace the

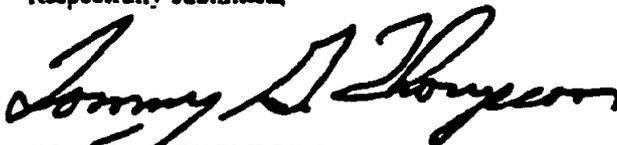
AFDC payment that the child is currently receiving, once W-2 is implemented. The child was to continue to receive Medical Assistance coverage. Unfortunately, these sections do not reflect the Administration's intent. A federal waiver is necessary before the department can make this supplemental SSI payment in lieu of an AFDC payment for the child. I am vetoing these sections because the provision in AB591 would require the department to make this payment beginning July 1, 1996 whether the waiver had been approved or not and whether the dependent child was receiving AFDC or not. I am directing the department to pursue the legislation needed to implement the provision as originally intended.

Medical Savings Accounts (MSAs)

Sections 250, 250m and 279 [as it relates to qualifying coverage definition] include provisions on high cost-share benefit plans that are linked to a tax-preferred savings plan for payment of medical expenses, which are often referred to as medical savings accounts. Under AB591, portability of coverage and guaranteed acceptance rights would be limited for MSAs under certain circumstances. If a person has had a MSA within 60 days of the effective date of his or her new job's health care coverage, and that new coverage includes a choice between a MSA and group health coverage, and the employee chooses to switch to a group health care plan, portability of coverage and guaranteed acceptance rights are not available. I am exercising the partial veto in these sections to remove any reference to high cost-share benefit plans that are linked to a tax-preferred savings plan for payment of medical expenses, including the portability and guaranteed acceptance restrictions for several reasons. First, tax-exempt MSAs have not yet been created at either the federal or state level. AB591 does not create MSAs either; it only provided for a limit on MSA portability and guaranteed acceptance in the event that other legislation is passed that creates the MSAs. I have been involved in discussions at the federal level on this issue and it is not clear to me that the federal legislation creating MSAs will pass in the near future. Furthermore, the state Legislature is currently debating a bill (AB545) that would create MSAs in Wisconsin. Any limits on the portability or guaranteed acceptance of MSAs should be included with the legislation that actually creates the MSAs. I do not believe it is appropriate to retain this language in the statutes in anticipation of the passage of a MSA bill.

I believe that these partial vetoes make a good piece of legislation even better. We can now move forward to implement this pathbreaking welfare reform measure.

Respectfully submitted,



TOMMY G. THOMPSON
Governor

Telecom - Bruce Reed

11-1 birthday¹
362-9595 (L)

Leon wants to punt for a few days.

Try to figure out - just a shade stricter

ent waiver contingent on success.

w/ little bells + whistles.

→ give them a paragraph.

accountability mechanism.

monitoring progress - WI t+c last time - ck this.

keep track.

2-yr action -
where are we?

Draft terms + conditions - have now.

Welfare meeting 7-11-96

Possibility??

Promise - only the initial hiring
not continued emp.

THE WHITE HOUSE

WASHINGTON

June 10, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN

SUBJECT: WISCONSIN WAIVER APPLICATION

The Wisconsin waiver application appears to present two serious constitutional issues. (HHS attorneys also believe the application presents two statutory problems -- one under the Disabilities Act and one under the Fair Labor Standards Act -- but OLC has not yet started to look into these issues.) In this memo, I briefly summarize the constitutional issues, first noting the arguments (already being pressed by HHS attorneys and, more tentatively, OLC deputies) that certain provisions in the waiver application violate the Constitution and then offering the best available responses to those arguments. Finally I suggest, in light of the President's desire to approve the waiver, one way to fudge these issues; this approach would allow Wisconsin to pursue its desired course without deeming that course constitutional, effectively punting the legal questions to the courts.

1. Right to travel issue. Under the Wisconsin program, an individual must reside in the State for at least 60 days prior to applying for a "Wisconsin works" employment position. There is a strong argument that this provision is unconstitutional under Shapiro v. Thompson. It is, however, possible to distinguish Shapiro. Moreover, this distinction, though not very convincing on its face, gains a measure of credibility from the widespread hostility to Shapiro, which may make the Court grab hold of any means available to confine that case to its facts.

In Shapiro, the Supreme Court held unconstitutional a statute requiring a person to reside within a State for a year prior to receiving welfare assistance. The Court reasoned that because this provision burdened a person's constitutional "right to travel" (*i.e.*, to move to another state), the State had to show that the provision was necessary to achieve a compelling interest. The Court then found that the State had failed to make the requisite showing.

Under a straightforward application of Shapiro, the Wisconsin residency requirement is unconstitutional. On this view (currently held by both HHS attorneys and OLC deputies), the requirement, just like the one at issue in Shapiro, impermissibly burdens a welfare recipient's ability to move to the State.

There is, however, one obvious difference between the Wisconsin provision and the Shapiro provision: the difference

between a year and sixty days. This difference could change the constitutional analysis on either of two theories. First, it might be argued that because Wisconsin's provision imposes less of a burden on a person's right to travel, that provision should be held to a less strict standard of review than the one at issue in Shapiro. Wisconsin then could claim that its interests in the residency requirement in fact meet this lesser standard. This argument, however, seems quite weak. Standards of constitutional review do not usually vary in accordance with how much an action burdens a right, at least assuming the burden is not de minimis. And no sensible person could say that a state's determination to deprive a welfare recipient of benefits for two months would have only a de minimis effect on her ability to move to that state.

More promisingly, it might be claimed that Wisconsin's 60-day waiting period in fact meets the strict scrutiny standard, whereas the one-year period at issue in Shapiro could not. The Court in Shapiro clearly viewed the length of the waiting period as evidence that the State adopted the requirement to keep poor people out of the State -- an intent the Court held illegitimate; the Court saw no other, constitutionally legitimate let alone compelling, interest that would necessitate such a long waiting period. By contrast, it might be easier to portray a 60-day waiting period as a necessary administrative device, intended to promote rational budgeting, ensure orderly eligibility decisions, prevent fraud, and so forth. This argument would be strengthened to the extent Wisconsin subjects other state-provided services to the same residency requirement. (For example, it would be quite useful if Wisconsin insisted on a 60-day residency period before granting in-state tuition or voting privileges.)

Even in these circumstances, however, the argument seems fairly tenuous. Shapiro also contains language suggesting that states simply do not need residency requirements -- of any length -- to achieve their administrative interests. In this vein, it may be especially hard to explain why a State, acting only to advance these proper purposes, needs to completely deny benefits for a set period, rather than to delay benefits for this time (thus allowing an orderly decision on eligibility) and then grant the benefits retroactively. Thus, if the Court sticks with the basic message of Shapiro, Wisconsin will be hard put to show that it could not achieve its legitimate purposes through means less drastic than the 60-day period.

What gives the proposed distinction some viability is that Shapiro might well be on the Supreme Court's chopping block; many view the decision as one of the worst excesses of the Warren Court, and certain Justices have indicated that they want to overrule it. At the least, the current Court might welcome an opportunity to interpret Shapiro narrowly, as essentially applying only to its own facts. OLC does not like to take such considerations into account; it generally thinks that as long as the law remains the law, it should be treated as the law. But it would be obtuse not to recognize that any pronouncement that the

Wisconsin provision violates the Constitution would stand on an uncertain foundation.

2. Procedural due process issue. The Wisconsin program offers fairly paltry procedural protections to persons dependent on it for assistance. This aspect of the program raises real concerns under the Due Process Clause: indeed, OLC told me last week that in light of the Supreme Court's decision in Goldberg v. Kelly, Wisconsin's proposed procedural framework clearly violates constitutional standards. I do not think this conclusion follows so easily; indeed, I think there is a reasonably strong argument that the Wisconsin program is not subject to the requirements of due process. I have communicated this argument to OLC, which is currently considering whether it agrees.

Under the Wisconsin program, a "Wisconsin works agency" -- a local (sometimes governmental, sometimes non-governmental) group under contract with Wisconsin's Department of Industry, Labor, and Job Development to administer the Wisconsin works program in a geographic area -- may refuse, modify, or terminate benefits without a prior hearing. If the person affected files a petition within 45 days, the agency must provide "reasonable notice and opportunity for a review" and as soon as possible thereafter render a decision. The Department, upon a petition of either the person affected or the works agency, generally has discretion to review this decision. (But where the decision at issue denies an application for benefits based solely on a determination of financial ineligibility, Departmental review is mandatory.) Even if the Department reverses the agency's decision, the affected person receives no retroactive benefits.

In Goldberg v. Kelly, the Supreme Court held that the Due Process Clause required a State providing assistance under the AFDC program to grant a recipient notice and an evidentiary hearing (including the opportunity to submit evidence orally or in writing, to cross-examine opposing witnesses, and to retain a lawyer) prior to terminating any benefits. The Court reached this conclusion upon finding that a welfare recipient's interest in avoiding "grievous loss" (and society's interest in fostering "dignity and well-being" through the welfare system) outweighed the government's interest in conserving fiscal and administrative resources.

At first blush (HHS and OLC seem to think at last blush too), Goldberg commands the invalidation of Wisconsin's hearing provisions. In Wisconsin, a works agency can terminate benefits prior to giving the recipient notice or a hearing. This is exactly what Goldberg prohibits. Indeed, Wisconsin does not guarantee even a post-termination evidentiary hearing. Only the works agency -- which may be a private actor under contract with the government -- need review the termination; the Department's review is discretionary. And there is nothing to indicate that the review -- whether by the agency or by the Department -- will include an evidentiary hearing of the kind Goldberg contemplates,

with the ability to offer evidence and confront adverse witnesses.

But Goldberg is based on one essential premise; if that premise evaporates, so too do the due process requirements the decision articulates. That premise, in the words of the Court, is that "[welfare] benefits are a matter of statutory entitlement for persons qualified to receive them." It is only when a person has an entitlement of some kind to a substantive benefit (only when, that is, the benefit counts as "property" within the meaning of the Due Process Clause) that denial of the benefit demands procedural safeguards. This is why, to use a concrete example, the government must provide due process (notice and a hearing) before dismissing an employee who has a "for cause" provision in his employment contract, but need not provide such process to an employee who lacks such a contract clause. It is only the former who has a contractual "entitlement" to employment, and it is only this entitlement -- this property interest -- that invokes the requirements of the due process clause.

It thus becomes extremely important that the Wisconsin legislation at issue specifically disavows any creation of an entitlement on the part of welfare recipients. In the words of the statute (in a subsection labeled "Nonentitlement"), "Notwithstanding fulfillment of the eligibility requirements for any component of Wisconsin works, an individual is not entitled to services or benefits under Wisconsin works." It is at least arguable that this provision of the Wisconsin law makes Goldberg completely inapplicable. Goldberg, or so the argument goes, sets forth due process standards for cases in which a statute grants an entitlement to welfare assistance; where a statute explicitly denies such an entitlement, effectively leaving the provision of assistance to the discretion of the State, due process standards never come into play. Stated another way, the difference between Goldberg and this case is identical to the difference between the cases noted above involving "for cause" and "at-will employment" contractual clauses.

A court, of course, might reject this analysis and apply Goldberg notwithstanding the Wisconsin law's "Nonentitlement" provision. Such a court might reason that the government cannot insulate itself from due process requirements simply by labeling a given benefit as a "nonentitlement." If, for example, a law details certain qualifications for receiving a benefit -- and, further, if those qualified to receive the benefit in fact always do so -- then there is a good case for disregarding the State's terminology and treating the benefit as an property. Perhaps, then, in evaluating the Wisconsin program, a court should look behind the formal description of the benefit and ask whether (and how) the State exercises discretion and, relatedly, whether the State's actions generate legitimate expectations on the part of recipients. And perhaps (though perhaps not) when viewed in this non-formalist light, the Wisconsin program would look similar to

the program in Goldberg, leading to adoption of the identical due process requirements.

The key point, however, is that there is a pretty decent constitutional argument that Goldberg does not apply here -- more specifically, that the due process clause imposes no procedural requirements on the Wisconsin program, because the substantive benefits provided in that program do not count as property interests.

3. Recommended Approach

One possible approach is simply to approve Wisconsin's residency requirement and procedural provisions as written, thus implicitly finding that they satisfy constitutional standards. I have argued that there is a very credible argument that the procedural provisions do so and a not wholly embarrassing argument that the residency requirement does so too. Perhaps the existence of such arguments allows simple approval of these provisions.

Another approach is to fudge the issue, allowing Wisconsin to do what it wishes, but withholding judgment on the legality of such action and pushing these questions to the courts. For example, the Secretary could approve the eligibility requirements (including the sixty-day waiting period for non-residents) and the procedural provisions "insofar as and to the extent that they comport with applicable constitutional requirements." Or the Secretary could be more specific, approving the sixty-day waiting period "insofar as that requirement is necessary to achieve a compelling state interest" (thus signalling continued approval of the Shapiro framework) or approving the procedural provisions "to the extent such provisions apply to non-property interests" (thus signalling continued approval of the Goldberg analysis). The variations here are almost endless. All would license the State to act without sanctioning the constitutionality of such action, leaving it for the courts to determine whether the action is indeed lawful.

The above suggestions of course assume that we want to allow use of Wisconsin's proposed residency requirement and procedural provisions. If for some reason we do not, we need only accept the constitutional arguments now being pressed by HHS and OLC.

Wf-Wisc

October 25, 1993

MEMORANDUM FOR MACK McLARTY
GEORGE STEPHANOPOULOS

DAVID GERGEN
MARCIA HALE
JOAN BAGGETT
CAROL RASCO
LEON PANETTA
JOHN PODESTA
MARK GEAREN

FROM Kathi Way, Domestic Policy/7777

SUBJECT: Welfare Reform Waiver Approval for Wisconsin

Attached are three documents related to the Wisconsin waiver rollout. The first is background information on the Wisconsin and Georgia waivers. The second is a draft press release from HHS. The third are the final draft terms and conditions for the Wisconsin waiver. HHS will fax to Wisconsin this evening the draft terms and conditions. We expect to finalize the waiver tomorrow.

Please review all enclosures and contact me tomorrow morning with any concerns.

cc: Keith Mason
Linda Moore
Belle Sawhill
Bruce Reed
Jodi Greenstone

BACKGROUND INFORMATION ON THE WISCONSIN WELFARE WAIVER

On Tuesday, October 26, HHS intends to approve the state of Wisconsin's Work Not Welfare Demonstration. This demonstration will be conducted in two counties (to be designated by the state), beginning on January 1, 1995.

Wisconsin's Work Not Welfare Demonstration

As originally submitted in mid-July, the proposal sought to reduce the time and duration of adults on welfare by guaranteeing, within a four year period, no more than 24 months of cash benefits and only 12 months of additional transitional medical and child care. At the end of 24 months cash benefits would cease for a 36 month period. As a condition of AFDC receipt, the state would require participation in education, training and work during the initial two years, and would provide no additional cash benefits for a child born to participants in the program.

Over the course of discussions between the Administration for Children and Families and the state, including face-to-face meetings both in Washington and Wisconsin, significant modifications to the most harmful aspects of Wisconsin's cold-turkey time limit approach were achieved. The agreement ensures that extension of cash benefits will be extended when individuals have cooperated in their efforts to find work but are unable to find an appropriate job locally. Medical care will not be cut off at the end of the 24 months. Furthermore, the "family cap" would be modified so that it would apply only to families who conceived children while on AFDC or within the subsequent six months. Other modifications were made to prevent unusual hardship.

Announcement and Notification Schedule

Tomorrow morning Walter Broadnax will call Governor Thompson to notify him of the decision. Simultaneously the transmittal letter and the approved terms and conditions will be sent to the state. At the same time, HHS will notify key members of the congressional delegation, key state assembly members and the Mayor of Milwaukee of the decision. These calls are an effort to give them as much warning as possible of the decision.

HHS also intends to approve the Georgia demonstration, entitled "Personal Accountability and Responsibility Project," tomorrow. (See draft press release, attached)

Considerations and Timing

The timing of this approval is delicate for several reasons.

The Governor has pushed for as early approval as possible, and Mary Jo Bane, Assistant Secretary for Children and Families was authorized to make every effort to come to agreement with the state. This agreement was successfully achieved.

Nevertheless, in Wisconsin, the state legislature must approve any such demonstration. Last week the Republican-controlled state Senate approved the Governor's plan with few modifications, and the Democratic Assembly is scheduled to take some action (or seek to delay action) prior to the end of the legislative session (scheduled for Thursday evening, October 28).

We believe that if we do not proceed now, the Governor is likely to announce his concerns and disappointment very publicly, including indicating that he had understood that we had come to agreement. There is a reasonable chance that the Governor's bill will pass in any case, in which case we are back to the beginning of working out any agreement. If the Democrats don't pass their bill, and it is not anticipated that they will, we will have made our ability to get a satisfactory agreement on the demonstration even more difficult. If no bill passes, the situation will be more ambiguous.

When we announce the decision tomorrow, however, there is little doubt that the Assembly will feel undercut and that the Mayor of Milwaukee and some members of the Congressional delegation, notably Senator Feingold who sent Secretary Shalala a letter asking that we delay our decision until after the legislature has acted, will be angered.

HHS NEWS**DRAFT #252**

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE

Contact: David Siegel
(202) 401-9215

HHS Assistant Secretary for Children and Families Mary Jo Bane today announced the department's approval of a welfare demonstration in the state of Wisconsin. The demonstration will operate in two Wisconsin counties.

Under the plan, called "Work Not Welfare," recipients of AFDC cash assistance will be encouraged to work or look for jobs. The plan provides case management, employment activities and work experience to facilitate employment. Receipt of AFDC cash assistance would be time-limited, except under certain conditions, such as inability to find employment in the local area due to lack of appropriate jobs.

"Our approval of Wisconsin's demonstration shows that the Clinton administration is serious about providing states with the flexibility needed to test innovations," said Bane. "This is one of several state demonstrations designed to test the concept of time-limited receipt of AFDC benefits."

The Wisconsin program also includes the following elements which will affect the state's AFDC program:

- o With exceptions, receipt of AFDC benefits will be limited to two years in a four-year period;
- o Elimination of 100 hour work rule; and
- o Child support will be paid directly to the AFDC custodial parent in cases where the funds are collected by the state.

- More -

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If approved by the state legislature, the demonstration will be carefully evaluated and will run for 11 years.

HHS Secretary Donna E. Shalala, who was chancellor of the University of Wisconsin, recused herself from the Wisconsin waiver decision.

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Wisconsin - Work Not Welfare Demonstration

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effective beginning with the implementation date as specified herein, and will remain in effect through December 31, 2005, unless the project is terminated earlier.

- 1.4 Federal approval of waivers, subject to these Waiver Terms and Conditions, shall not be construed to establish any precedent that either Department will follow in the granting of any subsequent request for waivers.

SECTION 2: IMPLEMENTATION

- 2.0 The official project and budget period for the activities covered by these Waiver Terms and Conditions is specified in the letters of approval issued by the Administration for Children and Families and the Health Care Financing Administration, the Department of Health and Social Services (DHSS), and the Food and Nutrition Service, USDA.
- 2.1 Under these Waiver Terms and Conditions, the State will operate a demonstration of WNW in two counties of the State. A designation of the two counties to be covered by the demonstration shall be submitted to the Departments for approval at the same time that the draft evaluation design described in section 3.3 is submitted (by March 1, 1994).
- 2.2 AFDC applicants and cases that are subject to the provisions of the demonstration will be called treatment cases in these Waiver Terms and Conditions. The State will implement the following provisions requiring waivers to recipients during recertification for AFDC and to applicants for AFDC at the demonstration sites during the first 7 years of the demonstration after which no new applicants will be taken into the demonstration:
 - (1) Food Stamp Cashout and the WNW Payment: Food Stamps will be cashed out and combined with the AFDC payment to form the WNW grant.
 - (2) Those Choosing Not to Enroll in WNW: Those choosing not to enroll in WNW, will still be eligible for Medical Assistance, if otherwise eligible for AFDC, and for Food Stamps coupons.
 - (3) Time Limit: Cases may receive a WNW grant for 24

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months and transitional benefits for 12 months within a 48-month period beginning with the first month of eligibility under WNW. No cash benefits will be available for a period of 36 months after the last of the 24 WNW payments is made. If eligible, cases may receive Food Stamp coupons during the period that no cash benefits are available. While certain conditions prevail, months of receipt of WNW will not count toward either the 24-month or 48-month limitations. These conditions are spelled out in (5) below.

Recipients who are eligible to receive a WNW grant under this demonstration will be given the option of receiving the WNW grant, in which case receipt of assistance is applied against the 24 month time period, or to select one of two alternatives. One alternative is to waive benefits, and the other alternative will be to waive cash benefits and to receive food stamp coupons if otherwise eligible for food stamps. Months for which the client chooses either of these alternatives will not count toward the 24-month limitation.

- (4) Persons to whom the Work and Training Obligations Apply: The work and training obligations apply to all parents in the budget group and to parents not themselves eligible except as noted in (5) below.
- (5) Conditions Under which Months Do Not Count Toward the 24 and 48-month Time Periods and Under which the Work and Training Requirements Do Not Apply: The work and training requirement and the accrual of months against the 24 and 48-month time periods will not occur for months during which 1) the case is headed by a teen parent subject to Wisconsin's Learnfare requirement, 2) the case head is a minor, 3) the sole custodial parent or both parents are temporarily incapacitated, 4) the parent is caring for an incapacitated dependent person, 5) the sole custodial parent or both parents are on SSI, 6) the case head is a non-legally responsible relative not included in the grant, and 7) the parent is caring for a child under 1 year of age that was not conceived while receiving WNW benefits (during the period in which a child, conceived while receiving WNW benefits, is less than 6 months old, the parent will be exempt from the work requirement, but the time limits will not be extended), except that food stamp recipients exempt from work registration under 7 CFR 273.7 (b) (1) (iii) and (v), may not have the food

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stamp portion of their WNW grant reduced for failure to comply with the WNW work and training requirement.

- (6) Children conceived while in the WNW program: The AFDC portion of the WNW payment will not be increased for children born more than 10 months after first receipt of WNW, unless the mother ceased receiving WNW for a period of at least 6 consecutive months and the child was conceived when the mother was not receiving WNW, or the child was conceived as a result of rape or incest. However, the additional children will be included in applying the gross income test in the regular manner. The Food Stamp component of the WNW payment will be increased based on the new household size.
- (7) After the Time Limit: Those who reach the 24-month limit without finding employment will either: 1) be referred to the Children's Services Network, 2) be referred to SSI because of severe disabilities, or 3) continue to receive a grant as determined under conditions of (8) below.
- (8) Extensions of the 24-month eligibility period: Ninety days prior to the termination of benefits the individual will be informed that benefits will be terminated. Individuals will be informed that they may apply for an extension of benefits, but extensions will be granted only in very limited circumstances. Extensions will be granted only to those persons who are unable to work for reasons such as personal disability or incapacity, persons who need to care for a disabled dependent, and persons who have made all appropriate efforts to find work and are unable to find employment because local labor market conditions preclude a reasonable job opportunity. If an extension is granted, it is expected that the individual will participate in some supported work activity within the limits of his or her ability.

The criteria that will be considered in making a determination that an individual's benefits should be extended will include but need not be limited to: 1) whether the recipient has received and/or rejected offers of employment, has quit a job without good cause or been fired for cause, 2) the degree to which the recipient has cooperated, and is cooperating, with the Agency in work related activities, 3) whether the State has substantially met its obligation to provide demonstration services to the individual, and 4)

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whether appropriate job opportunities actually exist locally at a given point in time for individual program participants.

- (9) **Assessment and Case Management:** Assessment and case management will be accomplished along the lines of the "medical model" by a team representing income maintenance, JOBS, child support, and child care.
- (10) **Children's Services Network:** Where benefits are terminated because the time limit has expired, supporting services will continue to be provided including helping the family find charitable food and clothing, WIC, child care for employed parents, and Medical Assistance ~~for children only~~. A special needs grant, not to exceed the amount of a child only grant, will be provided in the form of a vendor payment for housing if a child will be made homeless as a result of termination of benefits. Also, families could receive Food Stamp coupons while ineligible for WNW cash benefits if otherwise eligible for food stamp coupons.
- (11) **The 100 Hour Rule:** The 100 hour rule in the AFDC-UP program will be eliminated for recipients but not for applicants.
- (12) **The Earned Income Disregard:** The \$30 and 1/3 disregard for earned income will be replaced by a \$30 and 1/6 disregard which will not be time-limited.
- (13) **Partial Freezing of Benefits:** Benefits, once determined, will not vary with changes in income between eligibility determinations unless there is a drop in earnings for good cause, or the client's income increases and the client wishes to have the benefit reduced in order to reduce the clients WNW work and training obligations (described below).

For the purposes of determining the food stamp portion of the WNW grant, all participating households will have their income averaged over the six-month certification period. Benefits will be adjusted only when a significant change in circumstances occurs, such as the following:

1. change in household size;
2. new source of employment;
3. loss of unsubsidized employment or substantial reduction of hours beyond the recipient's control;

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Wisconsin - Work Not Welfare Demonstration

4. increase of ten hours or more in unsubsidized employment;
 5. receipt of a new source of unearned income;
and
 6. increases or decreases in existing sources of unearned income totaling \$50 or more.
- (14) Work and Training Obligations: There is no work requirement for the first month of eligibility. After the first month, the WNW grant is considered payment for activities clients performed the previous month. Clients without a high school diploma will be referred to a GED program. Where appropriate, education and training will generally occur in the first 12 months of eligibility. Those involved in part-time education or training may also be required to participate in a work activity. For those required to work, hours will be determined by dividing the grant by the minimum wage, but will not exceed 40 hours per adult participant. The 40 hour requirement can be a combination of a part-time unsubsidized job and of some agency related requirement. The WNW payment will be reduced by the minimum wage times the number of hours of the client's obligation not met (except in cases where there is good cause). Benefits will not be reduced below \$10. Recipients without good cause will be allowed to make up missed hours to the time the sanction is imposed, if make-up hours can reasonably be made available. If the agency does not substantially meet its responsibilities in terms of ensuring education and training opportunities, work assignments, day care and other necessary services the client will still receive a cash payment ~~but will be no extensions to the 24 and 48-month time limits.~~
- (15) Work Experience: For those required to work, the work experience includes unsubsidized or partially subsidized employment, the Community Work Experience Program (CWEP), or an Independence Job - a job developed specifically for WNW recipients by the county. Those that have had an Independence Job, obtain another job, and lose that job may return to an independence job.
- (16) Direct Child Support: All child support payments will go directly to the client. The monthly payment, except for \$50, will count as income when determining the WNW grant.

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Wisconsin - Work Not Welfare Demonstration

- (17) Migration from Demonstration Counties: A treatment case that moves from a demonstration county will still be subject to the time limits. It will not be subject to the work requirements, will not receive all the enhanced services offered in the demonstration counties, will not have Food Stamp coupons cashed-out, and will have AFDC and Food Stamp benefits calculated using regular program eligibility procedures. However, if a treatment case moves from a demonstration county, then that client will be eligible for the rent voucher (as described under Children's Services Network above) and will be prioritized for JOBS participation.
- (18) Transitional Services: Up to 12 months of transitional child care services are available, within the 4-year period starting with receipt of WNW grants, for clients who: 1) have lost eligibility because of earnings, 2) become employed after using up their 24 months of eligibility, or 3) who have a job and decline WNW benefits even though eligible. Up to 12 months of transitional medical services are similarly available within the four year period beginning with the first month of receipt of WNW benefits. Transitional medical services may include paying the employee portion of a health coverage plan. Transitional child care and medical care (see below) are to be offered on a sliding scale fee basis based on earnings.
- (19) Medicaid Benefits: Adults and children who will otherwise be eligible for Medicaid, except for the Medicaid transition benefit, will continue to be eligible for MA benefits after loss of WNW eligibility.

For those months that a case receives transitional Medicaid a premium may be charged. HCFA will work with DHSS to develop a premium schedule acceptable to HCFA. Months of transitional Medicaid can be declared retroactively and Medicaid premiums can be paid retroactively. No Medicaid payments will be made for a month for which the premium has not been paid,

- (20) Nutrition Education Component: Nutrition education will be mandatory for WNW recipients. The case management team will require recipients to participate in a training component that will result in demonstrable changes in knowledge, skills, attitudes and behaviors in the areas of food budgeting and nutrition. USDA will work with Wisconsin to design the substance of the nutrition education component and the

DRAFT**Wisconsin - Work Not Welfare Demonstration**evaluation methodology for this component.

- 2.3 For purposes of AFDC, Food Stamp, and Medicaid Quality Control, the eligibility of and amount of benefits for families in WNW will be reviewed against the rules of the demonstration, in lieu of the rules being waived. Food Stamp Quality Control review procedures will be incorporated into the forthcoming FNS letter.

SECTION 3: EVALUATION

- 3.0 The costs of approved evaluation activities will be matched at 50 percent for the duration of the evaluation and are excluded from cost neutrality requirements. The Department of Health and Human Services will match all evaluation costs. Evaluation components not approved by the Department will not qualify for Federal matching funds. Evaluation costs will include all costs necessary to carry out the approved evaluation plan, including costs for evaluation activities carried out by State and local agencies as well as those carried out by the evaluation contractor.
- 3.1 No later than one month after the State and Departments reach agreements on an evaluation design as specified in 3.3, the State will submit to the Departments, for approval, a draft Request for Proposal (RFP) for a contract to conduct an evaluation of the demonstration. The RFP must specify, in sufficient detail, the objectives of the project, the evaluation design, the specific tasks to be conducted, the time frames for conducting those tasks, and a schedule and list of deliverables. The research questions to be studied, the major variables to be measured, the data collection methodology, and the major data analyses to be performed must be clearly described.

The evaluation contractor must be an entity independent of the ~~Wisconsin Department of Health and Social Services executive branch of the State~~ except for the State University, and must be qualified and have experience in evaluating social experiments of the design, scale, and duration of that proposed by the State.

The RFP will also indicate that the selected contractor will be required to address in its evaluation plan any potential problems inherent in the evaluation design related to analyzing the impact of the program interventions under this demonstration and the methodology it will employ to minimize such problems. This must include methods of analysis which

(b) CONTENTS OF STATE PLANS- A plan meets the requirements of this subsection if the plan includes the following:

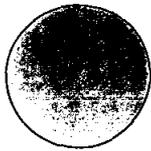
(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM-

(A) GENERAL PROVISIONS- A written document that outlines how the State will do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State, that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Determine, on an objective and equitable basis, the needs of and the amount of assistance to be provided to needy families, and treat families of similar needs and circumstances similarly, subject to subparagraph (B).

(v) Grant an opportunity for a fair hearing before the State agency to any individual to whom assistance under the program is denied, reduced, or terminated, or whose request for such assistance is not acted on with reasonable promptness.



WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/12/96 ACTION/CONCURRENCE/COMMENT DUE BY: 7/12 5:00pm

SUBJECT: Radio address

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LIEBERMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LEW	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REED	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	STREETT	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	HAWLEY	<input type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HILLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Waldman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input type="checkbox"/>	<u>Toiv</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	<u>Sperling</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Comments to Michael Waldman

RESPONSE: _____

Draft July 12, 1996 4pm

**PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS TO THE NATION
OVAL OFFICE**

July 13, 1996 96 JUL 12 P 4 : 15
[Taped July 12, 1996]

Good morning. Our nation's mission is to offer opportunity to all . . . and to demand responsibility from all. That is America's basic bargain. And we can make it real when we come together as a community, reaching past those things that divide us to find common ground.

This past week, Democrats and Republicans produced a bipartisan breakthrough for America's working families. On Tuesday, the Senate voted to pass a 90 cent increase in the minimum wage. Today, the minimum wage is not a living wage. You can't raise a family on \$4.25 an hour. For years, there has been a bipartisan consensus that the minimum wage should keep up with the cost of living. For too long, that consensus had broken down. Now it is restored. I congratulate the Republican members of Congress who joined with the Democrats to honor work, family, opportunity and responsibility by voting to give minimum wage workers a raise. They should send me the final legislation quickly, without delay. That will be a victory for both parties, and for all working Americans.

The passage of the minimum wage shows what can happen when we are united . . . when we reach across party lines to work together. Now we must use this momentum to meet our other challenges as well.

And I am pleased to report real progress toward another key bipartisan goal: welfare reform. Throughout my presidency, I have been determined to enact real reform that requires welfare recipients to work, imposes time limits on welfare, cracks down on child support enforcement, and is fair to children. For the past 3 1/2 years, I have worked with Congress to craft legislation that meets these goals.

For months, the Republicans in Congress had insisted that welfare reform be attached to a misguided plan to repeal Medicaid's guarantee of quality health care for elderly Americans, poor children, pregnant women and people with disabilities. I am determined to make welfare reform the law of the land. But I made it clear that I would not allow Medicaid to be destroyed -- and I didn't care what legislation it was attached to.

This week, the Republican leaders in the Congress announced that they are abandoning their strategy. They now say they will work to pass a straightforward welfare reform bill that I can sign into law, instead of sending me legislation they knew I would veto. This is a real breakthrough for the American people. Welfare reform is no longer a hostage to political games. If we work hard, and work together, we should now be able to pass real welfare reform -- and do it very soon.

Already, bipartisan legislation has been proposed in the senate by Democrat John Breaux and Republican John Chafee, and in the House by Republican Mike Castle and Democrat John Tanner. These are good, strong bills. They would end welfare as we know it. And they should be the basis for quick agreement between the parties. I look forward to having a bipartisan welfare reform bill within the next month.

We should also extend this same spirit to our other pressing challenges, as well.

We should pass the Kassebaum-Kennedy health reform bill, which would give 25 million Americans access to health insurance. In its purest form, it passed the Senate unanimously. But for months it has been stalled, as Republicans in the Congress have tried to link it to special interest provisions they know I will not sign. I urge them to reject political games and come to quick agreement.

And we should reform our illegal immigration laws. I support legislation that builds on our efforts to restore the rule of law to the border, ensures that American jobs are reserved for legal workers, and boosts deportation of criminal aliens. But some insist on a provision that would kick children of illegal immigrants out of school. Every major law enforcement organization says this could lead to more crime. Let's put aside this punitive measure, and reform our illegal immigration laws now.

It is no secret that this is a political year -- and there will be plenty of time to discuss our differences in the months to come. But our nation faces challenges that cannot wait until November.

Real welfare reform. A minimum wage increase. Access to health insurance. Stronger immigration laws. We can achieve all these things -- if we work together. I look forward to working with Majority Leader Lott, Speaker Gingrich, and the Democratic leaders of Congress to do the people's business in the coming weeks. Let's make the next month a time of genuine achievement for the American people. That's would be good for both parties. And it would be good for America.

Thank you for listening.

July 11, 1996

Welfare meeting

1. Waive The entitlement
 2. Penna/Me.
 3. Rewrite est - apply to jobs
 4. NOT waive est.
- } No Goldber
} Goldber v Kelly

Write up the option 2.

6:00 Learning

July 11, 1996 (1:34pm)

Wisconsin Waiver

Status of Waiver

Administration Action On May 29, Gov. Thompson delivered a 400-page request for waivers of 69 AFDC, 18 Medicaid, and 5 Food Stamp provisions. The Administration is prepared to grant many of the requested waivers and have been working closely with the State to work out mutually agreeable alternatives in some problem areas. However, a number of critical issues remain unresolved. Changes made by the State since its original waiver request raised some additional concerns. Some waiver requests the Executive Branch cannot legally grant -- such as more stringent Food Stamp sanctions, changes to Foster Care, minimum wage and other labor issues in work programs, and receiving AFDC funds without providing State matching funds.

Last week, Dole stopped in Wisconsin to attack the Administration for not completing its review of the waiver. However, the earliest the waiver can be approved without legal challenge is July 11 -- which marks the end of the required 30-day period for public comment.

Congressional Action Last month, the House overwhelmingly passed a bill to deem the entire Wisconsin waiver approved, after defeating an Obey-Klecicka substitute in a relatively close vote. The Senate is less likely to move similar legislation because of the range of procedural options available to Senate Democrats. It is also not clear how the Senate's legislation would look. CBO would likely advise the Senate that it would score the House's bill at over \$.5 billion. In addition, Gov. Thompson publicly disavowed parts of the waiver request having to do with worker displacement.

Public Comments The Administration received comments on this demonstration from an extremely large number of organizations representing program recipients; providers of social services including child care; state and national labor organizations; local officials including the Mayor of Milwaukee; the Catholic archbishop of Milwaukee and representatives of other religious groups; members of the state legislature and members of the State's congressional delegation. In addition, thousands of private citizens participated in letter campaigns or signed a petition to the department regarding this waiver application. With few exceptions, the individuals and organizations urged denial of modifications of the waivers. The objections focused especially on the lack of guarantees of services and jobs, on various provisions that make families worse off, and on privatization, displacement and the minimum wage.

Key Elements of AFDC Waivers

Work Program Wisconsin's waiver would replace AFDC's cash welfare system with a program that provides temporary jobs slots (generally up to five years). The State would pay private sector or local government contractors fixed amounts to provide job slots to those applicants the contractor deems eligible. After a two-week job search, an applicant would be placed in one of four programs -- an unsubsidized work or job search (where some child care assistance would be available), a trial subsidized job, or one of two types of community service jobs.

Wisconsin projects this plan would cut welfare caseloads in half. As an incentive to reduce welfare caseloads, contractors could retain funds from higher-than-expected caseload reductions, and generally would have to pay the costs of lower-than-budgeted caseload reductions.

Benefits Assistance would be based solely on the hours of work -- no work, no money. Accordingly, benefits would not be adjusted based on family size. Since families would be required to provide co-payments for using child care services, benefits could decline with larger family size.

Protections and Contingencies Only issues related to financial eligibility could be appealed to the State. All other eligibility, job placement, and sanction decisions would be at the contractor's discretion, with no right to appeal to the State. Extensions to the time limit for those who "play by the rules" would also be at the contractor's discretion. It is unclear whether any housing vouchers for children would be available after the time limit.

Key Elements of Medicaid Waivers

The waiver would end the Federal entitlement to Medicaid for poor families with children. In its place, families below 165% of poverty would pay a premium for more limited coverage than is available under Medicaid. Those who fail to pay premiums, those who drop out of the program, and most of those with access to employer-sponsored coverage would be ineligible.

MAJOR POLICY ISSUES

There are two ways of approaching the major remaining policy issues in the Wisconsin plan.

- One approach is to base policy judgements on the principles that the Administration has consistently articulated in its own legislative proposals, and that have provided the basis for previous approvals of waiver demonstrations. For example, we would ask whether the provisions are consistent with the protections for children advocated by the Administration. We could also use the standard of consistency with the principle of assuring jobs, health care and child care that both the President and Governor Thompson have articulated in describing the Wisconsin waiver.
- An alternative approach is to base policy judgements on what would be allowed under national legislation that the Administration would be willing to accept -- such as the Breaux-Chafee welfare bill -- rather than what the Administration wants from Congress.

The first approach would deny some provisions of the Wisconsin waiver that the State would be allowed to implement under the Breaux-Chafee welfare bill. The second approach would anger some important constituencies and set a new standard for waivers. Many States that have received waivers would want to renegotiate the existing protections for workers and children, and future requests would undoubtedly seek to go even further than Wisconsin.

Entitlement and Due Process

Background.

The toughest issue in the entire waiver is how best to make sure that recipients get jobs and child care, without handing Thompson the chance to claim we vetoed his waiver by insisting upon an individual entitlement to welfare, which we have not done in the congressional debate. (We have, however, pressed Congress for much stronger due process protections than Wisconsin proposes.) The stated intent of the Wisconsin plan is to provide enough work and child care to go around, and to use savings from caseload reduction toward that purpose, but there is no explicit guarantee. The Wisconsin statute specifically denies that any individual is entitled to a job slot. The problem is how to structure a response and hold them to their stated intent. There is not a simple mechanism for doing this.

The central question is whether to waive paragraph 402(10)(A) of the Social Security Act, which is the basis of the entitlement to assistance. That paragraph reads:

"[The State plan for aid and services to needy families with children must] provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals"

This paragraph is the basis of the *Goldberg v. Kelly* due process requirements that the State requests not apply to their demonstration. A wide variety of groups oppose a waiver of this provision, including among others the Archbishop of Milwaukee, other religious groups, Democratic Congressmen and labor organizations. Governor Thompson and other Republicans in Congress are likely to strongly criticize the Administration if this provision is not waived.

Wisconsin Request

The Wisconsin legislature enacted a specific non-entitlement provision that also limits due process, for two stated reasons: 1) The major national welfare reform bills end the entitlement; and 2) the state wanted to avoid the due-process constraints of *Goldberg v. Kelly*, a 1970 Supreme Court case which requires states to grant a recipients notice and an evidentiary hearing (including the opportunity submit evidence, cross-examine opposing witnesses, and retain a lawyer) before reducing or terminating any benefits to which the recipient has a statutory entitlement. Wisconsin argues that requiring a full evidentiary hearing before reducing or terminating benefits would make it easier for recipients to get around work requirements, and would keep the system looking more like a welfare program than the real world of work. Due process procedures similar to *Goldberg v. Kelly* would also make more of the contractors' decisions appealable to the State.

To ensure there is no appearance of entitlement, Wisconsin seeks almost full contractor discretion in providing assistance. A contractor could effectively refuse to provide assistance by placing individuals in permanent unsubsidized job search. Applicants and (former) recipients could appeal to State only on matters of income eligibility. They could not appeal to the State the denial or termination of a job opportunity for any other reason. || NO

The Administration has sought much stronger due process provisions in welfare bills. Both Castle-Tanner and Chafee-Breaux are much stronger than Wisconsin; the Republican bills are not much stronger. States would have to set specific rules for providing assistance, and follow them. Applicants and beneficiaries could appeal to the State who wrote the rules, not just to a contractor that has incentives to deny assistance.

Options and discussion

While the fundamental choice is whether to waive the entitlement and the related due process protections, the suboptions are as stark. Options include:

- **Waiving the entitlement:**
 - Waive both the entitlement and due process procedures
 - Waive the entitlement, but set up due process procedures that are less stringent than Goldberg v. Kelly
- **Not waiving the entitlement:**
 - Retaining all current due process procedures
 - Specify that Goldberg v. Kelly (including appeals to the State) applies only to the denial or termination of a job slot, but not to (reducing benefits) for failure to work. Allow the State to develop their own procedures as long as they meet Goldberg v. Kelly.

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Goldberg v. Kelly does not apply to assistance that is discretionary. As a result, waiving the entitlement voids its due process requirements unless some other entitlement is set up in its stead (such as a guarantee of a job slot). Absent an alternative entitlement, appeal rights would be those the State proposes unless more substantial ones were required by the waiver terms and conditions. Added appeal rights might include, for example, a timely post-termination evidentiary hearing before the State. (Goldberg v. Kelly requires a pre-termination hearing).

The State says it intends to provide timely assistance to all who are eligible. Therefore, it is not clear that waiving the entitlement is necessary for Wisconsin to accomplish its goals. Under W-2, any entitlement would be very different from the current one. A remaining entitlement could be structured so that Goldberg v. Kelly rules applied only to whether or not someone was offered a job slot or fired, but not to whether their benefit was reduced for failure to work. Current due process protections are more substantial than Goldberg v. Kelly requires, so the State could be given substantial flexibility to design its own procedures. This would substantially reduce the burden of fair hearings while providing assurances that a job would be available.

Any due process procedures need to factor in the financial incentives contractors will have. They will be paid based on the number of people they remove from the welfare rolls. If fewer people leave the rolls than the State budgeted, the contractor would have to pay the added costs (unless it were due to increasing local unemployment rates) <Absent rights to appeal to the State,> financially strapped contractors may inappropriately deny or terminate job slots to reduce costs.

Time Limits

Wisconsin proposes to limit participation in any one job component of W-2 to two years, with a five year time limit on overall participation. Some individuals might effectively have less than a five year overall time limit. Contractors could provide extensions at their discretion, but generally would have to pay the costs themselves. These optional extensions would be based in part on the contractors' assessment of an individual's ability to get a job in the local market. A parent whose request for an extension was denied would not have the right to appeal the decision to the State. When an extension was not granted, it is not clear whether any vouchers would be available for children needing assistance to retain housing.

There are three basic options:

- Grant the State's request without further clarification.
- Grant terms identical to those used in the existing "Work, Not Welfare" demonstration
- Use terms similar to "Work, Not Welfare", but specify that individual capacities must be considered when deciding whether to grant an extension to the time limit.

Wisconsin's current small "Work, Not Welfare" demonstration calls for extension on cash assistance when local conditions were such that individuals "who play by the rules" could not find a job. When approving the existing waiver, it was intended that the State's criteria for extensions should factor in individual's capacities to do work, and that extension would be granted to those who met them. However, the State's procedures (which have not been used since no one has reached the time limit yet) look only at local economic conditions and are optional to the counties rather than mandatory. The waiver also calls for child vouchers for housing "if a child will be made homeless as a result of the termination of benefits". It is not clear whether the State intends to continue the vouchers under W-2.

The Administration's legislative position has emphasized vouchers for children whose parents reach the time limit more than extensions for parents who play by the rules but do not find jobs. "Work, Not Welfare" provides less in vouchers than the Administration has sought. It cannot be compared directly to the Castle-Tanner and Chafee-Breaux proposals; they require vouchers in all cases where the time limit is less than five years. With respect to extensions, the Administration has sought to increase the number of exemptions States could offer, but has not proposed the specific exemptions it has sought in waivers (such as jobs that are suitable to a person's intellectual and other capacities). On the other hand, it has sought for States to have standard procedures for deciding who got an extension, rather than leaving it up to contractors.)

It is unlikely that Wisconsin would use the "Work, Not Welfare" procedures if W-2 waivers are granted without modification. The State plans to leave the decision to contractors, and not have written procedures. Each extension would effectively be paid for by the contractor, not the State, so their financial incentive would be to deny as many as possible.

Similarly, using terms identical to "Work, Not Welfare" would lead to a different outcome. Now, the counties are using State funds when approving an extension. Under W-2, contractors would effectively use their own.

Medicaid

Wisconsin has submitted a welfare waiver with significant Medicaid financial and programmatic implications. In connection with the work-based system, the Wisconsin waiver proposes to provide health insurance to current Medicaid eligibles and expand Medicaid eligibility for all families and children under 165% of poverty, subject to payment of premiums. Although the plan would expand coverage to some populations, the plan is predicated on a block grant financing structure and would eliminate the federal entitlement to Medicaid for the AFDC population (although if passed under current law, the waiver would not be structured as a block grant, despite such rhetoric). If the Administration approves the Medicaid proposal, the waiver would set a precedent for waiving mandatory eligibility and services that states could potentially use to restrict eligibility when expenditures exceed revenues. Approval of the Wisconsin plan would also undermine the Administration's objection to Republican proposals that deny the federal guarantee of Medicaid eligibility. The Administration could also be criticized for approving a plan that, similar to the Republican reconciliation package, would link a generally acceptable welfare reform proposal to unacceptable Medicaid changes.

In addition to the above concerns, the following eligibility restrictions could compromise the guarantee of Medicaid coverage. Recipients would lose Medicaid eligibility due to non-payment of premiums, or if they have access to any employer-sponsored health insurance after 12 months of employment. In addition, recipients would not be eligible for Medicaid if they had employer-subsidized insurance (at 50% or greater) for any one month during the past 18 months or currently. The Wisconsin plan would also limit several mandatory services, including treatment services for children under the EPSDT requirements, and skilled nursing and home care services.

If the Wisconsin health plan is approved without the above restrictions on eligibility, budget neutrality requirements will be harder for the state to achieve.

OTHER ISSUES

Residency Requirement

One constitutional issue will require a White House decision. The State asked for a 60-day residency requirement before any person could apply for assistance. DOJ believes that under Shapiro v. Thompson, a 1969 decision in which the Supreme Court held a one-year residency requirement to violate the constitutional "right to travel," any residency requirement must meet the most stringent kind of Supreme Court review, requiring assertion of a "compelling state interest." DOJ also notes that, so far, the State has failed to advance such an interest.

Lawyers have explored whether a 30-day residency requirement could be substituted in place of the longer period requested by Wisconsin, but they have determined that the length of the residency requirement is not the issue. Demonstration of a "compelling state interest" is the determining factor.

There are two options here. The first is to deny the request on the basis that Wisconsin's stated reason for instituting a residency requirement -- to deter people from moving into the State to receive welfare benefits -- does not meet the constitutional standards.

The second option is to grant the request for a period up to sixty days for which the state can demonstrate an interest satisfying constitutional standards. This approach would authorize the State to institute a 60-day residency requirement if such action is constitutional, leaving the issue of constitutionality to the courts. This would allow the Administration to grant the State's request, but it would place the burden on the State to defend its provision in court. DOJ does not see any problems with this approach. (It should be noted that many constitutional commentators believe the current court is looking for an opportunity to reverse or curtail Shapiro.) This option, however, may be viewed as passing to the courts what should be an Executive Branch decision. Some might see this as a precedent reducing the authority of the Executive Branch.

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Labor Issues

Labor organizations, including the AFL-CIO, AFSCME, and SEIU at the international and state levels, have expressed deep concerns about W-2. In addition to supporting retention of the entitlement, due process standards, and time limit extension protections, unions have raised three labor-specific issues, two of which can be worked out favorably:

First, they have opposed Wisconsin's proposal to waive anti-displacement language in the current AFDC statute which protects public employees from losing their positions to welfare recipients serving work assignments. This issue can be worked out favorably for the unions. After public criticism, Governor Thompson withdrew all but one of his requests to waive anti-displacement provisions. Since HHS does not have the legal authority to waive any anti-displacement language and has taken that position in denying states' requests for similar waivers, labor organizations will expect the Administration to deny Wisconsin's remaining waiver request relating to displacement.

Second, they have expressed concerns that W-2 wage levels will violate federal minimum wage protections. HHS proposes to require Wisconsin to pay the equivalent of the minimum wage (including any future increases) to W-2 participants for time spent at work. Labor organizations will appreciate this proposed minimum wage protection (which HHS has insisted upon for other states). They will continue to be concerned, however, that the Administration is allowing Wisconsin to require W-2 recipients to engage in non-work activities (such as job search, education, and training) as a condition of participation in W-2 for which they will receive no remuneration.

Third, they oppose Wisconsin's proposal to permit private entities to compete for and operate W-2 agencies. While the W-2 proposal does provide a right of first refusal for counties which meet the state's contract performance criteria, labor organizations will perceive the contracting process as stacked against them. In supporting their position, unions have argued that public sector accountability and civil service protections are important to maintain in the operating of any public assistance program. Wisconsin currently runs a county-based AFDC program, and AFSCME represents the workers in every county agency in the state.

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Benefit Reductions

The State has proposed benefit reductions in three areas. First, they would switch to a system of flat grants to families based on participation in work activities. Large families would face a benefit reduction, but small families would receive a grant increase. This change is central to the W-2 proposal, and must be approved for Wisconsin to test its approach. Approval is, however, likely to provoke significant negative criticism.

Second, Wisconsin would require participants to make co-payments for subsidized child care. Recipients would have to make these payments from their W-2 grant, thereby reducing the overall benefit. Under the proposal, the copay increases with the number of children in care, and the cost of care. As a result, benefits effectively go down as family size increases. The Administration discussed the possibility of capping the copays for lower income families.

Third, the State would reduce SSI children's grants to the smallest amount by which current benefit are increased when family size increases (the difference between two and three persons). It is not clear why this benefit level was selected. One possibility is using the average increment, rather than the smallest one.

Cost Neutrality

Welfare waivers normally include provisions that limit total Federal spending to the amount that would have been spent absent a waiver. In all but two cases, this has been based on random assignment with experimental and control groups -- and only one of those was not based on the research evaluation data. Preliminary estimates are that Wisconsin's request would increase Federal spending by more than \$100 million annually, an amount that is roughly 25% of their AFDC grant. (HHS and USDA do not have complete detailed estimates.) This increase is comprised of:

- An AFDC block grant that is increased to the 1994 level. (Wisconsin, like many States, has declining spending and caseload)
- Increases in Food Stamp spending to the 1994 level that would result from Food Stamp expansions and cuts in AFDC benefits. (Food Stamp spending is also going down.)

Wisconsin is likely to criticize the Administration for any decision that does not give the State significant increases in Federal funding. Wisconsin in essence seeks financial credit for past caseload decreases, much of which is due to the State's low unemployment rate and healthy economy. If Wisconsin is provided historical funding levels, most other States are likely to request it as well.

The third option appears to be the best approach -- agreeing to work with the State to develop an adequate formula for determining what costs would have been under current law. There is plenty of time, since the waiver would not be implemented for over a year. The Administration could not be attacked for short-funding the State, since the number would not be known. There would also be no precedent for other States to apply for similar funding increases.

Medicaid Cost Neutrality

In considering Medicaid waivers in general, budget neutrality is assumed if the agreed upon estimate of spending absent the waiver is greater than the estimate of spending with the waiver. Should the federal entitlement be retained, it is highly unlikely that the Wisconsin Medicaid waiver alone would be budget neutral.

Wisconsin has been using managed care in its Medicaid program since 1983. The state currently enrolls its SSI and AFDC populations in Primary Care Case Management. In five of the largest counties, Wisconsin has established a voluntary HMO plan for the AFDC population which has enrolled 93% of the AFDC population in those counties. The state has recently submitted a 1915(b) waiver to establish mandatory HMO enrollment for the entire AFDC population, 45% of whom are already enrolled into managed care. The state assumes that the waiver will save only \$16.8 million in FY 1997 off of a base of \$481 million in fee-for-service expenditures.

HHS has proposed to allow the state to use these savings to offset the costs of the expansion population. The Administration's policy to date which has been not to allow states to use managed care savings from proposed or operating 1915(b) waivers. OMB staff estimate that if all states "took credit" for savings associated with their current managed care programs, the costs to the federal government for the period from FY 1997- FY 2001 would equal approximately \$3 billion. We assume that approximately 50% of the AFDC adults and children will be enrolled in managed care under current law.

In addition to the concerns about precedent, OMB staff, based upon state estimates, believe that the savings from the 1915(b) are not enough to offset the costs of the expansion population. Thus, we believe that if Medicaid is to stand alone, it will not be budget neutral with or without the use of the managed care savings.

this not precisely right. The State has
discretion to review any such decision.

CLOSE HOLD

~~to~~ The difference between these
decisions and decisions relating strictly

to financial eligibility is Wisconsin Waiver.

That in the latter state review is mandatory, not discretionary. 169

On May 29, Gov. Thompson delivered a 400-page request for specific waivers of AFDC, 18 Medicaid, and 5 Food Stamp provisions. HHS sees no problem with at least 54 of the 69 welfare provisions and 7 of the 18 Medicaid provisions. USDA has more limited waiver authority, but most of the waivers can be worked out. HHS and USDA have been working with the State to flesh out the details and work out mutually agreeable alternatives to many of the smaller issues. The State has changed its request in some areas. There are a number of requests the Executive Branch cannot legally grant. These include, among others, more stringent Food Stamp sanctions, changes to Foster Care, minimum wage and other labor issues in work programs, and receiving AFDC funds without providing State matching funds.

Wisconsin seeks to replace AFDC with a program that provides temporary jobs slots (generally up to five years) rather than cash welfare. The State would pay fixed sums of money to contractors (that might be local governments) to provide job slots to those the contractor determined eligible. Applicants would go through a two-week job search and then be placed in one of four categories -- unsubsidized work or job search (where some child care assistance would be available), trial subsidized jobs, or one of two types of community service jobs. Assistance would be based on the hours of work -- no work, no money. Benefits would not increase with family size. Counting child care copays, benefits would decline with family size.

The State projects their plan would cut caseloads in half. Contractors could keep any money from higher-than-expected caseload reductions, and generally would have to pay the costs of lower-than-budgeted caseload reductions. Matters of financial fact could be appealed to the State, (but all other eligibility, job placement, and sanction decisions would be at the contractor's discretion.) Extensions to the time limit for those who "play by the rules" would also be at the contractor's discretion. It is unclear whether any vouchers would be available after the time limit for children who need it to retain housing.

The Federal entitlement to Medicaid for poor families with children would be waived. Families below 165% of poverty would pay a premium to obtain coverage that is more limited than Medicaid. Those who failed to pay premiums, those who had chosen to drop out of the program, and most with access to employer-sponsored coverage would not be eligible.

The earliest the waiver can be approved without legal challenge is July 11, which marks the end of 30-day period for public comment. Dole stopped in Wisconsin last week to attack the Administration for not getting the waiver done yet. Last month, the House overwhelmingly passed a bill to deem the entire Wisconsin waiver approved. The Senate is less likely to move that legislation, unless Wisconsin is too dissatisfied with what the Administration approves. It is not clear, however, what Senate legislation might look like. CBO would score the bill prior to Senate passage (with costs likely to exceed a half billion), and the Governor has publicly disavowed parts of the waiver request having to do with worker displacement.

*

First Draft

MAJOR POLICY ISSUES

There are two schools of thought on how to approach the major remaining policy and legal issues in the Wisconsin plan.

- One approach, advocated by HHS, is to address each policy issue separately. For example, are the time limits consistent with past waiver practice? Are they consistent with the protections the Administration has sought for children after time limits in welfare reform?
- The other approach would be to treat Wisconsin as the political equivalent of another welfare reform bill, and judge its elements based on what we are willing to accept or veto in national legislation from Congress, rather than what the Administration wants from Congress.

The first approach would deny Wisconsin some provisions even though states could do them under the Breaux-Chafee welfare bill we support. The second approach would set a new standard for waivers. Many States that have received waivers would want to renegotiate the existing protections for children, and future requests this and next term would seek to go further than Wisconsin.

Entitlement and Due Process

The toughest issue in the entire waiver is how best to make sure that recipients get jobs and child care, without handing Thompson the chance to claim we vetoed his waiver by insisting upon an individual entitlement to welfare, which we have not done in the congressional debate. (We have, however, pressed Congress for much stronger due process protections than Wisconsin proposes.) The stated intent of the Wisconsin plan is to provide enough work and child care to go around, and to use savings from caseload reduction toward that purpose, but there is no explicit guarantee. Indeed, the Wisconsin statute specifically denies that any individual is entitled to a job slot.

The Wisconsin legislature enacted a specific non-entitlement provision that also limits due process, for two reasons: 1) The major national welfare reform bills and the entitlement; and 2) the state wanted to avoid the due-process constraints of *Goldberg v. Kelly*, a 1970 Supreme Court case which requires states to grant a recipient notice and an evidentiary hearing (including the opportunity to submit evidence, cross-examine opposing witnesses, and retain a lawyer) before reducing or terminating any benefits to which the recipient has a statutory entitlement. Wisconsin argues that requiring a full evidentiary hearing before reducing or terminating benefits would make it easier for recipients to get around work requirements, and would keep the system looking more like a welfare program than the real world of work. ~~It would also require the State to take more responsibility for contractors' actions.~~

don't understand what this means

precisely, but I don't think it's right. Let's talk?

To ensure there is no appearance of entitlement, Wisconsin seeks almost full contractor discretion in providing assistance. A contractor could effectively refuse to provide assistance by placing individuals in permanent unsubsidized job search. Applicants and (former) recipients could appeal]

See my comment on p. 1. The state can always grant an appeal. The question is whether the appeal to the state is mandatory or discretionary.

to State only on matters of financial fact. They could not appeal the denial or termination of a job opportunity.

The Administration has sought much stronger due process provisions in welfare bills. Both Castle-Tanner and Chafee-Breaux are much stronger than Wisconsin; the Republican bills are not much stronger. States would have to set specific rules for providing assistance, and follow them. Applicants and beneficiaries could appeal to the State who wrote the rules, not just to a contractor that has incentives to deny assistance. HHS appears to want to go further, proposing that the State develop written procedures for offering job slots that are consistent with Goldberg v. Kelly.

review? Are there other differences?

The basic options are:

- Waive the requirement that families have the opportunity to apply for assistance and, if they meet written eligibility requirements, receive assistance timely. (This is the entitlement to welfare on which Goldberg v. Kelly due process standards are based.)
- Waive the entitlement to welfare, but substitute for it an entitlement to an opportunity to work. Apply Goldberg v. Kelly to only the more serious adverse actions.
- Maintain the entitlement and subject all adverse actions to Goldberg v. Kelly standards.

This is the key question: whether the decision-maker has to provide a pre-termination evidentiary hearing.

The opportunity to apply for assistance and, if one meets written eligibility standards, receive timely cash assistance is the heart of the "entitlement" to welfare. Without this guarantee, the due process standards of Goldberg v. Kelly do not apply. The State says it intends to provide timely assistance to all who are eligible. Therefore, HHS believes waiving their responsibility to do so is not necessary for Wisconsin to accomplish its goals. Moreover, HHS is concerned how contractors would implement the State's intentions absent due process protections. The contractors will be paid based on how many people they remove from the welfare rolls, so their incentive would be to deny assistance whenever possible.

On the other hand, Wisconsin will object strongly if any significant due process requirements are maintained. If the requirements are waived, Wisconsin could be warned that the waivers would be revoked if close monitoring shows that families are being treated arbitrarily.

The second option -- substituting an opportunity to work for the welfare entitlement -- does end welfare as we know it. Done right, the State would have to provide a fair hearing before denying assistance or terminating assistance -- but could summarily reduce benefits for failure to work. This would substantially reduce the burden of fair hearings while providing assurances that a job would be available.

Under option three, a fair hearing would be available for any adverse action the State took -- including reducing assistance for failing to work. While many commenters support maintaining all current protections -- and HHS would like to maintain as many as possible -- option three is not likely to be perceived as ending welfare as we know it.

Regardless of what approach is taken, White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the State, the waiver allow the State to adopt procedures that meet certain general criteria.

This does not seem to me the correct middle position. It keeps the entitlement, which means by definition that GvK will apply. The correct middle position to me to be along the lines of Bruce's memo.

Could I see that? Is the way these bills are "much stronger" in providing mandatory

I have to say that it seems to me that

SMK

see below - this should be the middle position in a somewhat tempered form.

This is simply not true. The entitlement would be to a job + a paycheck. If ~~for~~ a person were deprived of those things, the state would need to provide the full panoply of due process protections. Am I missing something?

insofar as + to the extent that they compare with applicable constitutional standards. no, use the old language

See comment
on page 1 again.

Time Limits

Wisconsin proposes to limit job slots to 5 years. Contractors could provide extensions at their discretion, but might have to pay the costs themselves. The contractor's decision could not be appealed to the State. It is not clear whether any child vouchers would be available for those not given an extension.

Wisconsin's current small "Work, Not Welfare" demonstration calls for extension on cash assistance when local conditions were such that individuals "who play by the rules" could not find a job. When approving the existing waiver, HHS intended that the State's criteria for extensions should factor in individual's capacities to do work, and that extension would be granted to those who met them. However, the State's procedures (which have not been used since no one has reached the time limit yet) look only at local economic conditions and are optional to the counties rather than mandatory. The waiver also calls for child vouchers for housing "if a child will be made homeless as a result of the termination of benefits". HHS says it is not clear whether the State intends to continue the vouchers under W-2.

The Administration's legislative position has emphasized vouchers for children whose parents reach the time limit more than extensions for parents who play by the rules but do not find jobs. "Work, Not Welfare" provides less in vouchers than the Administration has sought, but more than Castle-Tanner and Chafee-Breaux require. With respect to extensions, the Administration has sought to increase the number of exemptions States could offer, but has not proposed the specific exemptions it has sought in waivers (such as jobs that are suitable to a person's intellectual and other capacities). On the other hand, it has sought for States to have standard procedures for deciding who got an extension, rather than leaving it up to contractors.)

There are three basic options:

- Grant the State's request without further clarification.
- Grant terms identical to those used in the existing "Work, Not Welfare" demonstration
- Use terms similar to "Work, Not Welfare", but specify that individual capacities must be considered when deciding whether to grant an extension to the time limit (HHS proposal).

It is unlikely that Wisconsin would use the "Work, Not Welfare" procedures if W-2 waivers are granted without modification. The State plans to leave the decision to contractors, and not have written procedures. Each extension would effectively be paid for by the contractor, not the State, so their financial incentive would be to deny as many as possible.

Similarly, using terms identical to "Work, Not Welfare" would lead to a different outcome. Now, the counties are using State funds when approving an extension. Under W-2, contractors would effectively use their own.

Medicaid

Wisconsin has submitted a welfare waiver with significant Medicaid financial and programmatic implications. In connection with the work-based system, the Wisconsin waiver proposes to

provide health insurance to current Medicaid eligibles and expand Medicaid eligibility for all families and children under 165% of poverty, subject to payment of premiums. Although the plan would expand coverage to some populations, the plan is predicated on a block grant financing structure and would eliminate the federal entitlement to Medicaid for the AFDC population (although if passed under current law, the waiver would not be structured as a block grant, despite such rhetoric). If the Administration approves the Medicaid proposal, the waiver would set a precedent for waiving mandatory eligibility and services that states could potentially use to restrict eligibility when expenditures exceed revenues. Approval of the Wisconsin plan would also undermine the Administration's objection to Republican proposals that deny the federal guarantee of Medicaid eligibility. The Administration could also be criticized for approving a plan that, similar to the Republican reconciliation package, would link a generally acceptable welfare reform proposal to unacceptable Medicaid changes.

In addition to the above concerns, HHS has specifically objected to the following eligibility restrictions that would compromise the guarantee of Medicaid coverage. Recipients would lose Medicaid eligibility due to non-payment of premiums, or if they have access to any employer-sponsored health insurance after 12 months of employment. In addition, recipients would not be eligible for Medicaid if they had employer-subsidized insurance (at 50% or greater) for any one month during the past 18 months or currently. The Wisconsin plan would also limit several mandatory services, including treatment services for children under the EPSDT requirements, and skilled nursing and home care services.

If the Wisconsin health plan is approved without the above restrictions on eligibility, budget neutrality requirements will be harder for the state to achieve.

OTHER ISSUES

Residency Requirement

One constitutional issue will require a White House decision. The state asked for a 60-day ^{limit} residency requirement before applying for assistance. DOJ does not believe that any residency requirement is permissible under a 1969 Supreme Court decision, *Shapiro v. Thompson* (no relation). In that case, the court ruled that a one-year residency requirement violated the constitutional right to travel. White House Counsel believes that although this argument is substantial, the constitutional issue is not crystal clear. ~~It believes that while the State's current stated reasons for desiring the waiver (keeping poor families from moving to the State for higher benefits or a guaranteed job) would not pass muster, the State may be able to develop other reasons that do pass muster.~~ The two basic options are:

- Deny the waiver since DOJ believes it does not pass muster
- Allow the waiver on the condition that the State has motives for using it that it can convince the courts do not violate *Shapiro v. Thompson*.

HHS opposes passing to the courts what currently is an Executive Branch prerogative. The Counsel's office thus suggests that we grant the state a residency requirement of "the period up to 60 days for which the state can demonstrate an in interest satisfying constitutional standards."

Insert A

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improper

One constitutional issue will require a White House decision. The State asked for a 60-day residency requirement before any person could apply for assistance. DOJ believes that under Shapiro v. Thompson, a 1969 decision in which the Supreme Court held a one-year residency requirement to violate the constitutional "right to travel," any residency requirement must meet the most stringent kind of Supreme Court review, requiring assertion of a "compelling state interest." DOJ also notes that so far, the State has failed to advance such an interest.

There are two options here -- one advocated by HHS, the other by the White House Counsel's office. The HHS option is simply to deny the request for a residency requirement. The Counsel option is to grant the request for "the period up to sixty days for which the state can demonstrate an interest satisfying constitutional standards." This approach, approved in full by DOJ, authorizes the State to do what it wants if such action is constitutional, leaving the issue of constitutionality to the courts. The approach thus effectively allows the Administration to grant the State's request, but places the burden on the State to defend its provision in court.

HHS objects to the Counsel's approach on the ground that it abdicates to the courts a decision that properly should be made by the Administration. HHS also argues that this approach sets a dangerous precedent for the future. Counsel's Office replies that the approach is fully legal (DOJ concurs) and that it allows us to get rid of a tricky issue by at once giving the state what it wants and not approving anything we think improper. Counsel's Office also notes that a decision to hand the question to the courts may be especially appropriate in this context because the law here is very uncertain: a great many constitutional commentators believe that the current Court is looking for an opportunity to reverse or severely curtail Shapiro.

To Ken Apfel:

Substitute Residency Requirement
Section

Elena

That would allow the Executive Branch to grant the state's request, but put the burden on Wisconsin to defend its provision in court.

Labor Issues

The waiver contains four important labor issues, two of which can be worked out relatively easily. Most importantly, the proposal calls for W-2 program administration to be contracted out. Contractor employees would not be necessarily have the same merit system protections as government workers.

The waiver requested to weaken anti-displacement provisions, but Governor Thompson has retracted all but the proposal to fill existing vacancies with welfare recipients (and this cannot be waived). Also, the proposed W-2 grant would not necessarily equal minimum wage payment for the required work activities. This can be addressed by having the State modify the number of hours worked to equal minimum wage.

Benefit Reductions

The State has proposed benefit reductions in three areas. First, they would switch to a system of flat grants to families based on participation in work activities. Large families would face a benefit reduction, but small families would receive a grant increase. This change is central to the W-2 proposal, and must be approved for Wisconsin to test its approach. Approval is, however, likely to provoke significant negative criticism.

Second, Wisconsin would require participants to make co-payments for subsidized child care. Recipients would have to make these payments from their W-2 grant, thereby reducing the overall benefit. Under the proposal, the copay increases with the number of children in care, and the cost of care. As a result, benefits effectively go down as family size increases. HHS has discussed within the Administration the possibility of capping the copays for lower income families.

Third, the State would reduce SSI children's grants to the smallest amount by which current benefit are increased when family size increases (the difference between two and three persons). It is not clear why this benefit level was selected. HHS recommends using the average increment, rather than the smallest one.

Welfare Cost Neutrality

Welfare waivers normally include provisions that limit total Federal spending to the amount that would have been spent absent a waiver. In all but two cases, this has been based on random assignment with experimental and control groups -- and only one of those was not based on the research evaluation data. Preliminary estimates are that Wisconsin's request would increase Federal spending by more than \$100 million annually, an amount that is roughly 25% of their AFDC grant. (HHS and USDA do not have complete detailed estimates.) This increase is comprised of:

- An AFDC block grant that is increased to the 1994 level. (Wisconsin, like many States, has declining spending and caseload)
- Increases in Food Stamp spending to the 1994 level that would result from Food Stamp expansions and cuts in AFDC benefits. (Food Stamp spending is also going down.)
- Specific waivers that increase costs in Foster Care, Child Support, and Child Nutrition, some of which can be granted and others that cannot.

Wisconsin's waiver will have effects on costs that cannot be measured by the traditional research design. For example, deterring people from going on welfare may produce savings that the normal random assignment experimental design would not capture. There are three basic approaches that can be taken:

- Provide AFDC funding at the 1994 level, and accept cost increases in other programs as well. (A block grant cannot be approved, but a financial equivalent can.)
- Provide AFDC funding at some historical level, with downward adjustments for cost-shifts and expansions in Food Stamps and other programs. This will increase costs some, but not as much as the first option. A key question is what base would be used for spending and what savings would be expected.
- Specify in the waiver a date by which a new evaluation methodology and related cost neutrality baseline would be developed. (HHS recommendation).

Wisconsin is likely to criticize the Administration for any decision that does not give the State significant increases in Federal funding. Wisconsin in essence seeks financial credit for past caseload decreases, much of which is due to the State's low unemployment rate and healthy economy. If Wisconsin is provided historical funding levels, most other States are likely to request it as well.

The third option appears to be the best approach -- agreeing to work with the State to develop an adequate formula for determining what costs would have been under current law. There is plenty of time, since the waiver would not be implemented for over a year. The Administration could not be attacked for short-funding the State, since the number would not be known. There would also be no precedent for other States to apply for similar funding increases.

Medicaid Cost Neutrality

In considering Medicaid waivers in general, budget neutrality is assumed if the agreed upon estimate of spending absent the waiver is greater than the estimate of spending with the waiver. Should the federal entitlement be retained, it is highly unlikely that the Wisconsin Medicaid waiver alone would be budget neutral.

Wisconsin has been using managed care in its Medicaid program since 1983. The state currently enrolls its SSI and AFDC populations in Primary Care Case Management. In five of the largest counties, Wisconsin has established a voluntary HMO plan for the AFDC population which has enrolled 93% of the AFDC population in those counties. The state has recently submitted a 1915(b) waiver to establish mandatory HMO enrollment for the entire AFDC population, 45% of

whom are already enrolled into managed care. The state assumes that the waiver will save only \$16.8 million in FY 1997 off of a base of \$481 million in fee-for-service expenditures.

HHS has proposed to allow the state to use these savings to offset the costs of the expansion population. The Administration's policy to date which has been not to allow states to use managed care savings from proposed or operating 1915(b) waivers. OMB staff estimate that if all states "took credit" for savings associated with their current managed care programs, the costs to the federal government for the period from FY 1997- FY 2001 would equal approximately \$3 billion. We assume that approximately 50% of the AFDC adults and children will be enrolled in managed care under current law.

In addition to the concerns about precedent, OMB staff, based upon state estimates, believe that the savings from the 1915(b) are not enough to offset the costs of the expansion population. Thus, we believe that if Medicaid is to stand alone, it will not be budget neutral with or without the use of the managed care savings.

Newest

DRAFT

July 8, 1996

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Ken Apfel

SUBJECT: Major Issues -- Wisconsin Waiver

Here is a brief summary of issues the White House needs to resolve in the next few days so that the President can announce the Wisconsin waiver at the NGA meeting July 16.

I. Overview

On May 29, Gov. Thompson delivered a 400-page request for specific waivers of 69 AFDC, 18 Medicaid, and 5 Food Stamp provisions. HHS sees no problem with at least 54 of the 69 welfare provisions and 7 of the 18 Medicaid provisions. USDA has more limited waiver authority (it cannot allow changes that would make any families worse off), but ___ of ___ have been worked out.

The earliest the waiver can be approved without legal challenge is July 11, which marks the end of 30-day period for public comment. Dole stopped in Wisconsin last week to attack the Administration for not getting the waiver done yet. Last month, the House overwhelmingly passed a bill to deem the entire Wisconsin waiver approved, but the Senate is less likely to move that legislation -- unless we stir it up again by turning down too much.

II. Major Policy Issues

There are two schools of thought on how to approach the major remaining policy and legal issues in the Wisconsin plan. One approach, advocated by HHS, is to treat Wisconsin as another waiver request, and try to hold the line on a handful of issues -- time limits, residency requirements, etc. -- that HHS has denied states in the past. The other approach would be to treat Wisconsin as the political equivalent of another welfare reform bill, and judge its elements based on what we are willing to accept or reject in national legislation from Congress. The first approach would deny Wisconsin some provisions even though states could do them under the Breaux-Chafee welfare bill we support. The second approach would take the same position on Wisconsin that we have staked out in the national debate: yes to a work-based welfare block grant, no to a Medicaid block grant.

1. Medicaid: On Medicaid, the state will get very little of what it asked for. Although the health plan was designed to expand coverage up to 165% of poverty by placing welfare recipients in managed care, we will have to reject the basic framework, which is a block grant that ends the Medicaid guarantee. HCFA is also firmly opposed to allowing premiums of \$20 a month and forcing recipients to accept insurance from their employer if it is available. However, we can grant a pending Medicaid 1915(b) waiver that will place welfare recipients in managed care and use the savings to expand coverage, and pledge to keep working with the state to approve as much of the W-2 waiver as we can while preserving the guarantee. As always, budget neutrality will be a problem. The Medicaid provisions are the primary reason we need to keep Congress from passing legislation to deem the waiver approved, because such a bill would be their current reconciliation package in miniature -- generally acceptable welfare reform linked to unacceptable Medicaid.

2. Time Limits: The Wisconsin plan includes a 5-year lifetime limit, like our bill and all the major congressional plans. The issue for the waiver is whether to impose terms on who should get extensions to the time limit. Wisconsin wants to leave that decision to the discretion of the caseworker. In other states, HHS has always forced states to accept mandatory extensions for anyone who reaches the time limit and can't find a job. The one exception is the two-county waiver we granted Wisconsin in 1993, which essentially left that decision to the state.

We have two realistic options: 1) allow the state to implement the exact terms statewide that we granted in 1993; or 2) let the state develop its own terms. Under the first option, Thompson could only complain a little, since he has bragged in the past that his two-county waiver was the toughest in the country. Under the second option, the state could do what it will be able to do anyway if welfare reform becomes law. As a practical matter, Wisconsin will probably implement the same rules whichever option we choose. (Mary Jo Bane favors a third option, to "clarify" the 1993 terms along the lines of what HHS has demanded from other states -- but others at HHS consider this a non-starter, since it would enrage Thompson without enabling us to say he had agreed to the same terms once before.)

3. Entitlement: The toughest issue in the entire waiver is how best to make sure that recipients get jobs and child care, without handing Thompson the chance to claim we vetoed his waiver by demanding an individual entitlement, which has not been our bottom line in the congressional debate. The intent of the Wisconsin plan is to provide enough work and child care to go around, and to use some savings from caseload reduction toward that purpose, but like Breaux-Chafee and other congressional reform bills, there is no explicit guarantee.

The legislature enacted a specific non-entitlement provision, for two reasons: 1) the major national welfare reform bills end the entitlement; and 2) the state wanted to avoid the due-process constraints of *Goldberg v. Kelly*, a 1970 Supreme Court case which requires states to grant a recipient notice and an evidentiary hearing (including the opportunity to submit evidence, cross-examine opposing witnesses, and retain a lawyer) before terminating any benefits. Wisconsin is willing to provide ~~reasonable notice and opportunity for a~~

to which the recipient has a statutory entitlement.

Indeed, the state specifically denies that any individual is entitled to such benefits.

certain post-termination opportunities for review,

review but argues that requiring a full evidentiary hearing before terminating benefits would make it easier for recipients to get around work requirements, and would keep the system still looking like a welfare program instead of the real world of work.

There is no having it both ways on this question: any outright guarantee will maintain the individual entitlement, even if we call it an assurance or something else. HHS would like to do just that, and impose due process procedures that go and the consequent due process safeguards, further than the state proposed. That would have the advantage of protecting recipients if the state runs out of money. On the other hand, it might prompt Thompson to reject the terms of the waiver, claim that we had vetoed welfare reform a third time in order to preserve the current system, and lobby Congress to pass a full Wisconsin waiver. much

Another approach would be to require the state to "make best efforts to ensure that those eligible receive services and benefits." Holding Wisconsin to a "best efforts" standard would make it easier for courts and the Administration to review the waiver if Wisconsin fails to provide jobs, but it ~~could~~ probably would not be interpreted as an individual entitlement. Recipients would get the notice and review proposed by the state, but they could not go to court, therefore, the full panoply of due process protections would not apply. every time they were sanctioned.

White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the state, we could grant the state the right to go forward with its procedural provisions "insofar as and to the extent that they comport with applicable constitutional requirements." Since these issues are bound to be litigated no matter what we say, it probably makes sense to leave them to the courts to decide. to adopt procedures and demand a full evidentiary hearing prior to any sanction.

III. Legal Issues

Assuming we allow the state to proceed with something short of an individual entitlement (which clearly demands the full range of due process protections), Requestless which approach

On two of labor's main concerns (worker displacement and the minimum wage), we lack the legal authority to grant exactly what the state wanted. The provision that requires workfare participants to be placed in new (not existing) job vacancies is in a section of the Social Security Act that cannot be waived under current law. But every major welfare bill would remove that provision, so Wisconsin will be free to do what it wants once welfare reform becomes law. On the minimum wage, we can essentially grant the state's request to pay participants the minimum wage for 30 hours a week of work but not additional hours of education and training. But the state will have to reduce hours or raise benefits once an increase in the minimum wage goes into effect.

Two constitutional issues will require a White House decision. First, the state asked for a 60-day residency requirement before applying for assistance. HHS has refused to grant even 30-day requirements in the past, based on a 1970 ~~ok~~ Supreme Court decision, *Shapiro v. Thompson* (no relation), that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the grounds that 30 days represents a reasonable administrative period but 60 days does not. White House

459 Barue: do you not want to say that still a third approach is to leave the non-entitlement language (without adding a best-efforts requirement)?

Although this argument is substantial, believes that the constitutional issue is not crystal clear, noting that the current Court may wish to confine Shapiro to its facts and that Wisconsin (like many other states) has

Counsel argues that many states have residency requirements of 60 days or longer for other benefits -- Wisconsin requires university students to live in the state for a full year before they can qualify for resident tuition, and that we could grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate a compelling administrative interest." That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court under the strictest possible standard. An approach still more favorable to the state, reflecting the constitutional uncertainty,

requiring, for example, that

an in lieu of satisfactory court

constitutional

[The second constitutional issue involves the denial of benefits to U.S.-born citizen children of illegal immigrants. HHS argues that because the children are born here, they have a right to get welfare even though their parents are not eligible and cannot be required to work. White House Counsel argues that if welfare is turned into a jobs program and eligibility is based on work, the children of illegal immigrants might well have no constitutional claim, any more than the children of parents who refuse to work. This is not a big issue in Wisconsin, where there are very few child-only cases, but it is an enormous concern in California, where most of the caseload growth in the past decade has been child-only cases involving children of illegal immigrants.]

the same

these citizen

benefits as any others,

The court's office suggests that consistent with Shapiro,

and also suggested by counsel

in this area, would ~~also~~ generally, to require the state to demonstrate an interest ~~substantive~~ for the residency period satisfying constitutional ~~requirements~~ ^{standards,} without stating precisely what those standards are.

again think the constitutional issue is more difficult, than this analysis suggests. It

~~Ally and approach~~

July 8, 1996

DRAFT

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed
Ken Apfel

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2. Time Limits: The Wisconsin plan includes a 5-year lifetime limit, like our bill and all the major congressional plans. The issue for the waiver is whether to impose terms on who should get extensions to the time limit. Wisconsin wants to leave that decision to the discretion of the caseworker. In other states, HHS has always forced states to accept mandatory extensions for anyone who reaches the time limit and can't find a job. The one exception is the two-county waiver we granted Wisconsin in 1993, which essentially left that decision to the state.

We have two realistic options: 1) allow the state to implement the exact terms statewide that we granted in 1993; or 2) let the state develop its own terms. Under the first option, Thompson could only complain a little, since he has bragged in the past that his two-county waiver was the toughest in the country. Under the second option, the state could do what it will be able to do anyway if welfare reform becomes law. As a practical matter, Wisconsin will probably implement the same rules whichever option we choose. (Mary Jo Bane favors a third option, to "clarify" the 1993 terms along the lines of what HHS has demanded from other states -- but others at HHS consider this a non-starter, since it would enrage Thompson without enabling us to say he had agreed to the same terms once before.)

3. Entitlement: The toughest issue in the entire waiver is how best to make sure that recipients get jobs and child care, without handing Thompson the chance to claim we vetoed his waiver by demanding an individual entitlement, which has not been our bottom line in the congressional debate. The intent of the Wisconsin plan is to provide enough work and child care to go around, and to use some savings from caseload reduction toward that purpose, but like Breaux-Chafee and other congressional reform bills, there is no explicit guarantee.

The legislature enacted a specific ~~non-entitlement provision, for two reasons:~~ 1) the major national welfare reform bills end the entitlement; and 2) the state wanted to avoid the due-process constraints of *Goldberg v. Kelly*, a 1970 Supreme Court case which requires states to grant a recipient notice and an evidentiary hearing (including the opportunity to submit evidence, cross-examine opposing witnesses, and retain a lawyer) before terminating any benefits. Wisconsin is willing to provide ~~reasonable notice and opportunity for a~~

to which the recipient has a statutory entitlement.

Indeed, The state specifically denies that any individual is entitled to such benefits.

certain post-termination opportunities for review,

full evidentiary

review but argues that requiring a hearing before terminating benefits would make it easier for recipients to get around work requirements, and would keep the system still looking like a welfare program instead of the real world of work.

and the consequent due process safeguards,

There is no having it both ways on this question: any outright guarantee will maintain the individual entitlement, even if we call it an assurance or something else. HHS would like to do just that, and impose due process procedures that go further than the state proposed. That would have the advantage of protecting recipients if the state runs out of money. On the other hand, it might prompt Thompson to reject the terms of the waiver, claim that we had vetoed welfare reform a third time in order to preserve the current system, and lobby Congress to pass a full Wisconsin waiver.

probably would

Another approach would be to require the state to "make best efforts to ensure that those eligible receive services and benefits." Holding Wisconsin to a "best efforts" standard would make it easier for courts and the Administration to review the waiver if Wisconsin fails to provide jobs, but it could not be interpreted as an individual entitlement. Recipients would get the notice and review proposed by the state, but they could not go to court every time they were sanctioned.

Therefore, the full panoply of due process protections would not apply.

and demand a full evidentiary hearing prior to any sanction.

White House Counsel suggests that instead of HHS outlining its own detailed due process procedures for the state, we could grant the state the right to go forward with its procedural provisions "insofar as and to the extent that they comport with applicable constitutional requirements." Since these issues are bound to be litigated no matter what we say, it probably makes sense to leave them to the courts to decide.

III. Legal Issues

Assuming we allow the state to proceed with something short of an individual entitlement (which clearly demands the full range of due process protections),

On two of labor's main concerns (worker displacement and the minimum wage), we lack the legal authority to grant exactly what the state wanted. The provision that requires workfare participants to be placed in new (not existing) job vacancies is in a section of the Social Security Act that cannot be waived under current law. But every major welfare bill would remove that provision, so Wisconsin will be free to do what it wants once welfare reform becomes law. On the minimum wage, we can essentially grant the state's request to pay participants the minimum wage for 30 hours a week of work but not additional hours of education and training. But the state will have to reduce hours or raise benefits once an increase in the minimum wage goes into effect.

Two constitutional issues will require a White House decision. First, the state asked for a 60-day residency requirement before applying for assistance. HHS has refused to grant even 30-day requirements in the past, based on a 1970 Supreme Court decision, *Shapiro v. Thompson* (no relation), that a one-year residency requirement violated the constitutional right to travel. HHS is now willing to go along with a 30-day requirement for Wisconsin (and Minnesota, which has had a waiver pending for several months), on the grounds that 30 days represents a reasonable administrative period but 60 days does not. White House

Prue: do you not want to say that still a third approach is to use the "best efforts" language (without adding a best-efforts requirement

believes that^{although this argument is reasonable,} the constitutional issue is not crystal clear, noting that the current Court may wish to confine Shapiro to its facts and that Wisconsin (like many other states) has

Counsel ~~argues that many states have~~ residency requirements of 60 days or longer for other benefits -- Wisconsin requires university students to live in the state for a full year before they can qualify for resident tuition, ~~and that we could~~ grant the state a residency requirement for "the period up to 60 days for which the state can demonstrate a compelling administrative interest." That would allow us to grant the state's request, but put the burden on Wisconsin to defend its provision in court under the strictest possible standard. An approach still more favorable to the state, reflecting the constitutional uncertainty

requiring, for example, that

constitutional

[The second constitutional issue involves the denial of benefits to U.S.-born citizen children of illegal immigrants. HHS argues that ~~because the children are born here, they have~~ the same right to get welfare even though their parents are not eligible and cannot be required to work. White House Counsel argues that if welfare is turned into a jobs program and eligibility is based on work, the children of illegal immigrants might well have no constitutional claim, any more than the children of parents who refuse to work. This is not a big issue in Wisconsin, where there are very few child-only cases, but it is an enormous concern in California, where most of the caseload growth in the past decade has been child-only cases involving children of illegal immigrants.]

these citizen

benefits as any others,

The counsel's office suggests that consistent with Shapiro,

and also suggested by counsel

in this area, would ~~also~~ generally require the state to demonstrate an interest ~~substantiating~~ for the residency period satisfying constitutional ~~requirements~~ ^{standards} without stating precisely what those standards are.

again thinks the constitutional issue is more difficult, than this analysis suggests. It

~~Appellate and appellate~~

Welfare mtg 7-10-96

* Lots of comments - almost all in opposition
lots from unions; church sps

Legal issues first

1. Residency requirement

All not granted (many) will come back.

Policy issues - small

1. Min wage - 30 hrs / not for housing

Have to adjust for ↑ in min wage.

2. Contracting out admin of program -

Policy issues - big

1. Guarantee -

Talking to st. abt intentions - to provide jobs

or for everyone - everyone eligible placed

→ We therefore will write terms + conditions to reflect that.

In addition - st has requested waiver of entitlement provision.

Good reason not to waive

- ensure that everyone gets jobs etc. (need assurance).

Memorandum



Subject H.R. 3507, Personal Responsibility and Work Opportunity Act of 1996 and Medicaid Restructuring Act of 1996	Date July 2, 1996
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To
 Andrew Foiss
 Assistant Attorney General
 Office of Legislative Affairs

From
 Randolph Moss
 Deputy Assistant
 Attorney General
 Office of Legal Counsel

Attention: Greg Jones

You have asked us for our views as advisory unit on H.R. 3507, the Personal Responsibility and Work Opportunity Act of 1996 and Medicaid Restructuring Act of 1996. As explained in further detail below, we believe several of the provisions in this bill raise constitutional concerns.

Durational Residency Requirements

Section 103 of the bill amends Part A of title IV of the Social Security Act (42 U.S.C. § 601 et seq.) to create a new section 404(c), which would permit states to impose durational residency requirements for the receipt of welfare benefits. Specifically, § 404(c) would allow a state to provide families that have lived in the state for less than 12 months with the level of benefits, if any, that the families would have received in their prior states of residence. Similarly, section 2003 of the bill creates a new Title XV of the Social Security Act, which would allow states to impose durational residency requirements in their Medicaid programs: new § 1502(b)(4) permits a state to limit the duration and scope of Medicaid benefits for residents who have lived in the state less than 180 days to those benefits the residents would have received in their states of prior residence. See also new section 402(a)(1)(B)(1) (requiring state plans to indicate whether the state intends to treat new state residents differently from other state residents, and if so, how).

The Supreme Court has held that a state impermissibly burdens the right to interstate travel when it denies newcomers the "same right to vital government benefits and privileges . . . as are enjoyed by other residents." Memorial Hosp. v. Maricopa County, 415 U.S. 250, 261 (1974) (one-year residency requirement for free nonemergency medical care invalid as penalty on right to interstate travel); see also Shapiro v. Thompson, 394 U.S. 618 (1969) (invalidating one-year residency requirement for welfare benefits). This is true even where the state acts, as it would here, pursuant

*Different -
 has no
 citizenship
 a hand*

to congressional authorization. See Shapiro, 394 U.S. at 641. In a related line of cases, the Supreme Court has used a different rationale to come to the same conclusion, holding that distinctions based on length of residence violate the Equal Protection Clause under rational basis review. See, e.g., Zobel v. Williams, 457 U.S. 55 (1982) (state lacks rational and permissible interest in granting incrementally higher oil revenue dividend payments to residents of longer duration).¹

This does apply. Ch. would curtail as rational

Recent lower court cases have invalidated laws that, like those contemplated by the bill, limit new residents to the level of benefits they received in their prior states. See Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993), cert. denied, 114 S. Ct. 902 (1994); Aumick v. Bane, 612 N.Y.S.2d 766 (1994); Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993), aff'd, 26 F.3d 95 (9th Cir. 1994), vacated on procedural grounds, 115 S. Ct. 1059 (1995). But see Jones v. Milwaukee County, 485 N.W.2d 21 (Wis. 1992). The argument that such laws might be described as "neutral" with respect to travel, insofar as they provide equivalent benefits to those available in the state of prior residence, was rejected by those courts. Mitchell, 504 N.W.2d at 201-202; Aumick, 612 N.Y.S.2d at 772-73; Green, 811 F. Supp. at 521. As noted in Green, 811 F. Supp. 521, because the cost of living differs between states, such laws might not always provide new residents with benefits equal to those previously received in any meaningful sense. More fundamentally, however, two-tiered benefits systems disadvantage new state residents relative to older state residents:

but might provide more

[U]nder the cases the relevant comparison is not between recent residents of the State of California and residents of other states. . . . It is because the measure treats recent residents of California different than other California residents, and involves the basic necessities of life, that it places a penalty on migration.

Makes no sense.

Id. Under existing case law, this is the dispositive comparison, because it reveals "discriminat[ion] only against those who have recently exercised the right to travel." See Zobel, 457 U.S. at 55 n.5; see also Memorial Hospital, 415 U.S. at 261 ("right of

This is only possible rationale

¹ The majority opinion in Zobel asserted that the right to travel was grounded in the Equal Protection Clause: "In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents." 457 U.S. at 60 n.6. In her concurring opinion, Justice O'Connor argued that the right predated the Constitution and was preserved by the Privileges and Immunities Clause of Article IV. Justice Brennan suggested the right might derive from the Commerce Clause or the Privileges and Immunities Clause of the Fourteenth Amendment.

interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the state to which they migrate as are enjoyed by other residents").

Accordingly, under this line of authority, the durational residency requirement of H.R. 3507 can be sustained only if narrowly tailored to serve a compelling governmental interest, a burden that is extremely difficult to satisfy. See Shapiro, 394 U.S. at 627-638 (rejecting variety of budgetary and administrative interests as impermissible or non-compelling).

Denial of Food Stamp Benefits to Citizen Children of Unqualified Aliens

Section 1044 of the bill amends section 11 of the Food Stamp Act of 1977 to add a new subsection 11(e)(2)(B)(v), which would require states to ensure that all members of a household receiving food stamp assistance are either U.S. citizens or permanent resident aliens. Specifically, this provision would require anyone applying for food stamps, for herself or on behalf of a minor child, to certify that all members of the household are citizens or legal resident aliens. In practice, this provision would operate to deny the U.S.-born children of families with undocumented alien members certain food stamp benefits for which they might otherwise be eligible if their parents or siblings were not undocumented aliens.

Although Congress enjoys substantial authority to classify on the basis of alienage and, specifically, to limit the eligibility of aliens for benefits under federal programs, see Mathews v. Diaz, 426 U.S. 67 (1976), that authority ends once citizenship is attained. See Schneider v. Rusk, 377 U.S. 163, 166 (1964) (Congress' broad discretion to impose conditions precedent to entry and naturalization expires once an individual attains citizenship by naturalization: "The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual." (citing Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738, 827 (1824))). The Constitution guarantees that every person born in the United States becomes a citizen of this country, regardless of his or her parentage. U.S. Const. amend. XIV, cl. 1; see also United States v. Wong Kim Ark, 169 U.S. 649, 693 (1898) (citizenship clause "affirms the ancient and fundamental rule of citizenship by birth within the territory"); Rogers v. Bellei, 401 U.S. 815, 829-30 (1971); 14 Op. Atty. Gen. 154, 155 (1872) ("As a general rule, a person born in this country, though of alien parents who have never been naturalized, is, under our law, deemed a citizen of the United States by reason of the place of his birth"). This precious right of citizenship, once acquired, cannot be "shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit." Afroyim

Doesn't have anything to do with this classif.

All true but irrelevant.

Then - are illegal aliens w/ kids
entitled to all gov't benefits.
Impossible!

v. Rusk, 387 U.S. 253, 262 (1967).

A classification such as the one in § 11(e)(2)(B)(v) effectively distinguishes among citizen children on the basis of an immutable trait -- their national ancestry. The Supreme Court made the suspect nature of such classifications clear in Oyama v. California, 332 U.S. 633 (1948), where it invalidated a state law restricting the ability of citizen children of alien parents to own land. Concluding that discrimination between citizens on the basis of their racial descent is justifiable under "only the most exceptional circumstances," 334 U.S. at 646, the Court applied a strict scrutiny standard of review to classifications based upon ancestry. See also Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 and n.4 (1976) (including ancestry as a suspect classification requiring strict scrutiny); Graham v. Richardson, 403 U.S. 365, 372 and n.5 (1971) (citing Oyama for proposition that classifications based on nationality are "inherently suspect and subject to close judicial scrutiny").

This was a claim w/ kids involved.

In the context of public assistance benefits, lower federal courts and state courts have applied strict scrutiny to reject legislative schemes which operate to deny benefits to the citizen children of ineligible aliens. See Fuentes v. White, 709 F. Supp. 1026, 1030 (D. Kan. 1989) (confirming that state policy of denying food stamps and medical benefits to citizen children of undocumented aliens violated the Equal Protection Clause); Intermountain Health Care, Inc. v. Board of Commissioners of Blaine County, 707 P.2d 1051, 1054 (Idaho 1985) (Donaldson, C.J., specially concurring) (same; denial of medical indigency benefits); Darces v. Woods, 679 P.2d 458 (Cal. 1984) (same; AFDC benefits); cf. Lewis v. Grinker, 965 F.2d 1206, 1217 (2d Cir. 1992) (noting that "serious equal protection questions" would be raised if federal statute were construed to deny automatic eligibility for Medicaid benefits to citizen children of illegal aliens). As the California Supreme Court pointed out in Darces, citizen children of undocumented aliens "constitute a discrete minority" and "are classified on the basis of an immutable trait -- they cannot forsake their birth into an undocumented family." 679 P.2d at 473. Citing a long line of Supreme Court cases, including Oyama, which impose strict scrutiny for classifications based upon national origin or ancestry, the California Court concluded that strict scrutiny was warranted. Id. Compare Lyng v. International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America, 485 U.S. 360, 370 (provision denying food stamp benefits to households in which one member is on strike did not "affect with particularity any protected class," and was therefore reviewed, and upheld, under rational basis standard).

Are there laws w/ kids or adults? What is the claim?

Because the classification here operates to discriminate against citizen, rather than alien, children and does so on the basis of the national origin of their parents, we believe that it would be subject to strict scrutiny. It is highly unlikely that

This is not the 5. The basis discrimination almost never exist under EP law.

the compelling interest requirement could be satisfied in this context, as no court faced with a similar classification has found any proposed state justification sufficient under this standard. See, e.g., Darces, 679 P.2d at 473-74; Fuentes, 709 F. Supp. at 1030.

Indeed, even under a more lenient standard, this classification would be unlikely to survive constitutional scrutiny. As the Supreme Court explained in Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972), where it invalidated a state statute that discriminated against illegitimate children, penalizing a child is an impermissible means of attempting to affect the parent's conduct:

Again, found irrelevant.

[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual -- as well as an unjust -- way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where -- as in this case -- the classification is justified by no legitimate state interest, compelling or otherwise.

Id. at 175-76. Cf. Plyler v. Doe, 457 U.S. 202 (1982) (invalidating state's denial of public education benefits to undocumented alien children under higher standard than ordinary rational review; Supreme Court acknowledged "special constitutional sensitivity" of case, due to the state's penalization of innocent minors and the importance of the public benefits in question). Similarly, citizen children living in homes with undocumented aliens are neither responsible for nor able to control the alien status of their parents or siblings. In light of the constitutional standards reviewed here, punishing the innocent citizen children or siblings of undocumented aliens seems an impermissible means to effectuate Congress's legitimate interest in deterring undocumented aliens from entering this country.

State Authority to Limit Eligibility of Noncitizens

Section 412 of the bill permits states to establish eligibility standards for certain categories of aliens seeking state welfare benefits. Section 422 of the bill authorizes states to apply so-called "income deeming" rules to restrict the eligibility of otherwise qualified aliens. Under such rules, the income of an alien's "sponsor" would be attributed to the alien for purposes of determining eligibility for state benefits.

??



To the extent these provisions allow states to discriminate against aliens, they raise constitutional concerns. Although Congress enjoys broad authority to classify on the basis of alienage and to limit the eligibility of aliens for benefits under federal programs, Mathews v. Diaz, 426 U.S. 67 (1976), the states are constrained significantly by the Equal Protection Clause in their treatment of legal aliens. State denial of welfare benefits to legal aliens is subject to strict scrutiny, a standard that, as we have already noted, is exceedingly difficult to satisfy. Graham v. Richardson, 403 U.S. 365 (1971); cf. Nyquist v. Mauclet, 432 U.S. 1, 7 (1977) (state classification based upon alienage invalidated under strict scrutiny).

The question arises whether congressional authorization would be sufficient to immunize a state from such an equal protection challenge. Graham suggests that it would not: in Graham, the Supreme Court was faced with the argument that a state's durational residency requirement for aliens was in fact authorized by federal statute. The Court declined to read the statute in question "so as to authorize discriminatory treatment of aliens at the option of the States," in order to avoid the "serious constitutional questions" that would otherwise be presented:

Although the Federal Government admittedly has broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization, Congress does not have the power to authorize the individual States to violate the Equal Protection Clause.

By the
S. Wash.
w?

403 U.S. at 382 (citing Shapiro v. Thompson, 394 U.S. 618, 641 (1969)).

The fact that Graham involved state restrictions on alien eligibility for federal welfare benefits rather than state welfare benefits does not, we believe, alter the Equal Protection analysis applicable to such restrictions. Graham made clear that strict scrutiny should be applied to such classifications because "[a]lliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." 403 U.S. at 372 (citing United States v. Carolene Products Co., 304 U.S. 144, 152-153, n.4 (1938)).