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Education Issues

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Welfare Reform Act - Issue Paper

Application of the 20% Cap on Vocational Education and Teen Heads of Household

Issue: How should States apply the 20 percent cap on vocational education training and eligible teen heads of households for purposes of calculating a State's minimum rate of participation in work activities?

Discussion: Section 103 of the Act replaces Part A (Aid to Families with Dependent Children) of title IV of the Social Security Act (SSA) with the Block Grants for Temporary Assistance for Needy Families (TANF) program. TANF requires that States establish mandatory work requirements for recipients of assistance.

Under new section 407(a) of the SSA, States are required to achieve a minimum rate of participation in work activities of 25 percent in 1997, increasing to 50 percent in 2002, for all families, and 75 percent in 1997, increasing to 90 percent in 1999, for 2-parent families. "Work activities" is defined, under section 407(d), to include the following educational activities: (1) vocational educational training (not to exceed 12 months); (2) job skills training directly related to employment; (3) education directly related to employment for those who have not received a high school diploma or its equivalent; and (4) satisfactory attendance at secondary school or a course of study leading to a general equivalency certificate for those who have not completed secondary school or received such a certificate. Thus, recipients of assistance under TANF participating in one of these educational activities are also engaged in a work activity and, therefore, count toward fulfilling the State's work participation requirement.

Section 407(c)(2)(D), however, limits the credit given these educational activities. That section provides that for purposes of determining monthly participation rates: "not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of [being a single head of a household under 20 years of age and maintaining satisfactory attendance at a secondary school or its equivalent or participating in education directly related to employment for the requisite number of hours]."

Section 407(c)(2)(D) is not explained in the conference report; nor is it mentioned in House and Senate reports of the bill. While the section clearly limits a State to counting only a certain number of recipients in vocational training and eligible teen heads of households as working, it is unclear, on its face, how many such individuals the States can count as working. The language "individuals in all families and in 2-parent families" in the section could refer either to: (1) all individuals receiving assistance under TANF; or (2) all individuals required, under the minimum participation rate schedules, to participate in work activities under TANF. Under the first reference, 20 percent of all recipients could be enrolled in vocational education training or be an eligible teen head of household and enrolled in secondary school or its

equivalent, and count for the State as working. Under the second reference, only about 5 percent of such individuals could count as working.

OPTION 1. Encourage HHS to permit States to count more individuals in education as work participants (i.e., by interpreting section 407(c)(2)(D) as applying the 20% limitation against the State's total TANF caseload base) and encourage States to do so.

Pros: (1) Would encourage education (especially for teen parents) by making education a more broadly available means of satisfying the work requirement, thereby:

- creating an incentive for States to appropriate more funds for vocational and other education programs;
- encouraging recipients of assistance under TANF to pursue and continue their education (e.g., New York indicates that about 20% of its AFDC base are teen parents); and
- enhancing opportunities to acquire enough education to gain higher-paying, higher-skill level jobs.

(2) It is a legally supportable interpretation.

(3) If States define "vocational education training" broadly, adult education, ESL, and family literacy options under TANF could also increase (see the Adult Ed/Even Start: Adult Work Requirements issue paper).

Cons: (1) Counter to the overall approach of the bill (as reported by some congressional staff) that States should take a bottom-line approach and move recipients to jobs as quickly as possible.

(2) Might strain the vocational education system, especially if no additional appropriations were forthcoming.

(3) High enrollments of disadvantaged students might make it difficult for vocational programs to achieve the goal of educating vocational education students to challenging academic and technical skill standards.

OPTION 2: Leave interpretation to the States without Federal guidance (which would make more likely an interpretation of section 407(c)(2)(D) that would count fewer individuals in education as work participants).

Pros: This is clearly consistent with the philosophy of the Act. (Note: Section

417 prohibits the Federal government from regulating "the conduct of States under this part...except to the extent expressly provided" in the Part.)

Cons: (1) May limit educational options of recipients and force some who are participants in current vocational and adult education and literacy programs to drop out of those programs as work and family responsibilities increase.

(2) May result in a confusing array of State policies.

(3) It would make it very difficult to demonstrate the national impact of vocational education investments.

Recommendation: Support Option 1. Numerous reports document: (1) the educational disadvantages faced by low-income families (e.g., those now receiving assistance under AFDC and about to receive assistance under TANF); and (2) the necessity of education in securing meaningful employment (especially higher-paying, higher-skill level jobs). To require work-for-assistance without also facilitating educational opportunities to gain, and advance in, such work will discourage our most vulnerable citizens from choosing and continuing their education.

September 27, 1996

Welfare Reform Act - Issue Paper Adult Education: Adult Work Requirements

Issue: May an adult's participation in an adult secondary education program presented in a vocational education context (either under the Adult Education Act or the adult education portion of a family literacy program such as Even Start) qualify as a "work activity"?

Law: Section 407(d) defines work activities to include "vocational educational training (not to exceed 12 months)." This is the major "work activity" for adults (persons other than single teen parents under age 20) that could include an adult education program (and only to the extent the program is presented in a vocational education context).

Policy: The following national positions should be taken to maximize participation of the nation's low-income adults who lack a secondary-level education in educational programs:

- A broad interpretation of "vocational educational training" (see related issue paper) that includes adult secondary education programs to the extent those programs are presented in a vocational context under the Adult Education Act (and the adult education portion of the Even Start family literacy program).
- Clarification to States that adult secondary education programs under the Adult Education Act may be presented in a vocational education context as appropriate (and under Even Start so long as the focus remains literacy).

Pro: Provides maximum incentive for low-income adults who lack a secondary-level education to continue their education. (Because an adult secondary/voc program may not be available for the minimum number of work hours required (20 hrs/wk for a single parent), an adult may still have to combine this educational activity with another work activity.) **Problems even with this interpretation:** neither adult basic education (ABE) nor ESL training qualifies as a "work activity," so even this broad interpretation will result in an increasing class of persons with such low-literacy and limited job skills that they will not qualify for vocational education programs (e.g., a community college AA program).

Con: Emphasis on voc ed could shift Adult Education funds away from GED to adult secondary education (ASE) programs with a vocational focus for welfare populations, and shift Even Start funds away from ABE/ESL to ASE with a vocational education focus.

Action:

- Encourage HHS to interpret "vocational educational training" broadly to include adult secondary education programs when presented in a vocational education context under the Adult Education Act (and the adult education portion of the Even Start family literacy program).
- Notify States that adult secondary education programs under the Adult Education Act may be presented in a vocational education context (and under the Even Start family literacy program so long as the focus remains literacy).
- Propose including language in an amendments package to expand major work activities for adults to include adult basic education, ESL, and adult secondary education programs that meet for a minimum number of hours per week. (A similar amendment was proposed in the Senate (Simon) but was rejected in conference.)

September 27, 1996

Welfare Reform Act - Issue Paper Adult Education: Secondary School "Equivalent"

Issue: Do adult secondary education programs (either under the Adult Education Act or the adult education portion of a family literacy program such as Even Start) qualify as a "work activity" for a single parent under age 20 (teen parent) who is not pursuing a GED program?

Law: **Section 407(c)(2)(C)** allows a single parent under age 20 to meet the work participation requirements if that teen satisfactorily attends secondary school or the "equivalent." **Section 407(d)(11)** (generally applicable only to these teen parents) defines "work activities" as attendance at a secondary school or "in a course of study leading to a certificate of general equivalence" (GED). **Section 408** requires unmarried parents less than age 18 to attend high school or its "equivalent" (or an alternative program approved by the State).

Policy: Taking a national position that adult secondary education programs under the Adult Education Act (and the Even Start family literacy law) are the "equivalent" of secondary school would encourage teen parents to participate in these programs even if the student is not working toward a GED. This serves the goal of keeping teens involved in secondary education programs as long as possible, even if less participation hours are required than for secondary school or GED classes. States otherwise may interpret the work activity provisions to exclude secondary-level programs that are not secondary school or GED classes. (Adult basic education (ABE) and ESL training do not currently appear to qualify in any event as a "work activity.")

Pro: Would encourage maximum teen parent participation in adult secondary education programs, even if a teen is not attending secondary school or GED classes. Could be considered consistent with the spirit of the legislation. Congress desired to exempt from work requirements, to a degree, students in school or working toward a GED, and may not have realized that some secondary-level programs are not technically GED programs.

Con: Could enable a teen parent's receipt of a small amount of educational services to count as if it were full-time attendance at secondary school. If these secondary education programs were not considered as the "equivalent" to secondary school, teen parents might have an incentive to attend secondary school or GED classes to meet their work activity requirements, thereby obtaining a more intensive secondary education.

Action:

- Encourage HHS to interpret the WRA to include adult secondary education programs under the Adult Education Act (and the adult education portions of an Even Start family

literacy program) as the "equivalent" of secondary school for the purpose of single teen parent work requirements, whether or not a participant is engaged in a course of study leading to a GED.

- Propose including language in an amendments package to expand this provision to allow adult basic education and ESL programs that meet for a minimum number of hours per week to count as a "work activity" for single teen parents.

September 27, 1996

Welfare Reform Act - Issue Paper
Definition of "Vocational Education" for Purposes of Calculating
Participation Rates to Fulfill the Statewide Mandatory Work
Requirements

Section 407 of **Title IV, Part A of the Social Security Act**, as amended, establishes minimum work requirements for the new **Block Grant to States for Temporary Assistance for Needy Families**. The so-called "TANF" program **supersedes the Aid to Families with Dependent Children (AFDC)** program.

Section 407(a) establishes the **minimum Statewide participation rate for mandatory work requirements**, which constitutes one of the most notable changes in TANF from AFDC. The minimum participation rate for all families is 25 percent for fiscal year (FY) 1997; the rate for two-parent families is 75 percent for that year. These rates increase incrementally to a maximum of 50 percent and 90 percent, respectively, by FY 2002.

Section 407(d) defines "**work activities**" to include--

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) **vocational educational training (not to exceed 12 months with respect to any individual);**
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received

a high school diploma or a certificate of high school equivalency;

- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

For purposes of the **minimum hours per week of work activity required by section 407(c)(1)(A) and (B) for all families and the first spouse in a two-parent family**, only those activities listed in **paragraphs (1) - (8) and (12) of section 407(d)** can be counted for **20 hours for all families of the minimum weekly hours (which increases from 20 in 1997 to 30 in 2000)** and for **30 of the 35 hours for the first spouse**. For the **second spouse in a two-parent family, paragraphs (6), (8), and (12) are excluded** from the above-listed activities for purposes of the **minimum 20 hours**.

Section 407(c)(1)(C) allows **teen heads of households** to be considered to be engaged in work for any month that the teen *either* maintains **satisfactory attendance at secondary school** or the equivalent *or* participates in **education directly related to employment** for at least the minimum average number of hours per week required for all families (20 hours for FY 1997).

Issue: Can the apparently overlapping and inconsistent provisions of section 407(d) be interpreted to allow teen heads of households and other recipients to receive vocational and other education and job training for more than 12 month?

Law: The provisions of section 407(d) are ambiguous as to whether the 12-month limitation on “vocational educational training” is applicable to all recipients. Section 407(d)(8) makes “vocational educational training” an allowable work activity for only 12 months with respect to the first 20 or 30 hours of work required, depending on the category in which a recipient falls. Section 407(d)(10) makes “education directly related to employment” an allowable work activity for recipients who have not received a high school diploma or the equivalent without a 12-month limitation, and section 407(c)(1)(C) makes participating in education directly related to employment an allowable activity for recipients who are teen heads of households without a 12-month limitation. Yet, “education directly related to employment” is the generally accepted definition of vocational education. Furthermore, **none** of these provisions indicates expressly when paragraphs (9), (10), or (11) of section 407(d) are allowable work activities even though they are included within the definition of “work activities.”

Policy: The Department should encourage an interpretation of section 407(d) that maximizes recipients’ opportunities to receive adequate vocational and other educational opportunities in

order to prepare these recipients for high-wage, high-skill jobs.

Pro: Although the work activities listed for teens appear to overlap with the 12 months of vocational education training permitted for other recipients, these provisions can be read harmoniously to allow the teens to participate in the activities listed in section 407(c)(1)(C) without regard to a 12-month limitation. Under this interpretation, teen heads of households may complete their secondary education under section 407(c)(1)(C)(I), including a secondary vocational component, and then receive additional “education directly related to employment” until the recipients reach 20 years old or an additional 12 months of postsecondary vocational education training under section 407(d)(8), which would be counted fully toward the minimum number of hours required per week, if the recipient has reached age 20.

Moreover, although the work activities listed in paragraphs (9)(jobs skills training directly related to employment), 10(education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency), and 11(satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate) are not listed as an allowable activity for the first 20 hours for all families or a second spouse or for the first 30 hours for the first spouse in two-parent families, section 407 could be interpreted to allow these activities (essentially vocational and other education) to be counted for any required work time over these amounts. For example, the first spouse in a 2-parent family is required to work 35 hours per week. Such a recipient could not count vocational education for more than 12 months toward the first 30 hours worked. However, since such a recipient must work at least 35 hours, vocational education could be counted for the last 5 of the 35 required hours even after 12 months of vocational education.

Con: Congress may have intended the 12-month limitation on “vocational educational training” to be absolute for all participants even though it is not clear how this is distinguished from “education directly related to employment.” Any attempt by HHS or this Department to interpret the 12-month limitation broadly may result in a specific amendment resolving this and other ambiguity against the above-stated interpretation. If the Federal government is silent, States may adopt these interpretations by themselves.

Action: The Department’s policy to maximize opportunities to all individuals to receive adequate vocational and other educational opportunities in order to prepare these recipients for high-wage, high-skill jobs is so fundamental to the Department’s mission that it favors taking

action to encourage HHS to issue guidance interpreting the above provisions as extending vocational education beyond secondary school for teen heads of households at least until they reach 20, and allowing vocational and other educational participation to count as an allowable work activity for the minimum hours required above 20 and 30 hours a week for the respective categories of other recipients.

Issue: Should “vocational educational training” be defined?

Law: Section 407(d)(8) does not define “vocational educational training.”

Policy: An interpretation of “vocational educational training” that includes basic skills and other academic education that is integrated with vocational training would encourage States to give recipients broad education options. (See related issue paper on adult education and Even Start.)

Pro: A broad interpretation of vocational education would encourage States to encourage higher-quality educational programs, which in turn would prepare recipients for higher-skill, higher-wage jobs.

Con: This interpretation would result in States’ limiting adult education or other basic skills participation to 12 months because this is the limitation on vocational education. Without a definition that includes basic skills, adult education could not be pursued by those individuals counted toward the 20 percent cap unless the individuals were teen heads of households, which creates no incentive for States to provide adult education or for individuals to seek adult education. Rather, by allowing States to penalize persons aged 21-50 for not working toward a GED if they do not have secondary degrees, section 404(j) provides a disincentive to States to provide adult education because the State could decrease the benefits to these persons.

Action: Although HHS is prohibited from regulating, this Department can encourage HHS to promulgate non-regulatory guidance, including a definition of “vocational educational training” that includes a broad range of education programs, basic skills, academic majors, certificate, and degree programs so long as the overall thrust is vocational education -- not just basic skills and academics by themselves.

Issue: Should the 12-month limitation on counting “vocational educational training” as a “work activity” under a State’s minimum participation rate be extended to 24 months?

Law: Section 407(d)(8) indicates that “vocational educational training” can be considered to be an allowable work activity for “not to exceed 12 months with respect to any individual.”

Policy: The Department strongly supports the States' providing recipients with broader and higher-quality educational options that would be more likely to lead to high-wage, high-skill jobs.

Pro: Extending the time that recipients can participate in vocational education would provide an incentive for States to encourage more education as a means to recipients' finding higher-wage, higher-skill jobs after the end of welfare eligibility. Existing vocational education programs to train persons for such jobs typically require 24 months of vocational education *after* secondary school. Ultimately, this would save public funds by decreasing recipients' future dependence on publicly subsidized services, such as housing, child care, food stamps, and reduced-price school lunches, which continue for individuals in minimum-wage jobs.

Con: The 12-month limitation is consistent with the overall aim of the welfare act to place recipients into jobs as fast as possible. The conference committee rejected a proposal to substitute "educational training (not to exceed 24 months...)" for the 12 months of vocational education allowed by the welfare act. Additionally, there are existing vocational programs that could be completed in 12 months (i.e., 2 semesters + a summer session). These would qualify recipients for entry level jobs (e.g., medical billing and records) even though an individual would need additional vocational education to advance beyond that level.

Action: Because the welfare act is clear that vocational educational training can count as a work activity for only 12 months, the Department should request that HHS to include in its proposed legislative changes an amendment to section 407(d)(8) to allow vocational education to count as a work activity for at least 24 months. (Note: This would not be a "technical amendment" but would be included in the Administration's package of amendments to improve the program.)

Issue: Should the requirement that recipients who are in vocational education as an allowable work activity be in that activity for 20 to 30 hours per week be amended to simply allow recipients to be in a full-time vocational education program even if it provides less than 20 hours of vocational education per week?

Law: For purposes of whether the State has met its minimum participation rate in a particular year, **section 407(c) (1) (A) and (B)** defines the **minimum number of hours that an individual must be participating in vocational education or another allowable work activity to be counted as working**. For all families, the number of hours is **not fewer than 20 hours a week** for (FY) 1997, and, for **2-parent families**, the number of hours for the **first spouse is not fewer than 35 hours a week**. If a 2-parent family is receiving Federally-funded child care assistance, then the **second spouse must be in allowable work activities not fewer than 20 hours a week**.

Policy: The Department should encourage an interpretation that maximizes recipients' opportunities to receive adequate vocational and other educational opportunities in order to prepare these recipients for high-wage, high-skill jobs.

Pro: Although section 407(d)(8) allows vocational educational training to count as an allowable work activity for certain recipients for up to 12 months, the recipient must be engaged in 20-35 hours of allowable work activity a week to be counted toward the Statewide minimum participation rate. While vocational education programs at the postsecondary level typically involve this many weekly hours, part of those hours are spent in courses to develop basic skills related to the vocational training. (One study estimated the ratio of vocational courses to non-vocational course is 2-to-1.) It is not clear whether the non-vocational hours would be counted toward the work requirements. If they are not, a recipient also would have to be engaged in another allowable work activity to make up the shortfall in hours. An amendment to recognize that a full-time vocational education course does not typically involve this much instructional or classroom time but makes demands on a student's time outside of the classroom would allow recipients to go to vocational education training full time.

Con: Congress may have intended for States to create a new means of delivering vocational training at a faster, more intense pace than is the case in existing programs. Thus, while typically the States have not delivered vocational training in this manner, the 12-month limitation on vocational training coupled with the 20-35-hour-per-week requirements would seem to dictate change on the States' parts. Additionally, removing the minimum entirely would permit individuals who are engaged in vocational training on a trivial basis (in addition to those who are enrolled in full-time programs that meet less than 20-35 hours per week) to qualify. For instance, a student might be enrolled in a correspondence course that takes no more than a few hours a week. This result would seem to defeat the purpose of the law, which is that more and more welfare recipients should be fully involved in work or education toward work.

Action: The Department's policy to maximize opportunities to all individuals to receive adequate vocational and other educational opportunities in order to prepare these recipients for high-wage, high-skill jobs is so fundamental that the Department should encourage HHS to seek a legislative amendment to modify the 20-35 hour requirement to make it more flexible for recipients enrolled full-time in vocational education.

September 26, 1996

Welfare Reform Act - Issue Paper

Welfare Reform: Issues Affecting Children and Schools

Question: What are the issues that impact children, particularly children with disabilities, and what role should we play in the continuing policy making process ?

- (1) How many children will lose benefits as a result of the changing SSI definition of disability?
- (2) How will reduced eligibility for SSI and thus Medicaid impact the IDEA program with regard to school support services?
- (3) What will be the effect on IDEA and schools that have children who have been Medicaid eligible because of AFDC and lose health care coverage?

Background: The newly enacted welfare bill includes: (1) significant changes to the eligibility requirements of the SSI program for disabled children; (2) replaces the AFDC program with TANF, a block grant to states which requires the head of families to work within two years and sets a lifetime limit of five years of welfare assistance, and decouples automatic Medicaid coverage from welfare eligibility. Both the SSI and AFDC are programs that traditionally have served as the gateway to Medicaid eligibility for disabled and disadvantaged children. HCFA estimates that 60% of the all children currently receiving Medicaid are linked as a result of AFDC or SSI eligibility.

Adequate health coverage for these vulnerable populations is important to the education community as a means of attaining the Nation's first education goal of having "all children ready to learn". Schools have undertaken an increasing role in providing health services -- much of which are reimbursable through Medicaid -- particularly for low-income and disabled students. In the case of children with disabilities, schools are required by law to provide health services that are necessary for the child to benefit from their education. This requirement under the IDEA has been critical in ensuring both the health and education of children with disabilities -- however, schools rely heavily on Medicaid to pay for those services, given that: (1) 40-60% of children served under the Individuals with Disabilities Education Act (IDEA) are currently Medicaid eligible; and, (2) the estimated cost to local school districts for health related services for combined Medicaid and non-Medicaid disabled students is \$1.8 billion.

Concerns: As a result of the changes to the disabled children's SSI program, CBO estimated that 315,000 children will require re-determination under the new rules. SSA estimates that 50% or 157,000 children will be eligible under another SSI diagnostic category, thus retaining

Medicaid coverage. HCFA estimated that 50 % of the remaining 157,000 or approx. 80,000 children will be eligible for Medicaid as a result of meeting one of the mandatory poverty groups --- initially leaving 80,000 children without Medicaid coverage, all of whom are likely to be eligible for health-related services under the Individuals with Disabilities Education Act (IDEA) because of the expansive definition of disability in the IDEA. There is significant room for interpretation regarding the statutory definition of disability within the legislation, as well as questions regarding the continuation of SSI benefits during an appeals process. Both of these issues will need to be clarified by SSA.

A second overall concern deals with the identification and determination of children whose eligibility continues both under SSI and Medicaid. The welfare legislation was amended to require states to provide Medicaid coverage to families that meet their states' July 1996 AFDC income and assets standards, thus linking coverage to the 1996 AFDC standards, not to receipt of aid under the new TANF block grant. However, ensuring that eligible families know they need to go through the two separate eligibility processes will be a challenge. This same concern holds true for the redetermination process under SSI. Although SSA estimates that 50% of the 315,000 children will be found eligible for SSI under another diagnostic category, the challenge will be getting them to the redetermination process.

This memorandum is intended to examine issues related to: (a) the children's SSI eligibility requirements and appeal process and, (b) the de-coupling of AFDC and Medicaid eligibility; and lay forth preliminary ideas for how to address these concerns as the Administration continues to work with the implementation of welfare reform.

Impact of changes to the SSI Program for disabled children

Law

A: As part of the eligibility process for children's SSI, the law repeals (under Section 211) the use of the Individualized Functional Assessment, which is used to determine whether or not a child is able to engage in age-appropriate activities of daily living, and the concept of "comparable severity", as well as eliminating references to "maladaptive behavior" within the personal/behavioral domain of the medical listings -- replacing it with the following:

"An individual under the age of 18 shall be considered disabled for the purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked or severe functional impairment, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; and no individual under the age of 18 who engages in substantial activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)), may be considered disabled."

B. Sec. 211(d)(1)(A)(I)(ii) is silent on whether payment of benefits will continue when an individual has requested an appeal of an unfavorable decision.

- Issue:** How should the level of disability severity required to meet the new "marked and severe" functional impairment be defined?
- Policy:** The Department should encourage HHS to include in regulation, an additional step in the determination process (in addition to diagnostic groupings), that is stricter than the IFA but properly evaluates children too young to test, children who have multiple impairments, and children with unlisted impairments.
- Pro:** The intent of the evaluation is to assess how an impairment affects each child's functional ability, using a higher level of severity or disability threshold than was provided by the IFA. Sole reliance on the listings-level severity standard would not adequately meet that intent. An evaluation process that determines whether a child has an impairment that meets, or **medically or functionally equals**, a category in the medical listings requires an additional step in the process.
- Con:** The intent of the Congress was to serve only severely disabled children in this program. The subjective nature of a "functional" approach may be perceived as a loophole to serve less disabled children in the program.
- Issue:** **Will there be a period of benefits continuation if the family appeals?**
- Policy:** The Department should encourage SSA to include in regulation, the continuance of SSI benefits through a hearing and a decision by an Administrative Law Judge.
- Pro:** Given that a new standard will be in place, and the impact of loss of benefits for those who may be found eligible as a result of adjudication, maintaining benefits throughout the process should be considered part of the due process requirements.
- Con:** For those children who are not found eligible via an ALJ hearing, the issue remains of recouping dollars already paid to families. In addition, the savings realized from the lack of payment during the hearing process may be significant, as there is no mention of retroactive payment in the legislation.
- Issue:** **What mechanisms will be in place to identify and support children and families who need redetermination for SSI, or who are eligible for Medicaid regardless of TANF after 1/97?**
- Policy:** The Department should encourage the Administration to set up an interagency task force, including, at a minimum, SSA, HHS, HCFA, and ED, to determine how best to support the children and families who are both eligible or no longer

eligible for benefits under these programs, as welfare reform is implemented.

Pro: The issue of eligibility determination and/or re-determination under the various programs will be complicated. It is in the interest of all concerned to work together to ensure that those intended to receive benefits under the reform are assisted in the process, and that those who no longer receive benefits are directed to other existing resources. At present there are preliminary discussions occurring in HHS about using school-based clinics or schools as a site for public program outreach. This is an area where the Department of Education needs to be involved in the discussion.

Con: If the process of eligibility is difficult for families, then fewer families may apply --thus saving Federal and state dollars. As private industry begins to contract with states to manage their welfare reform systems, there is less incentive to "find" eligible individuals from a financial perspective.

Conclusion:

As welfare reform becomes implemented , it will ultimately be the synergy afforded by the aggregate effect of coordinating public programs such as IDEA, SSI, Medicaid, and TANF that will support the vulnerable children,, whether they are disabled and/or disadvantaged, to receive services and supports in their homes and communities, including schools, to achieve positive educational results and a productive future in a global economy.

September 27, 1996

Welfare Reform Act - Issue Paper

Eligibility of Unqualified Aliens for Department Programs

Issue: Are unqualified aliens eligible to participate in and receive the benefits of Department programs?

Law: *Welfare Reform Act* - Section 401(a) prohibits unqualified aliens from receiving any Federal public benefit. The definition of "Federal public benefit" in section 401(c)(1) includes any "grant, contract [or] loan. . . provided by. . . the United States or by appropriated funds of the United States" and any "postsecondary education" benefit or "any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit" by the United States or by appropriated funds of the United States. Section 433(a)(2) provides that the Act should not be construed as addressing eligibility of aliens for a basic public education under the U.S. Supreme Court decision in *Plyler v. Doe*.

Case Law - Under *Plyler v. Doe*, states may not deny a free public education (K-12) to undocumented immigrant children.

Policy: With the exception of postsecondary education programs that provide benefits such as Pell grants directly to individuals, the Department's programs do not fall within the definition of "Federal public benefit." The rationale for this position is that while grants and contracts by the United States are included in the definition of "Federal public benefit," the Department does not typically provide grants and contracts under the Department's programs directly to individuals, but, rather, to entities that provide services under these programs. Nor does the Department typically provide payments or assistance directly to individuals, households or family eligibility units under its programs (again, with the exception of postsecondary education programs). Thus, individuals participating in these programs are not receiving a "Federal public benefit" within the meaning of the Welfare Reform Act, and unqualified aliens remain eligible for services under the Department's programs. This position serves the Department's mission of providing access to education. (Note: To the extent that, in the implementation of any of the Department's programs, grantees or subgrantees provide stipends, vouchers or other assistance to individuals, such assistance could be interpreted as a "Federal public benefit" and, thus, prohibited for unqualified aliens.)

With respect to any postsecondary education programs that provide benefits directly to individuals, households, or family eligibility units, however, it appears that unqualified aliens are not eligible for such programs under section 401(c)(1)(B) of the Welfare Reform Act. (Note: Under current law, qualified aliens (as defined in section 431(b) of the Welfare Reform Act), with the exception of those able to provide evidence from the Immigration and Naturalization Service that they are in the United States with the intention of becoming permanent residents, are

not currently eligible for these postsecondary education programs.)

In any event, the Department should take the position, consistent with section 433(a)(2) of the Welfare Reform Act, that the Act's provisions were not intended to deny undocumented immigrant children the right to a free public education under *Plyler v. Doe*.

Action: (1) Confirm that the Department and HHS are interpreting the term “Federal public benefit” in the same manner.

(2) Notify the Department's grantees through guidance that unqualified aliens remain eligible for all Department programs, except for postsecondary education programs that provide benefits directly to individuals, households or family eligibility units. Also, notify grantees that the provisions of the Welfare Reform Act do not change the eligibility of undocumented immigrant children for a free public education under *Plyler v. Doe*.