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Welfare-Privatization [5]

Locking Horns

EDS, Lockheed Duel Over Contract to Run Texas' Welfare System

Each Firm Forms an Alliance With a State Agency, Promising Big Savings

The Battle With the Unions

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By JOHN HARWOOD

Staff Reporter of THE WALL STREET JOURNAL

AUSTIN, Texas — Gerald Miller was puzzled when Lockheed Martin Corp. kept phoning him last year, while he was Michigan's welfare director. "Is this the wrong number?" he recalls wondering. "These people make airplanes."

Nearly a year later, in a windowless one-story building here that once housed top-secret work on the Trident missile, he is leading a new Lockheed division to design a 21st century welfare program for the state of Texas. If Lockheed can win the five-year, \$2 billion contract over a rival bid from Texas-based Electronic Data Systems Corp. and its allies, that could be just the beginning. "The opportunity in this," Mr. Miller says, "is very real."

What has turned Mr. Miller's career upside down — and has lured such heavyweights as Andersen Consulting LLP, Unisys Corp. and International Business Machines Corp. into the chase as well — is a decision by Republican Gov. George W. Bush and other state leaders to privatize administration of the Texas welfare system. The new federal welfare law authorizes states to contract with private companies, and whoever prevails in the Lone Star state could create a franchise for privatizing welfare elsewhere — a step being considered from Arizona to New Jersey.

Choosing Partners

In the process, the competition here is testing the ability of business and government to jointly navigate the currents of the Information Age. The companies and state agencies have sought each other out to help mine new markets in one of the most sensitive of public functions. And by harnessing private efficiencies, those agencies look to preserve a role for themselves in the face of public discontent.

Each company's choice of a partner says a great deal about its strategy. Lockheed is allied with the 5,600-employee Texas Workforce Commission, which oversees job-training programs, and is promising a huge shift toward moving welfare recipients into jobs. EDS, linked with the 17,000 employees of the existing welfare department, argues that the agency's expertise and the company's technological strength will deliver a smoother transition to a new system. Only one of the three prospective bidders, from Chicago-based Andersen Consulting, lacks a public-sector partner, which could hurt its chances here.

The battle goes beyond the rival bids. In Austin and in Washington, privatization has sparked resistance from public-employee unions warning of lost jobs and potential corruption. Amid those objections, the Clinton administration has delayed granting the approval Texas needs before it can choose a welfare contractor.

One-Stop Shopping

Some analysts also express misgivings about the wisdom of turning welfare programs over to private contractors to wring savings through efficiencies — as has been done for other public services. "It's not like garbage collection," says Judy Gueron, president of New York-based Manpower Demonstration Research Corp., a leading private authority on welfare. "Welfare administrators already know how to save money. All you have to do is set up another hurdle at the front door."

Here in Texas, leaders say they are aiming to remove, not increase, the hurdles for the state's 650,000 welfare recipients. They expect to save money and bureaucratic hassles through a system in which beneficiaries could apply for about 20 different programs — including Medicaid and food stamps — at a single stop. The private contractor running that system, they say, will be rewarded for competence and efficiency, rather than for how many applicants are turned away.

"It's not taking money from poor people and giving it to corporations," says Health and Human Services Commissioner Mike McKinney, who is Gov. Bush's welfare adviser. "They're not going to get a percentage of the benefits they deny."

ATMs for Welfare

While unions warn of lost jobs, private bidders say that most current welfare workers would stay on under a new system; they would simply move to the private sector. And Mr. McKinney promises to streamline welfare administration whether or not the state proceeds with privatization. He anticipates savings of \$100 million annually, from such measures as replacing field offices with kiosks that resemble automated tellers.

When Gov. Bush and the Legislature decided more than 18 months ago to solicit bidders, the most direct threat was to the agency that now runs the welfare programs. Preserving its franchise represented "a huge challenge," says Kathy Davis, a top official at the Human Services Department. So she sought a private-sector partner to help prepare its bid.

After examining several suitors, her department settled on EDS. Not only was the Plano-based company, founded by former owner Ross Perot, a familiar presence, it also had 20 years of experience

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with the state from its contract to process Medicaid claims here. For EDS, which in recent years has focused on private-sector work, the welfare franchise would offer a return to one of its original strengths.

In late 1995, the EDS/Human Services team, joined by Unisys to provide computer hardware, sounded out one more possible partner: the Texas Workforce Commission. But the commission was already entertaining an overture from Lockheed Martin.

The aerospace giant has been seeking to diversify since dwindling Cold War tensions began threatening its defense business in the mid-1980s. The Texas contract offers a chance to expand its small information- and management-services subsidiary, which in recent years has reached into such areas as child-support enforcement and municipal water billing. The contract also offers the Workforce Commission a chance to move from job programs into the much-bigger world of welfare administration.

"We felt that Lockheed ... had a philosophical approach" in tune with the Workforce Commission's, says Bill Hammond, chairman of the agency. Instead of simply "signing people up for welfare faster," he says, the commission and Lockheed agreed that "we start the whole discussion based on getting a job." IBM, supplying computer services, rounded out the alliance.

But Lockheed, based in Bethesda, Md., faced a challenge in establishing its credibility here. A political force nationally — it gave \$1.3 million to federal candidates and national parties in 1995-96 — Lockheed was best known in Texas for its defense work, which was being scaled back.

To help navigate around Austin, the company turned to people with ties to the Council on Competitive Government, the panel of elected state officials that will ultimately award the contract. It lined up a spokesman for controller John Sharp as a subcontractor. It hired Gov. Bush's former legislative liaison and a former top aide to Lt. Gov. Bob Bullock as lobbyists. "It's not sixth-grade civics up here," explains Dan Shelley, the former Bush aide. He says he hasn't spoken to the governor directly about Lockheed, but adds, "I don't need to."

Lockheed's most significant target was in Michigan. As welfare director for reform-minded Republican Gov. John Engler, Jerry Miller earned respect from liberals and conservatives. In 1995, as Republicans in Washington moved to draw up their own proposals to overhaul the system, Mr. Miller became a key adviser.

Lockheed approached him at the right time. For several years, he says, he had come to lament "the inflexibility of the public sector to respond to human needs" quickly and efficiently. Involving churches, nonprofit groups and private companies in a new system, he says, could make a system "better for the clients and better for the taxpayers." Once Mr. Miller solved a crucial family problem — finding an assisted-living facility for his two severely handicapped adult children — he agreed to lead the company's new welfare-reform initiative in September.

By hiring Mr. Miller, the Lockheed team underscored its promise to shake things up. "We've got a broken welfare system," he says, and "we can change it." In Texas, its efforts are twofold: Beyond seeking the contract to administer welfare eligibility, the firm is also bidding to run job-training programs under contracts to be awarded by more than two dozen local districts. The rival Human Services/EDS team, says Lockheed executive Ed Gund, represents "the status-quo team."

The Lockheed team, counters Louis Matrone, an EDS vice president, could bring "radical change" that might hurt "the truly needy." He adds: "Our solution provides for a better balance between putting people to work and helping those that aren't equipped to work."

Weekly strategy meetings of each side's high command reflect their different profiles. Gathering at Lockheed's offices a few miles from downtown Austin, Workforce Commission representatives express broad preferences while letting Mr. Miller and other company executives craft the "minutiae" of program specifics, Mr. Hammond says.

Meanwhile, EDS casts itself as a supporting player to its government partner. Their gatherings, held alternately at EDS's stylish offices near the Capitol and at the Human Services Department, reflect the gap between public- and private-sector values. "Sometimes we have difficulty understanding each other," says Ms. Davis, the Human Services executive who ran two small businesses before entering government a few years ago. "The cultures are so different. We don't look at the bottom line."

It still isn't clear how differently either team would administer welfare programs. Their plans are shrouded in secrecy, and any winning bidder would be called on to implement the same set of state guidelines. But Mr. Miller suggests cryptically that Lockheed's bid would be distinguished from its rival's in two ways: its use of technological innovation, and the services it provides before a prospective welfare recipient begins the application process.

The two firms have some history in competing for government work. In the early 1990s, EDS lost out to Lockheed for a New York City parking-violations contract that then-Mayor David Dinkins ultimately canceled amid allegations of favored treatment. EDS isn't shy about hinting the same thing could happen again. "They have hired very strategically," Mr. Matrone says of Lockheed. "The people that they have, have relationships and the ability to influence."

"You can't buy this contract," Lockheed's Mr. Miller responds. And EDS has its own stable of expensive talent, including eight Austin lobbyists who have reported to the state that they expect to earn at least \$150,000 this year from the company. Meanwhile, EDS's partner, Unisys, employs a former Texas House speaker.

As long as the Clinton administration delays approval, however, the process remains in limbo. Federal officials say the matter remains under "active consideration" but give no timetable for action. A chief attraction of privatization is that it forces the winning bidder — rather than the parsimonious Texas Legislature — to pony up the \$150-million or so required for a new computer system to administer eligibility. But if the federal government doesn't sign off before the legislature adjourns in June, the state may have to scale back or abandon the initiative and reorganize welfare administration on its own.

Such talk makes union leaders optimistic that privatization can be turned back, even in a state with a relatively weak labor movement. "They thought they were going to ride right over us," says Michael Gross, of the Texas State Employees Union. "I think we're going to win."

Lockheed, for its part, says there is no holding back the trend toward companies running welfare programs across the country. Private sector opportunities, Mr. Miller says, could reshape the entire social service profession.

And Mr. Miller's old colleagues haven't accused him of selling out. To the contrary, he says with a grin: "I have a deep drawer here with resumes."

THE WALL STREET JOURNAL
WEDNESDAY, MARCH 19, 1997

Wp-privatization

Tax Report

A Special Summary and Forecast Of Federal and State Tax AI Developments

SUPPORT GROWS in Congress for easing restrictions on home-office deductions.

More people will be able to deduct the costs of a home office if any of several recently proposed bills wins approval. The bills are designed to change tough rules stemming from a 1993 Supreme Court decision that angered small-business groups. That decision hurt many self-employed people, including consultants, salespeople, freelance writers and home decorators, who do some work at home but also provide services or see customers elsewhere.

In that case, the court refused to let a doctor deduct his home-office expenses even though he worked at hospitals that didn't provide him with an office. The court said his home office wasn't his "principal" place of business because his work there wasn't as important as his hospital work. Unfair, say Sens. Bond, Nickles, Hatch, Lieberman and other lawmakers.

Under one proposal, a home office would qualify as a taxpayer's principal place of business if it were used on a "regular and systematic" basis for "essential" business activities, and if the taxpayer had no other place to do them.

MILLIONS OF PEOPLE give Uncle Sam a free ride once again.

Getting a hefty tax refund may feel great—and certainly beats having to write a big check. But people should remember that a refund check means they gave the government an interest-free loan, tax advisers say. It makes more sense for taxpayers to adjust their withholding during the year so that they wind up owing little or nothing.

Many people, though, ignore this advice, perhaps out of lethargy or uncertainty about how much they will owe. And some view a refund as a way to force them to save. One New Yorker says he arranges for a big refund each year to hide the money from his wife, who would spend it if he lowered his regular withholding. Whatever the case, the IRS as of March 14 approved individual refund payments totaling \$40.46 billion, up 6% from a year ago. Average income-tax refund: \$1,418, up 9%. The number of people getting refunds totaled about 28.5 million, down 3% from the prior year.

LONG IRS DELAYS in questioning taxpayers draw criticism—from the IRS.

An IRS official says the agency typically takes too long to issue "compliance contacts," such as notices about discrepancies between what taxpayers report on their returns and what is reported to the government by banks, brokers and other payers. Lee Monks, who heads an IRS program designed to help taxpayers resolve problems, says these contacts are "routinely initiated from one to two years after the income was received and/or reported."

Such a long delay "burdens taxpayers with the possible lack of recall and records," Mr. Monks says in a recent report to Congress required by a law enacted last summer. Delay also burdens taxpayers with "potential additional penalty and interest charges." He says the IRS is well aware of this problem and is "pursuing additional processing and procedural changes" to reduce the time.

The IRS's goal is to reach taxpayers before they file their next return so that they can avoid repeating the mix-up that triggered the agency's notice.

SENATE FINANCE CHAIRMAN Roth sharply criticizes the idea of delaying tax cuts, as some lawmakers have suggested. "Read my lips: No delay," the Delaware Republican says in an interview. "You can both balance the budget and give major tax relief. . . . I feel very strongly about that."

PROGRESS? The IRS answered 52% of callers' attempts to get tax help through Feb. 22, up from 21% a year ago, says Lynda Willis of the General Accounting Office, a congressional watchdog agency. The IRS, using different measurements, contends the rate rose to 71% from 52% a year ago.

TAX NOTES, a weekly journal in Arlington, Va., is the most-often-cited publication in a thick new anthology containing excerpts of about 150 tax-related articles in recent years. The anthology, from Anderson Publishing in Cincinnati, was assembled by law professors Paul L. Caron, Karen C. Burke and Grayson M.P. McCouch.

ELECTRONIC FILING continues to enjoy a big surge in popularity.

The IRS said yesterday that it received about 15.2 million returns filed electronically as of March 14. That was up 25% from a year ago. This year's total includes nearly 11.6 million returns filed through the IRS's standard electronic-filing format, up 18%. Another 3.7 million people filed by punching in their data on push-button phones, up 54%. Thus, about 30% of all individual income-tax returns filed as of mid-March came in electronically, up from 24% a year earlier.

The IRS also says more than 3.5 million taxpayers filed both federal and state returns in one electronic transmission. That surpasses a total of 3.2 million for all last year. Separately, more people are choosing to have their refunds deposited directly into their bank accounts: Nearly 10.9 million chose this direct-deposit option this year, up from 10.5 million for all last year.

As of mid-March, the IRS had received a total of 50.7 million returns, about the same as a year ago.

BRIEFS: Glutton for punishment? House Ways and Means Chairman Archer says he will prepare his own tax return again this year. . . . The nation's total tax burden stands at a record high, says Paul Merski, chief economist to Joint Economic Committee Vice Chairman Sen. Mack.

—TOM HERMAN

THE WALL STREET JOURNAL
WEDNESDAY, MARCH 19, 1997

From AFL
via VP's office

Problems with the Administration's State Flexibility Proposals

Background

The implementation of state managed care waivers has not been without problems. Many states have written poor contracts with managed care companies. Enrollment has been suspended in states as a result of fraud and marketing abuses, inadequate provider networks, and other problems which result in low quality care and denial of services for beneficiaries. In addition, state managed care programs have resulted in severe financial hardship for safety net providers, jeopardizing their ability to serve the 41 million uninsured people in the United States.

The administration's proposals for "state flexibility" in the Medicaid program could actually make these problems worse. AFSCME does not oppose giving more flexibility to states, but HHS has a responsibility to set national quality standards, protect providers who must continue to serve the 41 million uninsured, and protect the Medicaid program from abuse. The waiver approval and oversight process, which was hardly ideal, at least allowed for some federal standards and accountability. It also allowed stakeholders, including labor unions, who were not always included in the state process, to have a voice at the federal level.

Specific State Flexibility Proposals That AFSCME Opposes

- 1) Reduction of "unnecessary personnel requirements": We adamantly oppose any relaxation of the current requirements for state administration under section 1902 (a)(4). Eligibility determination and other core governmental functions must continue to be carried out by employees in a merit-based, public employment system. As states have privatized the enrollment of Medicaid beneficiaries in managed care, they have experienced serious problems. The GAO reported many of these serious problems to Congress at the end of 1996. Turning over additional administrative responsibilities to private, for-profit companies will threaten not only the fiscal integrity of the program, but beneficiary rights to privacy, confidentiality, due process, etc may also be undermined.
- 2) Conversion of managed care 1915(b) waivers to state plan amendments. AFSCME believes that this proposal, together with removal of the 75/25 requirement that HMOs must meet under 1915(b) waivers, will undermine quality in state managed care programs, and eliminate HCFA's ability to track and oversee the dramatic changes which occur under Medicaid managed care. Under a 1915(b) waiver, participating Medicaid HMOs must have at least 25% of their membership composed of commercial members. Unless and until we can see the quality standards that HCFA will propose in the place of these standards, we cannot support their removal at this time. The waiver process has allowed important

stakeholders, such as beneficiary advocates and unions who represent workers in the safety net, a voice in shaping state Medicaid managed care programs. Many states would have shut these groups out without HCFA's oversight.

Cuts in Medicaid Disproportionate Share

AFSCME has already expressed our opposition to the \$15 billion in cuts to DSH. At a time when the number of uninsured is growing and the new welfare law is likely to result in yet more uninsured people, the DSH program should not be cut. However, we agree that it needs some reforms. We are working with the National Association of Public Hospitals and the AFL-CIO on a proposal to target DSH dollars to those true safety net providers who provide the bulk of uncompensated care. Once we identify these safety net providers, we want to ensure that they are held harmless by any cuts which ultimately are made. We will continue to oppose deep cuts in DSH which jeopardize the mission of safety net hospitals. We would expect the Clinton administration to work together with the NAPH and us to promote this proposal on Capital Hill.

Per Capita Cap

AFSCME remains deeply concerned about the potential impact a per capita cap may have on the vulnerable Medicaid beneficiaries who depend on the safety net, particularly elderly and disabled beneficiaries. We do not think a per capita cap is necessary, as the growth in Medicaid spending has slowed significantly in the last two years, and CBO and other forecasts indicate only modest growth over the next few years.

**TEXAS HEALTH AND HUMAN SERVICES COMMISSION****MICHAEL D. MCKINNEY, M. D.**
COMMISSIONER

February 19, 1997

Donna E. Shalala, Ph.D.
Secretary
United States Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D. C. 20201

Re: Texas Integrated Enrollment Services Project

Dear Secretary Shalala:

The purpose of this letter is to respond to correspondence dated January 31, 1997, from Mr. Mark Ragan, Director of the Office of State Systems, Administration for Children and Families, to my office regarding the review of the State of Texas' request for approval of the Request for Offers for the Texas Integrated Enrollment Services [TIES] project. [Copy attached.] Mr. Ragan advises that the ACF and HCFA continue to review the RFO and that a final decision cannot be given at this time. He states that discussions were being conducted at the highest levels within DHHS.

It is therefore appropriate to direct my concerns about the approval process to your office and to inform you of my office's plans, based on our understanding of applicable federal regulations, to release the TIES Request for Offers [RFO].

As you may know, the State of Texas, through this agency and the State Council on Competitive Government, has embarked on a challenging initiative to integrate the eligibility determination and client enrollment functions of several public assistance programs, including Medicaid and cash assistance under the Temporary Assistance to Needy Families program. The State's overarching goal is to improve service to recipients of public assistance by maximizing efficiencies and taking advantage of technical and business innovations available through the marketplace. The State also has selected this project as a means to encourage public-private competition and, in the process, stimulate the formation of public-private partnerships.

The Texas Legislature directed this agency and the Council to determine the potential benefits of contracting out these functions and, if this option was deemed feasible, authorized this agency to contract out those functions. Following an extensive study of the programs to be included in the project and an assessment by the Council, the Council determined that there was a compelling business case to support the contracting out of eligibility determination and enrollment functions. The Council directed this agency to prepare and conduct a competitive procurement to implement the Council's findings.

We first presented the RFO for an integrated enrollment service for required prior approval to your agency and the Department of Agriculture in June of 1996. Following an extensive review and

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comment by the federal agencies, we met with agency representatives in Austin on July 23, 24, and 25. Based on the input and direction we received from federal staff and others, we resubmitted the RFO and Planning APD for the project for prior federal approval on October 17, 1996. We received acknowledgment in a letter from Mr. Joseph F. Costa, Director of the State Systems Policy Staff for ACF, dated October 24, 1997.

We met once again with federal staff at the offices of the Food and Consumer Service in Alexandria on November 15, 1996, where we received additional comments and direction. We received requests for clarification from DHHS and USDA on November 19th. We submitted information in response to these requests on November 27 and December 13, 1996. Mr. Ragan's letter is the most recent correspondence we have received from the Department on this matter.

Although your agency has indicated more time is needed to make a final decision on our request for approval, we believe a DHHS regulation adopted last year authorizes the State of Texas to proceed with the implementation of the TIES on a provisional basis without the Department's prior approval. The regulation, codified at 45 C.F.R. section 95.511(d), promises prompt agency action on states' requests for prior approval of Planning APDs, Implementation APDs, RFPs, contracts, and certain contract amendments. Under the new regulation, a state's request is automatically deemed to have provisionally met the prior approval conditions of the regulations if DHHS has not, within 60 days following the date of the its letter acknowledging receipt of the state's request, provided the state written approval, disapproval, or a request for information.

Based on our understanding of the purpose and intent of the regulation, we believe that, due to the delay in federal action, the State has provisionally met the prior approval conditions of DHHS and USDA regulations.

In the notice of proposed rule making that appeared in the Federal Register, the Department explained that the "prompt action" regulation was proposed in the interest of increasing efficiency and reducing federally-imposed burdens on the states. The Department's avowed intention was to help states contain costs by minimizing the delay in granting required approvals. The Department acknowledged that states which are confident their proposed ADP projects satisfy federal requirements should not be penalized by excessive delay in the Department's approval. See 60 Fed. Reg. 37859 (July 24, 1995). On final adoption of the regulation, the Department responded to a comment that the regulation may be employed to delay the approval of state requests by offering explicit assurance that "this will not happen." 61 Fed. Reg. 39894, 39896 (July 31, 1996).

Unfortunately, it appears that this is precisely what has occurred with the State's request for approval of the TIES RFO. Our concern is that the current and - if we interpret your agency's actions correctly - potentially interminable delay in the approval of the TIES RFO violates the spirit, if not the letter, of the prompt action regulation. Certain that this is not the Department's intention, we believe it is reasonable to interpret the regulation to authorize the State of Texas to proceed with the TIES project under the provisional approval criteria of the regulation.

The regulation is silent as to the Department's duty and a state's reasonable expectations in cases where federal approval takes longer than 60 days. It seems clear, though, that the policy basis for the regulation was to bring closure to a process that unfairly delays and adds costs to proposed state action. The Department's actions imply, however, that it interprets the regulation to permit an extension of the period of review for an additional 60 days upon delivery of written notice to the state. This application is plainly at odds with the Department's justification for the rule.

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If the regulation is to apply in this instance, we think the more reasonable application would be to permit the Department to receive an additional 60 days to review a state request for approval when it either (1) requests additional information from the state or (2) receives information from the state in response to such a request. Under this interpretation, the Department would be required, within the 60 days following the request or receipt of information, to provide the state a written approval, disapproval, or request for additional information. Mr. Ragan's letter of January 31, then, would not extend the Department's review period because it did not provide approval, disapproval, or request additional information from the State.

Accordingly, under this reading of the prompt review regulation, the State of Texas was deemed to have provisionally met the prior approval conditions of regulations, at the earliest, on January 18, 1997 (60 calendar days following November 18, 1996, the date of the Department's request for more information) or February 11, 1997, at the latest (60 days following the State's December 13, 1996, submission in response to the November 18 request).

Based on this understanding of the regulation, my staff is proceeding with final preparation of the TIES RFO for formal release to the marketplace. If we are incorrect in our reading of the regulations, we believe it is the Department's responsibility to so advise and provide the State of Texas information necessary to fulfill the prior approval requirement. If we receive no direction from the Department by February 28, 1997, we will assume you concur in our reading of the regulations and we will formally issue the TIES RFO.

We have conducted the dialog with our federal partners in the utmost good faith and in the spirit of partnership. We think this commitment is critical to the ultimate success of the TIES project. Almost without exception, our federal counterparts have been extremely helpful in providing my staff useful advice and direction. Their input has been indispensable to ensuring the success of the project. Yet, despite these efforts and repeated assurances of a prompt federal decision, we appear no closer to approval than we were nearly nine months ago when we first approached our federal partners. To my knowledge, we have responded (or have attempted to respond) to every request for information and clarification from federal oversight agencies. We are unaware of any reason why the RFO cannot be issued at this time. Mr. Ragan's letter discloses no lingering or insurmountable issues regarding the project. Thus, we are left to speculate whether the delay in approval is for reasons other than the adequacy of the RFO and compliance with federal requirements.

I agree with Mr. Ragan that a project as large and ambitious as TIES deserves careful consideration, and we are committed, as your staff are, to ensuring that the needs of our clients and taxpayers' interests are protected. However, each month of delay in the release of the RFO costs the taxpayers of Texas. To date, the State of Texas has invested approximately \$1.8 million in the planning and development of the TIES project. Additional expenditures will no doubt be necessary to accommodate further federal delay.

More important, we conservatively estimate that each month of delay in the statewide implementation of integrated enrollment in Texas costs the taxpayers of this state at least \$10,000,000. The Texas Legislature, in authorizing this project in 1995, instructed my office to direct the savings generated by integrated enrollment to fund additional health and human services programs. I estimate that the annual savings in administrative costs alone generated by TIES could provide health care coverage an additional 150,000 needy Texas children. Thus, the inability of the federal authorities to fulfill their

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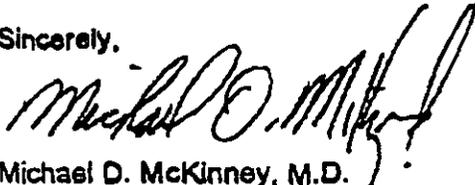
responsibilities frustrates the intent of the Texas Legislature and is borne directly by our agencies' clients and the citizens of Texas.

I regret that this action has become necessary, but it is my duty to ensure the intent of the Texas Legislature is implemented and the interests of the people of Texas are advanced. We firmly believe that the TIES project is the right thing for recipients of public assistance and the State of Texas, and it is long overdue. I understand our efforts have been criticized by people whose interests may be to preserve the status quo. Unlike your staff, these persons either have not taken the time to consult with us, have not given us the courtesy of an open and honest discussion of the issues, or have chosen to ignore the clear commitments we have made to improve service to our clients and give value to the taxpayers.

We view the TIES project as an opportunity to realize President Clinton's vision of a nation where the important and critical decisions of government are made closest to the people whose lives they affect. We also share his belief that restoring to the states this responsibility and authority is critical to reforming the welfare system and meeting the challenges of the next century. And we agree with your recent remarks that "when we target our resources responsibly and innovatively, when we team up with our private and public partners, and when we act as tough, savvy managers, the federal government can help lead the way in creating a stronger and healthier nation - a nation capable of meeting challenges both old and new." With your help, the State of Texas can follow a similar path.

Consequently, I respectfully ask for your assistance in resolving the apparent impasse over the approval of the Texas Integrated Enrollment Services Request for Offers. As always, we are prepared to supply any information you or your staff may need to reach a prompt and correct decision.

Sincerely,



Michael D. McKinney, M.D.
Commissioner

Attachment

c: Governor George W. Bush
Lieutenant Governor Bob Bullock
Speaker Pete Laney
Comptroller John Sharp

EX

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HHS RECEIPTION

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Handwritten signature: Carol Hood

TIES ISSUES: MERIT SYSTEM REQUIREMENTS AND DELEGATION OF AUTHORITY

In the course of Texas' TIES discussions with DHHS and USDA, federal agency staff have raised two issues:

- Are the merit system requirements of the Food Stamp Act and the Social Security Act applicable to a privatized eligibility work force?
- Do the merit system provisions prohibit the state from delegating eligibility determination functions to a contractor?

Texas has taken the position in those discussions that:

- (1) under the TIES proposal, the relevant Texas state agencies retain all responsibilities for administration that are associated with their designations as single state agencies;
- (2) the state is obligated to ensure that state-administered portions of TIES programs will use a merit system of personnel administration. That merit system, however, is not applicable to any private work force with which the state contracts to administer other parts of the eligibility determination process;
- (3) nothing in federal statute or regulation prohibits the state from delegating certain eligibility determination functions to a contractor, including some certification-related functions under the Food Stamp program.

Texas does not argue that, in order to comply with federal requirements, only the individual "pushing the button" to certify eligibility must be a public, merit system-protected employee. But the federal government has no basis for arguing the other extreme, namely that all eligibility functions beyond data intake must be performed by public employees.

Texas has asked the federal agencies repeatedly to identify where they draw the line between public and private employees in the eligibility certification process. Federal agency staff to date has refused to take a position on that issue.

The issue of whether private employees can certify client eligibility is a red herring for the following reasons:

- (A) The eligibility determination process and automation system are rules-based which minimizes the possibility of public or private employees exercising unbridled discretion.

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BHSC RECEPTION

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Put in same ? this

- (B) The state at all times will retain responsibility for the promulgation of program rules and policy. In other words, the objective criteria used by staff and systems in determining client eligibility in all instances will be defined by public employees.
- (C) The state will retain final approval and disapproval authority over all eligibility determinations and the state, not a private contractor, will be responsible for assuring the due process rights of all applicants whose eligibility is denied.
- (D) The state will retain control over all eligibility determination functions by holding the contractor to strict performance standards through stringent oversight of contractor operations.
- (E) While holding the contractor strictly responsible for results, the state will remain the party that is accountable to the federal government for compliance with all federal requirements.

So st. will have real incentive to keep client tabs.

From: Kenneth S. Apfel on 02/25/97 01:02:55 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, FORTUNA_D @ A1 @ CD @ LNGTWY

cc:

Subject: Outsourcing in Wisconsin

fyi

----- Forwarded by Kenneth S. Apfel/OMB/EOP on 02/25/97 01:02 PM -----



Stacy L. Dean	02/25/97
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12:01:09 PM

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP

cc: See the distribution list at the bottom of this message

Subject: Outsourcing in Wisconsin

The Wisconsin Secretary of HHS, Jean Rodgers, called USDA today to say that they expect an answer on their waiver request this week. Their privatization effort includes Food Stamps and Medicaid. HCFA apparently has not raised concerns about outsourcing, but has raised other issues. Ms. Rodgers plans to call Kevin Thurm or John Monahan with the same message.

If Wisconsin does not get an answer they plan to raise the issue to a "higher level". I assume this means the White House. Just wanted to give you a heads up.

Message Copied To:

Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP
Larry R. Matlack/OMB/EOP
Margaret A. Murray/OMB/EOP
Carole Kitti/OMB/EOP



THE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

*File: WR
privatization*

FEB 28 1997

Michael D. McKinney, M.D.
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Commissioner McKinney:

On behalf of the U.S. Department of Health and Human Services [HHS], I am writing in response to your recent letter to Secretary Shalala concerning the Request for Offers [RFO] for the Texas Integrated Enrollment Services [TIES] project.

This Department and other affected federal agencies are seriously and actively considering the TIES project. The proposal presents complex and unique issues regarding the proper and efficient operation of federally funded State public benefit programs. Please be assured that we are analyzing the issues raised by TIES in a manner designed to provide you as quickly as possible with the best available guidance. It is my sincere hope that any delay at this point, though regrettable, may save time in proceeding with any future implementation. I believe that the relationship we have established with you and your staff will allow us to continue to work together in partnership to reach a final decision regarding your proposal.

Based on our analysis, HHS does not believe that, under 45 C.F.R. § 95.611(d), the TIES project may be deemed to have provisionally met all applicable prior approval conditions, as you indicated in your letter. The TIES project contemplates a restructuring of the administrative methods of the included programs that is broader than an acquisition of automatic data processing (ADP) equipment and services. As a result, the approval that you have sought is broader than the prior approval required under 45 C.F.R. § 95.611. That regulation imposes a prior approval requirement on acquisitions of ADP equipment and services, but does not address the procedure for approval of administrative methods, such as eligibility determination, which have been included in the TIES project. Thus, we do not believe that the Department is limited to the scope and time frame of the prior approval process described in 45 C.F.R. § 95.611.

Please let me note two additional points:

- Even if the prior approval requirements at 45 C.F.R. § 95.611 were applicable, this Department met the required time frame at 45 C.F.R. § 95.611(d) by providing a written request for information on November 19, 1996 (within 60 days of the date of the Departmental letter acknowledging receipt of the State's request).

Page 2 - Commissioner McKinney

- Even assuming that the 60-day time frame set forth at 45 C.F.R. § 95.611(d) were applicable and had expired, the automatic deemed approval would be "provisional," i.e., it would not preclude a later finding by the Department that the project is not approvable. The preamble to the final rule promulgating this regulation states as follows:
"States which are confident that their project is in compliance would be able, however, to proceed after the 60-day waiting period has expired without further delay awaiting Federal approval. However, if it is subsequently determined that the State's project does not meet Federal requirements, appropriate changes will be necessary." 61 Fed. Reg. 39894, 39896 (July 31, 1996).

As noted above and in the preamble to the final rule, should the State proceed with its plans to release the TIES RFO without our approval, it would be doing so at its own risk. We are concerned that the State may be required to modify the RFO after it is released, further delaying the project and increasing the costs to both the State and the potential vendors, or more seriously, potentially putting in question Federal financial participation.

I appreciate your desire to move forward with this project. I can assure you that I remain committed to work as expeditiously as possible to resolve the remaining issues at the Federal level.

Sincerely,



Kevin Thurm

THE WHITE HOUSE
WASHINGTON

Elena:

Three attachments:

- ① The current relevant title XIX statute references on Medicaid personnel hiring/work responsibility requirements;
- ② Our Medicaid flexibility provision that deletes the merit system protections; and
- ③ The current statute modified by our provision.

Please interpret away!!! If you need more, please call. We're targeting a Monday meeting w/ HHS on this. Do you want anyone other than you & me at this meeting from our end? *Elms* 6-5560

STATE PLANS FOR MEDICAL ASSISTANCE³

SEC. 1902. [42 U.S.C. 1396a] (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; STATUTE 1921E C-5

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan,⁴ (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee,

³See Vol. II, P.L. 93-233, §13(c), with respect to medicaid eligibility for individuals receiving mandatory State supplementary payments.

⁴See Vol. II, P.L. 94-437, §402(c) and (d) with respect to a special fund for Indian Health Service facilities and §403 with respect to reports.

⁵P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). Functions of the Commission were transferred to the Director of the Office of Personnel Management under §102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note), effective January 1, 1979.

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r the purpose of enabling each the conditions in such State, to half of families with dependent abled individuals, whose income et the costs of necessary medical id other services to help such stain capability for independence ized to be appropriated for each out the purposes of this title. The ction shall be used for making nitted, and had approved by the sistance.

or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code⁵.

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies administering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1861(e)(9) or paragraphs (15) and (16) of section 1861(s), or, in the case of a laboratory which is in a rural health clinic, of section 1861(aa)(2)(G);

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of section 1905(a), to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or

⁵See Vol. II, Title 18.

ELIGIBLE

MANDATORILY

2

(c) CONFORMING AMENDMENT CONCERNING SPOUSAL

2 IMPOVERISHMENT.—Section 1924(a) (5) is amended by inserting "with
3 a PACE provider contract under section 1933 or" after "any
4 organization".

5 (d) REGULATIONS.—The Secretary shall promulgate interim
6 final regulations effective not later than the first day of the
7 ninth month beginning after enactment of this Act.

8 (e) REPEAL OF CURRENT PACE PROGRAM WAIVERS.—Effective as of
9 September 30 of the first fiscal year beginning after the
10 effective date of interim final regulations promulgated pursuant
11 to subsection (d), the following provisions of law are repealed:

12 (1) Section 603(c) of the Social Security Amendments of
13 1983 (Public Law 98-21);

14 (2) Section 9220 of the Consolidated Omnibus Budget
15 Reconciliation Act of 1985 (Public Law 99-272);

16 (3) Section 9412(b) of the Omnibus Budget
17 Reconciliation Act of 1986 (Public Law 99-509); and

18 (4) Section 4744 of the Omnibus Budget Reconciliation
19 Act of 1990 (Public Law 101-508).

20 **PART 6—STATE PLAN ADMINISTRATION**

21 **SEC. 11561. ELIMINATION OF PERSONNEL REQUIREMENTS.**

22 Section 1902(a) (4) is amended—

23 (A) in subparagraph (A), to read as follows:

1 "(A) provide methods of administration the Secretary
2 finds to be necessary for the proper and efficient operation
3 of the plan;";

4 (B) by striking subparagraph (B); and

5 (C) by redesignating subparagraph (C) as subparagraph
6 (B).

7 **SEC. 11562. ELIMINATION OF DUPLICATIVE INSPECTION OF CARE**

8 **REQUIREMENTS FOR ICFs/MR AND MENTAL HOSPITALS.**

9 (a) **MENTAL HOSPITALS.**—Section 1902(a)(26) is amended—

10 (1) by striking "provide—

11 (A) with respect to each patient" and inserting
12 "provide, with respect to each patient";

13 (2) by moving the balance of the subparagraph two ems
14 to the left; and

15 (3) by striking subparagraphs (B) and (C).

16 (b) **ICFs/MR.**—Section 1902(a)(31) is amended—

17 (1) by striking "provide—

18 (A) with respect to each patient" and inserting
19 "provide, with respect to each patient";

20 (2) by moving the balance of the subparagraph two ems
21 to the left; and

22 (3) by striking subparagraphs (B) and (C).

23 **SEC. 11563. PUBLIC PROCESS FOR DEVELOPING STATE PLAN AMENDMENTS.**

STATE PLANS FOR MEDICAL ASSISTANCE³

SEC. 1902. [42 U.S.C. 1396a] (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) ~~such~~ methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) ~~for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee,~~

³See Vol. II, P.L. 93-233, §13(c), with respect to medicaid eligibility for individuals receiving mandatory State supplementary payments.
See Vol. II, P.L. 94-437, §402(c) and (d) with respect to a special fund for Indian Health Service facilities and §403 with respect to reports.
⁴P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). Functions of the Commission were transferred to the Director of the Office of Personnel Management under §102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note), effective January 1, 1979.

Any change to this?

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usually
made?*

or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code⁵;

→ (5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; ~~or~~ provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies administering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI;

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(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1861(e)(9) or paragraphs (15) and (16) of section 1861(s), or, in the case of a laboratory which is in a rural health clinic, of section 1861(aa)(2)(G);

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⁵See Vol. II, Title 18.

or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code³.

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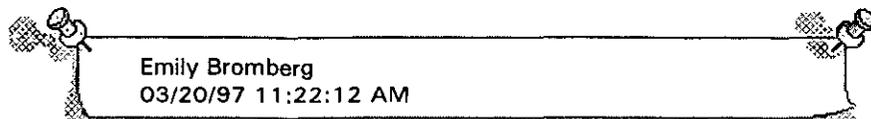
³See Vol. II, Title 18.

Personnel Rules + President's Medicaid Plan

The proposed change in Section 1902(a)(4) does not undercut the Department's ability to prevent States from contracting out complete functions (e.g., eligibility). The Department's authority is retained by keeping current language providing for methods of administration that "...the Secretary finds to be necessary for the proper and efficient operation of the plan." (Attachment A)

* In addition, Section 1902(a)(5) states that the State Plan's must "provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency..." This requires that the State cannot delegate its authority to a private entity. (Attachment B)

Although the proposed change in Section 1902(a)(4) does not legally affect the Secretary's authority, it could appear that we're taking away Federal review of State's decisions on personnel standards. Thus we have suggested adding a new parenthetical that makes it clearer that we are not trying to interfere with States in this manner -- only remove "micromanagement requirements. The new parenthetical is "(including personnel requirements)."



Record Type: Record

To: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc: Bruce N. Reed/OPD/EOP

Subject: privatization

FYI, the Governors Chiles folks are telling us that the FLA state legislature wants to privatize a la Texas. Chiles does not want to, and HHS is talking to his staff.

Stacy L. Dean

03/19/97

04:26:28 PM

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP

cc: See the distribution list at the bottom of this message

Subject: Texas Proposal

I'm picking up one of USDA's numbered copies of the Texas proposal tomorrow. I will have to sign a document attesting to my ability to protect it -- under the procurement procedures. Since I trust you all, you may feel free to come over here and read it at any time. I'm afraid that I won't be able to copy it for you though. Also, you won't be able to discuss its contents with anyone outside of the White House, USDA, HHS or OPM.

Message Copied To:

Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP
Larry R. Matlack/OMB/EOP
Emil E. Parker/OPD/EOP
Cynthia A. Rice/OPD/EOP
Diana Fortuna/OPD/EOP
Elena Kagan/OPD/EOP

Rich Tarplin

1. Outreach + info collection

elijah Leherms

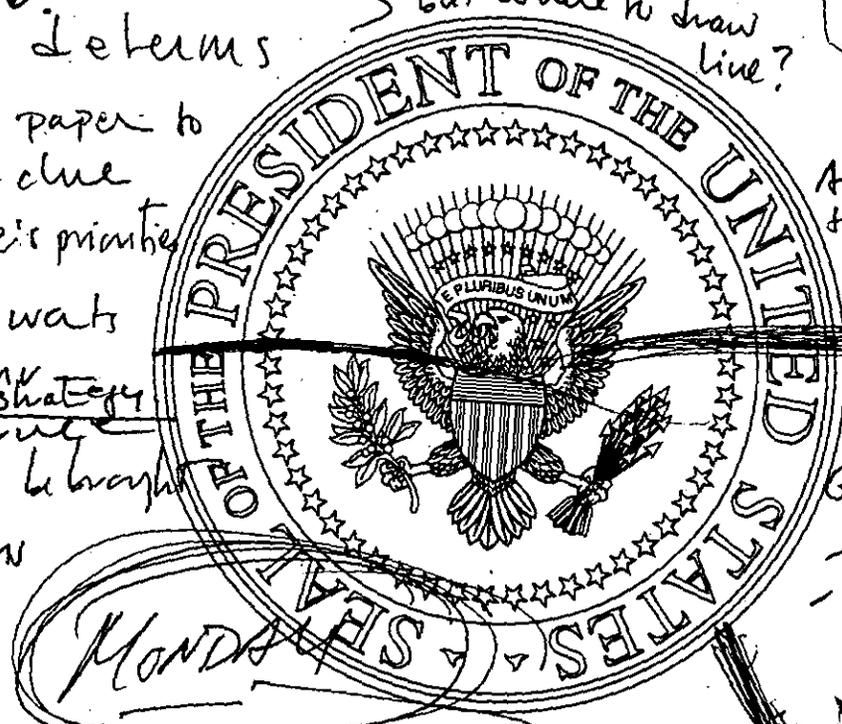
> but where to draw line?

Asked for TX paper to give us bn clue as to state's priorities

Thomson still wants

1 more copy will call ^{strategy} Bruce

WDA has to be brought along - this



MONDAY

17 two background materials

- Kids EO
- Liquor advert
- Legal capacity around chips

2. Public relations

Aim for conv. leading up to full ante markup.

Subcom markup Wed

too quick.

Get us next Thurs/Fri - wh - child support

It can go take the wk of 24th - OK can whole wk of recess to wh on it.

3/13 Privatization - Unions.

Need to look at each individually (the y earn w/ price)

• vast maj of whrs - have discretion / make judgement

14,000 EEs

Intake IV - elig whr does (computer)

Process applic - " " " } essentially mky calls

any supervision ←
trying to get in w/
an every case? but still
Don't know in hands of
discreti - in indiv. whrs
who will qualify
ass. week

KA: Medicaid outreach whrs
(whrs have to be M1) -
they do all that too.

6x as
many as
in intake
unit.

Bulk of whrs is redeterm - every 6 mos.
(shmes have to go to num of wh)

- investigator (found)
- quality assurance
- legal

14,000 - vast maj IV / elig deterns
 Most do AFDC / FS / Medicaid all.
 Most states - integrated elig deterns

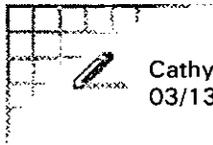
BRW - Student loans / Pell grants - entitlement to where
 elig. deterns aren't done by govt whrs.
 (incentives wh in right directio here)

How diff from e.g. Pell grants

- imp & ben

- nature & pop

- incentive structure



Cathy R. Mays
03/13/97 07:06:12 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Melissa Green/OPD/EOP, Jill M. Pizzuto/OMB/EOP, Marjorie Tarmey/WHO/EOP
Subject: Welfare Privatization Meeting

The list of participants for tomorrow's 2:00 p.m. meeting:

Gerald Shea, AFL-CIO
Marc Baldwin, AFL-CIO
Debbie Goldman, CWA
Lee Saunders, AFSCME
Marie Monrad, AFSCME
Carol Golubock, SEIU
John Howley, SEIU

Message Sent To:

Gene B. Sperling/OPD/EOP
Elena Kagan/OPD/EOP
Kenneth S. Apfel/OMB/EOP
Maria Echaveste/WHO/EOP
Cynthia A. Rice/OPD/EOP
Diana Fortuna/OPD/EOP

Record Type: Record

To: Elena Kagan/OPD/EOP, Kenneth S. Apfel/OMB/EOP, Emily Bromberg/WHO/EOP
cc: Keith J. Fontenot/OMB/EOP, Stacy L. Dean/OMB/EOP, Jeffrey A. Farkas/OMB/EOP
Subject: Conversation w/Cong. Stenholm's staffer on privatization/out-sourcing

I talked to Ed of Cong. Stenholm's office to ask if they had looked into the employee end of things on the Texas proposal. He didn't have much at all in the way of detail on types of employees or functions, so I suspect Comptroller Sharp's office would be a better source. (I seem to recall that someone was going to reach out to Sharp's office....)

He again indicated that he believes the state is open to middle ground solutions.

Here's what he did know:

There are currently 15,000 employees involved in "processing." The state's assumption is that, even in absence of contracting out, the process of moving to the new computerization and integrated enrollment would probably lead to about 1/3 attrition, i.e., going down to 10,000 employees.

He says that their expectation is that the new consortia will hire some significant portion of the public workforce. The RFO does require the various bids to address the issue of whether they are going to keep on current workforce, find other employment for them, etc.

Put in

They are assuming that the federal government still has approval over the final contract, and so we would know how employees are being treated before the contracts are final. He said that that would be the point when we could "try to work something out". (Sounds like he means make sure they have some job, if not necessarily in the same union or any union. I assume that if contractors hire these folks, they are certainly no longer in the same union, if any union at all.)

CHARLES W. STENHOLM

17TH DISTRICT
TEXAS

1211 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4405
FAX (202) 225-2234
e-mail: Stenholm17@hr.house.gov
Home Page: <http://www.house.gov/stenholm/>

AGRICULTURE COMMITTEE
RANKING MEMBER

Congress of the United States
House of Representatives
Washington, DC 20515

February 24, 1997

DISTRICT OFFICES:

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STAMPADE, TX 79563
(915) 773-3823
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The Honorable Franklin Raines
Director *
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20500

*cc: Elena
Cynthia
Diana*

File: W-privatization

Dear Frank:

I am writing on behalf of my constituents in the 17th District and the State of Texas to request your prompt attention to Texas' request for approval of the Request for Offers for the Texas Integrated Enrollment System (TIES). This request has been pending for several months and has reached a critical point for a decision.

When the welfare reform debate began in earnest in 1995, I set up welfare task forces in my district and asked them to put together their recommendations on how to structure the welfare delivery system. The number one recommendation of the task force was that the application process be streamlined and simplified across various means-tested programs. The task force concluded that streamlining the application process would provide better service to needy individuals and would use scarce resources more efficiently. I was therefore pleased that the Texas legislature directed the Texas Human Services Commission to develop an integrated enrollment system as part of the state's welfare reform plan. I have been even more pleased that the Commission has taken this direction very seriously and developed an integrated enrollment proposal very consistent with the goals outlined by the welfare task force I established.

I am enclosing a copy of a letter that Dr. Mike McKinney, Commissioner of the Texas Human Services Commission, sent to Secretary Donna Shalala on February 19 informing the Department of Health and Human Services of his intention to proceed with the release of the TIES Request for Offers. The Commission is proceeding under the authority of HHS regulations that deem requests to be approved if the Department does not provide the state with approval, disapproval or a written request for more information within 60 days.

While I share Dr. McKinney's disappointment that the Commission has found it necessary to proceed without formal approval from HHS or USDA, I believe that the Commission has been extremely patient throughout the approval process and has ample legal and substantive justification to proceed with the program at this point. The Texas Human Services Commission has been developing the TIES at the direction of the Texas legislature since June of 1995. The initial RFC was presented to HHS and USDA in June of 1996. Since that time, state officials have worked extensively with the administration to refine and improve the proposal and have responded to several requests for information. Further delay risks jeopardizing the

success of the Texas welfare reform initiative, which anticipated implementation of the TIES. The timing is especially critical because the Texas legislature will only be in session for a few months. Dr. McKinney and his staff need to begin to work with the legislature very soon if any changes need to be made to the TIES that need legislative approval, or if the welfare reform legislation needs to be modified to adjust to the absence of the TIES.

I have worked with Dr. McKinney in seeking federal approval of the TIES and several other issues, most notably approval of a waiver for the Texas welfare reform plan in 1995. In all of these instances, I have found Dr. McKinney to be extremely reasonable and willing to make accommodations to address administration concerns. Dr. McKinney remains willing to work with the administration to resolve any problems preventing federal approval of the TIES. I am willing to work with you, Dr. McKinney, Governor Bush and other state and administration officials to foster a constructive dialogue that can lead to prompt resolution of this matter. If the administration determines that legislation is necessary to allow approval of the TIES, I will work in my capacity as Ranking Member of the House Committee on Agriculture to pursue such legislation, and believe that there would be bipartisan support for such an effort. I hope that the cooperation between the State of Texas, my office and the administration that led to the approval of the Texas welfare waiver under terms that were acceptable to all parties can serve as a model for dealing with this issue.

Thank you in advance for your attention to this matter. I look forward to working with both the State of Texas and the Administration to see that we continue to make progress toward final implementation of the Texas Integrated Enrollment System. Please feel free to contact me if I can be of assistance. With kind regards, I remain

Sincerely yours,



Charles W. Stenholm
Member of Congress

CWS:esl

Enclosure

cc: Governor George Bush
Lieutenant Governor Bob Bullock
Dr. Mike McKinney
Bruce Reed
Ken Apfel

2/21

Privatization

ES - allow!

- safeguards for recipients?
- transition provisions for state EEs?

FRONT END

BACKEND

Quality
control

Appeals

Interviews key - recertification

Need numbers - agencies?
- Stockholm's guy
Sharp??

87 commissioner - dismissive
Cathy Way

other stuff
(some to be EBT)

Goal - same std - so single person can do all their progs.

Privatization 2/20/97

Memo w/ edits coming back tomorrow
Stip with agency comments since that version

Put in

FS - reqs a waiver

Medicaid - machine

DOL - interp of law - not seeking a waiver
always allowed.

FS - 60 days to approve

said: wd an exterior

[st may insist on ans.]

1. Has demo auth -

Not appear to be demo - strude lim - term change.

2. Do have auth to interp law

define certificate in diff manner

e.g. IV - just partnering info.

certif = just denying / approving request.

3. another op lic - do demo project -

of counties. Hd. No one satisfied.

13,000
[at least some]

Medicaid -

Stat / req reqs.

Outstate - i.e. - K ant intake of mat'l. by statute

Could waive

- one elig determ - (not come out diffly in what these are than usual)
- " " " plus evaluation (as of now)

DOL - ~~the~~ SSAET is key.

Previously asked re UI

Also - looking for inherently governmental func.

Approved MA - 1-shop.

Px wants same thing -

20,000 - Not yet asked re UI. - (align w/ Medicaid/FI)
Think most crit be kept out (why??)

13,000-15,000 ← Emp. servs - no eligibility decision
Not a lot to stand on.

OPM - "inherently gov'tal" - criteria for fed gov't keep out
cert services.

Barry - "inher. gov'tal" - lots of stuff done by priv people.
crit so generically
has to be statute by statute

IV | supervisor thy
info

st. says computer!

could 80% of total / 90% of unique mbrs

↓
bec all supervisors being exempted.

02/08/97 12:00

512 424 6587

HHS RECEIPTION

002



DEPARTMENT OF HEALTH & HUMAN SERVICES

1997 FEB -6 11 9:33
 JUN 31 1997

ADMINISTRATION FOR CHILDREN AND FAMILIES
 370 L'Enfant Promenade, S.W.
 Washington, D.C. 20447

Michael D. McKinney, M.D.
 Commissioner
 Texas Health and Human Services Commission
 4900 North Lamar, Fourth Floor
 Austin, Texas 78751

MM
 AS
 SA

Dear Dr. McKinney:

The Administration for Children and Families (ACF) and the Health Care Financing Administration (HCFA) continue to have under review your November 26, 1996 request for approval to release a Request for Offers (RFO) for the Texas Integrated Eligibility Services (TIES) project.

We cannot provide a final decision on your request at this time. The acquisition proposed by Texas is both complex and unique. The issues involved in the proposal are being discussed at the highest level within the Department of Health and Human Services. We will provide a final response to your request as soon as the major issues under review are resolved.

If you have any questions concerning this response, please call me at 202-401-6960.

Sincerely,

Mark E. Ragan
 Director
 Office of State Systems

Reference No. 120996TX

cc: Ms. Colleen Daly, Director, DSSA/ACF
 Mr. James Dunnigan, HCFA
 Mr. Norm Thompson, Director, OPS/ACF
 Ms. Lavinia Limon, Director, OFA/ACF
 Mr. Robert Keith, OGC
 Region VI, Regional Director
 Region VI, Regional Administrator, ACF
 Region VI, Associate Regional Administrator, Division of Medicaid, HCFA
 Regional Financial Management Officer, FCS, USDA
 Mr. Chris Beavers, FCS

DRAFT

PRIVATIZATION OF THE FOOD STAMP PROGRAM

ISSUES REQUIRING DECISION

To what extent should the States be permitted to transfer certification responsibilities to the private sector through competitively bid contracts and to what extent should the Merit System of Personnel Administration provisions be waived to allow States to enter into contract agreements?

BACKGROUND

There is increasing interest among the State welfare agencies in transferring the administration of public assistance programs to the private sector through competitively bid contracts. This interest stems, in part from the efforts of the Federal and State governments to test new methods to improve program services and to increase self-sufficiency among program recipients.

Contracting or privatizing certain functions of the Food Stamp Program is not new. Many States have contracts with private agencies to provide Food Stamp Employment and Training services and all States that have implemented an Electronic Benefit Transfer (EBT) system have a contract agreement with a private entity.

What is new is the possibility of contracting with private entities to perform functions that have historically been the responsibility of the public sector, such as conducting the required food stamp interview and determining the food stamp eligibility and benefit level. Such proposals would require a waiver of current statutory and regulatory provisions related to the Merit System of Personnel Administration as required under section 11(c)(6) of the Food Stamp Act of 1977, as amended.

CURRENT PROPOSALS REQUIRING DECISIONS ABOUT THE MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Texas Integrated Enrollment System (TIES)

TIES is a privatization initiative of the Texas Health and Human Services Commission (HHSC) and the Texas Council on Competitive Government (CCG) in support of a State law enacted in 1995. Under TIES, the certification and eligibility determinations for most public assistance programs, including the Food Stamp, Special Supplemental Nutrition Program for Women, Infants and Children (WIC), TANF and Medicaid programs, would be contracted to the private and/or public sectors through competitive bids. The TIES proposal would require a waiver of the merit system provisions under the Food Stamp Act. The Federal agencies and the State of Texas have been negotiating the conditions for releasing a Request for Offers (RFO) for

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TIES since May, 1996. With the exception of a final decision about the merit system provisions contained in the RFO, all other issues have been resolved.

mix
publ
priv?

Texas is expecting final approval of the RFO in January to be able to release the RFO by the end of the month. Two consortia have been developed with the intention of bidding on the RFO. One consortium is composed of the Texas Workforce Commission, International Business Machines Corporation and Lockheed Martin Corporation. The other consortium consists of the Texas Department of Human Services, Electronic Data Systems Corporation and the Unisys Corporation. Arthur Anderson has also indicated an interest in the proposal but has not aligned itself with a State agency.

Wisconsin Works (W-2)

Under the W-2 proposal, the State would contract on a competitive basis with a public or private agency for certification actions such as gathering client eligibility information, conducting eligibility interviews and data input. The State, presuming Departmental approval of its waiver request of the merit system requirements, released its Request for Proposals (RFP). The State is pending any further action on the RFP process until its receives Federal approval to waive the Food Stamp Merit System provisions.

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PUBLIC RESPONSE

The Department has received numerous letters from employee unions about the TIES proposal, including the American Federation of Labor and Congress of Industrial Organizations (AFLCIO), the American Federation of State, County, and Municipal Employees (AFSCME) and the Service Employees International Union. The unions assert that a waiver of the merit system would result in a decline of client services, including access to program benefits and client confidentiality. The Department received over 1,000 letters from employees in Wisconsin objecting to the W-2 project.

WAIVER AUTHORITY TO CONDUCT DEMONSTRATION PROJECTS

The Food Stamp and Social Security Acts provide the Departments with the authority to waive most statutory requirements to allow the States to conduct demonstration projects. However, because authority for the Merit System of Personnel Management was transferred from the Departments to the Office of Personnel Management (OPM) under the Intergovernmental Personnel Act of 1970, the Departments would need to obtain concurrence from OPM prior to approving any demonstration project that would waive the Merit System of Personnel Management.

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OPTIONS

Approve Waiver of Merit System of Personnel Administration. Approval of TIES and the W-2 would require use of the Department's demonstration authority and the necessary approval of the Merit System of Personnel Administration from OPM. The Department's waiver authority for demonstrations is intended to test innovations and is not intended to approve long-term operational alternatives such as those proposed by Texas and Wisconsin. Approval of the waiver may result in additional objections from employees unions and advocacy groups but would be supported by States, the National Governors Association and private corporations which have formed alliances with public agencies to respond to the RFO.

Deny Waiver of Merit System of Personnel Administration. Denial of the TIES and W-2 project would seriously disrupt the progress the Federal and State agencies have made on the proposals. The Federal agencies would receive serious objections from the State and private corporations. Also, a denial may be viewed as inconsistent with the Administration's support for allowing the private sector to be more involved in the administration of public assistance programs. However, it is important to note that during the recent debate on welfare reform legislation, Congressional Conferees reinstated the merit system provisions in the Food Stamp Act that a previous Senate bill had deleted.

Redefine Certification. The Food Stamp Act requires certification to be completed by merit system employees. Certification is not defined in either the Act or program regulations. Current regulations provide that the required interview be conducted by merit system employees. The Department prefers this interpretation (which is supported by the legislative history to the Act) but States want to reinterpret the law so that compliance could be achieved through the automated processing of data by computers which are programmed under State agency direction to make eligibility and benefit decisions. A middle ground could preserve more merit system involvement in a complex eligibility determination process that requires judgment. FCS could require merit system review of applications and interview results before benefits were determined (a process comparable to the supervisory reviews currently used by many State agencies). The Department believes it would be imprudent to eliminate the interview from merit employees on a statewide basis without further testing. *most labor-int?*

Approve small-scale demonstration projects. The Department supports privatization initiatives that may result in improved services and/or administrative costs savings. However, we have concerns about statewide initiatives that have not been proven to be effective any may seriously affect program access to low-income households. For instance, TIES is a Statewide initiative in a State that issues annually approximately 10 percent of food stamp benefits issued nationwide. A demonstration limited to a small number of counties may be supportable by the advocacy groups. Private corporations may object or lose interest in small-scale demonstration projects. It is unclear how the unions and other States would react to such a compromise. *Cost \$1 million*

Food Stamp, Medicaid, and Employment Service Privatization

The applicable section of law governing medicaid administration (42 USC §1396a(a)(4)(A)) authorizes the Secretary to require "the establishment of personnel standards on a merit basis...as are found by the Secretary to be necessary for the proper and efficient operation of the plan..." This language connotes discretion and may be the source of agency claims that the merit system requirement is waivable. For example, the Secretary may find that merit personnel standards are not necessary for "proper operation." On the other hand, the Secretary clearly has the discretion to require merit standards. More importantly, the Secretary's authority under these sections was expressly transferred to the Director of OPM in 1979. The IPA at 42 USC §4728 states that OPM has "all functions, powers, and duties" conferred on the Secretary in the above referenced section of law. Therefore, the Secretary of HHS does not have authority to waive merit standards; that authority resides with OPM.

not really a waiver - just can do! Secy hiding.

OPM's IPA implementing regulations (5 CFR Part 900, Subpart F) "apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program." (§900.602) Although the regulations do not expressly state that private sector organizations cannot be considered to have merit based personnel systems, there is a very strong implication to that effect. Appendix A to Subpart F of the OPM regulation lists the programs that "have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis." Food Stamps, medicaid and Employment Security (Unemployment Insurance and Employment Services) are expressly listed as programs subject to a requirement for a merit system.

but no such req in Medicaid.

The language in the Food Stamp Act is stronger than the medicaid law regarding the requirement for merit personnel standards (7 USC §2020 (e)(6)(b)). The Food Stamps Act law states that "the State agency personnel utilized in undertaking such [Food Stamp eligibility] certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Director of the Office of Personnel Management pursuant to section 4728 of Title 42...". The IPA also transferred USDA's authority regarding merit personnel systems to OPM.

For the above reasons, merit based standards are a non-waivable bar to privatization. Although the HHS Secretary may have had authority to waive the standards prior to the revision of the IPA in 1979, she does not have such authority now. Only OPM can change its own regulations and they must go through a notice and comment period in accordance with the Administrative Procedures Act (APA) prior to doing so. The APA requires that agency regulations not be changed arbitrarily.

OPM's AUTHORITY UNDER THE INTER-GOVERNMENTAL PERSONNEL ACT

42 USC §4728 delegates the power of the Secretaries of Labor, Agriculture, and HHS to require the establishment of personnel standards on a merit basis to the U. S. Office of Personnel Management.

The statutory references to §4728(a) that are relevant to our discussion are to the following:

- 4728(a)(1): "2019(e)(2) of Title 7" is a reference to the Food Stamp Law prior to 1977 amendments. The provisions formerly contained in 2019(e)(2) are now covered by § 2020(e)(6) of Title 7.
- 4728(a)(2)(A): "the Act of June 6, 1933, as amended (29 USC 49)" is the Wagner-Peyser Act governing employment services; and
- 4728(a)(3)(D): "1396a(a)(4)(A) of this title" is the federal statute authorizing Medicaid

Appendix A to the implementing OPM regulations expressly state that the Food Stamp, Employment Service, and Medicaid Programs "have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis."

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ONNEL Ch. 62

Ch. 62 PERSONNEL ADMINISTRATION

42 § 4728

§ 4727. Interstate compacts

The consent of the Congress is hereby given to any two or more States to enter into compacts or other agreements, not in conflict with any law of the United States, for cooperative efforts and mutual assistance (including the establishment of appropriate agencies) in connection with the development and administration of personnel and training programs for employees and officials of State and local governments.

(Pub.L. 91-648, Title II, § 207, Jan. 3, 1971, 84 Stat. 1915.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1971 Act. House Report No. 91-1733.
See 1970 U.S. Code Cong. and Adm.
News, p. 5879.

LIBRARY REFERENCES

American Digest System
Compacts and agreements between states in general. see States 6.
Encyclopedias
Compacts and agreements between states in general. see C.J.S. States §§ 31, 32, 143.

WESTLAW ELECTRONIC RESEARCH

States cases: 360k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 4728. Transfer of functions

Prescription of personnel standards on a merit basis

There are hereby transferred to the Office all functions, powers, and duties of—

(1) the Secretary of Agriculture under section 2019(e)(2) of Title 7;

(2) the Secretary of Labor under—

(A) the Act of June 6, 1933, as amended (29 U.S.C. 49 et seq.); and

(B) section 503(a)(1) of this title;

(3) the Secretary of Health and Human Services under—

(A) sections 2674(a)(6) and 2684(a)(6) of this title;

(B) section 3023(a)(6) of this title;

(C) sections 246(a)(2)(F) and (d)(2)(F) and 291d(a)(8) of this title; and

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4: 1978 Reorg. Plan
(1978.)

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Ord. No. 12107, Dec.
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pages of this volume

42 § 4728

INTERGOVERNMENTAL PERSONNEL Ch.

(D) sections 302(a)(5)(A), 602(a)(5)(A), 705(a)(3)(A), 1202(a)(5)(A), 1352(a)(5)(A), 1382(a)(5)(A), and 1396a(a)(5)(A) of this title; and

(4) any other department, agency, office, or officer (other than the President) under any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program;

insofar as the functions, powers, and duties relate to the prescription of personnel standards on a merit basis.

(b) Standards for systems of personnel administration

In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall

(1) include the merit principles in section 4701 of this title;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) Powers and duties of Office

The Office shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Office under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants or financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Office considers will most effectively carry out the purpose of this subchapter.

(d) Transfer of personnel, property, records, and funds; time of transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Office by this section as the Director of the Management and Budget shall determine shall be transferred to the Office at such time or times as the Director shall direct.

Ch. 62 PERSONNEL

(e) Modification or
Personnel standards and regulations referred to in this section shall continue in effect unless otherwise prescribed by the Office.

(f) Systems of personnel design, execution,

Any standards or regulations prescribed by this section shall be applied with diversity on the part of the Office in the execution, and management, of personnel administration.

(g) Interpretation of

Nothing in this section shall be construed to—

(1) authorize the Office to exercise any authority over the assignment, advancement, or personnel action of any Federal employee;

(2) authorize the Office to exercise merit basis to the part of or school system;

(3) prevent positions in the force from being in the force on conditions of the terms and conditions of the services of the State;

(4) require the Office to disclose his religion, or national origin, or race;

(5) require the Office, or any personnel, to participate in any government activity which is designed to influence personal relationships, blood or marriage, or conduct in sexual matters;

(6) require the Office to participate in any such activities.

Pt. 900, Subpt. D, App. C

5 CFR Ch. I (1-1-96 Edition)

Office of P

sistance under a program for failure to comply with the requirements. are superseded to the extent that discrimination is prohibited by this subpart. except that nothing in this subpart relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this subpart. This subpart does not supersede any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. OPM shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies, and for which it is responsible.

(c) Supervision and coordination. The Director, Office of Personnel Management may from time to time assign to officials of OPM, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this subpart (other than responsibilities for final decision as provided in §900.410), including the achievement of effective coordination and maximum uniformity within OPM and within the executive branch in the application of title VI and this subpart to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by OPM.

APPENDIX A TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES

1. Personnel mobility assignments of OPM personnel pursuant to title 5, U.S.C. chapter 33 and 5 CFR part 334 (36 FR 6488).

[38 FR 17920, July 5, 1973, as amended at 48 FR 6311, Feb. 11, 1983]

APPENDIX B TO SUBPART D—ACTIVITIES TO WHICH THIS SUBPART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. None at this time.

APPENDIX C TO SUBPART D—APPLICATION OF SUBPART D, PART 900, TO PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE OF THE OFFICE OF PERSONNEL MANAGEMENT

Nondiscrimination in Federally assisted programs or projects:

Examples. The following examples without being exhaustive illustrate the application of the nondiscrimination provisions of the Civil Rights Act of 1964 of this subpart in programs receiving financial assistance under programs of the Office of Personnel Management.

(1) Recipients of IPA financial assistance for training programs or fellowships may not differentiate between employees who are eligible for training or fellowships on the ground of race, color, or national origin.

(2) Recipients of IPA financial assistance for training programs may not provide facilities for training with the purpose or effect of separating employees on the ground of race, color, or national origin.

Subpart E—(Reserved)

Subpart F—Standards for a Merit System of Personnel Administration

AUTHORITY: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR part 557 (1971-1975 Compilation).

SOURCE: 48 FR 9210, Mar. 4, 1983, unless otherwise noted.

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provisions of title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Feder-

ally require in State-a ner that powers, a; and local innovati among Sta the design of their sy tration, as (b) Cert require, a that Stat ceive gra systems f administr gram. Th are in son Federal e cases are Federal e the Act g nel Manag standards merit per.

§ 900.602

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Office of Personnel Management

§ 900.604

lly required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603-604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as—

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) *Certification by Chief Executives.* (1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies any applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.

(3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

(b) *Resolution of Compliance Issues.* (1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They

§ 900.605

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Office of Pe

shall resolve all questions regarding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.

(3) If a chief executive is unable to resolve a compliance issue to the satisfaction of the Office of Personnel Management, the Office will assist the chief executive in resolving the issue. The Office of Personnel Management, as authorized by section 208 of the Intergovernmental Personnel Act, will determine whether personnel systems are in compliance with the Standards and will advise Federal agencies regarding application of the Standards and recommend actions to carry out the purpose of the Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

[48 FR 9210, Mar. 4, 1983; 48 FR 19801, Mar. 15, 1983]

§ 900.605 Establishing a merit requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

§ 900.606 Publication of procedures to implement merit requirements.

Procedures to implement these merit requirements will be specified in the Federal Personnel Manual System and other relevant publications of the Office of Personnel Management.

APPENDIX A TO SUBPART F—STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 1 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, section 1522, on January 2, 1975; 42 U.S.C. 300m-1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 513(a)(1) and 29 U.S.C. 492(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(6).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1852(a)(5)(A).

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 20, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, section 301 on October 18, 1978; 42 U.S.C. 3027(a)(4).

¹ Pub. L. 92-503 repealed Titles I, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

Adoption
Adoption Act
of 1980; 42 U.S.C.
Part II: The
statutory requ
and maintain
merit basis.

Program, Legi

Occupation
Williams-Ste
Health Act c
Health State
Enforcement
ment of Labo
Occupation
Williams-Ste
Health Act c
Kit, May 1,
No. 15A.

Child Well
Act (Title IV-
Developme
ilities Cons
abilities Ser
tion Act, as
November 6,
Emergency
Defense Act
CFR 302.5.

Comprehen
Act, Compre
ing Act of 197
Part III: Ti
sonnel requi
merit system
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istration.

Program

Disability
Security Act
ed: SSA Dis
Part IV, § 425
Health Ins
Social Secur
as amended
Aged Act, o
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Subpart (C)
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AUTHORITY
SOURCE: 41
otherwise p:

§ 900.701

The pur
tuate sect:
Act of 1973.

Part G of Personnel Management

§ 900.703

tion Assistance and Foster Care.
on Assistance and Child Welfare Act
42 U.S.C. 671(a)(5).

II: The following programs have a reg-
y requirement for the establishment
aintenance of personnel standards on a
basis.

vi. Legislation, and Regulatory Reference

Occupational Safety and Health Standards.
ms-Steiger Occupational Safety and
Act of 1970: Occupational Safety and
State Plans for the Development and
ment of State Standards: Depart-
of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics.
ms-Steiger Occupational Safety and
Act of 1970: BLS Grant Application
May 1, 1973, Supplemental Assurance
A.

id Welfare Services Social Security
Title IV-B): 45 CFR 1392.19(c).

velopment Disabilities Services and Fa-
s Construction, Developmental Dis-
es Services and Facilities Construc-
ct, as amended by Pub. L. 95-602, on
ber 6, 1978; 45 CFR 1396.21.

gency Management Assistance, Civil
so Act of 1950 (Title II), as amended; 44
02.6.

prehensive Employment and Training
prehensive Employment and Train-
of 1973; 29 CFR 28.14(a).

III: The following programs have per-
l requirements which may be met by a
system which conforms to the Stand-
or Merit Systems of Personnel Admin-
ion.

Program, Legislation, and Reference

ability Determination Services, Social
ity Act (Titles II and XVI), as amend-
SA Disability Insurance State Manual,
IV, § 425.1.

th Insurance for the Aged (Medicare),
l Security Act (Title XVIII), especially
ended by the Health Insurance for the
Act, on July 20, 1965; SSA State Oper-
s Manual, Part IV section 4510(a).

Part G—Nondiscrimination on the Basis of Handicap in Fed- erally Assisted Programs of the Office of Personnel Man- agement

ORITY: 29 U.S.C. 794.

RCE: 45 FR 75569, Nov. 14, 1980, unless
wise noted.

§ 900.701 Purpose.

e purpose of this part is to effec-
e section 504 of the Rehabilitation
of 1973, to eliminate discrimination

on the basis of handicap in any pro-
gram or activity receiving Federal fi-
nancial assistance from the Office of
Personnel Management (OPM).

§ 900.702 Applicability.

This subpart applies to each activity,
program or project receiving Federal
financial assistance from the Office of
Personnel Management from the date
this subpart is approved. The duration
of the applicability is the period of
time for which the assistance is au-
thorized.

§ 900.703 Definitions.

Unless the content requires other-
wise, in this subpart:

(a) *Recipient* means any State or its
political subdivisions, any instrumen-
tality of a State or its political sub-
divisions, any public or private agency,
institution, organization, or other en-
tity, or any person to which Federal fi-
nancial assistance is extended directly
or through another recipient, including
any successor, assignee, or transferee
of a recipient, but excluding the ulti-
mate beneficiary of the assistance.

(b) *Federal financial assistance* means
any grant, loan, contract, (other than a
procurement contract or a contract of
insurance or guaranty), or any other
arrangement by which the agency pro-
vides or otherwise makes available as-
sistance in the form of:

(1) Funds;
(2) Services of Federal personnel; or
(3) Real and personal property or any
interest in or use of such property, in-
cluding:

(i) Transfers or leases of such prop-
erty for less than fair market value or
for reduced consideration; and

(ii) Proceeds from a subsequent
transfer or lease of such property if the
Federal share of its fair market value
is not returned to the Federal Govern-
ment.

(c) *Facility* means all or any portion
of buildings, structures, equipment,
roads, walks, parking lots, or other
real or personal property or interest in
such property.

(d) *Handicapped person* means any
person who has a physical or mental
impairment that substantially limits
one or more major life activities, has a



FORTUNA_D @ A1
01/16/97 05:41:00 PM

Record Type: Record

To: Bruce N. Reed, Elena Kagan

cc:

Subject: Privatization issue and meeting tomorrow

Tomorrow at 2:30 Ken Apfel is convening a meeting on the privatization issue with the agencies. Here is some background on it. There are still a lot of unanswered questions.

Pending State Requests: We have pending requests from Texas and Wisconsin. Texas wants to privatize food stamp and Medicaid eligibility state-wide. It is not seeking a waiver to do so, but simply arguing that current law allows this. If we say no, then they may fall back on a waiver request. Wisconsin is seeking a waiver in order to privatize.

Tx
Wis
Med

not seeking w.
Wis - seeking waiver for what?
f.s.
Med.

Areas for Potential Privatization: States may seek to privatize eligibility services in 4 areas: TANF, Medicaid, food stamps, and some employment programs. I don't know much about the last one, but the unions are worried about it and the Dept. of Labor is coming tomorrow.

TANF: The new law explicitly allows privatization without Federal permission, and everyone agrees there is nothing to be done about this.

dis. need w.

Medicaid: The law was not changed in this area. The relevant language that appears to preclude privatization is the requirement for "merit systems protections." This is waivable.

waivable (?) or dis. need

Food Stamps: This is the most confusing and most active area. This is also covered by the "merit systems protections" language. Texas is arguing that, as long as the handful of people who design the computer program that determines eligibility are state employees, it can privatize many other parts of the operation. USDA and OPM disagree.

waivable (?) or dis. need
↓
or OPM must do

Unions' Argument: The unions gave Erskine a paper arguing that USDA and HCFA delegated their waiver authority on merit systems to OPM in 1979, and that OPM must do a reg with notice and comment, not a simple waiver, in order to allow this. But, if true, this really just delays action and doesn't really change anything.

Options: I suspect that legally we can do this if we want to. State flexibility argues for saying yes, while the unions' concerns argue no. I'm not sure I detect a policy issue here,

beyond perhaps a desire to see if the private sector could do this more efficiently than the public sector. Governors Thompson and Bush will presumably complain loudly. The departments will lean toward opposing this.

From: Bruce N. Reed@EOP@LNGTWY@EOPMRX@LNGTWY
*To: FORTUNA_D@A1@CD@LNGTWY
Date: 1/16/97 7:00pm
Subject: Re: Privatization issue and meeting tomorrow
Message Creation Date was at 16-JAN-1997 19:00:00

I defer to Elena on the legal question. On policy and politics, I think it's a mistake for us to step in and say no, you can't do this, to a state that's not even asking for a waiver.



FORTUNA D @ A1
01/17/97 09:49:00 AM

Record Type: Record

To: Bruce N. Reed, Elena Kagan

cc:

Subject: Re: Privatization issue and meeting tomorrow

Just so you know: Texas does have a matter pending before USDA and HHS, even though it's not a waiver. The state is asking us to share the costs of a new automated system, and such requests are routinely reviewed by both agencies. That's the hook that enables the 2 agencies to say yea or nay on this. Supposedly the agencies are required to review the RFP's involved to make sure the new system is cost-efficient, protects federal dollars, and is legal. Hence the potential opportunity for them to say no on the grounds that it violates the merit systems protection requirement.

From: Bruce N. Reed@EOP@LNGTWY@EOPMRX@LNGTWY
*To: FORTUNA_D@A1@CD@LNGTWY
Date: 1/17/97 10:52am
Subject: Re: Privatization issue and meeting tomorrow
Message Creation Date was at 17-JAN-1997 10:52:00

still slim grounds to say no, in my view

Diana 1/10/96

Privatization - -

Wise / Tx -

Privatize child services

(TANF) / Medicaid / Food Stamps

can just do
we have no
control

Need workers

↓
union paper on this.

Ken to have mtg -
agency / counsels.

Wp-privatization

THE WHITE HOUSE
WASHINGTON

August 8, 1998

MEMORANDUM FOR GENE SPERLING
BRUCE REED
ELENA KAGAN
SALLY KATZEN
BARBARA CHOW

FROM KAREN A. TRAMONTANO

SUBJECT GUIDING PRINCIPLES FOR PRIVATIZATION

Months ago many of you gathered for a discussion with John Podesta, Secretary Herman and others on how we should try to get ahead of various "requests" for privatization and develop principles that the Administration could adopt. As next steps, we worked with the labor community and asked them to develop a set of principles for our consideration. Current events i.e. Michigan's effort to privatize its employment services, forced our process to the "back burner." Nonetheless, the labor community did develop principles that we considered as we resolved Michigan. Those principles are attached for your review and comment. Your comments on both substance and process/next steps would be helpful. I know John would like to respond to the Departments' request for guidance in this matter.

Bruce (p.1) - (and return to me)
Do you want to take
the lead on this?
etc

GUIDING PRINCIPLES FOR STATE WAIVERS

Currently most federal programs of assistance to needy individuals require that public civil servants play key roles. Statutory and regulatory provisions prohibit federal agencies from allowing states to use private contractors to serve in these roles. The policy concerns that motivated these Congressional and administrative mandates also require that, when a federal agency is asked to exercise the limited authority that it might have to waive certain of these mandates on an experimental, sub-state basis, it must carefully scrutinize proposals to ensure that these concerns are adequately addressed, avoiding harm to intended beneficiaries of the program and inefficiencies resulting in reduced services to those beneficiaries. Programs that are fully federally funded and/or are designed to serve the most vulnerable populations, in particular, require the utmost oversight by the federal government and accountability for program goals. Therefore, federal agencies will review any requests to waive the design elements of such programs with the highest standards. To that end:

* States must prove that proposals to waive important statutory requirements will not result in harm to claimants or customers.

* States must justify the need for an experiment.

Experiments should be justified by insufficient public performance, fraud, cost savings, or vendor expertise that cannot be efficiently replicated. States should explain why they have been unable to rectify problems through public sector interventions within current legal boundaries. Experiments should not be based solely on an interest in exploring private provision.

* States must show evidence of labor-management cooperation in design.

In both the public and private sector, the definition of "high performance" includes extensive coordination between front line workers and managers. The insights of all parties, particularly those who will implement change, must be brought to bear in decision-making from the beginning of the re-design process.

* The experiment should be designed through extensive public input.

States should be held to a high standard for public input. Evidence of stakeholder support should be required. Vendors should have proven capacity and experience, with documentation available for public evaluation.

* Evaluation should be on-going, with state monitoring, benchmarks, and reporting.

Experiments should not be evaluated only at completion. This will require "sunshine" provisions and non-proprietary information sources. Employees of vendor organizations must be guaranteed "whistle blower" protections in the interest of full disclosure. As a means to ensure accountability and due process, clients should be guaranteed face-to-face options where new technology is being implemented.

* Plans must provide structures which avoid conflict of interest.

Experiments should never be designed to create new incentives that discourage vendors from providing services or encourage vendors to determine that clients are ineligible.

* Plans must ensure privacy and confidentiality.

* Public employees should retain discretionary decision-making around eligibility and policy determination.

* Public "failsafe" provisions.

Related to the on-going monitoring, states should be required to show that they can return programs to state provision without interruption of benefits or services to clients. Vendors should be made aware, from the beginning, that they will be required to facilitate the return to public provision should the experiment fail.

WR - privatization

Welfare Reform Daily Report - August 25, 1997 (PAGE 5)

Articles

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PR Newswire - August 25, 1997, Monday - 11:11 Eastern Time

Lockheed Martin IMS To Expand Welfare-to-Work Services In Texas & Florida

Building on the successful welfare-to-work models it has already established in Texas, Florida, Maryland and Mississippi, Lockheed Martin IMS announced today it has been awarded several new contracts - valued at more than \$14 million - to administer job training and other welfare services in Texas and Florida over the next year.

"Lockheed Martin IMS has demonstrated its ability to improve program performance and create meaningful job opportunities for individuals trying to achieve self sufficiency," said Gerald Miller, senior vice president and managing director of Lockheed Martin IMS' Austin, Texas-based Welfare Reform Services. "Texas and Florida are at the forefront of welfare reform, and Lockheed Martin is confident we can help thousands of additional people in those states gain the skills and experience they need to succeed in today's job market."

With these new contracts, Lockheed Martin IMS now has 11 welfare-to-work contracts nationwide. Following is a summary of the seven new projects in Florida and Texas, scheduled to begin this fall:

- Pinellas County (Fla.) awarded Lockheed Martin IMS a one-year, \$2 million contract - with a possible one-year extension - to perform the intake, assessment and case management for the county's Work and Gain Economic Self-sufficiency (WAGES) program, which seeks to move more people from welfare to work. AUSTIN, Texas, Aug. 25
- The Central Florida WAGES Coalition awarded IMS a one-year, \$2.86 million contract - including two one-year options - to administer the community work experience and case management, areas of the program in Sumter, Lake, Seminole, Orange and Osceola counties.
- The Polk County (Fla.) Workforce Development Board awarded Lockheed Martin IMS a one-year, \$1.8 million contract - with a one-year option - to provide job placement and case management services to an estimated 3,875 clients of the county's WAGES program.
- The First Coast (Fla.) Jobs & Education Regional Board - serving the Jacksonville area - awarded IMS and its partner, Goodwill Industries of North Florida Inc., a one-year, \$1.8 million contract - with two one-year extensions - to oversee the community work experience portion of its WAGES program in Clay, Putnam, Nassau, Duval and St. John's counties.
- The Broward County (Fla.) WAGES Coalition awarded IMS a two-year, \$1.9 million contract - with two one-year extensions - to administer six of 10 service areas, for the county's WAGES program.
- The Rural Capital Area Workforce Development Board in Texas awarded IMS a one-year, \$2.3 million contract - with two one-year options - to create 10 to 12 "one-stop" career centers that combine three federal programs: the Job Training Partnership Act (JTPA), Job Opportunities and Basic Skills (JOBS) and the Food Stamp Employment and Training (FSET) programs. The Rural Capital area includes seven counties surrounding the city of Austin and has Round Rock as its biggest city.
- The Houston-Galveston Area Council awarded IMS a one-year, \$1.6 million contract - with a one-year option - to manage and operate four career centers as part of the Gulf Coast Workforce Development Area JTPA program. IMS will operate sites in Bay City, Lake Jackson, Pearland/Alvin and Wharton.

Lockheed Martin IMS launched its Welfare Reform Services business in 1996, putting together a top-flight team of human services and workforce development professionals who achieved national recognition for their work in directing state and local government programs that succeeded in helping welfare recipients achieve self sufficiency.

In its first project in Dallas County, Texas, IMS placed 76 percent of its welfare clients in new jobs that paid an average of \$431 weekly during its first year of operation - exceeding federal goals of 54 percent placement and a \$292 average weekly salary.

Please contact Dana Colarulli if you would like to receive the WR Daily Report by e-mail or if you have questions about articles found in this publication. (dcolarulli@acf.dhhs.gov (e-mail) or 202-401-6951 (voice)).

PHIL GRAMM
TEXAS

APR 14 1997

United States Senate

WASHINGTON, D. C. 20510-4302

April 9, 1997

Cynthia -

I'm informed by Erskine's office that they never sent a response to this letter - I take it they were waiting for a decision. Now that we have one, could you draft a response that we can use ~~and~~ generally? Thanks.

Elena

Mr. Erskine Bowles
Chief of Staff
The White House
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Bowles:

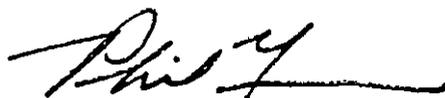
As you know, the State of Texas is seeking approval of the Texas Integrated Enrollment Services (TIES) project, an initiative that will improve the accessibility and efficiency of public assistance programs in the state. I am concerned that the final approval of this innovative proposal has been delayed. The State of Texas has been expecting a positive decision on this plan for several months, and I understand the approval is currently being withheld by your office. I urge you to approve the TIES project without further delay.

One of the goals of recent congressional welfare reform was to allow states more flexibility to solve their own problems. Through the TIES project, my state has met the challenge posed by Congress and is positioned not only to markedly improve services to public assistance beneficiaries in Texas but also to demonstrate that the marketplace can play a vital and effective role in improving the delivery of these services.

I recognize that organized labor is staunchly opposed to this proposal and has been actively lobbying the White House against the TIES program. I certainly hope that you will not permit anyone to inject politics into this policy decision.

Additional delays in the approval of the TIES program will further deprive the State of Texas the flexibility it needs to efficiently implement these public assistance programs, and I therefore urge you to approve this proposal as soon as possible.

Yours respectfully,



PHIL GRAMM
United States Senator

PG:pmg

Wre-privatization

OFFICE OF INTERGOVERNMENTAL AFFAIRS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 Independence Avenue, SW
Room 630F
Washington, DC 20201



F A X C O V E R S H E E T

DATE:

TO: *Elena Kagann*

PHONE:
FAX:

FROM: John Monahan
Director

PHONE: (202) 690-6060
FAX: (202) 690-5672

RE:
CC:

Number of pages including cover sheet: *24*

Message:

Per our conversation, this draft apparently reflects all HHS + USDA comments. We are meeting with USDA to ~~confirm~~ handle any loose ends.

DRAFT - Texas TIES - 5/8/97 - 4:30 PM

DRAFT

May XX, 1997

Michael D. McKinney, M.D.
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Commissioner McKinney:

I am writing to follow up on our most recent meeting and to respond to your letter dated March 5, 1997 to me concerning the Texas Integrated Enrollment Services (TIES) project. You asked that we provide interim Federal guidance under which Texas could release the TIES request for offers (RFO), if it so chooses.

In this letter, I describe the current status of our discussions, the flexibility available to the State under current law, the limitations regarding functions which must be performed by State employees, and next steps in the process of moving forward with the TIES project. Because Texas is considering an integrated eligibility system, I address both Medicaid and Food Stamp policy in this letter, the content and language of which have been approved by the Department of Agriculture. Official notification by the Food and Consumer Service (FCS) of the Department of Agriculture will be provided to you by the FCS regional office.

Current Status of Our Discussions

Over the past several months, our staffs have been working together to resolve many issues related to the development of the TIES project, a highly complex undertaking by the State that involves the integration of three large Federal programs (cash assistance, Medicaid and Food Stamps), as well as a number of State programs. The State has submitted for review a draft RFO which seeks innovative approaches to the delivery of public services. The RFO calls for proposals which will replace the State's computer system and which will re-engineer the methods by which eligibility is determined. Among the important technical and policy issues potentially raised by the RFO is the fundamental question of the extent to which functions historically performed by State employees could be performed by private contractors.

The State has not submitted an actual proposal to privatize State functions, nor requested a waiver of any Federal statutes or regulations. Rather, we have engaged in discussions so that the State will be in a position to communicate to the vendor community any restrictions regarding those activities which could be performed by non-public employees.

DRAFT

DRAFT - Texas TIES - 5/8/97 - 4:30 PM

2

Flexibility Available in Current Statutes and Regulations

Current Food Stamp and Medicaid statutes, regulations and precedent provide the State with the opportunity to use contract staff to perform a number of functions. Such functions include design, development and operation of the large and complex information system which the State expects to implement in TIES. The State could also employ contract staff to develop and recommend an integrated and re-engineered eligibility process for the programs included in TIES. Contract staff could provide training, assist management in the transition to TIES. In addition, as you know, Texas has very broad authority to administer the Temporary Assistance for Needy Families (cash assistance) program and can use non-State employees without limitation.

Therefore, significant opportunities exist for the State to take advantage of the efficiencies and expertise available through the vendor community in developing TIES. There are, however, limitations on contractor involvement related to client certification and eligibility determination, as described below.

Limitations on Work by Non-State Employees

Section 1902 of the Social Security Act and section 11(e)(6) of the Food Stamp Act and implementing regulations reflect the principle that most activities included in the eligibility determination process must be performed by public agencies. Among other requirements, these sections require public agencies to administer the Medicaid and Food Stamp programs, and that merit system employees must perform all eligibility functions and decisions, including eligibility interviews, evaluation, and the actual eligibility determination. The hearing and appeals process must also be conducted by merit system employees.

A non-merit, non-state employee may not take actions involving discretion or value judgments, including all essential elements of the eligibility determination that relate to the evaluation of information provided by an applicant or bearing on the eligibility determination. While it is not possible to identify all functions and all interactions involved in securing eligibility, we can identify some generic functions that non-state employees can do. Non-state employees, including volunteers, can perform functions that are outside of the eligibility determination process including data entry, reception activities, and accepting applications as long as such activities and interactions with applicants do not evaluate or verify information or otherwise act to screen applicants seeking benefits. Non-state employees cannot validate submissions or otherwise screen applicants from the interview or other parts of the eligibility determination process.

During our discussion last week, the possibility of waivers of the relevant statutes and regulations was raised. I would like to clarify our position regarding waivers for both the Medicaid and Food Stamp programs. While authority to waive statutory and regulatory provisions exists for the purpose of conducting demonstration projects for both programs, we would not approve a request to waive the provisions regarding State merit system employees on a statewide basis. We would, however, entertain a limited demonstration project in which non-merit system employees

DRAFT

DRAFT - Texas TIES - 5/8/97 - 4:30 PM

3

could conduct all application interviews so long as merit system employees evaluate information on the application and make the determination of eligibility. Such a demonstration should cover no more than a limited geographic area and would require a valid and complete evaluation.

Possible Next Steps

If the State has no further questions regarding the limitations on the use of non-State staff described above, then the State may release the RFO, under the condition that the State include the applicable language from this letter in the RFO. HHS will approve Federal matching funds for project planning activities for the costs incurred through the release of the RFO.

In order for HHS to consider approving and funding a contract which may result from release of the RFO, the State must submit an implementation advanced planning document (IAPD) for HHS' prior approval following the solicitation process, in accordance with the rules at 45 CFR Part 95, Subpart F. The IAPD must meet the requirements specified in the cited rules and provide a rigorous and positive cost benefit analysis for the project. The State may want to advise potential offerors to make use of HHS' cost benefit analysis guidance for State systems, which I have enclosed for your review. We will consider HHS funding for the actual project itself at such time as the State submits and an IAPD for approval by the Federal agencies.

If you have questions regarding the policy described above, or if you change your plans for release of the RFO as a consequence of this letter, please notify my office that the State is not yet prepared to move forward. My staff and I are available for additional discussions.

HHS and USDA staff are also available to continue their ongoing discussions with your office. Mark Ragan, Director of the Office of State Systems, Administration for Children and Families or his staff will be in contact with your office shortly. Ruthie Jackson, FCS Regional Administrator will also be in contact with your office.

I want to express my appreciation for your understanding of the complex issues raised during our consideration of the TIES project. I also appreciate the time and effort you and your staff have contributed towards moving these issues to resolution. If you have any questions concerning the content of this letter, please do not hesitate to call me or Mr. Ragan at (202) 401-6960.

Sincerely,

Kevin Thurn

Enclosure

05-09-97 02:15PM FROM FOOD STAMP PROGRAM TO 92024567431

0003
002/004

WR-privatization

MAY-09-1997 13:46 FROM ACF/OISM

TO

3052454 P.01

DRAFT - Texas TIES - 6/9/97 - 1:47 PM

Draft #2

May XX, 1997

Michael D. McKinney, M.D.
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

Dear Commissioner McKinney:

I am writing to follow up on our most recent meeting and to respond to your letter dated March 5, 1997 to me concerning the Texas Integrated Enrollment Services (TIES) project. You asked that I provide, on behalf of the Administration, guidance under which Texas could release the TIES request for offers (RFO), if it so chooses.

In this letter, I describe the current status of our discussions, the flexibility available to the State under current law, the limitations regarding functions which must be performed by State merit system employees, and next steps in the process of moving forward with the TIES project. Because Texas is considering an integrated eligibility system, I address both Medicaid and Food Stamp policy in this letter, the content and language of which have been approved by the Department of Agriculture. Official notification by the Food and Consumer Service (FCS) of the Department of Agriculture will be provided to you by the FCS regional office.

Current Status of Our Discussions

Our staffs have been working together to resolve many issues related to the development of the TIES project, a highly complex undertaking by the State that involves the integration of three large Federal programs (Temporary Assistance for Needy Families, Medicaid and Food Stamps); as well as a number of other Federal and State programs. The State has submitted for review a draft RFO which seeks innovative approaches to the delivery of public services. The draft RFO calls for proposals which will replace the State's computer system and which will re-engineer the methods by which eligibility is determined. Among the important technical and policy issues potentially raised by the draft RFO is the fundamental question of the extent to which functions historically performed by State merit system employees could be performed by private contractors.

The State has not submitted an actual proposal to privatize State functions, nor requested a waiver of any Federal statutes or regulations. Rather, we have engaged in discussions so that the State will be in a position to communicate to the vendor community any restrictions regarding those activities which could be performed by non-merit system, non-State employees (hereinafter "non-public employees").

DRAFT - Texas TIES - 5/9/97 - 1:47 PM

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Flexibility Available in Current Statutes and Regulations

Current Food Stamp and Medicaid statutes, regulations and precedent provide the State with the opportunity to automate and re-engineer business processes, as well as to use contract staff to perform a number of functions. Such functions include design, development and operation of the large and complex information system which the State expects to implement in TIES. The State could also employ contract staff to develop and recommend an integrated and re-engineered eligibility process for the programs included in TIES. Contract staff could provide training and assist management in the transition to TIES. In addition, as you know, Texas has very broad authority to administer the Temporary Assistance for Needy Families (TANF) program and, with respect to the administration of TANF, can use non-public employees without limitation.

Therefore, significant opportunities exist for the State to take advantage of the efficiencies and expertise available through the vendor community in developing and administering TIES. There are, however, limitations imposed by law on contractor involvement related to client certification and eligibility determination, as described below.

Limitations on Work by Non-Public Employees

Section 1902 of the Social Security Act and section 11(e)(5) of the Food Stamp Act and implementing regulations reflect the principle that most activities included in the eligibility determination process (referred to as the certification process in the Food Stamp Act) must be performed by public agencies. A non-public employee may not take actions involving discretion or value judgments, including all elements of the eligibility determination that relate to the evaluation of information provided by an applicant or bearing on the eligibility decision.

Streamlining the intake and eligibility determination process to the extent that Texas proposes has the effect of merging discretionary and non-discretionary activities. Whereas previously a series of separable administrative processes occurred before eligibility determination, current technology enables the State to combine multiple steps into a single, seamless process. The initial contact, application, data entry, interview process, request for and evaluation of appropriate documentation, as well as a discussion of the resulting eligibility determination and benefit calculation are no longer necessarily separable and sequential processes. To attempt to separate certain portions of the intake and eligibility determination process for the purpose of isolating individual activities involving discretion would seem to defeat the State's purpose in integrating and streamlining program enrollment.

It is more appropriate to restate the intent of these provisions in the context of the Texas proposal - that is, that in an integrated and streamlined process, most if not all activities involving personal contact with an applicant or recipient, including data entry during an interactive discussion with the applicant, have the potential to involve the use of discretion or judgment, and to directly influence or affect the eligibility determination process. Specific

why not
their
choice?

05/09/97 14:41
05-09-97 02:15PM FROM FOOD STAMP PROGRAM

TO 92024567431

PU04/004

MAY-09-1997 13:48 FROM ACF/DISM

TO

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3

examples of non-discretionary activities could include contacts with a receptionist for purposes of recording an inquiry or scheduling an appointment. However, any process in which specific eligibility criteria are discussed or eligibility-related information collected and evaluated must be performed by a State merit system employee.

It should be noted that, in the outstationing provisions in the Medicaid program and the use of volunteers in the Food Stamp Program - the individuals enlisted in these efforts simply assist potential clients in filing applications with the State for the purpose of expanding and enhancing State outreach efforts. If such activities had the effect screening potential applicants, this would not have been permitted. A significant non-State presence in the integrated enrollment process would inevitably result in some screening of potential applicants by non-public employees.

Possible Next Steps

The State may release the draft RFO, under the condition that the State include the applicable language from this letter in the draft RFO. HHS will approve Federal matching funds for project planning activities for the costs incurred through the planning phase.

In order for HHS to consider approving and funding a contract which may result from release of the RFO, the State must submit an implementation advanced planning document (IAPD) for HHS' prior approval following the solicitation process, in accordance with the rules at 45 CFR Part 95, Subpart F. The IAPD must meet the requirements specified in the cited rules and provide a rigorous and positive cost benefit analysis for the project. The State may want to advise potential offerors to make use of HHS' cost benefit analysis guidance for State systems. We will consider HHS funding for the actual project itself at such time as the State submits an IAPD for approval by the Federal agencies.

HHS and USDA staff are available to continue their ongoing discussions with your office. Mark Ragan, Director of the Office of State Systems, Administration for Children and Families or his staff will be in contact with your office shortly. Ruthie Jackson, FCS Regional Administrator will also be in contact with your office.

I want to express my appreciation for your understanding of the complex issues raised during our consideration of the TIES project. I also appreciate the time and effort you and your staff have contributed towards moving these issues to resolution. If you have any questions concerning the content of this letter, please do not hesitate to call me or Mr. Ragan at (202) 401-6960.

Sincerely,

Kevin Thurn

Unions stalling welfare privatization

Bush, Gramm question delay in federal OK of Texas plan

By Bill Minutaglio

4/20/97

Article Reprint of The Dallas Morning News

AUSTIN — Texas has never been known as a bastion of organized labor, but union leaders have been victorious so far in stalling a billion-dollar welfare reform plan sought by state GOP leaders.

In response, Gov. George W. Bush and Sen. Phil Gramm, R-Texas, have questioned why federal officials are taking so long to approve the state's request to let businesses run part of its welfare program.

For several months, the heads of the country's largest labor unions have urged President Clinton and administration staffers to stall a proposal from Texas

welfare administrators.

Those administrators need federal approval before the state can accept bids worth \$2 billion, expected from EDS, Lockheed Martin and other global firms to computerize some welfare services.

Union representatives for state employees fear the change will force thousands of Texas workers out of their jobs.

"The questions we have raised have obviously slowed the track down," said Morton Bahr, president of the Communications Workers of America in Washington.

During a meeting March 28 at the White House, Mr. Clinton met with Mr. Bahr and the presidents of the AFL-CIO,

Service Employees International Union and the American Federation of State, County and Municipal Employees.

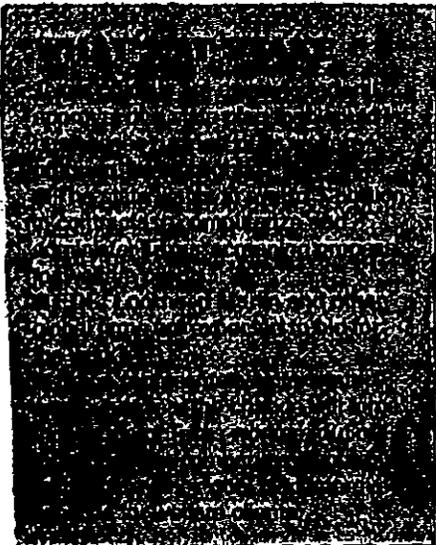
The topic was the Texas welfare plan.

The labor officials told Mr. Clinton to hold up the Texas privatization proposal, saying there is growing resistance to the proposal among state lawmakers.

"We've caused a lot of state legislators in Texas to take a closer look at this," Mr. Bahr said.

Rep. Robert Junell, D-San Angelo, head of the House Appropriations Committee, has expressed concerns about the privatization proposal and its impact on state

Please see GRAMM on Page 55A.



The Dallas Morning News

H-S REG VI

PAGE 02

Copy to:

- Kevin Thurn
- Bruce Shabert
- Olivia Collier
- Bruce Rosell
- Elana Kugler
- Cynthia Rice
- Emily Bronkberg

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Mr - privatization

Gramm, governor question delay in federal OK of Texas welfare plan

Continued from Page 47A.
employees.

He has introduced a bill that would limit the scope of the privatization plan. Other proposals to control privatization have been introduced by Rep. Elliott Naishtat, D-Austin, and Sen. Gonzalo Barrientos, D-Austin.

In 1995, Texas lawmakers passed a bill overhauling the state welfare system.

The firms, in partnership with state welfare officials, found language in the bill that opened the door to privatizing the public welfare system.

The Texas Health and Human Services Commission, citing the legislation two years ago, is promoting the merits of the privatization proposal in Austin and Washington.

Health and Human Services Commissioner Mike McKinney, a former employee of an EDS subsidiary, has criticized the federal government for delaying its decision on the proposal — which has been dubbed the Texas Integrated Enrollment Services (TIES) program.

And there has been an increasingly pointed exchange of letters between Mr. McKinney and federal officials, including Secretary of Health and Human Services Donna Shalala.

Recently, Mr. Bush joined the campaign when he wrote to Health and Human Services Secretary Donna Shalala.

"We wait your decision on the TIES project. You promised an answer last Monday. In my state, we take people at their word. I have called to seek an explanation. Texans are eagerly awaiting your decision to save taxpayers' money and improve services for welfare recipients," he said in a letter dated April 2.

Mr. Gramm followed that with a letter to White House Chief of Staff Erskine Bowles that read:

"I recognize that organized labor is staunchly opposed to this proposal and has been actively lobbying the White House against the TIES program. I certainly hope that you will not permit anyone to inject politics into this policy decision."

Federal officials say they have been weighing in the input from the labor unions.

"Certainly we've heard from the national unions. We're looking at the project itself but we're willing to listen," said Michael Kharfen, spokesman for the U.S. Department of Health and Human Services.

Labor leaders, including representatives of state employee unions, have said any moves to privatize welfare will not only mean the loss of jobs but also result in inferior service to welfare recipients.

Advocates for low-income Texans also criticized privatization, saying they fear increased computerization of services will remove a "human element" from the welfare process.

Spokesman for EDS and the other firms interested in bidding to run Texas' welfare system have said state employees should not be afraid of losing their jobs — and that services for welfare clients would be improved.

What happens with Texas' welfare system is being watched around the nation.

If approved in Texas, the lucrative privatization contracts are expected to pave the way for private firms to bid on welfare systems in dozens of other states.

"It does have implications for the rest of the country," said Marcia Kinsey, an analyst with the Center for Public Policy Priorities, an Austin-based research group examining issues affecting low-income Texans.

Meanwhile, Texas union leaders say that even if the proposal is eventually approved, organized labor has scored a victory simply by delaying the entire process — against the best wishes of Mr. Bush, Mr. Gramm and big business.

"Two years ago, at the end of the last legislative session, we decided to fight this," said Mike Gross, an organizer with the Texas State Employees Union.

He and others admit they have been somewhat surprised at how organized labor has been able to slow down what he calls "the runaway train" of privatization in Texas.

24TH STORY of Level 1 printed in FULL format.

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May 3, 1997

Wp-privatization

SECTION: News; Pg. A1

LENGTH: 932 words

HEADLINE: U.S. agency rejects Texas welfare plan; Privatizing welfare -

BYLINE: Christi Harlan, Suzanne Gamboa

BODY:

WASHINGTON -- The Clinton administration on Friday essentially rejected Texas' first-in-the-nation plan to hire private companies to handle most of the state's public-assistance programs.

The U.S. Department of Health and Human Services said any private contractor would have to use state employees for the screening of applicants for food stamps and Medicaid. That requirement effectively guts the Texas plan, which would allow private-sector employees to screen applicants for several public benefit programs.

By merging the variety of state offices that handle applications and hiring private companies to run the system, Gov. George W. Bush has said the state could save \$10 million a month.

Other states have been watching the Texas effort, hoping it would open doors for their privatization plans as well. President Clinton, who took heat from within his own party when he signed a welfare overhaul last fall, has been under pressure to grant Texas a waiver from federal rules requiring government employees to conduct the screening for people seeking Medicaid and food stamps.

Without specifically approving or denying the waiver, the Department of Health and Human Services on Friday told Bush to proceed with his plan and seek bids from private companies -- as long as state employees continue to screen Medicaid and food stamp applicants, said Health and Human Services Department spokesman Michael Kharfen.

'That's not the program we proposed,' said Karen Hughes, a spokeswoman for Bush.

Hughes and Mike McKinney, the state's commissioner for health and human services, angrily insisted that the response from the federal agency was no answer to Texas' proposal.

'We were not given a no,' and we were not given a yes,' Hughes said. Governor Bush is incredulous that the White House cannot give a yes' or a no' answer on a project.

McKinney, who went to Washington on Friday to meet with federal officials, emerged after 21/2 hours, saying he was disgusted' and had wasted his time..

Austin American-Statesman, May 3, 1997

I spent \$338 on an airline ticket and \$14 on a cab, and I want my money back," McKinney said. "We sat in there, and it was very cordial and everybody was real nice, but the bottom line is, I have permission to do exactly what I had permission to do before I walked in there."

Health and Human Services Department officials told McKinney that the new welfare law gives Texas the flexibility to hire private companies to distribute Temporary Assistance to Needy Families, one of the programs known as welfare.

But Congress and the president decided they wanted to retain statutes and regulations that govern the Medicaid and food stamp programs," Kharfen said.

The federal agency's reaction to Texas' plan angered Republican Sens. Kay Bailey Hutchison and Phil Gramm and U.S. Rep. Sam Johnson, R-Plano, all of whom threatened to use federal legislation to force Clinton to approve the plan.

Several Texas legislators, however, said that what the federal government approved is in line with what the Texas Legislature intended in its 1995 welfare reform law.

We can save the state significant money by doing computerization and downsizing state government. We don't have to privatize in order to save money," said Rep. Glen Maxey, D-Austin, who helped draft the state welfare law. We can make sure our constituents and people who need human services get the quality they deserve in a timely manner without having to traipse all over town."

Critics of Bush's welfare plan said they believe the federal government's action stops the state's rush toward turning over government jobs to private companies and is in line with a related bill moving through the Legislature.

I think this is a vindication of what the Texas Legislature is doing," said Mike Gross, vice president of the Texas State Employees Union, which opposes any loss of state jobs under the privatization proposal.

The decision, the plan's opponents said, doesn't stop Texas from making it easier to apply for welfare benefits and improving the computer system used to determine who gets benefits. Giving up thousands of state jobs to private companies was not part of the plan, some legislators have said.

State employees and the Department of Human Services and other agencies have been doing an outstanding job of determining eligibility," said Rep. Elliott Naishtat, D-Austin.

Some legislators have grown wary of the project because they would have little control over the bidding for what would be one of the largest contracts ever offered by the state. The project was being steered by the governor's office, which heads a panel of state officials known as the Council of Competitive Government.

The Texas House on Wednesday approved a bill drafted by Rep. Rob Junell, D-San Angelo, that would give legislators more control over the project.

If we had done a pilot on this, then maybe we would know how well it works and how well the companies could handle this," said Rep. Garnet Coleman,

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Austin American-Statesman, May 3, 1997

D-Houston, who co-sponsored Junell's bill. But to take the whole system without any knowledge or without evaluation of the whole project would be something that would be unadvisable.

Junell's bill does allow the state to contract with a private company to buy computer software and hardware and to design a better welfare computer system.

A spokesman for Electronic Data Systems declined to comment on Friday's developments, and a Lockheed Martin official could not be reached. Both companies have been prospective bidders for the Texas project.

LOAD-DATE: May 4, 1997

WR - privatization

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**EXECUTIVE OFFICE
OF
GOVERNOR GEORGE W. BUSH**

W2-privatizati-

STATE OF TEXAS

**FAX NUMBER: 512/475-2211
OFFICE NUMBER: 512/463-1762**

**TO: Mr. Erskin B. Bowles
Chief of Staff for the President**

FROM: Governor George W. Bush

DATE: April 24, 1997

Total number of pages including cover sheet: 2

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STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH
GOVERNOR

April 24, 1997

Mr. Erskine B. Bowles
Chief of Staff
The White House
Washington, D.C. 20500

Dear Mr. Bowles:

Several weeks ago, you assured me that the White House would expeditiously decide about Texas' Integrated Enrollment Services (TIES) project.

My office has not heard anything from you all. After months of negotiations with the federal government, it is inconceivable that the White House cannot make up its mind, one way or the other, about a project important to our state.

Your indecision is not in the best interests of our taxpayers or the welfare recipients we are trying to help. Please do us a favor and decide. Texas deserves an answer, and you ought to give us one.

Sincerely,

A handwritten signature in black ink, appearing to read "George W. Bush".

George W. Bush