

STATES REBELLING AT FEDERAL ORDER TO COVER ABORTION

THE NEW YORK TIMES, WEDNESDAY, JANUARY 5, 1994

RAPE AND INCEST AT ISSUE

Medicaid Directors Say Clinton Failed to Offer Discretion as Congress Intended

By ROBERT PEAR
Special to The New York Times

WASHINGTON, Jan. 4 — Medicaid officials in many states have objected to a new directive from the Clinton Administration that requires states to help pay for abortions for low-income women in cases of rape or incest.

In a letter written on behalf of the State Medicaid Directors' Association, Ray Hanley, the chairman of the group, strongly objected to the Administration position. Mr. Hanley is also the Medicaid director of Arkansas.

The new directive, the latest in a series of efforts by the Administration to expand access to abortion, interprets an appropriations bill passed by Congress and signed by President Clinton on Oct. 21. But Mr. Hanley said the Administration had misinterpreted the law and imposed a firm requirement where Congress intended to give states flexibility.

"Congressional intent in this area was to be permissive for states, not mandatory," Mr. Hanley wrote.

Volatile Issue

The complaint by state Medicaid directors reopens the volatile issue of abortion just as Congress and the Administration prepare for a fight over whether to require insurance coverage for the procedure as part of Mr. Clinton's health plan.

Mr. Hanley was apparently not speaking for all 50 state Medicaid directors. The organization did not vote on the question. He wrote the letter, dated Dec. 30, after consulting with a number of state Medicaid directors and the organization's executive committee, which is made up of eight state directors. In interviews with several state officials, some said they strongly supported Mr. Hanley's letter and a few said they did not know about it. None of them expressed objections to it.

The association has asked the Federal Government to reconsider the directive, and the state officials interviewed said lawsuits to challenge it were likely.

Timing of Announcement

In an interview today, Mr. Hanley said the Clinton Administration had "decided to make a political statement by distorting what was intended to be an optional clause" in the new Federal law.

He said the Administration had not consulted state officials before issuing the directive on Dec. 28 and had not given the states time to adjust their laws.

At least one state, Utah, has rejected the Federal mandate to pay for Medicaid abortions in case of rape or incest.

"We don't intend to implement that mandate until it is clarified to our satisfaction that it was intended to operate in the way described by the Clinton Administration," said Rod L. Betit,

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States Rebel at Federal Directive For Medicaid to Pay for Abortions

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executive director of the Utah Health Department.

The Utah Medicaid program does not cover abortion in case of rape or incest, and Congress did not demonstrate a clear intent to supersede state law on this point, Mr. Betit said. "There is substantial uncertainty about the meaning of the Federal law, so we will not move forward until we've had time to explore it further," he added.

Federal officials insist that their reading of the law is correct and that Congress intended to require states to pay for abortions when pregnancies resulted from rape or incest.

In an interview, Sally K. Richardson, director of the Medicaid bureau of the Federal Health Care Financing Administration, said: "Our interpretation is legally correct. I see nothing in Mr. Hanley's letter that would cause us to reconsider our position."

She said she suspected that some state officials agreed with the Clinton Administration. In any event, she said, the new policy would require Medicaid coverage for only about 1,000 abortions a year.

In the past, Federal law said no Federal Medicaid money could be used to perform abortions "except where the life of the mother would be endangered if the fetus were carried to term."

Language of the Law

The new law is more convoluted. It says, "None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest."

Ms. Richardson said, "States are required to cover abortions that are medically necessary." By its action last year, she said, Congress added abortions for rape and incest to the category of medically necessary abortions.

Asked tonight about the new directive from Washington, Audrey Rowe, the Commissioner of Social Services in

Connecticut, said: "There wasn't any consultation. That's for sure."

She said the extra abortion coverage should be optional. "It's very important that states have the option to determine what their Medicaid programs pay for," she said, noting that the Federal Government and the states share the cost.

Differences Among States

In his letter, Mr. Hanley said that some states would have voluntarily "expanded abortion coverage as an optional service for which the Congressional appropriation language would have allowed Federal financial participation." On the other hand, he said, "some states, for different reasons, would not elect to expand abortion coverage — again in keeping with the optional nature of the appropriation language."

Opponents of abortion made similar arguments when the policy was announced. They said the Administration had violated assurances to Congress that the additional coverage for abortions would be optional.

In New Jersey, Alan G. Wheeler, the acting state Medicaid director, said the new Federal requirement would not have a significant effect because the state was already using its own money to pay for medically necessary abortions.

Policy in New York

In New York, Richard M. Cook, a health policy adviser to Gov. Mario M. Cuomo, said he had not seen Mr. Hanley's letter. The Medicaid program in New York pays for approximately 45,000 abortions a year, using \$15 million of state and local money.

Mr. Hanley said the Federal directive imposed "another unfunded Federal mandate with apparently no notice or allowed time for comment." This, he said, appears to violate an executive order in which President Clinton on Oct. 26 promised to reduce such mandates.

The Arkansas State Constitution says, "No public funds will be used to pay for any abortion, except to save the mother's life." Mr. Hanley said that a dozen states had similar laws.

Bruce

WR - HC

The White House
Health Care Reform Today
January 5, 1994

* In order to move forward on the President's domestic agenda, comprehensive health care reform must be passed in 1994. Today, millions of welfare recipients stay on Medicaid or return to welfare to avoid losing health benefits for themselves and their children. Thus, the proposals being drafted by the President's working group on welfare are specifically designed to complement health reform.

* The President's welfare reform plan will include initiatives to prevent teen pregnancy, ensure that parents fulfill their child support obligations, and try to keep people from going on welfare in the first place. People who can work will be required to do so after two years of receiving welfare benefits, either in the private sector or community service. This will include providing education, training, and job search and placement for those who need it.

* Comprehensive health reform will eliminate so-called "Medicaid lock" and enable people to seek jobs, secure in the knowledge that they and their children will be covered. By ensuring universal coverage, the Health Security Act provides the necessary foundation for welfare reform.

u A recent poll conducted by the Employee Benefit Research Institute and the Gallup Organization, reported in the January 10th issue of Business Week, that 75% of Americans felt that guaranteed health insurance was more important than having unlimited choice of physicians. The study further indicated that on average, Americans would be willing to pay \$227 a year in added taxes for a guarantee that they and their families would never be without health benefits, and \$169 more a year to guarantee that all Americans have health coverage.

* According to the poll, 20% of Americans say that they or a family member have passed up a job opportunity or stayed in a particular job specifically to retain health care benefits. 11% reported that they or a family member had been denied health care insurance because of a medical condition. The President's Health Security Act would provide health care that could never be taken away...not if you change jobs or if you have a pre-existing condition.

Health Care Reform Today * The White House *
202-456-2566 * Fax: 202-456-2362

TALKING POINTS HEALTH CARE AND WELFARE REFORM

We must have comprehensive health care reform in order to move forward on the rest of the President's domestic agenda. Without reform, health care costs will continue to explode and eat up our investment dollars. Without reform, people will continue to be locked in current jobs or on welfare.

The bottom line: we cannot end welfare unless we also have comprehensive health care reform.

THE PROGRAM

From the outset of this Administration, the President has been working to make good on his pledge to end welfare as we know it. This initiative has four major parts: the Earned Income Tax Credit; health care reform; personal responsibility and work.

The Earned Income Tax Credit (EITC). We ought to reward work over welfare. Enacted in last year's budget, the expanded EITC will ensure that any family that has a full-time worker will no longer live in poverty. Expanding the EITC represents a giant step forward in reducing those dependent on welfare.

Comprehensive health care reform. Today, millions of welfare recipients stay on Medicaid or return to welfare -- the Federal government's health care program for the poor -- because taking a job means they will lose health benefits for themselves and their children. Comprehensive health reform will eliminate so-called "Medicaid lock" and enable people to seek jobs, secure in the knowledge that they and their children will be covered. By ensuring universal coverage, the Health Security Act provides the necessary foundation for welfare reform. The proposals being drafted by the President's working group on welfare are specifically designed to complement health reform.

Personal responsibility. The President's welfare reform plan will include initiatives to prevent teen pregnancy, ensure that parents fulfill their child support obligations, dramatically increase paternity establishment, and try to keep people from going on welfare in the first place. The message is clear: Governments don't raise children, parents do.

Work, not welfare. The final part of the President's welfare plan will build on the Family Support Act by requiring people who can work to do so within two years, either in the private sector or community service. This includes expanding child care for working families; providing education, training, and job search and placement for those who need it; and restoring the basic social contract of providing opportunity and demanding responsibility in return.

Health/Welfare Talking Points -- 2

TIMING

Q: When will welfare reform legislation be introduced?

A: We expect to introduce welfare reform legislation this year and want Congress to pass it.

[if pressed on specific timing]

No decisions have been made. We think it's premature to make decisions on timing before you make decisions on policy.

Q: What comes first? Health reform or welfare reform?

A: The President has made clear that health reform is his number one domestic priority for 1994. The Administration and Congress want to enact both health and welfare as quickly as possible -- and consultations are continuing on the exact sequencing.

Q: The Republicans say you're dragging your feet on welfare reform. What's taking so long?

A: No President -- Democrat or Republican -- has done more than Bill Clinton to "end welfare as we know it."

Look at the record. President Clinton has been at the forefront of welfare reform in this country since he led the nation's governors in writing and worked with Congress to pass the Family Support Act of 1988. And when the House Republicans introduced their bill last November, they pointed out that it is based on proposals put forth by President Clinton in the 1992 campaign.

In addition, the Administration has been working closely with states and local officials to reward innovative welfare reform programs. In 1993, the Department of HHS granted a number of waivers for innovative state programs.

President Clinton's four-step welfare reform package makes economic and common sense, and will attract bipartisan support.

[if pressed]

Those who are criticizing us now are the same people who voted against the first part of the President's welfare reform package -- the EITC.

DRAFTWR -
Health Care

Dear Senator Moynihan,

Let me thank you once again for the time and attention you gave us on Friday, January 28th. In many respects, I see this round of welfare reform as a continuation of the extraordinary partnership you and then Governor Clinton forged in developing the Family Support Act. Ultimately the real goal is to implement the vision contained in that strongly bipartisan legislation. We'll stay in close touch in the coming weeks as we face the key decisions on policies and financing.

I also wanted to clear up any confusion over the estimate the administration will be using for the impacts of health reform on welfare caseloads. As you know, I believe that a reasonable estimate is that 10% of current welfare recipients and their children would leave if comprehensive health reform were in place. (See the enclosed one page note for references). With 14 million people (adults and children) on AFDC, the 1 million figure for *people* (not cases) in the original text of the State of the Union speech seems, if anything, conservative. When the President inadvertently added "and their children," the misleading impression may have been conveyed that 1 million *cases* would be affected. I believe there is general agreement in the administration now that the 1 million *people* figure is more sensible. There is a footnote in the Budget citing one study which estimated that 25% of the 4 million cases might leave with health coverage. That is on the high end of existing estimates. I wish we had caught the footnote in time to add references to other studies which show lower estimates. In any case, I believe we are all reading from the same script now.

I look forward to working with you.

Sincerely,

David T. Ellwood

JAN 26 1994

PEOPLE STAYING ON WELFARE TO GET HEALTH COVERAGE

At least 1,000,000 adults and children are on welfare because it's the only way their families can get health care coverage. Together, they comprise 7 percent of the 14 million people currently on AFDC.

There have been several recent studies which have examined the effects of the provision of health insurance and welfare participation. Research by Moffitt and Wolfe, Keane and Moffitt, and Ellwood and Adams suggest that the provision of health insurance could reduce welfare caseloads by 10 to 20 percent.

Eligibility for Medicaid has traditionally been linked to actual or potential receipt of cash assistance under the AFDC or SSI programs. Legislation in the last decade has extended coverage to some low-income children and pregnant women who are not on welfare. This fact was not fully reflected in these studies. Therefore, the Administration conservatively estimates that there are at least 1 million people on welfare to get health care coverage.

Bibliography

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Keane, Michael and Robert Moffitt. "A Structural Model of Multiple Welfare Program Participation and Labor Supply." Working Paper 91-29; Brown University, Providence, Rhode Island, October 1991.

Ellwood, David and E. Kathleen Adams. "Medicaid Mysteries: Transitional Benefits, Medicaid Coverage and Welfare Exits." Health Care Financing Review, 1990 Supplement.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

MEMORANDUM

To: Bruce Reed

From: Kristine DeBry^{VP} and Dan Porterfield^{VP}

Subject: Health Care Reform/Welfare Reform Op-Ed

Date: 1/19/94

Attached is Secretary Shalala's Op-Ed on the connection between health care reform and welfare reform. Please review.

Also, Avis Lavelle and Melissa Skolfield suggested you run it by Carol Rasco and anyone else who might want to see it. We have sent it to Bob Boorstin and George Stephanopolous.

Please call Kristine or Dan at 690-7470 with your comments by the end of the day, Friday, January 21 (our office is closed tomorrow). Thank you.

*Comments
by phone
1/24*

Op-Ed

Donna E. Shalala

Secretary of Health and Human Services

Twin Agendas: Health Care Reform and Welfare Reform

The fabled twins, Alphonse and Gaston, kept their mother in labor for years as they debated in the womb about who should enter the world first. The dialogue went something like this, "Go ahead, you go first," "No, my brother, be my guest," "No really, you deserve to go first," and so on.

Now, as the country awaits the arrival of both health care reform and welfare reform, the question on many lips is, which comes first?

In fact, these are not separate issues; they address the common needs of Americans for security and for a society that enables people to work.

These twin reforms must be enacted in this legislative session of Congress -- health care reform just ahead of welfare reform. For all practical purposes, Congress and the Administration will be working on both issues at the same time.

As a matter of social policy, health care reform is a critical ingredient of welfare reform. That's because many

people are forced to stay on welfare simply because of the failures in our health care system. This happens in a couple of different ways.

First, hundreds of thousands of recipients *go* stay on welfare to qualify for Medicaid, the government's health care program for the poor. Some welfare recipients have children with chronic health problems, or they require frequent health care services themselves. One such woman, Debra, graduated from a local community college in Boston and began to search for a job. At the same time, her 3-year-old son was diagnosed with diabetes and asthma.

Unfortunately, the part-time, low-wage, or entry level jobs most often available to women like Debra are often those least likely to provide health insurance. Because Debra's son simply cannot do without health care, she can't leave welfare.

This situation is known as "welfare lock," and by ensuring that everyone who works receives health insurance, the Health Security Act provides the key.

Under the President's health reform plan, all employers will provide health coverage for their workers, including low-wage earners. No one will be locked into welfare for the Medicaid benefits.

Another reason people stay on welfare is that a disabled or chronically-ill dependent relies on them for care. A Virginia woman named Barbara wrote to President Clinton to explain this dilemma in personal terms. She told the President that she can't leave welfare and go to work because her disabled son requires constant attention, and she can't afford to hire someone to care for him.

The Health Security Act offers hope for families like Barbara's. We will provide states with funds to set up home- and community-based long-term care programs. No longer will able-bodied people be denied the option of working while providing full-time care for disabled loved ones.

Finally, many people are forced to stay on welfare because of the pre-existing condition clauses imposed by insurance companies.

Imagine you are a welfare recipient who is being considered for a job as a mail order clerk in a small furniture outlet. However, because you have diabetes, your health benefits will cost the company several hundred dollars more per month than another applicant's. Therefore, you lose the job because of a pre-existing condition, and you stay on welfare.

The Health Security Act will remove this roadblock to work and independence. Under the President's plan, insurance companies will no longer be allowed to "cherry pick" the healthiest people and leave everyone else to fend for themselves. Businesses will no longer have a financial incentive to hire those employees who will be least expensive to ensure, because the premiums will be the same for everyone. No longer will people be turned away from jobs simply because of physical conditions that don't hinder their ability to contribute.

Obviously, health care reform is only one piece of our welfare reform plan. The President has already dramatically expanded the Earned Income Tax Credit to ensure that people who work fulltime don't have to raise their children in poverty. In the final proposal, we will strengthen the child support system; discourage unplanned pregnancy; improve access to work-related education and training programs; and create a time-limited period of welfare eligibility followed by work.

So the message is clear: We can't wait any longer for health care reform and welfare reform. We must deliver them both right away.