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APWA
AMERICAN PUBLIC WELFARE ASSOCIATION

February 18, 1997

Olivia Golden, Assistant Secretary
Administration for Children and Families
Department of Health and Human Services
5th Floor East, 370 L'Enfant Promenade, S.W.
Washington, DC 20447

Dear Assistant Secretary Golden:

On behalf of the National Governors' Association and the American Public Welfare Association, we are pleased to provide the following comments on the proposed rule governing the Temporary Assistance for Needy Families (TANF) block grant, issued Nov. 20, 1997, by the U.S. Department of Health and Human Services' (HHS) Administration for Children and Families. The comments set forth in our document were developed after a series of meetings in which state agency administrators and governors' policy advisors discussed the proposed rules' probable effect on state TANF programs designed to serve America's most vulnerable children and families. We are grateful to the Department for conducting extensive consultations with states throughout the development of these proposed rules, and offer our continued commitment to work with the Administration to revise and finalize these critical rules.

Since enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), states have achieved remarkable success in the development of programs and policies to move welfare clients off assistance and into employment. Absent any federal rules, states have developed innovative and effective welfare reform programs guided by their reasonable interpretation of the law. States have been successful in large part because they are no longer bound by past rigid federal regulations that once compelled 48 states to seek time-consuming and resource-depleting waivers to implement promising ideas. Just as the architects of the TANF statute had envisioned, freedom from restrictive federal regulations has sparked new ideas and strategies to move clients from welfare to work and to avoid welfare dependency.

Some states have devolved considerable authority to localities, and in the process have established performance goals and outcomes rewarded with increased funds for local human service programs. Others have developed creative state interagency partnerships linking public human service departments with economic development, labor, transportation, and education to leverage program resources to attain the goals set forth in the act. These cross-program collaborations are producing improved services and opportunities for families. New state partnerships with the private sector and community-based, religious, and charitable organizations are changing the design and delivery of public human services throughout the country. A heightened focus on measuring program outcomes and performance, a departure from the payment accuracy systems of the past, is providing state agencies with new tools to periodically assess and refine their welfare reform strategies.

The emphasis on work, coupled with the imperative to make families self-sufficient within a five-year time limit, has hastened the pace of state performance. Thousands of clients have moved into private, unsubsidized employment often supported with government-subsidized child care, medical, and transportation services. As President Clinton has often noted, the dramatic decline in the nation's welfare caseloads during this period is unprecedented. As recent financial reports have shown, all states have met and many have exceeded their maintenance-of-effort (MOE) requirements—marking a period of record investments in critical services such as child care to support clients in their transition to the world of work.

States are changing their welfare reform strategies to meet the needs of their clients—whose needs are changing as well. States no longer administer static systems of entitlement and income maintenance, but rather dynamic programs tailored to match client skills with evolving employment opportunities and services designed to meet the needs of children and families making the transition to work. The program that serves families today may change tomorrow because the needs and characteristics of caseloads may be different, because the economy may slow, or because the original plan may need to be refined. For these reasons, the federal rules applied to TANF must stand the test of time, preserving the enhanced state flexibility afforded in the law that is so critical to maintaining this impressive record of achievement.

After all, the individuals with the most at stake are the children and families we serve. Accordingly, states need to be allowed to focus their time and resources on serving these children and families. While federal regulations are obviously necessary, they should not hinder or cripple state programs in the process. We need a strong federal-state partnership with the shared objective to minimize unnecessary interference so we can maximize the chance that families will succeed.

The proposed rules, therefore, are critical to the future administration of TANF. Definitions and restrictions on program design and operation in the proposed regulations could dramatically alter each state's TANF plan. This would be especially unfortunate because states have completed one fiscal year and a quarter guided by their reasonable interpretations of the law. Clients have been notified of the rules the state has elected to apply to their programs, devolution to the counties has occurred, and programs are underway.

States wholeheartedly endorse a number of provisions in the proposed rules, either because they comport with the guidance HHS released in January 1997 or because they edify the states' reasonable interpretations of the statute. For example, we are pleased with the proposals to simplify the TANF financial reporting form; the interpretation that six weeks of job search applies to the fiscal year and not to a lifetime limitation; the ability of states operating under waivers to use their work definitions in calculating the participation rates; the pro-ration of the penalty for failure to meet the two-parent work rate penalty; the application of the family violence option to the work penalties and hardship exemption; and other provisions noted throughout the attached document.

However, we have a number of serious concerns with the proposed rules. The basic, foremost concern is that the rules would greatly limit the state flexibility that was at the heart of the TANF statute. We were disappointed with the overall tone and approach of the proposed rules that presumes states will behave dishonorably and either "game" the system or treat welfare recipients unfairly. We believe this approach is unfair and unwarranted—effectively punishing states for actions that have not occurred. Absent any compelling findings of such behavior, we believe the regulations should support, rather than discourage, state flexibility and innovation. Should problems arise in the future, we would be happy to work with the Administration to resolve them.

Based on extensive conversations and meetings, state officials came to a consensus on the following priority concerns:

- restrictions on separate state-only programs and MOE
- limitations on child-only cases
- provisions that discourage continuation of waivers
- new data collection requirements
- application of the administrative cost cap
- definition of assistance and eligible families
- work and related penalties

Our comments are divided into three sections: The first section represents state consensus on the priority concerns with the proposed rules and recommendations for changes deemed most critical by states. The second section provides comments on remaining issues. The final section contains detailed recommendations for changes to Appendix A.

We appreciate the opportunity to comment on these proposed rules and hope that the final regulations will include many of our recommendations so states can continue to effectively implement their programs and move families toward self-sufficiency.

Sincerely,

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Governor of Ohio
Chairman, National Governors' Association

Thomas R. Carper
Governor of Delaware
Vice Chairman, National Governors' Association

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NGA AND APWA COMMENTS ON PROPOSED TANF REGULATIONS

SECTION 1: PRIORITY AREAS OF CONCERN

I. INTRODUCTION

We are greatly concerned that key sections of the proposed rule seriously erode state flexibility and, if implemented without substantial revision, would impede the progress states have made to date. The law is clear: the Department must adhere to Section 417 of the Temporary Assistance for Needy Families (TANF) statute that "No officer or employee of the Federal Government may regulate the conduct of states under this part or enforce any provision of this part, except to the extent expressly provided in this part." In numerous instances, we contend that the Secretary has exceeded her authority, regulating program design and administration when the statute gives her no legal right to do so. We are particularly concerned about the proposed rules related to separate state programs, child-only cases, data collection and waivers.

In other areas, it is hard to understand how the Department could have interpreted the law so as to enable the Secretary to condition and link a state choice of TANF program design and optional report submissions to eligibility for penalty relief, caseload reduction credits and bonuses. For example, the statute does not give the Secretary authority to deny the caseload reduction credit to any state and yet the proposed rules would deny states the credit for failure to submit a separate state program maintenance-of-effort report (MOE). We detail our concerns in each section of this document.

Finally, we are disappointed with the tone of the preamble and the fact that the Department makes no reference to a federal-state partnership in achieving the goals of the Act. To the contrary, throughout the proposed rule, we find policies cast in suspicion that states would make every effort to avoid the work participation rates, evade the life time limit and undermine the goals of child support enforcement. And, yet, the Department provides no evidence to support its suspicion or justify this assumption. The rule ignores the fact that the majority of states are requiring clients to move to work immediately, not waiting the two years the statute permits. Nearly half the states have chosen shorter lifetime time limits than the five-year maximum as a way of encouraging clients to move to work more swiftly. And even the Administration has touted the record improvement states have achieved in recent years through rigorous enforcement and collection of child support for needy families.

II. SEPARATE STATE PROGRAMS

We are very concerned about and disappointed by the negative and distrustful tone of the preamble to the proposed regulations regarding separate state programs. We hoped the Department would not seek to limit the flexibility provided in the statute that will allow states to develop innovative and outcome-oriented programs.

In a number of sections of the proposed rules, the Department, assuming the worst behavior from all states, threatens to limit penalty reduction or reasonable cause exemption if a state operates a separate state program. The proposed rules also add substantial new and burdensome reporting requirements to monitor state behavior in the area of separate state programs and ties the submission of these "optional" reports to eligibility for the high performance bonus, the caseload reduction credit and a work penalty reduction. We believe that the combined effect of these provisions will be to discourage state innovation—to the detriment of the well-being of families.

We believe that the statute is clear: states are permitted to serve eligible families in separate state-funded programs and have the spending in these programs count toward the maintenance-of-effort requirement. As outlined in the January 1997 policy announcement (TANF-ACF-PA-97-1), states may expend state MOE funds in three different configurations: 1) co-mingled with TANF dollars; 2) segregated but within the TANF program; and 3) expended in separate state programs. The preamble and proposed regulations, as well, confirm that separate state programs are a legitimate option under the law and that states are to have more flexibility with these funds. At 62Fed.Reg.62129, the Department writes "We recognize that States have more flexibility in spending State MOE funds than federal funds, especially when they expend their MOE funds in separate State programs."

We also firmly believe that the MOE requirement under TANF represents a financial commitment to spending on needy families, not a specific program commitment. As recognized in the January policy announcement referenced above, TANF requirements do not apply to these separate state programs. This enables states to design programs for targeted populations that have special needs or to create innovative approaches to support work such as state earned income credits.

Currently, several states have created separate programs to serve the most vulnerable families—legal non-citizens with poor language and literacy skills, single parents taking care of a disabled child, clients not disabled enough to qualify for SSI but unable to work 20 to 30 hours a week, and victims of domestic violence. With the flexibility available under separate programs, states are able to set individualized participation requirements—which may include substance abuse treatment, ESOL, education and work —appropriate to the unique circumstances of the family. States have also created separate state programs to provide enhanced access to education and training activities and to provide food assistance to immigrant children. These programs serve very legitimate purposes and are not designed to evade the work requirement or time limit but rather to provide the flexibility needed to meet the families' special needs. According to the statute, state spending in these programs on eligible families counts toward the MOE.

Recently, the Department released financial data on FY 1997 TANF and MOE spending. The reports showed that in FY 1997, states spent just slightly more than 2 percent of MOE spending in separate state programs. Spending in separate programs, then, is not a significant amount of total MOE and there is no evidence of widespread abuse. We urge the Department to monitor state activity and only propose regulations when and if a problem truly arises.

The specific separate state program provisions that are of concern include the following:

Data Report, Section 275.3 (d)

This section conditions eligibility for the high performance bonus, caseload reduction credit, and a work penalty reduction on the state providing a quarterly TANF—MOE Data Report containing detailed aggregated and disaggregated case information on families served in separate state programs. We believe that the request for this information and its linkage to penalties, bonuses, and caseload credit exceeds the Department's regulatory authority under the Act. Further, much of the data requested can not even feasibly be collected for some separate state programs—such as diversion programs in which the clients have only limited contact with the state or state earned income credit programs which are administered through the tax system.

Under Section 273.7 (b) states are required to file an annual addendum to their fourth quarter TANF financial report providing information on expenditures, activities provided and individuals served in state-only programs for the purpose of counting MOE expenditures. We believe this report will provide sufficient information to the Department for monitoring of spending in separate state programs and no further reporting is necessary. Additionally, since the vast majority of MOE spending is expended in the TANF program, client data on most MOE-funded families will be included in the TANF Data Report. Therefore, we recommend that the TANF-MOE Data Report be eliminated.

Penalty Reduction, Section 271.51

This section makes states ineligible for a penalty reduction for failure to meet work participation rates unless the state demonstrates it has not diverted cases to a separate program for the purpose of avoiding work participation rates. By adding a new conditional requirement, the rule is in conflict with the law which states that the Secretary "*shall*" impose reductions in penalties based on the *degree of noncompliance*. This noncompliance relates to the states' performance in its TANF program—the statute makes no reference to MOE spending in a separate state program. Additionally, while a state may have an unrelated policy purpose in establishing a separate program, the Secretary may erroneously determine that the state's intent is to avoid the work rates. We do not believe that the state should be put in the situation of having its intent or purpose challenged by the Secretary. It is unclear how the Secretary can accurately make an assessment of the state's purpose: the reasons for state decisions are complex and often based on many factors. This provision creates a circular debate about intent—one that will be impossible to fairly and definitively resolve.

Reasonable Cause and Corrective Compliance, Section 272.5

Sections 272.5(c) and (d) prohibit a reasonable cause exemption from a number of penalties if the Department detects a significant pattern of diversion of families to a separate state program that achieves the effect of avoiding the work participation rate or diverting the federal share of child support. We believe that if a reasonable cause for a penalty waiver exits—such as a recession, then the Secretary should grant the relief—regardless of the existence of a separate program. Section 272.6(i)(2) similarly limits penalty reduction under a corrective compliance plan "unless the state corrects the diversion." This would effectively require states to discontinue their separate state programs. If so, the special needs of these families will go unmet. These provisions place states with separate programs at greater risk of penalties even though the law does not speak to "a significant pattern of diversion"—an arbitrary and imprecise standard created in the proposed rule. In fact, it is virtually inevitable that some diversion of the federal share of child support will occur. For example, for some separate state programs, such as a program to provide food assistance to non-citizen children, the state may not feel it's appropriate to trigger the assignment of child support rights.

States also object because these provisions are so far-reaching, not only would a state be denied penalty relief from the work participation rate but also from the time limit, work sanction and child care penalties—issues unrelated to the work rate.

We believe that these provisions are based on unfounded assumptions that separate state programs would be used for purposes other than to serve families. Indeed, if states truly wanted to "avoid the work participation rate," the simplest approach would be to eliminate benefits altogether for certain families. The vast majority of states have been administering TANF programs for 15 months and there is no compelling evidence to suggest that states have structured or operated their programs to avoid work penalties or avoid remitting the federal share of child support collections.

We firmly believe that HHS should not issue regulations to address problems that do not exist. Regulating to prevent some potential, future actions by states may have the unintentional result of discouraging states from adopting innovative and progressive strategies to assist TANF families. Again, we must underscore that the law places no such restrictions on separate state programs. We believe that the maintenance of effort requirement is a financial commitment, not a program commitment. As long as the

Department determines that the state-funded programs are qualified expenditures under the law, then the state program design should not be regulated further.

Recommendation. We urge the Department to strike any reference to separate state programs when determining penalty reductions, reasonable cause exemptions or corrective compliance. The Secretary should not treat states with separate state programs any differently than those without them. Additionally, as discussed above, the rules should not require detailed data reporting on separate state programs.

III. WAIVERS

Central to the intense negotiations over the design and application of the PRWORA law was the states' ability to continue federally-approved welfare waiver research and demonstration projects after the enactment of welfare reform. Governors fought for the inclusion of Section 415 of the TANF statute that explicitly allows states to continue their waivers until their expiration date, even if they are inconsistent with the new law. Congress allowed states to continue these waivers because it knew that welfare reform-- undertaken by the states long before the passage of PRWORA-- was achieving extraordinary, unprecedented success in moving families off of welfare and into work. Indeed, the innovations and policies included in state waivers provided a model for the new federal welfare reform law.

Congress respected the fact that states had dedicated considerable resources to develop waiver demonstration projects; achieved federal approval only after an exhaustive application process; committed resources for a rigorous evaluation of their waivers and adopted state laws to undertake their waiver experiments. That is why Congress permitted states to continue their successful policies and practices and specifically instructed the Secretary to "*encourage* any State operating a waiver to continue the waiver." It is confounding that, in direct contradiction to the expressed intent of the law, the cumulative effect of this proposed rule is to *discourage* states from continuing their waivers.

The proposed rule sets forth a narrow and incomprehensible definition of waiver "inconsistencies," denies waiver states any reasonable cause exception or penalty reduction, and pressures states to discontinue their waiver as part of their corrective compliance plans. The Secretary once again has exceeded her authority in the regulation of waivers. Section 415 of the TANF statute grants her no such authority.

The preamble (62 Fed. Reg. 62143-44) states that with respect to the waivers and the work requirements of the new law, the Department "wanted to draft a regulation that would balance the legislative emphasis on helping recipients find work quickly with the intent to allow States to continue reform activities they had already undertaken." This statement is odd for a number of reasons; first the statute does not instruct the Secretary to "balance" these objectives and second , the Department wrongly assumes the states with waivers do not have welfare to work as a primary objective. In fact, work is the centerpiece of these waiver demonstrations. States are well aware that when their waivers expire and cannot be renewed, they must immediately meet all the provisions of the TANF statute, including the work participation requirements.

Definition of Inconsistency, Section 270.30

The proposed rule introduces a new standard not found in the law by stating in Section 270.30 "Inconsistency means that complying with a TANF requirement would necessitate that a State change a policy reflected in an approved waiver." This standard of necessity is far too restrictive. More fundamentally, Section 417 of the TANF statute limits the Secretary's authority to regulate the conduct of States "except to the extent expressly provided" in the law. The TANF statute grants the Secretary no such authority to regulate Section 415 with respect to defining waiver inconsistency.

Recommendation. The authority rests with the state, not the Secretary, to determine if a waiver provision is inconsistent with the law. In their TANF state plans, states identified waiver inconsistencies and whether they intended to continue or discontinue their waivers. We recommend that states continue to have the authority to do so.

Application to Work Requirement, Section 271.60(b)(1)

Second, the application of the proposed definition of inconsistency creates more confusion than clarity, particularly with respect to work participation requirements. We agree with the policy in Section 271.60 (b)(1) that permits states to use the work activity definitions contained in their waivers. Clearly, states would need to "change a policy reflected in their approved waiver" if they were compelled to follow the TANF work definitions. We were perplexed when the application of the inconsistency definition to the hours of work and exemptions, Section 271.60 (b)(2) and 271.60(c) respectively, produced a different outcome.

Some states would need to change their waiver policies to comply with the hours of work defined in the work participation rate requirement in TANF statute or they would be penalized for failure to meet the work rate. Yet, under the proposed rules, some would not be permitted to defer to their waiver hours in this instance. Some state waivers contain exemptions for certain clients from work requirements, yet under the proposed rule, those exemptions would not be recognized as inconsistencies. Again, these states would have to change their policy in order to meet the work rates and avoid a penalty. As with allowable work activities, we believe hours and exemptions represent inconsistencies.

In Section 415(a)(2)(B) of the TANF statute pertaining to waivers granted states after enactment of the PRWORA, states that "a waiver granted under section 1115 or otherwise which relates to the provision of assistance under a State program funded under this part *shall not affect the applicability of section 407 to the State*." Presumably, then the applicability of section 407 should be affected with respect to waivers granted prior to the enactment of the law.

Recommendation. We interpret this section of the law to mean that the intent of Congress was that all states must meet work participation rates. States with waivers could continue to use their hours, definitions of work activities and exemptions in calculating work rates. We believe the required hours, exemptions and definitions of work are often inextricably linked and therefore, states should be permitted to assert inconsistencies for all of these.

Lack of Encouragement of Waivers, Section 272.8(b) (1), (2) and (3)

Section 415 (c) of the TANF statute states that the Secretary "shall encourage any State operating a waiver described in subsection (a) to continue the waiver and to evaluate...the result or effect of the waiver." Unfortunately, Section 272.8(b) (1), (2) and (3) of the proposed rule discourages states from maintaining their waivers if they fail the work participation rate or time limit requirements by a) making those states ineligible for a reasonable cause exception from the penalty as well as a reduction in the work penalty under Section 272.51(b)(3); b) requiring States to "consider modifications of its alternative waiver requirements as part of its corrective compliance plan;" and, c) denying a reduced penalty to states who continue their waiver and fail to correct a violation under a compliance plan. This section is unduly punitive and harsh. It would cause important evaluations and experimentation to be discontinued if states are forced to make these alterations in their waiver designs.

Similar to the treatment of separate state programs, the proposed rules add a new conditional requirement to penalty reduction under Section 272.51 relating to waivers. Rather than following Section 409 of the TANF statute, the proposed rule adds waiver status to the conditions for penalty reduction. As in the case of separate state programs, the proposed rule is in conflict with the law.

The Department explains these proposed penalty provisions in the preamble (62 Fed. Reg. 62150) by pointing to the waiver states' "advantage compared to States operating fully under TANF rules." If these states find themselves in penalty status, the waiver evidently did not provide them with that advantage. The proposed penalty ignores the fact that waiver states that experience a recession or a natural disaster may not be able to meet the work participation rate, notwithstanding any "advantage" work definitions might afford. Yet, waiver states experiencing these extreme circumstances would not receive any relief. The treatment of waiver states with respect to penalties is unjustified.

Recommendation. We recommend the elimination of these sections of the proposed rule. We believe waiver states should be treated no differently than non-waiver states with respect to the application of the reasonable cause exception, work penalty relief and the corrective compliance plan.

Application to the Time Limit, Section 274.1(e)(2)(i)

The proposed rule specifies that "a State will count toward the five-year limit all the months for which the adult is subject to a State waiver time limit." The proposed rule raises serious client notice issues. Some states operating under waivers informed clients that their time on assistance did not count toward the federal lifetime time limit. These states viewed the time limit as inconsistent with their waivers, based on their reasonable interpretation of the statute. Under this proposed rule and due to the lack of Department guidance on this issue, clients and their families would lose a year or more of TANF eligibility.

Recommendation. We recommend that the Secretary follow the law and allow states to continue their waivers that are inconsistent with the law. As noted above, some states operating their reasonable interpretation of the law, notified clients that their time limits would not begin immediately. In those instances, we believe the lifetime time clock for those clients should begin on the date these rules are finalized.

IV. CHILD-ONLY CASES

We strongly oppose the child-only case policy outlined in the proposed rule. Just as in the Separate State Programs section, we see the sentiment of distrust and suspicion about state behavior emerge once again. It is particularly ironic that the preamble states that the Department has "become concerned" that states would avoid the penalties by excluding the adult from the cases, yet, provides no evidence that any state has "converted" any cases in order to avoid work or time limit requirements. The preamble states that "such conversions would seriously undermine these critical provisions of welfare reform." However, states fearing the risk of penalty may discontinue providing funding for these child-only cases. The effect of this proposed rule may violate the first "purpose" found in Section 401 of the TANF act: "to provide assistance to needy families so that *children may be cared for in their own homes or in the homes of relatives.*" We urge the Department to reverse this policy that would force states to decide whether to fund these children or be exposed to severe penalty.

Prohibitions on Child-Only Cases, Section 271.22 and Section 274.1

These sections of the proposed rule would prohibit states from converting TANF cases to child-only cases solely for the purpose of avoiding the work participation rate and time limit penalties. Further, the proposed rule would "add-back" those cases into a states' denominator to calculate the work participation rate and hardship exemption, if the Secretary determines those cases have been "converted" or the state has adopted a definition of family solely for the purpose of penalty evasion. Finally, Section 271.22 (b)(2)(i) requires states to "report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion." States strongly object to the proposed rule pertaining to child-only cases for the following reasons:

First, it is critical to note that there has been no widespread change in state policy with respect to the funding of child-only cases. The percentage of the child-only cases to the total number of cases was increasing prior to the enactment of the TANF statute due to factors unrelated to work participation rates and time limits. Child-only cases serve "citizen children" born to non-citizen parents, children in households with adults receiving SSI benefits, children who have avoided entering the child welfare system and instead are cared for by relatives and in some states, children whose parents lose benefits due to sanctions or time limits. The percentage of child-only cases continue to rise due to these aforementioned factors and due to the number of adult headed households exiting the welfare rolls for work. The funding of child-only cases was permissible under AFDC and there is no reason why states should not continue to fund these cases under TANF.

Second, the TANF statute neither prohibits nor discourages states from making only the children—and not the adult caretaker—eligible for benefits providing that the children are in the care of an adult. The Secretary has exceeded her authority by proposing to determine state motivation for creating a child-only case and to add-back cases in the denominator in determining work participation rates and hardship exemptions from the time limit. The Secretary has no authority to regulate the type of child-only cases that can be funded in a state TANF program.

Third, the proposed rule introduces an arbitrary and vague "sole purpose" standard that the Department would use to determine whether the state "converted" cases or defined families to avoid penalties. Given the complex factors involved in these children's lives, it is difficult to imagine how the Secretary could attribute evasion of the penalties as the "sole" motivation for creating a child-only case. The Department apparently had difficulty in developing a clear and enforceable standard to use, such as specific criteria it might use in determining the state's motivation. The absence of any problem always makes it difficult to advance a solution. The Department should not regulate in this area until a problem arises.

Finally, the proposed rule seeks to determine the motivation of the state for creating <u>each</u> child-only case by creating a vague standard that would be impossible to administer and even more difficult to prove. Moreover, the requirement that states report on the circumstances underlying each exclusion would be extremely burdensome on states and yield little useful information to enable the Secretary to determine state "motivation." Since this determination would result in the adding-back of cases in the denominator, states, fearing federal penalties, may discontinue benefits to child-only cases.

Recommendation. Absent any evidence of a problem, there should be no federal regulation of child-only cases or special reporting requirements on child-only cases.

V. WORK-RELATED ISSUES

Caseload Reduction Credit--Subpart D, Sections 271.40-271.44

Under the TANF statute, states will receive a pro rata reduction to their work participation rates based on caseload reductions compared to FY 1995. This provision "rewards" states for successfully moving families off the caseload and into employment and self-sufficiency. The caseload reduction credit compensates for the fact that work participation rates are essentially process measures, counting only those who are on welfare and working and failing to measure the desired outcome of leaving welfare for work.

The law requires that the caseload reduction credit must not reflect any caseload changes that resulted from either Federal requirements or state changes in eligibility. The statutory language placed the burden on the Secretary to demonstrate "that such families were diverted as a direct result of differences in such eligibility criteria." The proposed rule at Section 271.41, however, effectively transfers this burden to states by requiring states to submit an application that specifies all eligibility changes since the beginning of FY 1995, estimates the impact of each change that affected the caseload and describes the estimating methodologies. States generally support this approach because they are in a better position to make these calculations. However, they have expressed concerns about the difficulty in clearly identifying the effects of individual policy changes. They also believe that the timeframe established in the rules is not sufficient time given the complexity of the undertaking. State must submit a caseload credit application within 45 days after the end of the fiscal year (Section 271.44) and have only two weeks to respond to any followup questions from the Department (Section 271.41(d)(2)). Since the Department recognizes the difficulty in determining these factors, as well, we hope the Department will work with the states and be open to evolving methodologies.

States have raised a number of concerns with the methodology for determining the caseload reduction factor as outlined below.

First, the proposed regulation at, Section 271.41, requires the calculation of two separate caseload reduction factors – one for *all families*, and one for *two-parent families*. This two-part distinction was not in the statute. It will disadvantage many states that, consistent with the goals of promoting work and two parent family formation, have adopted policies that have resulted in an increase in the two-parent caseload, while their all-families caseload has declined. These state policies include the expansion of the earned income disregard, and the elimination of the hundred hour for two-parent families rule. We recommend that states have the *option* to either use separate caseload reduction factors or use a total caseload reduction factor for both the two-parent and the all-family work participation rates.

Second, the proposed rules at Sections 271.40 and 271.41 require that states compare their FY 1995 AFDC caseloads with all TANF and MOE cases in the state receiving assistance, including those in separate state programs. States have noted a number of concerns about this comparison:

- The FY 1995 caseload figure will exclude cases that received emergency assistance and At-Risk and transitional child care benefits—however, these cases may be included in the TANF caseload (unless they are excluded from the definition of assistance.) Excluding recipients of these benefits from the FY 1995 base year could create an undercount of the total population served in FY 1995 and will offset legitimate caseload reductions. A more appropriate comparison may be individuals in the caseload (for both the base year and current year) receiving *cash* assistance.

- For the two-parent caseload reduction factor, the proposed rule would require a state to compare its two-parent caseload to its FY 1995 AFDC UP caseload. However, these data are not necessarily comparable. For example, two-parent families with a disabled child were excluded from the UP definition but are included in the two-parent caseload under the TANF statute. Also, while the TANF law permits states to exclude from the two-parent caseload those individuals with a *disabled* spouse, the AFDC program excluded families with an *incapacitated* spouse. States my define disability differently from the definition of incapacity under the AFDC program.

- Finally, states report that they have made a number of "positive" policy changes—such as increasing earnings disregards, eliminating the deprivation factor, increasing need standards— that have resulted in caseloads being larger than they would have been in the absence of these eligibility changes. As currently written, the proposed rules do not permit any sort of adjustment to the base year or for eligibility changes that increase the current caseload.

At Section 271.42, the rule outlines the reductions that count in determining the caseload reduction factor. We believe that the Department has generally created a reasonable distinction between factors that directly affect a family's eligibility for assistance, such as income and resource limits, and time limits, and those that are enforcement mechanisms and procedural requirements. While the proposed rules are silent on the issue, we do not believe that the behavioral requirements such as the requirement to participate in work activities or cooperate with child support authorities should be considered an eligibility rule.

Recommendation. To improve the calculation of the caseload reduction credit, we recommend that states be permitted to make adjustments to either their base-year caseload numbers or their current year caseload numbers to take into account the kinds of factors mentioned above. We propose that the Department use the concept of *net decrease* to adjust for caseload increases due to federal and state eligibility changes. Without this flexibility, states may be disinclined to adopt policies that are consistent with the intent of the law and secondarily result in caseload increases. These include policies that make work more attractive and/or support the formation of two-parent families. We strongly urge the Department to work with our organizations and states to develop a consistently fair net caseload reduction credit methodology that would permit states to make adjustments either in their base year figure or current year caseload data so that states will truly be comparing "apples to apples."

Additionally, as previously discussed, the rules should allow states to have the option of applying their total caseload reduction credit to both the all-families and two-parent work participation rates. We also recommend a more reasonable time frame for states to provide information to receive a caseload reduction credit and specifically recommend that states be given at least 30 days to respond to any followup questions from the Department. Finally, the rules should clarify that requirements that individuals perform certain activities in order to receive or continue to receive assistance should not be considered an eligibility requirement for the purpose of determining the caseload reduction credit.

State Work Penalties—Subpart E

The TANF statute established tough, new work participation rate requirements upon the states and stiff penalties for failure to meet the rates. At the same time, recognizing the substantial challenge of meeting these work rates, the law permits the Secretary to reduce the penalty based on the severity of the failure and/or other circumstances and to waive the penalty altogether if the state had a reasonable cause for failure to comply. The statute grants the Secretary substantial latitude in making these decisions because legitimate reasons for failure could vary widely. Thus, we are concerned by some provisions in the proposed regulations that would limit penalty relief to a narrow set of circumstances.

Penalty Reduction for Failure to Meet the Work Participation Rate, Section 271.51

The statute, at Section 409(a)(3)(C), requires the Secretary to reduce a state's penalty for failure to meet the work participation rate based on the "*degree of noncompliance.*" The proposed rules have interpreted this in two ways.

First, at Section 271.51 (b)(2), the proposed rule provides that a penalty for failure to meet the two-parent rate will be assessed proportional to the size of the two-parent caseload relative to the all-families caseload. Given that the two-parent caseload is generally quite small relative to the entire caseload, the imposition of a full penalty if the state failed to meet the two-parent rate—while meeting the all-families rate—would be excessive. We believe the proportional penalty is consistent with "the degree of noncompliance" and are very supportive of this provision.

Second, the rules propose that states must meet the 90 percent of the work rate in any fiscal year in order to qualify for penalty reduction. This is an arbitrary threshold without any statutory basis and an inadequate approach for many reasons:

- It fails to distinguish between states that have made a substantial effort and those that have not.
- It may fail to give relief to a state that has made significant progress even if it hasn't met the 90 percent threshold.
- It creates a disincentive for improvement if a state does not believe it can realistically meet the 90 percent threshold.
- It fails to give relief to states that have high participation in countable work activities but may have missed meeting the work participation rate because not all participating individuals met the hourly requirement.
- It fails to provide any consideration for increases in the caseload, whereby a state may be faced with an even higher work participation rate because the caseload reduction credit will be less.
- It fails to account for the changing composition of the caseload—overtime, a higher proportion of a state's caseload will be those individuals with the most significant barriers to employment.
- It fails to account for the fact that states are starting from different baselines.
- It fails to recognize that the two-parent work rate will be much harder to achieve, and that overtime the all-families work rate will be harder to achieve as well.

Recommendation. Clearly, the use of a single measure—a 90 percent threshold—can not address the complexities of the "degree of noncompliance." In fact, "degree of noncompliance" would most logically be interpreted as a proportional reduction without any threshold. Most states believe every state should be given some degree of credit for progress achieved in meeting the work rate. For example, a state with 40 percent non-compliance, i.e. having an 18 percent work participation rate when the standard was 30 percent, would receive a 40 percent penalty reduction. If the Department retains the threshold approach, we strongly urge that it be reduced it to a more reasonable level. As states universally agree that the 90 percent threshold is too high. Additionally, given that the two-parent participation rate is widely recognized as being much more difficult to meet, the threshold should be lower for the two-parent rate than for the all-families.

We believe that there are a number of options that could be considered together or in lieu of a threshold and that the opportunity for penalty reduction need not be limited to a single measure of degree of noncompliance. The Secretary should be required to reduce penalties if a state meets one of several criteria or measures that address some of the issues raised above. For example, the penalty could be reduced if:

- The state demonstrates that significant progress occurred as indicated by the percentage increase from the previous year. Significant progress could be defined by the percentage increase in the work participation rate requirement compared to the previous year under the statute. For example, the increase between the FY 1998 all-families requirement of 30 percent and the FY 1999 all-families requirement of 35 percent is 16.7 percent. A state would receive a penalty reduction if it increased participation by 16.7 percent in FY 1999 compared to FY 1998.
- The state achieves high levels of work participation in countable work activities even though the hours of required work are not met. For example, if a state meets 75

percent of the work participation rate based on individuals in countable work activities the state would receive a lesser penalty. (Or the measure could be individuals in countable work activities who participated for at least 50 percent of the required hours.)

- A state experiences a significant caseload increase but would have met the criteria for penalty reduction if its work participation rate were computed based on the prior year's caseload.
- A state fails to meet the two-parent rate but exceeds the all-families rate. The number of single-parent families participating in excess of the required number could be added to the two-parent participants. If the sum of the excess single parents and the two-parents that meet the work rate exceed the required number to meet the two-work rate, then the state would have its penalty reduced.
- A state would have met any of the criteria for penalty reduction but for the provision of good cause domestic violence waivers.

Under the proposed regulations, Section 271.51(c), the Secretary may also grant penalty relief a state meets the definition of a needy state or if the state submits objective evidence that the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. We believe that examples of extraordinary circumstances should also include sub-state, state or regional recessions or economic downturns, wide-spread economic disruption (i.e., a plant closing or a significant number of layoffs), chronic high unemployment, and caseload increases. We also recommend that the definition of natural disaster include severe bad weather, such as ice storms which prevent people from getting to work.

Reasonable Cause Waivers of Work Penalties Section, 271.52

Under the proposed rules, the Secretary is permitted to grant reasonable cause waivers of a number of penalties, including failure to meet the work participation rate requirements. The Secretary may apply the reasonable cause criteria specified at Section 272.5 which apply to a number of penalties. The factors a state may use to claim reasonable cause are limited to 1) natural disasters and other calamities, 2) formally issued federal guidance that provided incorrect information, and 3) isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem. Additionally, specifically with respect to the work requirement states may also claim reasonable cause if failure to meet the rate was attributable to its provision of good cause domestic violence waivers or the provision of assistance to certain refugees.

Recommendation. While we believe the factors outlined in the proposed rule would be reasonable causes for penalty waiver, states also believe that the proposed list is too limited and narrow. Under Section 409(b) of the statute, the Secretary was granted broad authority to make reasonable cause determinations, however the proposed rule unnecessarily restricts the Secretary's discretion to a few criterion. We recommend that the Secretary be permitted to consider a number of factors or combination of factors and that the proposed rule should provide a list reasonable cause factors by way of example. However, the Secretary's determination need not be limited to these factors. For example, the Secretary should be able to consider as reasonable cause any unexpected events that are beyond the state agency's control that the state couldn't reasonably anticipate and plan for.

We recommend that additional factors be provided in the proposed rule as examples of reasonable cause including sub-state, state or regional recessions or economics downturns, wide-spread economic disruption, chronic high unemployment, caseload increases, natural disasters (including severe bad weather), and court orders or legal challenges that prohibit compliance. These factors are similar to those we believe the Secretary should be permitted to consider for a penalty reduction. Thus, the Secretary could determine whether the circumstances warranted a complete waiver of the penalty or a reduction.

Corrective Compliance Plan, Section 272.6

Under the proposed rules, states not claiming or awarded a reasonable cause exemption for a penalty or receiving a penalty reduction under the work requirement may enter into a corrective compliance plan with the Secretary to correct or discontinue the violation. The rule proposes that corrective action must be completed with six months. The preamble explicitly asks for comments on the six-month limitation.

States hold the view that the six-month timeframe will not be realistic or feasible in many circumstances and they are particularly concerned with respect to the work participation rate penalty. In order to come into compliance, a state may have to make changes to its underlying statute, reprogram computers or change state regulations—all of which may take longer than six months to achieve. For example, a state may not be able to meet the work participation rate unless it changes its exemption policies—which would likely require a change in the state's law. And six months could pass before the state legislature even came into session again. States with county-administered systems particularly believe six months will not be adequate.

Recommendation. We recommend that the timeframe for the corrective compliance plan be proposed by the state in its plan and, as such, would be subject to review and consultation during the HHS process to reach mutual agreement on the plan. In this manner, the timeframe could be designed to take into account the particular needs or circumstances of the state.

Additionally, with respect to the corrective compliance plan and a state's failure to meet the work participation rate, a state should be considered in compliance if, in the year the state implements the compliance plan (penalty year), it achieves the work participation rate of the year for which it is subject to a penalty. The proposed rules, however, would require states to meet a new target for compliance—the work participation rate in the penalty year. While states will obviously strive to meet the new work participation rate requirement, they should not be held accountable to that standard in their corrective compliance plan.

The rule also provides for a penalty reduction if the state achieves significant progress in correcting the non-compliance and sets a 50 percent threshold, Section 271.53(b). We believe this is unnecessarily arbitrary threshold. We recommend that identification of a level of progress or benchmark appropriate to the individual state's situation be part of the development of the corrective compliance plan.

Finally, as mentioned in the separate state program discussion, we do not believe that the Secretary has the statutory authority to deny a penalty reduction under a corrective compliance plan because the state operates a separate state program. The TANF statute gives clear authority to the state to establish these programs to serve eligible families. Therefore, we recommend that the Department eliminate any reference to separate state programs when granting penalty relief under a corrective compliance plan.

<u>Good Cause Domestic Violence Waiver , Sections 270.30, 271.52 and 274.3</u>

States are generally supportive of the Department's approach to provide a reasonable cause exemption to a state for failure to meet the work participation rate requirements and to comply with the 60 month time limit if a state can demonstrate that failure to do so was attributable to the granting of good cause domestic violence waivers. (Section 271.52 and Section 274.3.) We believe that it is only reasonable that states be granted penalty relief if they choose the Family Violence Option. As mentioned in the discussion on penalty reduction, we recommend that states also have the opportunity to receive a penalty reduction if it would have met the reduction criteria but for the provision of domestic violence waivers.

However, states are concerned that the definition of Good Cause Domestic Violence Waivers, Section 270.30, establishes some prescriptive requirements that will have the effect of discouraging states from choosing this option, notwithstanding the penalty relief. First the proposed regulation states that the good cause domestic violence waiver must be temporary—not to exceed six months. In contrast, the law at Section 402 (a)(7) provides that the waivers may be for "for so long as necessary." States with experienced in working with victims of domestic violence report that six months is generally not long enough to resolve their problems. While the preamble language explains that the waiver may be renewed, this is not explicit in the proposed rules. While we agree that the waiver should not be permanent, states should be permitted to determine the appropriate length on a case-by-case basis, as permitted in the statutory language.

The provision requiring "an appropriate services plan designed to provide safety and lead to work" also concerns states. Again, the provision goes beyond the statutory language which requires the state to "refer such individuals to counseling and supportive services." The services plan implies that the individual would be expected to participate in specified activities and could be sanctioned for non-compliance. This overlooks the fact that participation—independent of the nature of the activity—puts the individual at risk in a domestic violence situation. Thus, this provision could result in more harm than good. Additionally, based on the language of the statute, states have moved ahead and created referral mechanisms, developed screening forms and have trained caseworkers. The proposed rules would require that states revamp much of their efforts to date.

Recommendation. In summary, we urge the Department to modify the proposed rules regarding the good cause domestic violence waiver in several areas. First, the definition at Section 270.30 should remove any reference to any time limit and return to the statutory language "for so long as necessary." Similarly, rather than requiring "an appropriate services plan ..." the definition again should reflect the statutory language which requires referrals to counseling and supportive services.

Finally, with respect to penalties for failure to meet the work participation rate, we believe that the granting of domestic violence waivers ought to be a criterion for penalty reduction as it is for a reasonable cause exemption.

VI. DEFINITION OF ASSISTANCE

The definition of assistance is critical to the states' ability to administer their TANF programs, their flexibility in designing innovative new approaches to supporting a family's transition to work, and ending dependence on welfare. States are concerned about the proposed definition of assistance included in the proposed rule, particularly as it relates to child care, work subsidies, transportation and the stricter definition of "one-time, short term assistance." The preamble describes the proposed definition as "additional clarifications" to the January 31, 1997 ACF policy announcement (TANF-ACF-PA-97-1). However, the proposed definition of assistance in Section 270.30 would dramatically alter the lifetime time limits for thousands of TANF families receiving child care and work subsidies and require states to significantly alter or discontinue welfare avoidance or diversion programs now underway in 30 states.

The Department correctly acknowledges in the preamble (62 Fed. Reg. 62132) that "a state may provide some other forms of support under TANF that would not commonly be considered public assistance." And we agree that "short-term, crisis-oriented support" should not be defined as "assistance." However, we believe that the emphasis the proposed rule places on "direct monetary value" as a criterion to distinguish between assistance and non-assistance is not the right approach.

We recommend the Department place the emphasis on other forms of support "directly related to the work objectives of the Act" described in the preamble. We recommend that you consider the distinction drawn in Section 271.42(b)(3) that excludes cases in determining the caseload reduction factor such as "cases that are receiving only State earned income tax credits, child care, transportation subsidies or benefits for working families that are not directed at their basic needs" for further guidance. Applying a work-focused criterion would produce a clearer line between families receiving on-going cash assistance, more commonly considered "welfare" and TANF support services enabling families to transition to and retain employment.

States strongly oppose the inclusion of child care in the definition of assistance. We do not believe working low-income families who have transitioned off of welfare should be treated the same as welfare clients receiving traditional cash assistance. Working middle-income families, who receive federally-subsidized child care in the form of tax credits or discounted child care services, are not considered to be receiving "welfare" nor are they subject to a lifetime limit on benefits. Working low-income families receiving subsidized child care should be treated no differently than working middle-class families receiving tax credits. Child care is a critical service to support clients as they enter the work force. These families ought not to have their lifetime time clocks ticking simply because they are receiving federally-supported TANF child care.

We cannot understand how the Department arrived at the conclusion that child care was not a form of support "directly related to the work objectives of the Act" (62 Fed. Reg. 62132). Under the proposed definition, clients who work and receive child care services under the TANF program would be subject to time limits while clients served with Child Care and Development Funds (CCDF) are not. Therefore, we believe TANF-funded child care should be excluded from the assistance definition. The preamble seeks to assuage concerns by pointing out that states could transfer up to 30 percent of their funds to the CCDBG and serve clients without applying the lifetime time limit. However, this transfer is not easy to do in states that require legislative approval for such transfers, particularly in states with legislatures meeting biennially. We oppose requiring additional administrative and legislative efforts to transfer these funds, when the federal rule could reasonably exclude child care from the definition of assistance. Similarly, states are concerned that under the proposed definition transportation assistance, in the form of vouchers, might be considered assistance because it has "direct monetary value." This assistance, needed to move people to work, should not be considered assistance.

Second, Section 270.30 provides that the definition of assistance would not include "assistance paid within a 30 day period. no more than once in any twelve month period, to meet needs that do not extend beyond a 90 day period." States believe this definition is to too narrow. The January 1997 guidance provided states broad discretion to design welfare avoidance programs, such as diversion. As a result, states have adopted different approaches and applied their own definitions of short-term assistance tailored to meet the needs of the families seeking support services. Some states have permitted local governments to develop their own definitions as well. These innovative new programs provide critical services, divert families from a lifetime of dependency and move them toward new employment opportunities. With 30 states providing some type of diversion program, the narrow definition in the proposed rule would force states to either radically redesign their programs or discontinue providing multiple support services altogether.

The proposed definition limits states from providing assistance to families "no more than once in any twelve month period." In state diversion programs, clients may be provided with a variety of forms of assistance to enable them to work, such as automobile repair, temporary housing, etc. There may or may not be any limit on the number of times a client would seek and be provided support services in a given year. Forms of assistance in a given year could vary as well. We believe states should be permitted the flexibility to provide diversion assistance to clients seeking to obtain or retain employment or achieve self-sufficiency without limitation.

We interpret the proposed definition limiting assistance "to meet the needs not to exceed 90 days" to apply to the duration not the aggregate amount or value of non-assistance provided to the client. States would object to the proposed rule placing a limitation on the value of the non-assistance provided.

Recommendation. We believe the proposed definition is insufficient . The January 1997 guidance on this topic was better in that it excluded child care and transportation assistance from the definition and granted states greater flexibility in providing short-term assistance. We support the January 1997 guidance with respect to those provisions. In crafting the final rule, we urge you to drop the criterion of "direct monetary value" and instead apply the test of whether the support is "directly related to the work objectives of the Act." We recommend replacing the "one-time, short term" limitations with short-term, episodic support to families in discrete circumstances that can be solved with specific actions aimed at addressing a crisis situation or preventing clients from going on or returning to welfare.

VII. ADMINISTRATIVE COSTS

The TANF statute prohibits states from spending more than 15 percent of their TANF grant for administrative purposes. A similar restriction applies on state MOE expenditures. Given these limitations, the definition of administrative costs is extremely important. The definition must recognize that under a work-focused system of time limited assistance, traditional lines between administration and services are blurred, that welfare programs are evolving, and that states will be experimenting with alternative forms of service delivery. Upon reviewing the proposed rules regarding administrative costs, Sections 273.0 (b) & 273.12 and the preamble explanation for those sections, states have identified a number of serious concerns with the proposed rules.

First, while the actual rule is silent on the matter, the preamble (62Fed.Reg.62151) states that eligibility determination would be an administrative cost and the portion of a worker's time spent on this activity must be allocated accordingly. This conclusion overlooks the fact that as the role of front-line workers is changing, eligibility determination is no longer a clearly defined activity but more often integrated with and sometimes indistinguishable from other activities such as assessment, case management, counseling and job placement. It would be extremely problematic, costly and burdensome for states to attempt to track and cost allocate these functions. Moreover, front-line eligibility determination is arguably a direct service, consistent with the first goal of TANF "... to provide assistance to needy families..."

The preamble suggests that the definition has the advantage of being consistent with the definition of administration under JTPA and would therefore facilitate coordination of Welfare-to-Work (WtW) and TANF activities. We disagree. We believe that a more compelling model is the definition of administration under the Child Care and Development Fund, which excludes eligibility. The WtW funds will be administered at the local level through PICs and according to the interim final rules for this program, the state TANF agency will have little authority to influence how these funds are spent. On the other hand, significant coordination is already occurring in many states between the state TANF agency and the state child care agency, which are often housed in the same state department and eligibility determination for both services is often done by the same case manager. In these circumstances, the proposed rules would treat these costs differently.

Second, states are concerned that the proposed rule will discourage community-based, for-profit and non-profit organizations and local entities from participating in welfare reform efforts. Under the proposed rule, organizations operating under contract or grant with the state would be required to monitor and track administrative spending. These costs would then be counted toward the state's total administrative cap (62Fed.Reg. 62151). These organizations have proven to be highly effective partners with states in delivering employment-related, post-employment and support services to recipients. This requirement will create a significant burden on providers due to paperwork and tracking costs and is likely to discourage the participation of community or private entities. In fact, it's likely that administrative costs of contractors or grantees would actually increase due to the burdens of this requirement. Additionally, states will be reluctant to pursue these innovative partnerships for fear of hitting the 15 percent administrative cap. We do no believe the definition of administrative costs proposed in the rule meets the criteria stated in the preamble that "We thought it was very important that any definition be flexible enough not to unnecessarily constrain state choices on how they deliver services."

This provision is also inconsistent with current procedures whereby states consider that they are purchasing a service—often under a performance contract with payment conditioned on successful achievement of specified outcomes. We recommend that the tasks or services performed under contract or grant be defined as a direct or program cost--not administration--so that states can focus on innovation and results.

Third, states are also very concerned about the language in the preamble that suggests that the 15 percent administrative cap is applied to a state's TANF grant net of transfers to the Social Services Block Grant (SSBG) or Child Care and Development Fund (CCDF). This appears inconsistent with the statutory language which imposes the 15 percent cap on a state's TANF grant provided under Sec. 403 and makes no reference to any adjustments. This provision may provide a disincentive for states to transfer funds for fear of exceeding the cap. Additionally, this cap calculation is in contradiction to the application of penalty percentages to the grant without adjusting for transfers.

Fourth, states oppose the structuring of the 15 administrative cap as being calculated separately for state TANF and separate state program MOE. Certain separate state programs such as state EITC's have low administrative costs while running a TANF program can be more labor intensive. The instructions to the "Temporary Assistance to Needy Families (TANF) ACF 196 Financial Report (62Fed.Reg.62215) indicate that "For state expenditures reported in columns (B) and (C), the 15 % administrative cost cap applies to the amount of Total Expenditures (line 8) in each of these columns." While the wording is confusing, this instruction appears to suggest that a distinct and separate cap exists for state TANF expenditures (column B) and separate state programs (column C) rather than applying a single cap against the combined expenditures. This is clearly not supported by the statute which imposes the 15 percent administrative cap on qualified state expenditures in total at Section 409(7)(B)(i)(I)(dd). Thus, the 15 percent cap should be calculated against the sum of lines 8(B) and 8(C).

Recommendation. In summary, we recommend that the regulations clarify that activities related to eligibility determinations are not considered administrative activities for purposes of the cap. We urge the Department to use the definition of administrative costs under the Child Care and Development Fund as a model. Additionally, administrative costs incurred by subgrantees, contractors, community services providers, and other third parties should not be included in the administrative cost cap. Third, the 15 percent calculation should be applied to a state's TANF grant without adjusting for transfers to the SSBG or CCDF. Finally, the 15 percent administrative cap should be calculated based on the combined total of the required state MOE expenditures rather than separately by category.

VIII. MAINTENANCE-OF-EFFORT REQUIREMENT AND ELIGIBLE FAMILIES

At Section 273.2(b), the proposed rule requires that in order for state spending to count towards the MOE requirement, the services must "have been provided to or on behalf of eligible families." The rule provides further at Section 273.2(b)(3) that eligible families "must be financially eligible according to the TANF income and resource standards established by the State under its TANF plan." States have expressed a number of concerns with these provisions which appear to be more restrictive than the statutory language.

First, the TANF law allows states to claim MOE for spending on qualified activities "with respect to eligible families," Section 409(a)(7)(B)(i). The law does not require that spending be made to or on behalf of an eligible family. The proposed regulation would appear to make it very difficult to count as MOE those activities that benefit TANF eligible families in general, but do not involve a specific payment to or on behalf of a specific eligible families. For example, activities related to two of the major purposes of the Act, in particular—preventing and reducing the incidence of out-of-wedlock pregnancies and encouraging the formation and maintenance of two-parent families—could well involve the development of materials, pamphlets, videotapes, etc. These MOE expenditures benefit all TANF eligible families but do not necessarily benefit any one family in particular.

Second, the language seems to suggest that states have a single income and resource standard. However, states may vary eligibility according to the services provided. For example, some states may use more "streamlined" standards when determining eligibility for diversion assistance. Additionally, some states are considering eliminating resource standards. The January 31, 1997 guidance (TANF-ACF-PA-97-1) only made reference to income standards established by the state under its TANF program and is preferable in this respect. Moreover, because states may provide a different set of services to individuals with special needs in separate state programs, the income and resources standards in the TANF program may not be appropriate. For example, considering that families with disabled members often face higher costs, the state may want to raise the income eligibility for these families if they are served in a separate program.

This provision would also seem to exclude state expenditures for transitional services such as child care, transportation and on-going case management as counting toward MOE, as these services are provided to families that are no longer income eligible for assistance due to earnings. However, these services are clearly consistent with the intent of the law. Similarly, At-Risk child care expenditures were included in the calculation of a state's MOE requirement, yet according to the rule, state spending on families at-risk of going on welfare would not be considered qualified expenditures.

Recommendation. The statutory intent of the TANF program is to serve needy families—as defined by the state. The statute permits states to determine eligibility with no reference to income or resource standards in the discussion of qualified state expenditures. We recommend that the proposed rules be revised to allow states to have different income standards for different services or for families served in separate programs and provide that spending on transitional benefits is countable toward MOE. Further, the proposed rules must clarify that spending on behalf of eligible families could include expenditures for services provided for TANF eligible families in general.

IX. DATA COLLECTION

States believe information collection is critical to successfully implement and manage state welfare reform programs as well as to assess the effectiveness of the programs in achieving the desired results. Indeed, many states are continuing waiver evaluations, investing in evaluations requested by their state legislatures and adopting new outcome and performance measures to guide their policy decision-making. States understand that they must be accountable to the federal branch for the expenditure of federal funds and subject to penalties if they fail to meet the requirements of the federal TANF law. States are also anxious to share their experiences so that they can assess the effectiveness or the imperfections of this new approach to welfare reform.

Meeting Shared Objectives

The cost of collecting, reporting and verifying data as identified in the proposed rule is prohibitive and will absorb significant TANF resources that could more appropriately be used to fund programs and services to benefit children and families. That is why states want to provide data to the Secretary in ways that meet the dual objectives of providing all the information necessary for the Department to determine state compliance with the law while generating these data in the least burdensome and least costly way. We believe these objectives can be met if the Department:

1) limits the number of elements required to be collected to those explicitly called for in Section 411(a)(1)(A) of the TANF statute;

2) develops a mutually agreed to list of elements needed to enable the Secretary to accurately assess compliance with the statute;

3) recognizes the states' authority, provided under Section 411(a)(1)(B)(i) of the TANF statute, to comply with the general reporting requirements by submitting "a sample estimate which is obtained through scientifically acceptable methods approved by the Secretary;"

4) allows the states to avoid costly reporting by permitting states to use their existing data to satisfy requests for additional information;

5) minimizes the burden on clients and caseworkers as well as the need to make costly state information systems changes;

6) limits the number of state reports to those explicitly called for in the statute; and,

7) conducts a national sample to prepare an annual report to Congress (Section 411(b)) rather than shifting the burden of data collection to the states.

Assessing the Burden

In assessing the scope and burden of the data collection requirements and new state reports, the proposed rule fails to meet the objectives described above. States have universally expressed deep concern about the data collection requirements contained in the proposed rule; indeed, it is one of their priority concerns. Rather than being substantially similar to the TANF Emergency Data Report (ACF Transmittal No. TANF-ACF-PI-97-6) issued on September 30, 1997, the data elements required under the proposed rule are significantly expanded and overall the reporting requirements are much more complex than under the previous AFDC program. We believe the administrative burden of reporting these data is *five to 20 times greater* than the Department's estimated 241,128 "burden hours." As the Department encouraged us to do, our organizations, along with the majority of states, sent detailed comments to the Office of Management and Budget on January 15, 1998 commenting on this burden assessment.

Overall, the data collection requirements and new state reports will entail significant systems overhaul and redesign that will require substantial investments in staff and resources as well as create costly on-going operation and reporting efforts. To meet all the requirements, many states will have to divert staff from providing direct services such as case management, job creation and placement and supportive services to families.

In addition to increased costs and the burden of the data collection and required state reports created by the proposed rule, states are greatly concerned that the Secretary has exceeded her authority. The proposed rule requires reporting of the client characteristics of those served in separate state MOE programs; "conversion" reports of each child-only case; detailed case closure information and client characteristics; and expansive definitions of Section 411 caseload characteristics, to name just a few. Also, in a number of instances where the law instructs the Secretary to prepare annual reports to Congress, the Secretary has effectively shifted this burden to the states by requiring additional annual quarterly reports. Yet, under Section 417 of the TANF law, the Secretary is prohibited from regulating the State "except to the extent expressly provided" in the statute.

Recommendation. In the past two months, our organizations have convened a series of meetings and conference calls with state agency staff expert in the data collection requirements under former AFDC and TANF law to analyze the proposed rule and to prepare detailed recommendations. What follows is a summary of our recommendations with respect to data collection. It should be noted that many of the elements we recommend for deletion should be available either through existing means (such as other federal agencies) or could be gathered with relative ease and economy via national samples.

State Sampling, Section 275.5.

The sampling option contained in the proposed rules is unnecessarily restrictive and fraught with problems. The proposed rules would mandate a sample size of 3,000 active cases and 800 closed cases on both the federally-funded program and the MOE program. These numbers are far in excess of the sample (1,200 or less) many states were allowed to use for their AFDC caseloads. The large proposed sample would dramatically increase state data collection workloads. In some small states and tribal programs, drawing such a sample would *equal or exceed* the entire caseload.

The proposed rules also mandate in detail the parameters of the state sampling plan, specifically in Appendix H. These requirements place unacceptable limitations on the ability of states to effectively provide valid samples through means other than those outlined in the rules. For example, one state has pointed out that innovative designs including stratification by counties and panel studies would not be allowed, or may not be allowed, under the proposed regulations.

Recommendation. The monthly sample size requirement specified in Appendix H should be eliminated because it restricts state flexibility, expressly provided in the TANF statute. States should be allowed to use alternative sampling methodology when it can be demonstrated that other methods produce equally valid samples. States should be permitted to transmit part of the data via sample and the balance for all members of the universe when that method is most efficient for them.

Complete, Accurate and Timely, Section 275.8

The proposed rule in Section 275.8 and other sections throughout the rule hold states to the standard of "complete and accurate information" reported on a "timely basis." This definition raises serious concerns that the state would not be permitted to submit revised data nor does it seem to allow a reasonable margin of error. In addition, Section 275.8 (f) states that "for each quarter for which the State fails to meet a reporting requirement" the state's TANF grant will be reduced by an amount equal to four percent of the adjusted grant. Based on early state experience in transmitting the data called for in the TANF Emergency Data Report, states interpreted terms differently and were subsequently asked by the Department to revise their submissions based on the clarifications they received. Clearly, data collection will be an evolving process requiring many future discussions between the Department and states.

Recommendation. In light of the severe penalty attached to the reporting requirements for each quarter, which could result in a cumulative annual loss of 16 percent of the adjusted State Family Assistance Grant, we urge the Department to revise the "complete, accurate and timely" standard affording states greater flexibility to report and subsequently revise their data in a reasonable time period and to allow for some reasonable margin of error. States should not be penalized for failure to provide data that are not necessary to determine compliance with TANF requirements.

Secretary's Report to Congress

States should not be required to collect data and prepare new quarterly reports to fulfill the Secretary's obligation under Section 411(b) of the TANF statute. This is an unfunded mandate imposed on states through regulation, particularly Appendix B.

Recommendation. A national sample could be conducted by the Department, in cooperation with the states, to collect these data in a more efficient, statistically valid and least costly way.

Transition Period

States are concerned that once the final rule is issued they will be required to report the new required data immediately without a period of transition necessary to make the appropriate adjustments in their computer system programming or data collection procedures. The changes to state information systems will be extensive and all states are also challenged by the need to make their systems Year 2000 compliant.

Recommendation. We urge the Department to give states at least 12 months to comply with the new data collection requirements.

Appendix A, TANF Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program

Our analysis of Appendix A determined that most states could report the majority of the required elements. However, some new elements not required by the TANF Emergency Data Report or in law, will require states to provide a level of detailed information not currently collected by the TANF agency. For example, states object to the additional child care reporting requirements and new categories of alienage because they are not required to be reported under the TANF statute and are burdensome to collect.

Recommendation. We are recommending the modification or deletion of a number of the elements in Appendix A to meet the requirements of Section 411(a)(1)(A) of the TANF statute. In many cases, the modification can be accomplished by collapsing multiple elements into one category. (See Section 3 which provides a detailed list of these recommendations.)

Appendix B, TANF Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

Section 411(b) of the TANF statute requires the Secretary to report to Congress on the demographic and financial characteristics of "families who become ineligible for assistance." The requirement that the Secretary report on these families does not justify the extensive new data reporting requirement on the states called for in Appendix B.

States should not be required to collect data and prepare new quarterly reports to fulfill the Secretary's obligation under Section 411(b) of the TANF statute. This is an unfunded mandate imposed on states through regulation. A national sample could be conducted by the Department, in cooperation with the states, to collect these data in a more efficient, statistically valid and less costly way.

In the TANF Emergency Data Report, the Department asked states to simply report "Reason for Closure," providing eight categories. There is no need to gather data on closed cases in the same manner as families receiving assistance; a 3,000 case sample for each state is unnecessary when a statistically valid sample of a smaller size should suffice.

There appears to be an error in the drafting of the Appendix B, Question 9. Reason for Closure (62 Fed. Reg. 62208) when it asks for information on "A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month." The Appendix requires the state to collect information on families in the reporting month –the first month they are not receiving assistance. We do not believe the Department intends for states to contact families in the month after they have left the assistance rolls in order to collect these data. Any collection of information on previously closed cases would be highly problematic, since many clients want nothing to do with the agency after case closure, clients move or are otherwise difficult to locate, and the additional cost to meet this requirement is prohibitive. States see no justification for the separate reporting of this information. All the proposed information can be retrieved from the case's file from the former quarter. The absence of a given case from a subsequent quarter's report will indicate that it is no longer active.

Recommendation. We recommend that to produce the information required under Section 411(a)(1)(A)(xvi) of the TANF law, a question on reason for case closure be added to Appendix A, similar to the format used in the TANF Emergency Data Reporting Requirements. A number of states are conducting followup studies to evaluate the circumstances of clients after they have left TANF assistance. Instead of requiring this extensive data collection in the regulations, we suggest that the Department collect these reports prepared by states.

Appendix C, TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

We recommend changing the following elements in Appendix C:

16. Total Number of Minor Child Heads-of-Household

This information can be derived from data reported in elements #45 and #47 of Appendix A.

17. Total Number of Births

This information can be determined from the date of birth reported in element #90 of Appendix A.

18. Total Number of Out-of-Wedlock Births

This information can be derived from data reported in element #90 coupled with element #56 of Appendix A.

19. Total Number of Closed Cases

This information can be derived by adding a case closure question, such as in the TANF emergency data report.

Appendix D, (TANF) ACF-196 Financial Report

We commend the Department for the simplicity of Appendix D—the TANF Financial Reporting Form. The form has generated few complaints or requests for clarification during the FY 1997 reporting period. As noted earlier in the section on Administrative Costs, we believe one further clarification is needed. The instructions to the TANF ACF 196 Financial Report appears to suggest that a distinct and separate cap exists for state TANF expenditures (column B) and separate state programs (column C). The statute clearly specifies that the 15 percent administrative cap is on total qualified state expenditures. Therefore, the 15 percent cap should be calculated against the sum of lines 8(B) and 8(C).

Appendix E, TANF MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Programs, Appendix F, TANF MOE Data Report—Section Two—Disaggregated Data and Appendix G, TANF MOE Data Report—Section Three—Aggregated Data

In conformance with the definitions provided in January 1997 guidance (TANF-ACF-PA-97-1), states contend that the Secretary has authority to collect information only on the "Programs Funded Under this Part" and not on the remaining, state-funded-only activities in the other categories. The guidance defined state programs funded under this part to include co-mingled or segregated state dollars spent within a state's TANF program. The vast majority of state MOE funds are expended as part of the TANF program and therefore the vast majority of MOE case characteristics are already being reported under Appendix A.

Beyond the requirement to report MOE dollars in the state's TANF program, there is no statutory authority for the Department to request data collection on separate state programs. Under the law, states must meet a financial requirement-- the maintenance of effort-- ensuring that these funds are "qualified expenditures" and represent new state spending. States already report these financial data under Appendix D—Section 3. There is no statutory basis for the reports called for in Appendices E, F and G.

Furthermore, it is unreasonable to ask states to report detailed client characteristics on state MOE programs operated in whole or in part by entities outside the human service agency. For example, under the proposed rule, data collection on those receiving a state Earned Income Tax Credit or receiving transportation assistance from a Transit Authority would be very difficult if not impossible to collect with any degree of economy or accuracy. States emphatically oppose this very costly, new, unfunded federal mandate created in Appendices E, F and G.

Recommendation. We urge the elimination of Appendices E, F and G. Section 3 of Appendix D requires "Information To Be Reported as an Addendum to the Fourth

Quarter TANF Financial Report" with respect to separate state programs. This information should suffice.

NGA
WR - gov

Todd A. Bledsoe
07/28/99 12:12:16 PM
****

Record Type: Record

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

cc:
Subject: From Fred DuVal

In anticipation of tomorrows meeting on NGA message, pls see the attached budget material. I believe we may have a great opening to put the squeeze on GOP Govs on our budget priorites. Secondly, I hope we will consider highlighting New Markets and class size. These are priority areas for us where we have support among Governors of both parties.

GOP to ask states to return $6B

By DAVID ESPO
Associated Press Writer
July 27, 1999
Web posted at: 6:21 p.m. EDT (2221 GMT)

WASHINGTON (AP) -- Desperately seeking cash for routine spending bills, House Republican leaders intend to ask the nation's governors to return up to $6 billion in welfare money accumulated by the states in recent years, according to congressional officials.

The officials, who spoke on condition of anonymity, said the idea was broached most recently by Rep. Tom DeLay of Texas, the GOP whip, at a leadership meeting. It was approved by Speaker Dennis Hastert, R-Ill., as part of a months-long struggle by the GOP to win approval of all 13 regular spending measures.

In addition to having an impact on Congress' spending battles, the proposal could pose a dilemma for Texas Gov. George W. Bush, who is not only the elected leader of the nation's second-largest state, but also the front-runner for the GOP presidential nomination. Karen Hughes, an aide to Bush, said she didn't know whether the suggestion had yet been broached to the governor.

Seeking the return of money would be an irony for a political party whose oft-articulated philosophy is to ship money and power to the states. In addition, some GOP aides acknowledge, it could require Republican governors to choose between tax cuts at home and spending needs in Washington.

Under welfare reform legislation enacted in 1996, the nation's governors were guaranteed preset levels of funding for five years. Governors lobbied for the guarantee, saying they were assuming a risk; namely, that the demand for welfare money would outstrip the supply of funds.

Republican aides in the House, though, say the opposite has happened that the federal government has been giving money and power back to the states and welfare rolls have gone down, leaving the states flush with money.

Privately, several lawmakers and aides expressed doubt that the governors would be willing to voluntarily send money back to Washington.

One Democrat was harshly critical. "Why should we be surprised that the House Republicans want to pay for their tax cut, two-thirds of which goes to the wealthiest 10 percent of the people in this society, by kicking the props out once again from low-income families and children with some of the toughest problems in the country," said Rep. David Obey of Wisconsin, the senior Democrat on the Appropriations Committee.

The effort to find money outside Washington comes at a time when House Republicans are struggling mightily to win approval for all 13 regular spending bills, while being able to claim at least the appearance of living within spending restraints imposed in the 1997 balanced budget deal.

In fact, they have resorted to a number of budgetary artifices to avoid the spending limits. Republicans recently declared $4.5 billion for the 2000 Census to be an emergency meaning it would be above and beyond the spending limits in place and be paid for out of budget surplus funds.

This and other devices still leave Republicans an estimated $12 billion short of funds they estimate will be needed to permit passage of legislation financing programs at the departments of Health and Human Services, Education and Labor. Work on the bill was recently sidetracked until September.

July 23, 1999

The Honorable Arlen Specter
Chairman
Subcommittee on Labor, Health and
Human Services, and Education
Senate Appropriations Committee
SD-186 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Harkin
Ranking Minority Member
Subcommittee on Labor, Health and
Human Services, and Education
Senate Appropriations Committee
SH-123 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Specter and Senator Harkin:

As you near the halfway point in the annual appropriations process, we are writing to reemphasize our highest funding priorities for discretionary programs for next year. As you manage the various appropriations bills, we would like to urge you to maintain the current level of state and local grants.

We believe the budget resolution provides your committee with insufficient funds to meet the nation's discretionary needs. While we support your efforts to both protect critical programs, as well as prepare for the future, we are deeply concerned about the potential impact that deep spending cuts will have on providing key human services in our states. Just like the federal government, states have strong revenue balances—both because states have held down state spending and because of the strength of the economy. But not every one of our states has benefited from the strong economy. A number of states are struggling to maintain spending levels.

The current state budget balances and rainy day funds are not a reason for Congress to abandon its commitment to state and local grant programs. Thus, while Governors urge you to maintain 1999 levels for all programs, they are particularly concerned that you not cut the following high priority programs:

Social Services Block Grant (SSBG) – The effectiveness of SSBG is based on the broad state flexibility in using SSBG funds to provide crucial services to low-income individuals, including children, families, the elderly, and the disabled. Funding for SSBG has repeatedly been cut over the past few years and we urge you to fully fund the program as was requested in the Administration's budget. Further, the Governors strongly oppose any efforts to reduce the amount states can transfer from TANF to SSBG from 10 percent. The transferability was a key provision of the 1996 welfare reform agreement and we hope you will maintain this state flexibility at 10 percent. Many states are using SSBG funds to successfully prevent families from receiving welfare assistance and to address the needs of low-income working families. The need for this kind of assistance will increase as states face the challenge of helping former welfare recipients stay employed, build a work history, and advance to higher-skill, better paying jobs.

Temporary Assistance for Needy Families (TANF) – We want to remind you of the commitment Congress made to the nation's Governors for guaranteed TANF funding as part of the 1996 welfare reform law and reiterate our adamant opposition to the use of TANF funds as an offset for other spending. The existing law allows states to carry forward their TANF funds without fiscal year limitation. However, federal regulations prohibit states from drawing down those funds until they can be spent. This creates the false perception that, because of the tremendous drop in welfare caseloads, states no longer need these funds to serve the eligible populations. In many cases, states have already designated specific uses for these funds, such as reserving a portion of TANF funds for future economic downturns or for providing more costly assistance to the "hardest to serve" cases that now remain on the caseload. We urge you to protect the integrity of the block grant as it was established in 1996.

Medicaid, TANF, and Food Stamp Administrative Funds – The budget resolution passed by the Senate proposed to achieve savings through "reforms in federal funding for the administration of welfare programs." The President's budget proposal also contained savings realized by cuts in the Medicaid program specifically. Regardless of the programmatic solution devised to attain these savings, the end result is ultimately a radical reduction in the federal commitment to serving needy families, and would pose a severe threat to the ability of states to operate these crucial programs. The nation's Governors are opposed to cuts in administrative funds for vital human services programs that would result in a drastic cost-shift to states.

Children's Health Insurance Program (CHIP) – The Children's Health Insurance Program represents an incredible opportunity for states to provide health care coverage for millions of previously uninsured kids. Passed as a part of the Balanced Budget Act of 1997, CHIP was funded at $24 billion over five years as an entitlement for the states. Governors must be confident that a stable funding stream will be available to provide health care services to beneficiaries. States have up to three years to spend their annual allotments. As states plan their long-term goals for coverage and state spending, it is vital that Congress maintains its commitment to fully funding the federal share of the CHIP program. The design, development, and implementation of a health insurance program like CHIP takes time in order to enroll children, educate families about the benefits of a managed care delivery system, ensure that necessary services are received, and ensure that claims are fully and fairly met.

Special Education – The Governors call on Congress and the Administration to honor its original commitment and fully fund 40 percent of Individuals with Disabilities Education Act, Part B services within three years as authorized by the act so that the principles under the act can be achieved. This year's appropriation should include the first year of this commitment to fully fund this critical program. In the event that the federal government fails to fully fund this act, the Governors believe that the statute should be amended to release states from prescriptive and costly administrative mandates.

Low-Income Home Energy Assistance Program (LIHEAP) – The Low-Income Home Energy Assistance Program provides assistance to nearly five million primarily elderly, disabled, and working poor households in paying their heating and cooling fuel bills. It is also a key component in preventing many former welfare recipients from returning to the welfare rolls. The nation's Governors believe LIHEAP is a crucial program that should be a considered a funding priority.

We appreciate your consideration of our views.

Sincerely,

Governor Thomas R. Carper

Chairman

Governor Michael O. Leavitt
Vice Chairman

c: Chairman Stevens and Senator Byrd

Message Sent To:

Cathy R. Mays/OPD/EOP@EOP
Sara M. Latham/WHO/EOP@EOP
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THE WHITE HOUSE
WASHINGTON

cc CR
AK
EK

April 29, 1999

MEMORANDUM TO: Maria Echaveste
Bruce Reed
Mickey Ibarra
Kevin Thurm

File:
WR-NGA

FROM: Fred DuVal

This is rather unprecedented! For NGA to compliment us is a rare and wonderful feat. Thanks to HHS and DPC for their good work.

NATIONAL GOVERNORS' ASSOCIATION

Thomas R. Carper
Governor of Delaware
Chairman

Michael O. Leavitt
Governor of Utah
Vice Chairman

Raymond C. Scheppach
Executive Director

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5300
http://www.nga.org

April 28, 1999

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We appreciate that many of the changes in final regulations for the Temporary Assistance for Needy Families (TANF) block grant reflect comments submitted by the nation's Governors. Specifically, we are pleased that significant changes were made related to the definition of assistance, the creation of separate state programs, and the continuation of waivers.

We believe that the final regulations recognize the positive initiatives already taking place at the state level and support the flexibility inherent in the statute. We look forward to continuing to work with the administration as we move toward new challenges in welfare reform.

Clearly it will take some time to fully analyze the impact of these regulations on states' efforts to reform the welfare system. As states begin to understand how they will effect innovation at the state level, it is our hope that we can work with you and Congress to resolve any outstanding issues affecting the continued success of welfare reform.

We look forward to continuing our federal-state partnership in serving the nation's neediest families.

Sincerely,

Tom Carper

Governor Thomas R. Carper
Chairman

Michael O. Leavitt

Governor Michael O. Leavitt
Vice Chairman

WR-NGA plan

Talking Points
NGA Resolution on Welfare Reform
February 6, 1996

As the President said in his speech to the NGA this morning, real welfare reform must require work, promote family and responsibility, and protect children. The governors' resolution reinforces what the President has said all along -- that the conference report he vetoed fell short of real welfare reform, and must be improved.

The NGA resolution suggests valuable improvements over the conference report and the Senate bill in several key areas that are priorities for the President:

Child Care -- The NGA resolution calls for adding $4 billion for child care to the conference report, which is $5 billion more than the Senate bill. Senator Dole acknowledged the need for more child care money in his speech to the NGA this morning. The Administration believes, however, that states should match this additional child care funding, and maintain current quality standards.

Contingency Fund -- The NGA called for doubling the contingency fund to $2 billion, and providing an additional trigger based on Food Stamps population. The Administration has made additional suggestions to improve this provision.

Performance Bonus -- The NGA endorsed additional funding for a 5% performance bonus to reward states that meet the work requirements -- a key provision that the President has long championed and that was a centerpiece of the Daschle-Breaux-Mikulski bill. This is a significant improvement over both the conference report and the Senate bill.

Equal Treatment -- The NGA resolution includes an important requirement that was not in either the conference report or the Senate bill, to ensure that states set forth objective criteria for the delivery of benefits and fair and equitable treatment.

Overall Savings -- The NGA resolution cuts more deeply into Food Stamps than the Administration's balanced budget plan -- at approximately the same level as the Senate bill. Because the NGA resolution calls for additional spending on child care, the contingency fund, and the performance bonus, its overall net savings are less than the Senate bill and in the same range as the Administration's balanced budget plan.

SSI Disabled Children -- The NGA resolution adopts the SSI children provisions of the Senate bill, but move back the effective date a year, to 1998.

The NGA resolution recommends other important changes that are similar to the Senate bill:

Work Requirements -- The NGA resolution adopts work requirements and state flexibility similar to the Senate bill, which will somewhat reduce state costs of running work programs.

Hardship Exemption -- The NGA resolution endorses the 20% hardship exemption in the Senate bill for recipients who reach the five-year limit. The conference report had reduced this provision to 15%.

Family Cap -- The NGA resolution endorses the Administration policy that states should decide for themselves whether to limit benefits for additional children born to parents on welfare. Like the Senate bill, the NGA would make the family cap a state option -- rather than a mandatory provision with an opt-out, as the conference report included.

The Administration continues to have serious reservations about some other provisions in the NGA resolution:

Child Welfare -- The Administration has strongly opposed block granting child welfare. The Senate bill maintained current law in this area. The NGA resolution would allow states the option to block grant certain programs.

Food Stamps -- The NGA resolution fails to criticize certain Food Stamp provisions of the conference report which the Administration has strongly opposed, including the state option to block grant Food Stamps and the arbitrary cutoff of able-bodied childless adults.

School Lunch -- The Administration has strongly opposed block granting the school lunch program. The NGA resolution would maintain the entitlement for children, but block grant administrative costs.

Maintenance-of-Effort -- The NGA resolution is silent on the issue of maintenance-of-effort. The Administration strongly favors the Senate provision of 80% maintenance-of-effort, rather than the 75% requirement in the conference report.

Immigrants -- The NGA resolution is silent on the question of benefits for legal immigrants. The Administration's balanced budget plan requires deeming until citizenship. The Administration strongly opposes the level of immigrant cuts in the conference report and the Senate bill.

File under:
1) POTUS memos
2) WR - NGA plan

THE WHITE HOUSE

WASHINGTON

February 2, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: NGA and Welfare Reform

By Monday, the governors may have reached a bipartisan agreement on welfare reform that would call for improving the Senate bill in key areas -- more money for child care, a better contingency fund, and fewer cuts in benefits for legal immigrants. This agreement would make it easier for moderate Republicans and Democrats in Congress to pass those changes if the Republican Congressional leadership gives us another shot at a welfare bill.

I. Update

Congressional Republicans remain divided over whether to pass another welfare bill or take the issue to the election. For now, they are leaning toward sending you the Senate bill with no changes. Senate moderates would like to amend the Senate bill along the lines of what was discussed in the budget talks, but they will do whatever Dole tells them. Blue Dogs and the Chafee-Breaux coalition are pushing for similar changes in any budget deal. But unless there is a budget deal, we're likely to see either the Senate bill or no bill at all.

An NGA agreement with the backing of Thompson and Engler might give Dole an excuse to allow a few changes in our direction. Engler (the lead Republican for the NGA on welfare) has been uncharacteristically eager to reach an agreement. He and Carper (the lead Democrat) have reached tentative agreement on an improved block grant that we could generally support: more child care money than the Senate bill; a $2 billion contingency fund (double the Senate's) with a more flexible trigger; exempting the elderly and the disabled from the SSI ban for legal immigrants (a substantial movement in our direction); a $1-2 billion performance bonus to reward states for job placement; guaranteed health coverage for recipients; and a maintenance of effort requirement of 75-80% (a first for NGA). They will also oppose the cap on food stamp growth, and limit the food stamp block grant state option to the conference approach, which is better than the Senate version.

The agreement could still fall apart if Dole raises strong objections, although Engler and Thompson probably would not have gone this far without Dole's permission. It might also become part of the more significant negotiations over Medicaid, with Democrats agreeing to an AFDC block grant in return for Republican acquiescence in a Medicaid per capita cap.

II. Monday's Discussion

Engler and Carper (and others) are likely to bring up welfare reform in Monday's roundtable. You may not want to explicitly endorse the details of their agreement, if only because too much enthusiasm from us might scare the Republicans away from it. But you can certainly indicate that it is in keeping with the kinds of improvements you and the Republican leadership discussed in the budget talks.

If you get asked again whether you would sign the Senate bill, you should repeat that you don't answer hypotheticals -- you're not drawing lines in the sand, you just want the best possible bill.

HHS will announce two waivers Monday afternoon -- North Carolina and Mississippi. Two others could be ready the following day -- Illinois and Louisiana. If those last two take place, our total would be 54 waivers to 37 states. The most significant outstanding waivers are New Hampshire (where HHS and Merrill are at odds over the need for a control group) and California (where HHS and Wilson are at odds over how far he can go in cutting benefits). Gov. Whitman announced a sweeping plan last week that is consistent with our overall approach (five-year lifetime limit, child care, family cap), but she has not yet submitted a waiver request.

NATIONAL CONFERENCE OF STATE LEGISLATURES
NATIONAL GOVERNORS' ASSOCIATION
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL LEAGUE OF CITIES

WR-NGA Plan

April 23, 1996

Dear Senator:

The National Conference of State Legislatures (NCSL), the National Governors' Association (NGA), the National Association of Counties (NACo), and the National League of Cities (NLC) are very concerned about unfunded mandates in S.1664, the Immigration Control and Financial Responsibility Act of 1996 that would be an administrative burden on all states and localities. We urge you to support a number of amendments that will be offered on the Senate floor to minimize the impact of these mandates on, and cost shifts to, states and localities.

S.1664 would extend "deeming" from three programs (AFDC, SSI and Food Stamps) to all federal means-tested programs, including foster care, adoption assistance, school lunch, WIC and approximately fifty others. As you know, "deeming" is attributing a sponsor's income to the immigrant when determining program eligibility. It is unclear what "all federal means-tested programs" means. Various definitions of the phrase "federal means-tested programs" would include a range of between 50-80 programs. Furthermore, regardless of the size of their immigrant populations, this mandate will require all states to verify citizenship status, immigration status, sponsorship status, sponsor's income and length of time in the U.S. in each eligibility determination for "all federal means-tested programs." NCSL estimates that implementing deeming restrictions for just 10 of these programs will cost states approximately $744 million. Extending deeming mandates to over 50 programs garners little federal savings and should be eliminated as part of the Congressional commitment to eliminating cost shifts to state and local budgets and taxpayers.

Therefore, we urge you to support Senator Bob Graham's (FL) effort to raise a point of order against S.1664 based on its violation of P.L. 104-4, the Unfunded Mandates Act of 1995. This is a critical test of your commitment to preventing cost-shifts to, and unfunded administrative burdens on, states and localities. We also urge you to support subsequent amendments that will reduce the scope of the deeming provisions and limit the administrative burden on states and localities. These include:

- **Senator Graham's amendment giving deeming mandate exemption to: 1) programs where deeming costs more to implement than it saves in state or local spending; or 2) programs that the federal government does not pay for the administrative cost of implementing deeming.** *This ensures that new deeming mandates are cost effective and are not unfunded mandates.*
- **Senator Graham's amendment substituting a clear and concrete list of programs to be deemed for the vague language in S.1664 requiring deeming for "all federal means-tested programs."** *This amendment ensures that Congress, and not the courts, will decide which programs are deemed.*
- **Senator Kennedy's amendment conforming Senate deeming exemptions to those accepted by the House in H.R. 2202.**

In addition, we urge you to support other amendments that would temper the unfunded mandates in S.1664 and relieve the administrative burden on states and localities. We are especially concerned about the impact of extending the deeming requirements to the Medicaid program. Without Medicaid eligibility, many legal immigrants will not have access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics and states and localities would incur increased unreimbursed costs for treating legal immigrants. We support the following compromise amendment to preserve some Medicaid eligibility for legal sponsored immigrants.

- **Senator Graham's amendment to limit Medicaid deeming to two years.**

We strongly support amendments to exempt the most vulnerable legal immigrant populations from deeming requirements. We urge you to support the following amendments that will preserve a minimal amount of federal program eligibility for the neediest legal immigrants and protect states and localities from bearing the cost of these services.

- **Senator Kennedy's amendment exempting children and pre-natal and post-partum care from Medicaid deeming restrictions.**
- **Senator Simon's amendment exempting immigrants disabled after arrival from deeming restrictions.**

Finally, we firmly believe that deeming restrictions are incompatible with our responsibility to protect abused and neglected children. Courts will decide to remove children from unsafe homes regardless of their sponsorship status and state and local officials must protect them. Deeming for foster care and adoption services will shift massive administrative costs to states and localities and force us to fund 100% of these benefits. We urge you to support the following amendments to protect states and localities from this cost shift.

- **Senator Murray's amendment exempting immigrant children from foster care and adoption deeming restrictions.**
- **Senator Wellstone's amendment exempting battered spouses and children from deeming restrictions.**

We appreciate your consideration of our concerns and urge you to protect states and localities from the unfunded mandates in S.1664.

Sincerely,

Directors or Principals?

WR - NGA

THE WHITE HOUSE

WASHINGTON

May 1, 1996

MEMORANDUM

TO: Leon Panetta

FROM: Marcia L. Hale MLH

SUBJECT: Conference Call with Democratic Governors

Attached is information for the conference call with Democratic Governors this afternoon at 4:00 p.m. You should open the call by thanking the Governors for their letter to Senators Breaux and Chafee (attached) and should then discuss the current status of welfare and Medicaid negotiations. You should also reference the meeting that is scheduled with the President and Democratic Governors on May 29th at the White House.

Attachments
1. A list of Governors participating
2. An agenda for the call
3. Medicaid talking points provided by Chris Jennings
4. Welfare talking points provided by Bruce Reed
5. Democratic Governors' Letters to Breaux/Chafee

→ Breaux

Leon on WR: Don't blackmail us on WR - pass it on a separate track
Breaux-Chafee is close to what we support

Miller: Let's come back to educ. issue
Leon: GOP may come forward w/cuts in education

DEMOCRATIC GOVERNORS' ASSOCIATION

MEMORANDUM

TO: MARCIA HALE

FROM: Katie Whelan
Doug Richardson

RE: Governors' Conference Call

DATE: May 1, 1996

Attached is the agenda that Governor Caperton has approved for today's conference call with Democratic Governors, Senator Tom Daschle and Leon Panetta.

Governor Caperton will introduce Mr. Panetta at 4 p.m. and then ask him to explain the Administration's legislative and political strategy for the next few months. There will be time for discussion of topics (including welfare and Medicaid) of special interest to the Governors.

Governors who intend to be on the call are:

- Governor Caperton, West Virginia, DGA Chair
- Governor Evan Bayh, Indiana
- Governor Mel Carnahan, Missouri
- Governor Tom Carper, Delaware
- Governor Lawton Chiles, Florida
- Governor Bob Miller, Nevada
- Governor Paul Patton, Kentucky
- Governor Roy Romer, Colorado.

We are using an executive calling service for this call. At 3:55 p.m., an operator will dial the numbers you have provided us for Mr. Panetta and for you and connect you to the call.

Thank you for your help in arranging for Mr. Panetta to participate on this call. Please call us if you have questions about the call.

430 South Capitol Street, S.E. • Washington, D.C. 20003 • (202) 479-5153 • FAX (202) 479-5156

DEMOCRATIC GOVERNORS' ASSOCIATION
CONFERENCE CALL WITH
SENATOR TOM DASCHLE
AND
WHITE HOUSE CHIEF OF STAFF LEON PANETTA
3:30 p.m. Eastern
Wednesday, May 1, 1996

I. **Welcome & Introduction Of Senator Daschle (3:30 p.m.)**
Governor Gaston Caperton

II. **Senator Tom Daschle**
- Senate Action Agenda
- Welfare
- Medicaid
- Shared Concerns
- Discussion: Q & A

III. **Welcome & Introduction Of Leon Panetta (4 p.m.)**
Governor Caperton

IV. **Leon Panetta**
- Administration Legislative Agenda
- Budget
- Welfare
- Medicaid
- Discussion: Q&A

V. **Closing (4:30 p.m.)**
Governor Caperton

GOVERNORS' CONFERENCE CALL: MEDICAID TALKING POINTS

- **Thank You for Letter on Breaux/Chafee and the Positive, Bipartisan Message.**

- **Republicans' Intentions on Medicaid Cuts.** Republicans are likely to include a Medicaid Federal savings number of between $60–$85 billion in their budget resolution this week. (Their proposal will retain the lower state matching dollar provision, which translates into well over $200 billion in reduced total expenditures.)

- **CBO Medicaid Baseline Reduction Allows for Lower Republican Medicaid Cut.** Because of CBO's March Medicaid $24 billion downward baseline adjustment, the same House formula that previously scored $85 billion now yields $61 billion in Federal savings over 7 years. (A block granted amount of expenditures off of a lower base reduces the savings by the amount of the baseline adjustment.)

- **Republicans Divided on Advisability of Lowering Medicaid Savings Number.** Kasich is arguing to keep the $85 billion number; the Senate and the House Commerce Committee wants to use lower ($61 billion) savings number. They know that keeping the $85 billion number would require $24 billion in more cuts and risk their fragile Republican Governors' coalition.

- **Republicans Also Divided on Best Time to Release Policy.** There is also seems to be an ongoing argument among the Republicans as to the best timing to release specific policy behind the numbers. The Senate seems to want to delay in order to avoid premature and critical scrutiny. The House wants to commence the unveiling; they reportedly fear delay makes it impossible to garner the eventual support for "jamming" the President and forcing a veto.

- **If They Use the $61 Billion Medicaid Cut Number, They Will Use it as Leverage to Push for Their Financing Formula.** Republicans are likely to inaccurately suggest they have given us a major concession on savings and push us to accept their formula. **You can help us educate the public and the media that the $61 billion number represents no concession.**

- **If Republican Formula and Policy is Flawed and Inconsistent with Your NGA Agreement, We Need You to Very Publicly Walk Away.** We have a Medicaid "swat" team ready to analyze whatever proposal they come out with and we will immediately share whatever we produce to help you criticize their flawed, "partisan" approach. We would hope that you could use the opportunity to also reiterate your position that this issue should be addressed on a bipartisan basis -- such as what has been done by Senator Breaux and Senator Chafee.

- **How are the Other Democratic Governors?** We want to make sure that the Republicans are not bypassing you three and going to the other Democratic Governors to gain their support for the Republican formula. Are you working with them to make certain that they understand that should not be tempted by Republicans promising special formula deals for a Medicaid plan that would have to be vetoed?

WELFARE REFORM
TALKING POINTS
5.1.96

* The Administration remains deeply committed to passing a bipartisan welfare reform bill this year.

* Bipartisan bills have been introduced in both the House and Senate that are consistent with the NGA resolution, and that the Administration could accept:

-- Senators Breaux and Chafee (and a bipartisan group of two dozen Senators) have included a strong welfare reform bill as part of their balanced budget plan that follows the NGA recommendations to provide $6 billion more for child care and a $2 billion contingency fund; protects food stamps and child welfare; and requires an 80% maintenance of effort.

-- Reps. John Tanner and Mike Castle have introduced a similar bill in the House, with 30 Republicans and Democrats as co-sponsors.

* So there is broad desire among many in both parties to get welfare reform done this year. The only obstacle is whether the Republican leadership will try to jam the Administration by linking welfare reform with a bad Medicaid bill, in the hope of forcing a veto.

* That is why it is important for Democratic governors to send a clear signal that the Republicans' Medicaid plan does not have bipartisan support and is a breach of the NGA resolution. Your message is simple: We shouldn't hold bipartisan welfare reform hostage while the Republicans mess with Medicaid.

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EXECUTIVE CHAMBER
Capitol Complex
Carson City, Nevada 89710

BOB MILLER
Governor

TELEPHONE
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Fax: (702) 687-4486

April 25, 1996

The Honorable John Chafee
505 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Chafee:

We are writing to applaud your bipartisan efforts to balance the federal budget, while making responsible changes in Medicaid and welfare programs. Democratic Governors have had a long-standing interest in balancing the federal budget as many of us are required to do in our states.

While we have not had an opportunity to review your proposal in detail, the summary we have seen is both encouraging and practical. And, while we cannot comment on all aspects of your comprehensive package, we believe your proposal goes far toward achieving the principles outlined in the National Governors' Association's agreements on Medicaid and welfare. Your reform package -- if adopted -- will improve the Medicaid program while achieving significant savings and go a long way in assisting states in their efforts toward welfare reform.

In the Governors' agreement on Medicaid, the basic premise is that individuals have a guarantee of coverage and that the dollars will follow the people. Your outline indicates that you preserve that guarantee and have a funding formula very similar to the NGA agreement. As you know well from our ongoing discussions, these principles are critical to us and are the basis of our concern about the draft proposal from the House Commerce Committee which we believe would have undermined the guarantee of coverage for individuals. And, while a final proposal is yet to be seen, reportedly it will not contain a formula reflective of the NGA agreement where the dollars clearly follow the people.

Your summary shows that the Centrist Coalition package includes a strong welfare component that builds on the major tenets of the NGA bipartisan welfare agreement. Your proposal would time-limit benefits and strengthen work requirements while protecting children. These provisions most certainly complement state efforts to reform welfare and are consistent with Governors' desire to impel Congressional action this year.

Most importantly, your Coalition has forged a bipartisan compromise with your proposal. If anything is to be learned from the health care and welfare battles over the past years, it is that reform will never become a reality in a purely partisan environment. Our goal has always been to have a bipartisan effort on these issues which would lead to a bipartisan discussion in Congress. As administrators of these critical state programs, we have been very concerned about the stalled legislative process in the relevant House and Senate committees. We have worked tirelessly over the past year with you, other members of Congress, the Administration and Republican Governors toward effective, comprehensive reform. We appreciate your efforts and dedication to completing this task this year.

We appreciate your continued willingness to work with Governors and stand ready to assist with your efforts to achieve real reform that will enable and bolster our efforts at the state level to provide meaningful, cost-effective programs for our people.

With best regards,

Gaston Caperton

Governor Gaston Caperton
West Virginia

Bob Miller

Governor Bob Miller
Nevada

Thomas R. Carper

Governor Tom Carper
Delaware

Lawton Chiles

Governor Lawton Chiles
Florida

Roy Romer

Governor Roy Romer
Colorado

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: JUN 3 1996

TO: Bruce Reed - 456-7431
Maryjo - 401-4678
Ken Apfel - 395-5730
Rich Tarplin - 690-7380
Melissa - 690-5673
Ellen Haas - 690-3100

PHONE:
FAX:

FROM: John Monahan
Director

PHONE: (202) 690-6060
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RE:

CC:

Number of pages including cover sheet: 3

Message:

WR-NGA plan

U.S. House of Representatives

Committee on Agriculture

Room 1301, Longworth House Office Building
Washington, DC 20515–6001

May 29, 1996

Copy to:
· Bruce Reed
· MJ Bane
· Ellen Haas
· Ken Apfel
· Rich Tarplin
· Melissa ?

The Honorable Tom Carper
Governor of Delaware
Democratic Governors' Association
430 South Capitol Street, S.E.
Washington, D.C. 20003

Tom

Dear Governor Carper:

I have been provided a copy of your May 29, 1996, letter in which you criticize H.R. 3507, the Personal Responsibility and Work Opportunity Act of 1996. I am a sponsor of that bill and want to set the record straight in regard to the reforms to the food stamp program and your comments.

The reforms to the food stamp program included in H.R. 3507 do not "cut" food stamp benefits. In fact, the food stamp program is retained as a federal program, with 100% of the benefits paid by the federal government. Food stamps will continue to be provided as a basic need. The reforms do take the program off automatic pilot, ending automatic spending increases for all except annual increases in food benefits. States are allowed to harmonize other welfare programs and the food stamp program and strong provisions are included to curb trafficking and fraud with increased penalties to stop criminals from profiting from the food stamp program.

Despite your statement that the food stamp program is not reauthorized in H.R. 3507, the bill, in particular Section 1062, provides for reauthorization of the food stamp program through 2002 with no cap. I am particularly distressed that you would criticize this bill for this reason because it was at the suggestion of the Administration, the Secretary of Agriculture, and the National Governors' Association that the food stamp cap was eliminated. In fact, I had serious reservations about elimination of the food stamp cap because I believe it is necessary to put Congress in control of spending on this and other programs. However, because of suggestions I received and as a concession to those parties, the change was made.

You also make reference to "untenable work requirements" in the bill. If in fact you are referring to the provision that limits receipt of food stamps for those able-bodied persons between the ages of 18 and 50, with no dependents, unless they work or participate in a workfare or a training program, I believe your comments are misguided. This is, no doubt, a strong work requirement. We are asking able bodied people, between 18 and 50 years, with no dependents to work half-time in order to receive food stamps, after they receive food stamps for a four month period. Exceptions are provided for areas of high unemployment. There is nothing "untenable" about this provision. Able bodied food stamp participants should work, like most everyone else in this country.

Receipt of food stamps should be temporary, especially for able-bodied people with no dependents who can work and have no one relying on them at home. We are asking that they work only half-time if they want to continue to receive food stamps.

These and the other reforms to the food stamp program represent necessary changes, many of which are either incorporated at the request of the Administration or adopted by the Administration in its most recent proposal.

I would be happy to discuss the need for food stamp program reform with you.

Sincerely,

Pat Roberts
Chairman

WR-NGA plan

STATE OF DELAWARE

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Thomas R. Carper
Governor

J. Jonathon Jones
Director

Maura J. Cullen
Deputy Director

FACSIMILE COVER PAGE

TO: Bruce Reed - WH
John Monahan - HHS
Carmen/Blaine - DHSS
Phil Soule - DHSS
Sue Golonka - NGA
Doug Richardson - DGA

FAX#: ——→

FROM: Maura, Office of Governor Carper, Delaware

DATE: 6/24/96

\# OF PAGES: 8 (INCLUDING COVER)

NOTE:

Testimony Submitted to the Senate Committee on Finance

June 13, 1996

Welfare and Medicaid Reform

by

Governor Bob Miller of Nevada

Governor Roy Romer of Colorado

Governor Lawton Chiles of Florida

Governor Tom Carper of Delaware

In February, the Nation's Governors unanimously endorsed proposals to reform our welfare and Medicaid systems. We testified before you with our Republican colleagues on our shared hope for bipartisan reform of the Medicaid and welfare systems this year. Since that time the Republican leadership has introduced S. 1795, a bill to reform the Medicaid and welfare systems. We submit written testimony to offer our comments on this bill.

Medicaid

We want to say in the clearest terms possible: the bill before you does not reflect the NGA agreement as it pertains to Medicaid. We know. We were the governors who negotiated that agreement.

Before we discuss how S. 1795 differs in critical and substantial ways from the NGA agreement, we must say that we are troubled by public statements that have been made about this proposal. The congressional majority took our bipartisan work and spent more than three months developing legislation. During that period there was no contact either by members of the committees or staff with the bipartisan NGA, with Democratic Governors or our staff. While committee staff were drafting this bill, a bipartisan group of governors continued to meet to develop the details of the NGA proposal. We reached greater clarity on issues including the funding formula, the definition of disability, policies on comparability and state-wideness of benefits and policies related to amount, scope and duration of benefits. The results of these negotiations are not included in S. 1795.

We understand and respect the Finance Committee's responsibility and authority to draft Medicaid legislation. Our only objection is to the content of S. 1795 and efforts to describe that bill as the NGA proposal.

How the bill is inconsistent with the NGA agreement on Medicaid

The most obvious failing in the bill is in the financing formula. S. 1795 essentially recreates the block grants in earlier bills, thereby abandoning the NGA policy. The funding formula is critical because a guarantee to provide coverage without sufficient funding is a meaningless guarantee.

The NGA policy calls for a base allocation to each state using 1993, 1994 or 1995 actual Medicaid expenditures. The bill is inconsistent with the policy. The bill uses the 1996 numbers that appeared in the Medigrant bill. While these figures were generated with the input of Republican Governors, Democratic Governors were not invited to participate in this process. Many states have discovered that the figures in the bill do not match any actual data for that state. Actual baselines must be used if the bill is to comply with the NGA policy.

The NGA policy says that the formula for growth must account for estimated changes in each state's caseload. The growth portion of the formula in the bill is completely different. It has two serious flaws. First, the formula in the bill is not based upon an estimate of caseload or changes in case-mix.

This is entirely inconsistent with the NGA policy which is based upon the principle that federal funds should follow the people served by the program.

Second, growth rates in the allocation to each state are severely constrained by floors and ceilings. These constraints prevent states from actually receiving the funds associated with expected caseloads. The floors and ceilings so completely overwhelm the so-called "needs-based formula" that states would not have their needs met at all. At least 15 states are fully capped in advance. No matter how much the expected caseload might increase in Florida or Nevada, those state's allocations will increase by no more than 7.22% per year because that is the program cap. Meanwhile, many other states are guaranteed a significant rate of growth (4.33%) even if they are losing population and caseload.

The NGA policy calls for an umbrella fund that guarantees states a per-beneficiary payment for actual enrollees who were not accounted for in the growth estimates. The fund in S. 1795 is entirely different and inadequate. First, it is impossible for the fund to cover enrollees not included in the estimates because, as noted above, there are no estimates of caseload in the bill's formula. In addition, the umbrella only covers unanticipated caseload for one year. If a state experiences a recession that lasts more than one year (not an uncommon event) the umbrella is of no use. It is inappropriate to require states to cover certain populations and then not provide one dollar of federal support for people whose coverage is "unanticipated."

The NGA policy says that disproportionate share hospital (DSH) funds will not grow for states where DSH accounts for more than 12 percent of the Medicaid program. The bill does not comply with this provision. Instead, even states with excessive DSH programs will have the full growth rate in the formula applied to their DSH funds.

The dynamics of a capped medical assistance program are very different from those of the current Medicaid program. Under current law, if one state receives excess money, either through the DSH program or other means, the burden falls on the federal taxpayer, but not on other states. Under the proposed Medicaid block grant, states would be in competition for limited resources. Where the bill diverges from NGA policy and provides a higher level of funding for certain states, those funds are taken directly from the citizens of another state where they may be needed simply to support a basic Medicaid program.

The NGA formula was crafted with great care to balance legitimate, competing needs. S. 1795 fails to adhere to that formula, and has upset that careful balance. Because the formula has been modified in a manner that will assist certain states, some governors will certainly support the formula in the bill. However, this committee should not interpret support by those governors as a statement that S. 1795 is consistent with the NGA funding principles.

Committee staff has indicated they had no choice but to reject the NGA formula because GAO could not generate state-specific funding estimates using the NGA formula. That complaint rings hollow. The staff made no effort to work with us to clarify the formula. We can only interpret this excuse as a cover for the staff's desire to return to the block grant formula negotiated in a partisan process and rejected by the NGA.

While closer to the NGA proposal in some of its other features, the bill contains other serious flaws in its design of the program. The NGA proposal says that the guarantees of coverage and the set of benefits "remains" for certain populations and certain services. Some of the features of the bill so fundamentally change the nature of that guarantee that one cannot say that those guarantees remain -- certainly not in a form anything like what the NGA proposal contemplated. Specifically, permitting unlimited copayments and deductibles, residency requirements, family financial responsibility, and other similar provisions completely undermine the guarantee of health care services to our most needy citizens.

We raise these issues not because we do not trust states or because we believe the federal government needs to tell states how to administer their programs. Rather, we believe these provisions are important to guarantee the continued commitment of the federal government to this program. If states in difficult budget times can dramatically scale back coverage while receiving the same amount of federal funds, political support for this program at the federal level will wane. We believe there is value in a federally-defined safety-net, while we desire the flexibility to administer our programs in the most appropriate manner. We believe that the flexibility to define away the guarantee of coverage will undermine the program and harm all states.

There are some areas where Democratic Governors fought for a position in the NGA policy, but we were not successful. We knew that, to achieve bipartisan consensus, we needed to give on some issues in order to gain on others. As we read S. 1795, it largely reflects the negotiating position of the Republican Governors when we began bipartisan discussions in November of 1995. Rather than retaining the balance the governors negotiated, the bill picks and chooses issues, adopting the positions Republican Governors felt were most critical, while rejecting the most important issues for the Democratic Governors. Since S. 1795 strays so far from our compromise, we think it is important to bring to the committee's attention some of the issues where Republican Governors prevailed.

S. 1795 changes the federal matching formula, creating the possibility that more than $120 billion of state funds will be withdrawn from the Medicaid program over the next seven years while states continue to draw federal matching funds. The bill eliminates the guarantee of coverage for poor children age 13 to 18 that is being phased in under current law. It eliminates the standard federal definition of disability that is used to establish Medicaid eligibility. All of these provisions are consistent with our policy, but warrant the same reexamination that you have undertaken with respect to the formula. If the committee is going to consider legislation that is not based upon NGA policy, it should take a close look at each of these issues.

Governors negotiated a Medicaid policy in good faith. This Congress has rewritten our agreement and attempted to pin our bipartisan name on a bill that was written without the participation of a single Democratic Member of Congress or Democratic Governor. We would like very much to work with you on this issue. However, that work needs to proceed on the same bipartisan basis the Governors used. These important issues will never be resolved if partisan politics guide your work.

Welfare

While serious and significant differences remain on how to reform the Medicaid system, the same is not true for welfare.

And although there is no doubt that welfare and Medicaid are inextricably linked in practice, it has not been the position of the NGA that they must be united in one legislative package. We believe that a strategy that insists on linking welfare and Medicaid dooms hope of bipartisan agreement and legislative success for reform of either program.

We believe that the welfare title of the Republican leadership's bill represents strong, positive movement in the welfare debate. S.1795 is significantly better than H.R. 4 in many respects and reflects the bipartisan agreement of Governors in many important areas.

S.1795 includes $4 billion in additional resources for child care. The NGA bipartisan welfare agreement recommended the inclusion of $4 billion in additional resources for child care. S.1795 supports governors in their understanding that adequate child care is critical to the success of welfare-to-work efforts. Access to affordable, quality child care is the number one barrier to self-sufficiency faced by mothers currently receiving benefits.

S.1795 includes $2 billion for an economic contingency funds for states. NGA recommended that there be at least $2 billion in economic protection for states in times of economic downturns and/or increases in unemployment or child poverty. S. 1795 supports the funding levels recommended by the NGA and includes a more responsive trigger, consistent with the NGA agreement.

S. 1795 includes additional resources for performance incentives for states. The NGA proposal recommended the inclusion of incentives in the form of cash bonuses to states that exceed specified employment-related performance target. Governors believe that, along with state sanctions for poor performance, there should be rewards for states that perform well.

There are, however, some areas where S. 1795 does not reflect the NGA agreement.

S. 1795 does not include the NGA recommendations on how to measure work participation.

. Governors believe that in order to measure work participation states must count individuals who leave welfare for work. If states are not permitted to count persons who leave the roles to go to work in the work participation rate, the work measure is flawed and states' ability to succeed according to prescribed participation rates will be severely diminished. We urge Congress to revise the work participation calculation to reflect the NGA agreement.

S.1795 caps the excess shelter deduction in the Food Stamp Program. Although the Food Stamp Program is not within the jurisdiction of the Finance Committee, it is important to note that S. 1795 does not reflect the NGA agreement in this area.

NGA recommended that the cap on the shelter deduction included in H.R. 4 be rejected by Congress. A cap on the excess shelter deduction in the Food Stamp Program would have a disproportionate impact on the poorest families with children and would result in over a $1 billion more in savings from the Food Stamp Program. We urge Congress to eliminate the cap on the excess shelter deduction in the Food Stamp Program.

S. 1795 includes unnecessary restrictions on states' access to the economic contingency fund.

The NGA policy supports the $2 billion contingency fund included in S. 1795, however, S. 1795 includes additional restrictions on states' access to the contingency fund not supported by NGA policy. The contingency fund must be adequately funded and appropriately responsive to states' economic circumstances. We urge Congress to eliminate the unnecessary restrictions on states ability to draw down assistance.

S. 1795 includes a 20 percent reduction in funds for the Social Services Block Grant (SSBG).

States use a significant portion of their SSBG funds for child care assistance for low income families. It is counterintuitive to include new money for child care in one instance and snatch it away in another. We urge you to reject the additional cuts in the Social Services Block Grant.

S. 1795 includes new restrictions on states' abilities to provide services to families. The NGA supports time-limits as applied to cash assistance. The NGA policy does not support the application of a time-limit on non-cash assistance. S. 1795 would prohibit states from using the block grant for important work supports such as transportation vouchers or job retention counseling. It would also prohibit state discretion to provide in-kind services in particular circumstances. We urge Congress to impose the time-limit on cash assistance only.

Although we have used this opportunity to discuss some of the remaining issues on welfare reform, our primary message on welfare continues to be that we believe bipartisan welfare reform is within reach. Congress has come a great distance on welfare in the last year and S. 1795 is consistent with the NGA welfare policy in many important areas. We urge Congress begin bipartisan discussions on welfare and to move a welfare bill as soon as possible.

It has always been our hope that legislation to reform both the welfare and Medicaid programs could be enacted this year. The content of S. 1795 suggests that the governors' proposal on welfare is within reach, while our proposal on Medicaid is not likely to be adopted by this Congress. We would be very disappointed to see welfare reform lost in a battle over Medicaid. Therefore, unless this Congress is willing to substantially modify its approach to Medicaid, we would urge you to enact welfare reform in a separate bill and allow states to continue our efforts to improve this program.

WR-NGA plan

STATE OF DELAWARE

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Thomas R. Carper
Governor

J. Jonathon Jones
Director

Maura J. Cullen
Deputy Director

FACSIMILE COVER PAGE

TO: Bruce Reed - WH
John Monahan - HHS
Carmen Nazario - DHSS

FAX#:

FROM: 6/20/96, Office of Governor Carper, Delaware
Maura

DATE:

OF PAGES: 9 (INCLUDING COVER)

NOTE:

STATE OF DELAWARE
OFFICE OF THE GOVERNOR

THOMAS R. CARPER
GOVERNOR

June 19, 1996

The Honorable Bill Archer, Chairman
Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Archer:

I am writing in response to your letter of June 11th to assure you that Democratic governors will not abandon bipartisan efforts to enact Medicaid and welfare reform. However, you are right to point out that Democratic governors view the Medicaid and welfare provisions of H.R. 3507 differently. It is not the position of NGA, nor my personal belief, that reform of these programs must be united in one legislative vehicle. While I hope to see major changes adopted to both welfare and Medicaid this year, I concur with many who believe a strategy that insists on linking welfare and Medicaid may doom hope of bipartisan agreement and legislative success for reform of either program.

Let me defer here on the Medicaid issue to my three Democratic colleagues directly involved in negotiating the NGA's Medicaid proposal. I ask you to refer to the attached letter sent to Senator Roth by Democratic governors outlining issues with the Medicaid title of H.R. 3507.

Clearly, serious differences remain on how best to reform the Medicaid program; however, the same is not true for welfare. The welfare provisions of H.R. 3507, as introduced, are largely consistent with the major recommendations of the National Governors Association. The inclusion of additional resources for child care and the contingency fund, as well as the inclusion of many of performance incentives and the NGA recommendations on work, undoubtedly strengthen the bill. In addition, I am encouraged that your Committee rejected inclusion of additional cuts for the Social Services Block Grant. And although some differences remain, the differences are not great. I, like you, have every hope that we can reconcile these differences in the weeks ahead to craft a welfare compromise acceptable to Democrats and Republicans.

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CARVEL STATE OFFICE BLDG.
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The welfare debate and the prognosis for successful reform have been greatly enhanced by the open, constructive dialogue between us that has taken place in the drafting of the welfare bill. You and your staff are to be commended for your efforts. Lets continue to work together to achieve our shared goal - - meaningful, responsible reform of the welfare system this year. That goal, which all of us seek, is within our grasp at last. It is important that we not let it slip away.

With best personal regards.

Sincerely,

Tom Carper

Tom Carper
Governor

cc: Governor Chiles
Governor Romer
Governor Miller

Attachment

STATE OF DELAWARE
OFFICE OF THE GOVERNOR

THOMAS R. CARPER
GOVERNOR

June 19, 1996

The Honorable E. Clay Shaw, Jr., Chairman
Ways and Means Subcommittee on Human Resources
B-317 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shaw:

I am writing in response to your letter of June 11th to assure you that Democratic governors will not abandon bipartisan efforts to enact Medicaid and welfare reform. However, you are right to point out that Democratic governors view the Medicaid and welfare provisions of H.R. 3507 differently. It is not the position of NGA, nor my personal belief, that reform of these programs must be united in one legislative vehicle. While I hope to see major changes adopted to both welfare and Medicaid this year, I concur with many who believe a strategy that insists on linking welfare and Medicaid may doom hope of bipartisan agreement and legislative success for reform of either program.

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The welfare debate and the prognosis for successful reform have been greatly enhanced by the open, constructive dialogue between us that has taken place in the drafting of the welfare bill. You and your staff - especially Ron Haskins - are to be commended for your efforts. Lets continue to work together to achieve our shared goal -- meaningful, responsible reform of the welfare system this year. That goal, which all of us seek, is within our grasp at last. It is important that we not let it slip away.

With best personal regards.

Sincerely,

Tom Carper

Tom Carper
Governor

cc: Governor Chiles
Governor Romer
Governor Miller

Attachment

June 13, 1996

The Honorable William V. Roth, Jr.
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

We are writing this letter in response to separate letters you sent each of us on May 31, 1996, regarding Medicaid and S. 1795. We hope this letter will clarify how S. 1795 fails to match the NGA policy on Medicaid and make clear to you that we have no interest in abandoning bipartisan efforts to enact Medicaid and welfare reform.

In February a bipartisan group of governors representing the National Governors' Association (NGA) shared with your committee the outline of a Medicaid reform proposal that had been adopted unanimously at our winter meeting. That outline was developed after more than 100 hours of face-to-face negotiations by a group of six governors.

We want to say in the clearest terms possible: the bill before you (S. 1795) does not reflect the NGA agreement. We know; we were three of the governors who negotiated that agreement

Before we discuss how S. 1795 differs in critical and substantial ways from the NGA agreement, we must say that we are troubled by public statements that have been made about this proposal. The Congressional majority took our bipartisan work and spent more than three months developing legislation. During that period there was no contact either by members of the committees or staff with the bipartisan NGA, with Democratic Governors or our staff. While committee staff were drafting this bill, a bipartisan group of governors continued to meet to develop the details of the NGA proposal. We reached greater clarity on issues including the funding formula, the definition of disability, policies on comparability and state-wideness of benefits and policies related to amount, scope and duration of benefits. The results of these negotiations are not included in S. 1795.

We understand and respect the Finance Committee's responsibility and authority to draft Medicaid legislation. Our only objection is to the content of S. 1795 and efforts to describe that bill as the NGA proposal.

How the bill is inconsistent with the NGA agreement

The most obvious failing in the bill is in the financing formula. S. 1795 essentially recreates the block grants in earlier bills, thereby abandoning the NGA policy. The funding formula is critical because a guarantee to provide coverage without sufficient funding is a meaningless guarantee.

The NGA policy calls for a base allocation to each state using 1993, 1994 or 1995 actual Medicaid expenditures. The bill is inconsistent with the policy. The bill uses the 1996 numbers that appeared in the Medigrant bill. While these figures were generated with the input of Republican Governors, Democratic Governors were not invited to participate in this process. Many states have discovered that the figures in the bill do not match any actual data for that state. Actual baselines must be used if the bill is to comply with the NGA policy.

The NGA policy says that the formula for growth must account for estimated changes in each state's caseload. The growth portion of the formula in the bill is completely different. It has two serious flaws. First, the formula in the bill is not based upon an estimate of caseload or changes in case-mix. This is entirely inconsistent with the NGA policy which is based upon the principle that federal funds should follow the people served by the program.

Second, growth rates in the allocation to each state are severely constrained by floors and ceilings. These constraints prevent states from actually receiving the funds associated with expected caseloads. The floors and ceilings so completely overwhelm the so-called "needs-based formula" that states would not have their needs met at all. At least 15 states are fully capped in advance. No matter how much the expected caseload might increase in Florida or Nevada, those state's allocations will increase by no more than 7.22% per year because that is the program cap. Meanwhile, many other states are guaranteed a significant rate of growth (4.33%) even if they are losing population and caseload.

The NGA policy calls for an umbrella fund that guarantees states a per-beneficiary payment for actual enrollees who were not accounted for in the growth estimates. The fund in S. 1795 is entirely different and inadequate. First, it is impossible for the fund to cover enrollees not included in the estimates because, as noted above, there are no estimates of caseload in the bill's formula. In addition, the umbrella only covers unanticipated caseload for one year. If a state experiences a recession that lasts more than one year (not an uncommon event) the umbrella is of no use. It is inappropriate to require states to cover certain populations and then not provide one dollar of federal support for people whose coverage is "unanticipated."

The NGA policy says that disproportionate share hospital (DSH) funds will not grow for states where DSH accounts for more than 12 percent of the Medicaid program. The bill does not comply with this provision. Instead, even states with excessive DSH programs will have the full growth rate in the formula applied to their DSH funds.

The dynamics of a capped medical assistance program are very different from those of the current Medicaid program. Under current law, if one state receives excess money, either through the DSH program or other means, the burden falls on the federal taxpayer, but not on other states. Under the proposed Medicaid block grant, states would be in competition for limited resources. Where the bill diverges from NGA policy and provides a higher level of funding for certain states, those funds are taken directly from the citizens of another state where they may be needed simply to support a basic Medicaid program.

The NGA formula was crafted with great care to balance legitimate, competing needs. S. 1795 fails to adhere to that formula, and has upset that careful balance. Because the formula has been modified in a manner that will assist certain states, some governors will certainly support the formula in the bill. However, this committee should not interpret support by those governors as a statement that S. 1795 is consistent with the NGA funding principles.

Committee staff has indicated they had no choice but to reject the NGA formula because GAO could not generate state-specific funding estimates using the NGA formula. That complaint rings hollow. The staff made no effort to work with us to clarify the formula. We can only interpret this excuse as a cover for the staff's desire to return to the block grant formula negotiated in a partisan process and rejected by the NGA.

While closer to the NGA proposal in some of its other features, the bill contains other serious flaws in its design of the program. The NGA proposal says that the guarantees of coverage and the set of benefits "remains" for certain populations and certain services. Some of the features of the bill so fundamentally change the nature of that guarantee that one cannot say that those guarantees remain -- certainly not in a form anything like what the NGA proposal contemplated. Specifically, permitting unlimited copayments and deductibles, residency requirements, family financial responsibility, and other similar provisions completely undermine the guarantee of health care services to our most needy citizens.

We raise these issues not because we do not trust states or because we believe the federal government needs to tell states how to administer their programs. Rather, we believe these provisions are important to guarantee the continued commitment of the federal government to this program. If states in difficult budget times can dramatically scale back coverage while receiving the same amount of federal funds, political support for this program at the federal level will wane. We believe there is value in a federally-defined safety-net, while we desire the flexibility to administer our programs in the most appropriate manner. We believe that the flexibility to define away the guarantee of coverage will undermine the program and harm all states.

There are some areas where Democratic Governors fought for a position in the NGA policy, but we were not successful. We knew that, to achieve bipartisan consensus, we needed to give on some issues in order to gain on others. As we read S. 1795, it largely reflects the negotiating position of the Republican Governors when we began bipartisan discussions in November of 1995. Rather than retaining the balance the governors negotiated, the bill picks and chooses issues, adopting the positions Republican Governors felt were most critical, while rejecting the most important issues for the Democratic Governors. Since S. 1795 strays so far from our compromise, we think it is important to bring to the committee's attention some of the issues where Republican Governors prevailed.

S. 1795 changes the federal matching formula, creating the possibility that more than $120 billion of state funds will be withdrawn from the Medicaid program over the next seven years while states continue to draw federal matching funds. The bill eliminates the guarantee of coverage for poor children age 13 to 18 that is being phased in under current law. It eliminates the standard federal definition of disability that is used to establish Medicaid eligibility. All of these provisions are consistent with our policy, but warrant the same reexamination that you have undertaken with respect to the formula. If the committee is going to consider legislation that is not based upon NGA policy, it should take a close look at each of these issues.

Mr. Chairman, you issued a press release criticizing Democratic Governors for abandoning efforts to reform Medicaid and welfare. This partisan attack was unfair. Governors negotiated a Medicaid policy in good faith. You chose to rewrite our agreement and to pin our bipartisan name on a bill that was written without the participation of a single Democratic Member of Congress or Democratic Governor. We would like very much to work with you on this issue. However, that work needs to proceed on the same bipartisan basis the Governors used. These important issues will never be resolved if partisan politics guide your work.

Sincerely,

Roy Romer	Lawton Chiles	Bob Miller
Governor of Colorado	Governor of Florida	Governor of Nevada

cc: Ranking Member Moynihan, Chairman Bliley, Ranking Member Dingel

JUN 26 '96 12:43PM P.2/4

NATIONAL GOVERNORS' ASSOCIATION

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June 26, 1996

WR-NGA plan

Senate Finance Committee
United States Senate
Washington, DC 20510

Dear Finance Committee Member:

The nation's Governors appreciate that *S.1795, as introduced*, incorporated many of the National Governors' Association's (NGA) recommendations on welfare reform. NGA hopes that Congress will continue to look to the Governors' bipartisan efforts on a welfare reform policy and build on the lessons learned through a decade of state experimentation in welfare reform.

However, upon initial review of the Chairman's mark, NGA believes that many of the changes contained in the mark are contradictory to the NGA bipartisan agreement. The mark includes unreasonable modifications to the work requirement, and additional administrative burdens, restrictions and penalties that are unacceptable. Governors believe these changes in the Chairman's mark greatly restrict state flexibility and will result in increased, unfunded costs for states, while at the same time undermining states ability to implement effective welfare reform programs. These changes threaten the ability of Governors to provide any support for the revised welfare package, and may, in fact, result in Governors opposing the bill.

As you mark up the welfare provisions of S. 1795, the Personal Responsibility and Work Opportunity Act of 1996, NGA strongly urges you to consider the recommendations contained in the welfare reform policy adopted unanimously by the nation's Governors in February. Governors believe that these changes are needed to create a welfare reform measure that will foster independence and promote responsibility, provide adequate support for families that are engaged in work, and accord states the flexibility and resources they need to transform welfare into a transitional program leading to work.

Below is a partial list of amendments that may be offered during the committee markup and revisions included in the Chairman's mark that are either opposed or supported by NGA. This list is not meant to be exhaustive, and there may be other amendments or revisions of interest or concern to Governors that are not on this list. In the NGA welfare reform policy, the Governors did not take a position on the provisions related to benefits for immigrants, and NGA will not be making recommendations on amendments in these areas. As you markup S. 1795, NGA urges you to consider the following recommendations based on the policy statement of the nation's Governors on welfare reform.

THE GOVERNORS URGE YOU TO SUPPORT THE FOLLOWING AMENDMENTS:

- **Support the amendment to permit states to count toward the work participation rate calculation those individuals who have left welfare for work for the first six months that they are in the workforce (Breaux).** The Governors believe states should receive credit in the participation rate for successfully moving people off of welfare and into employment, thereby meeting one of the primary goals of welfare reform. This will also provide states with an incentive to expand their job retention efforts.

- **Support the amendment that applies the time limit only to cash assistance (Breaux).** S. 1795 sets a sixty-month lifetime limit on any federally funded assistance under the block grant. This would prohibit states from using the block grant for important work supports such as transportation or job retention counseling after the five-year limit. Consistent with the NGA welfare reform policy, NGA urges you to support the Breaux amendment that would apply the time limit only to cash assistance.

- **Support the amendment to restore funding for the Social Services Block Grant (Rockefeller).** This amendment would limit the cut in the Social Services Block Grant (SSBG) to 10 percent rather than 20 percent. States use a significant portion of their SSBG funds for child care for low-income families. Thus, the additional cut currently contained in S. 1795 negates much of the increase in child care funding provided under the bill.

- **Support technical improvements to the contingency fund (Breaux).** Access to additional matching funds is critical to states during periods of economic recession. NGA supports two amendments proposed by Senator Breaux. One clarifies the language relating to maintenance of effort in the contingency fund and another modifies the fund so states that access the contingency fund during only part of the year are not penalized with a less advantageous match rate.

- **Support the amendment to extend the 75 percent enhanced match rate through fiscal 1997 for statewide automated child welfare information systems (SACWIS), (Chafee, Rockefeller).** Although not specifically addressed in the NGA policy, this extension is important for many states that are trying to meet systems requirements that will strengthen their child welfare and child protection efforts.

Governors urge you to OPPOSE amendments or revisions to the Chairman's mark that would limit state flexibility, create unreasonable work requirements, impose new mandates, or encroach on the ability of each state to direct resources and design a welfare reform program to meet its unique needs.

In the area of work, Governors strongly oppose any efforts to increase penalties, increase work participation rates, further restrict what activities count toward the work participation rate, or change the hours of work required. The Governors' policy included specific recommendations in these areas, many of which were subsequently incorporated into S. 1795, as introduced. The recommendations reflect a careful balancing of the goals of welfare reform, the availability of resources, and the recognition that economic and demographic circumstances differ among states. Imposing any additional limitations or modifications to the work requirement would limit state flexibility.

<u>THE GOVERNORS URGE YOU TO OPPOSE THE FOLLOWING AMENDMENTS OR REVISIONS IN THE AREA OF WORK.</u>

- **Oppose the revision in the Chairman's mark to increase the number of hours of work required per week to thirty-five hours in future years.** NGA's recommendation that the work requirement be set at twenty-five hours was incorporated into S. 1795. Many states will set higher hourly requirements, but this flexibility will enable states to design programs that are consistent with local labor market opportunities and the availability of child care.

- **Oppose the revision in the Chairman's mark to decrease to four weeks the number of weeks that job search can count as work.** NGA supports the twelve weeks of job search contained in S. 1795, as introduced. Job search has proven to be effective when an individual first enters a program and also after the completion of individual work components, such as workfare or community service. A reduction to four weeks would limit state flexibility to use this cost-effective strategy to move recipients into work.

- **Oppose the revision in the Chairman's mark to increase the work participation rates.** NGA opposes any increase in the work participation rates above the original S. 1795 requirements. Many training and education activities that are currently counted under JOBS will not count toward the new work requirements. Consequently, states will face the challenge of transforming their current JOBS program into a program that emphasizes quick movement into the labor force. An increase in the work rates will result in increased costs to states for child care and work programs.

- **Oppose the revision in the Chairman's mark to increase penalties for failure to meet the work participation requirements.** The proposed amendment to increase the penalty by 5 percent for each consecutive failure to meet the work rate is unduly harsh, particularly given the stringent nature of the work requirements. Ironically, the loss of block grant funds due to penalties will make it even more difficult for a state to meet the work requirements.

- **Oppose the amendment requiring states to count exempt families in the work participation rate calculation (Gramm).** This amendment would retain the state option to exempt families with children below age one from the work requirements but *add* the requirement that such families count in the denominator for purposes of determining the work participation rate. This penalizes states that grant the exemption, effectively eliminating this option. The exemption in S. 1795 is an acknowledgment that child care costs for infants are very high and that there often is a shortage of infant care.

- **Oppose the amendment to increase work hours by ten hours a week for families receiving subsidized child care (Gramm).** This amendment would greatly increase child care costs as well as impose a higher work requirement on families with younger children, because families with older children—particularly teenagers—are less likely to need subsidized child care assistance.

- **Oppose the revision in the Chairman's mark to exempt families with children below age eleven.** S. 1795, as introduced, prohibits states from sanctioning families with children below age six for failure to participate in work if failure to participate was because of a lack of child care. This revision would raise the age to eleven. NGA is concerned that this revision effectively penalizes states because they still would be required to count these individuals in the denominator of the work participation rate.

THE GOVERNORS URGE YOU TO OPPOSE THE FOLLOWING AMENDMENTS OR REVISIONS IN THE CHAIRMAN'S MARK IN THESE ADDITIONAL AREAS.

- **Oppose the revision in the Chairman's mark to increase the maintenance-of-effort requirement above the 75 percent in the cash assistance block grant or further narrow the definition of what counts toward maintenance-of-effort.**

- **Oppose the revisions in the Chairman's mark that increase state plan requirements and include additional state penalties.**

- **Oppose the amendment to limit hardship exemption to 15 percent (Gramm).** NGA policy supports the current provision in S. 1795, as introduced, that allows states to exempt up to 20 percent of their caseload from the five-year lifetime limit on benefits.

- **Oppose the amendment to mandate that states provide in-kind vouchers to families after a state or federal time limit on benefits is triggered (Breaux, Mosely-Braun).** NGA believes that states should have the *option* to provide non-cash forms of assistance after the time limit, but they should not be mandated to do so.

- **Oppose the provision in the Chairman's mark to restrict the transferability of funds out of the cash assistance block grant to the child care block grant only.** The Governors believe that it is appropriate to allow a transfer of funds into the foster care program or the Social Services Block Grant.

- **Oppose a family cap mandate in the Chairman's mark.** NGA supports a family cap as an option, rather than a mandate, to prohibit benefits to additional children born or conceived while the parent is on welfare.

Governors urge you to consider the above recommendations.

Sincerely,

Raymond C. Scheppach

WR-N6A plan

STATE OF DELAWARE

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TO: Bruce Reed

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FROM: Maura, Office of Governor Carper, Delaware

DATE:

OF PAGES: (INCLUDING COVER)

NOTE:

DRAFT - Not for Distribution June 26, 1996

Members of the Senate Finance Committee

Dear Finance Committee Members:

The nation's Governors appreciate that S. 1795, *as introduced*, incorporated many of the National Governors' Association's (NGA) recommendations on welfare reform. NGA hopes that Congress will continue to look to the Governors' bipartisan efforts on a welfare reform policy and build on the lessons learned through a decade of state experimentation in welfare reform. However, upon initial review of the Chairman's mark, NGA believes that many of the changes contained in the mark are contradictory to the NGA bipartisan agreement. Unreasonable and onerous modifications to the work requirement and additional administrative burdens, restrictions and penalties for states threaten the ability of Governors to provide any support for the revised welfare package. Governors believe these changes in the Chairman's mark greatly restrict state flexibility and will result increased, unfunded costs for states, while at the same time undermining states ability to implement effective welfare reform programs.

As you mark up the welfare provisions of S. 1795, the Personal Responsibility and Work Opportunity Act of 1996, NGA strongly urges you to consider the recommendations contained in the welfare reform policy adopted unanimously by the nation's Governors in February. Governors believe that these changes are needed to create a welfare reform measure that will foster independence and promote responsibility, provide adequate support for families that are engaged in work, and accord states the flexibility and resources they need to transform welfare into a transitional program leading to work.

Below is a partial list of amendments or revisions included in the Chairman's mark that may be offered during the committee markup that are either opposed or supported by NGA. This list is not meant to be exhaustive, and there may be other amendments of interest or concern to Governors that are not on this list. In the NGA welfare reform policy, the Governors did not take a position on the provisions related to benefits for immigrants, and NGA will not be making recommendations on amendments in these areas. As you markup S. 1795, NGA urges you to consider the following recommendations based on the policy statement of the nation's Governors on welfare reform.

THE GOVERNORS URGE YOU TO SUPPORT THE FOLLOWING AMENDMENTS:

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- **Support technical improvements to the contingency fund (Breaux).** Access to additional matching funds is critical to states during periods of economic recession. NGA supports two amendments proposed by Senator Breaux. One clarifies the language relating to maintenance of effort in the contingency fund and another modifies the fund so states that access the contingency fund during only part of the year are not penalized with a less advantageous match rate.

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Governors strongly oppose what appear to be a number of administrative requirements and penalties included in the Chairman's mark which
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THE GOVERNORS URGE YOU TO OPPOSE THE FOLLOWING AMENDMENTS OR REVISIONS IN THE AREA OF WORK.

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- **Oppose the revisions in the Chairman's mark which increase state plan requirements and includes additional onerous penalties.**

- **Oppose the amendment to limit hardship exemption to 15 percent (Gramm).** NGA policy supports the current provision in S. 1795 that allows states to exempt up to 20 percent of their caseload from the five-year lifetime limit on benefits.

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- **Oppose a family cap mandate in the Chairman's mark.** NGA supports a family cap as an option, rather than a mandate, to prohibit benefits to additional children born or conceived while the parent is on welfare.

- **Oppose the amendment to link Medicaid eligibility to AFDC eligibility. (Chafee, Breaux)** NGA opposes this mandate, which limits state flexibility. The NGA Medicaid policy would allow states three options: retaining eligibility based on current-law AFDC eligibility; linking Medicaid eligibility to a state's new welfare program under the block grant; or linking eligibility to AFDC eligibility up to the national median income standard.

Governors urge you to consider the above recommendations.

Sincerely,

Raymond C. Scheppach

w/ NGA plan

PROBLEMS WITH THE CONFERENCE WELFARE BILL

WITH MODIFICATIONS AS DISCUSSED BY NGA

1. **Food Stamps and Child Nutrition.** The proposal would allow optional block grants for Food Stamps, and it does not clearly oppose a cap on FS spending. It allows seven demonstrations of school lunch block grants.

2. **SSI Kids.** The proposal accepts the two-tier benefit structure for disabled kids, and is unclear whether new rules about functional assessment apply immediately to current recipients of SSI.

3. **Child Protection/Child Welfare.** The proposal may accept the block granting of child welfare and child protection funds and is unclear about maintaining the basic protections for abused and neglected children.

4. **Maintenance of Effort.** The proposal includes a 75 percent MOE, with loose definitions of what counts.

5. **Contingency Fund.** The proposal improves the contingency fund by adding $1 million and allowing for draw-down based on increases in the Food Stamp population. It still does not, however, seem to respond fully to the potential needs of states.

6. **Medicaid Link.** The proposal appears not to guarantee Meciaid coverage to all those currently eligible.

7. **Prohibitions on Eligibility.** The proposal allows states to deny cash benefits to minor mothers. It requires states to impose a family cap unless the state explictly opts out.

8. **Child Care.** The propsal adds $4 billion to mandatory spending and adjusts work requirements to be more compatible with the funds available. It does not continue current health and safety provisions, nor an adequte set aside for improving child care quality.

9. **Immigrants.** The proposal appears to exempt the elderly and disabled from the bans on receipt of assistance. It still, however, denies assistance to many current legal immigrants.

10. **Recipient Protections.** The proposal explicitly repeals the entitlement; it includes no guarantees of objective and equitable treatment or of prompt review of eligibility and provision of assistance; it includes no provisions for fair hearings.

WELFARE REFORM

Governor Carper has been conversing with Governor Engler in an effort to reach a compromise that would be endorsed by Governors, the Administration and Congress.

There is an agreement on the following areas which both sides believe will provide greater flexibility to Governors, provide assistance to families and children and recognize the importance of incentives for improved performance and sustained success.

1. **Flexibility in Meeting Work Requirements**
   - Change the participation rate formula to take into account those who leave cash assistance for work.
   - Change the number of hours of participation required in future years to 25 hours (20 hours for parents with a child under six).
   - Count job search and job readiness as a work activity for 12 weeks.

This agreement vastly improves the Conference Report by reducing the number of hours required for work from 35 to 25 and preserves the Senate provision of 20 hours for parents with a child under six. Job search and job readiness in the conference agreement were only counted as work activities for one month and are now extended to 3 months. States can get credit for their success in moving people to work by being able to count recipients who have left welfare for work in their participation rate.

2. **Performance Incentives**
   - Grant cash bonuses (not a set-aside from the block grant) for exceeding employment related performance targets.
   - Maintain the teen pregnancy reduction bonuses as stated in the conference agreement.

We are proposing a 5% bonus of the actual block that the State gets. Michigan agrees to this amount in principle but wants to look at the financial impact. This money would be given as additional funds rather than a set-aside. The bonus would be automatically provided based on the State performance as defined in the Senate bill for job placement rather than an award to the highest performing states. This bonus is to be added to the MOE reduction that is called for in the Conference Agreement for the highest performing states.

The Conference Agreement language on bonuses for reducing illegitimacy ratios without increasing abortion is acceptable to both sides. States that reduce their illegitimacy ratio by 1% in any year compared to 1995 get a 5% bonus; a 2% reduction gets the state a 10% bonus.

3. **Child Care**
   - Add $4 billion

Adds $4 billion to the funds described in the Conference Report. This would satisfy the shortfall between the Conference Report and the CBO estimate of need. Michigan will argue that revising the work requirements should bring the CBO estimate downward in order to meet the participation rate. We insist that money for child care is needed beyond participation rates to assist those who have left welfare for work.

4 **Contingency Fund**
   - Add $1 billion to the proposed funding.
   - Add a funding trigger of Food Stamp caseload growth of 10% or greater.

At an average of $400 per grant, the $1 billion in the conference report could be used-up by 200,000 families nationwilde in about a year. Adding another billion dollars and a fair trigger makes this a more realistic protection for states, a necessity in the absence of individual entitlements.

The trigger would make it possible for any state to be eligible for monies from the Contingency Fund once its food stamp caseload reaches a level at least 10% higher than 1995.

The unemployment trigger included in the Conference Report would remain an option to the State.

5. **Legal Aliens**
   - Add the provision that legally admitted immigrants who are elderly or disabled would not be denied assistance if there is no available sponsor income.

The Conference Report provides a 5 year bar and then deeming until citizenship for SSI and Food Stamps. This agreement protects elderly and disabled legal immigrants who have no access to a sponsor's support.

6. **Earned Income Tax Credit (EITC)**
   - Limit the savings from revising the EITC to $10 billion.
   - Add a state option to advance the EITC.

This provision is in the Reconciliation Bill and not in the Conference Report. The impact of EITC on the ability to put people to work is so important that it bears inclusion in this agreement. A possible strategy would be to wait and deal with this issue as part of the budget. With that option, is the risk of losing Republican support for lowering the savings. Through this agreement, the Republicans are willing to lower the savings from $15 billion to $10 billion. This provides for some tightening of this program, which no ones denies is necessary, while preserving the bulk of this critical support to the working poor. The state option to advance EITC is an added attraction. This would enhance the incentives for work without overburdening state funds.

7. **SSI**

- Effective date for new applicants is 1998.
- Children currently receiving services will have redeterminations based on current rules.

This agreement substantially improves the Conference Report by protecting current beneficiaries and postponing the effective date for new applicants until 1998. Current beneficiaries will not only continue to be eligible, they will also receive the full benefit amount. NO

UNRESOLVED AREAS

1. **Medicaid Delinking** enemy

While recognizing that there are internal differences the democrat position has been to argue for guaranteed medical assistance to all current recipients. The Republicans are willing to argue to guarantee medical assistance to all those eligible for the new cash assistance program under block grants. This seems like the logical compromise since it relieves the state from the requirement of maintaining two eligibility systems for medical assistance.

2. **Food Stamps/Child Nutrition** NO

States have not raised issues in this area. The position of the Administration, from the conversation with Bruce Reed, is that the seven state demonstrations for child nutrition provided for in the Conference Agreement are acceptable; but they would like to not make it too easy for the states to go with a Block Grant. It is difficult to argue for a state perspective against the Conference Report since it makes the block grant optional. In more recent conversations, the administration is asking that the Senate language, which retains the uncapped individual entitlement, be preserved.

no demos on school lunch

School lunch DS

3. Child Protection

The Republicans are looking for flexibility and are willing to concede on the issues of the block grant if they are able to find a satisfactory alternative. They have put on the table the APWA recommendation as a possible option. This option allows the state to choose between maintaining the current uncapped entitlement with all its strings or choosing a block grant with a capped entitlement. If the state chooses the block grant, it must still preserve the individual entitlement. If caseload increases, the State must use its own funds to meet the caseload needs.

Other alternatives more advantageous to the states are being explored. For example a state could be given, within the uncapped entitlement, flexibility to transfer a percentage of funds from child protection to family preservation. A way would have to be found to establish some outer threshold for overall spending in order to make this option acceptable.

80% MOE for cw BG

4. Maintenance of Effort

The Administration's position is very strong for preserving 80% MOE. The Republicans have been steadfast for 75% but are now willing to move to 80% if flexibility for child protection is obtained.

SUMMARY OF THE CONFERENCE AGREEMENT FOR HR 4, THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY ACT OF 1995

Overview and update

The conference agreement for HR 4, the Personal Responsibility and Work Opportunity Act of 1995, was passed by the House on December 21 (245 yeas - 178 nays), the Senate on December 22 (52 yeas - 47 nays) and sent to the President on Friday, December 29, 1995. The President vetoed the bill on January 9, 1996. It is clear that the margin of support is not sufficient in either house to override a veto.

The outlook for welfare reform is now uncertain and linked, to some degree, to the budget negotiations which may result in a new (and lower) savings requirement for welfare reform. If Congress and the President are successful in reaching an agreement on balancing the budget, then it is likely that the welfare reform provisions will be incorporated into the budget reconciliation bill. If the budget situation remains unresolved, welfare could be negotiated separately.

While the President has vetoed the bill, at least some of the structural and programmatic changes contained in HR 4 (in particular, time limited welfare, tough work requirements, the block granting of AFDC and capped funding for child care) will likely be in any bill passed by Congress. The prognosis for a child protection block grant, optional school nutrition block grant and optional food stamp block grants is unclear. Additionally, disagreement still remains over the level of funding for child care and the level of cuts for food stamps, SSI and benefits to legal immigrants.

CBO estimates. CBO estimates that the HR 4 conference agreement (using the new December baseline) will result in savings of $64 billion over seven years. This includes almost $4 billion in Medicaid savings but does not include $2.5 billion in savings that would be realized by denying SSI benefits to drug addicts and alcoholics. This SSI section was deleted from the welfare conference agreement because it was included in the House-passed bill HR 2684, the Senior Citizens Right to Work Act.

The savings are less than those projected using the March baseline ($72 billion) because the new assumptions take into account that AFDC caseloads have declined significantly below FY 1994 levels below so that projected spending under *current law* is less. In fact, according to CBO projected spending under HR 4 for the new cash assistance block grant and mandatory child care will actually be *greater* than under current law programs until FY 2001. The bulk of the savings in HR 4 comes from changes in the SSI program - $29 billion (reduction in SSI benefits for children and denial of SSI benefits to legal immigrants) and decreases in the food stamp program - $26 billion (including denial to immigrants).

Costs of the work requirement. CBO has recently released estimates of the costs to states (child care and work program costs) of meeting the work participation rates under the HR 4 conference agreement. These new estimates also use the December baseline. CBO estimates that *total child care costs* related to meeting the work participation rate over the period FY 1997-2002 to be $16.43 billion. Over this same period, the bill provides $9.8 billion in federal funding ($4 billion of which is new money). Because states are required to maintain FY 1994 child care spending levels and provide a match to draw down the new dollars, states are expected to spend $7.1

billion to access the full amount. Thus, combined federal and state spending on child care would be $16.9 billion and would be sufficient to meet the child care demands created by the new work requirement. However, this does not take into account child care funds states will need or want to spend on transitional child care and families at-risk of welfare. Under current law, CBO estimates that total federal and state spending in these areas for FY 1997-2002 would total almost $6 billion or $1 billion annually.

CBO estimates the *work program costs* of meeting the work requirement to be $21.95 billion for FY 1997-2002. The Temporary Assistance for Needy Families (TANF) block grant consolidates JOBS funding in its base, essentially at the FY 1994 level, but does not provide any new money for a work program. In FY 1994, combined federal and state spending on JOBS was $1.4 billion. Over the six year period, CBO estimates that the work program would cost an additional $13.6 billion above what state and federal governments would have spent on JOBS during this period under current law.

HR 4 Conference Report. The conference report for HR 4 is similar to the welfare reform provisions that were contained in the vetoed budget reconciliation bill, HR 2491, with the inclusion of items that were stripped from the reconciliation bill because of possible Byrd rule violations. Thus, added back into the bill is the portion of the Child Protection Block Grant which is discretionary ($320 million a year); the reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA) in the form of a block grant; the exemption of state and local electronic benefit programs (EBT) from Regulation E; the expanded waiver authority in the Food Stamp program; the requirement that block grant funds be appropriated through the legislature; and the state option to exempt families with children under age one from the work requirement. Additionally, the following changes were made prior to floor consideration largely in an attempt to meet some of the concerns of moderate Republicans and shore up their support:

1. New implementation date of October 1, 1996 for the Temporary Assistance for Needy Families (TANF) block grant, child care block grant and the child protection block grant. States will continue to receive funding for AFDC as an open-ended entitlement in FY 1996 although states do have the *option* to convert to the TANF block grant in FY 1996.
2. The addition of $1 billion more in mandatory child care funding. Thus, total *new* child care funding would be $4 billion over the six years FY 1997-2002, (rather than $3 billion over seven).
3. A 10% cut in the Social Services Block Grant funding level rather than a 20% cut beginning in FY 1997.
4. The addition of $200 million into the contingency fund for a total of $1 billion over five years (FY 97- FY 2001).
5. The addition of $1 billion to the child protection block grant spread over six years (above the level in the reconciliation bill).
6. A reduction of $1.5 billion in the cut to child nutrition programs.
7. A child nutrition block grant option on a limited, demonstration basis. One state in each of seven consumer service regions will receive a block grant.

A summary of the bill follows.

1. BLOCK GRANT FOR TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) (TITLE I)

Purpose. To provide assistance to needy families with children so they can be cared for in their own home and provide parents with job preparation, work and support services to enable them to become self-sufficient. States may also use funds on efforts to prevent out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families.

Grants to states.

- Basic grant. Consolidates funding for AFDC, JOBS and Emergency Assistance(EA) into a $16.35 annual billion block grant to states beginning in FY 1997 called the Temporary Assistance for Needy Families (TANF) block grant. A state's TANF block grant allocation will be based on either the *greater of* the average of FY 1992-1994, FY 1994 or FY 1995 federal expenditures in the state on AFDC benefits and administration, emergency assistance and JOBS. For states choosing FY 1995, the Federal share of reported expenditures for the first three quarters will be multiplied by 4/3 for an annualized amount. States using FY 1994 can add to their base an amount equal to 85% of the increase in EA expenditures from FY 1994 to FY 1995 if, during FY 1994, the Secretary approved a state plan amendment for the use of EA funds for family preservation.
- Supplemental grant fund of $800 million for FY 1997-FY 2000 for states with high population growth and/or low grant amounts per poor person. Qualifying states will receive an annual adjustment based on 2.5% of FY 1994 federal expenditures for AFDC, AFDC-related child care, emergency assistance and JOBS. A state must qualify in FY 1997 to be eligible. To qualify, a state's level of welfare spending per poor person must be less than 35% of the national average or have experienced a population increase of 10% between April 1, 1990 to July 1, 1994.
- Contingency Fund for State Welfare Programs. Establishes a contingency fund for states of $1 billion in matching funds over five years (FY 1997-2001) for states that experience high unemployment. To qualify, a state must have an unemployment rate of at least 6.5% and the average rate of unemployment for the quarter must be at least 10% higher than the same quarter in either of the two preceding years. States must also meet a 100% maintenance of effort requirement in each preceding year. Funds are provided at the FY 1995 FMAP and can not exceed 20% of a state's annual TANF grant.

  Preliminary bipartisan agreement would add $1 billion to the contingency fund. States could also access the fund by meeting a different trigger based on food stamps. Under this trigger, states would be eligible for the contingency fund if their food stamp caseload increased by 10% over FY 19995 caseload levels.
- Separate block grant or set-aside for child care funds. (See below.)

Cap on administrative expenses. 15% cap on administrative expenses but the cost of information technology and computerization needed for tracking and monitoring recipients is not counted in the cap.

Maintenance of effort. The conference agreement includes a 75% maintenance of effort requirement through FY 2000 based on a state's FY 1994 spending on AFDC, JOBS, and AFDC-related child care and EA. State expenditures that qualify toward meeting the MOE are total state expenditures on *eligible families* during the fiscal year under *all* state programs for any of the following: cash assistance, child care assistance; educational activities related to job training and work administrative costs; and any other use of funds reasonably calculated to accomplish the purposes of the TANF. Eligible families includes families that would have been eligible but for the application of a family cap, the five-year lifetime benefit limit or the restriction on aid to legal immigrants. A state's grant would be reduced $1 for each $1 that a state's spending falls below the required maintenance of effort level. **Preliminary bipartisan agreement to maintain 75% MOE requirement.**

10 (?)

Effective date of October 1, 1996 States do have the option of implementing the block grant in FY 1996. States that choose this accelerated effective date option must submit a state plan within three months of the bill's enactment.

Transferability. States may transfer up to 30 % to the Social Services Block Grant, the Child Protection Block Grant, and the Child Care and Development Block grant.

Personal contracts. No provision.

Work requirements.

- States must require a parent or caretaker receiving assistance under the program to engage in work after receiving assistance for 24 months.
- Participation rates. States must meet the following participation rates for single parent families: 1996-15%, 1997-20%, 1998-25%, 1999-30%, 2000-35%, 2001-40%, 2002 and thereafter-50%. (Lower than Senate rates but not quite as low as the House rates.) The rates for two-parent families are: 1996-50%, 1997-75%, 1998-75%, 1999 and thereafter-90%.
- Eligible work activities for purposes of meeting the participation rate are unsubsidized employment; subsidized private and public sector employment; work experience; on -the-job training; job search and job readiness (only in the first four weeks of participation); community service; vocational educational training (not to exceed 12 months for any individual); job skills training directly related to employment; education directly related to employment for recipients 20 years or younger who don't have a high school diploma or GED; and satisfactory attendance at a secondary school for a recipient who has not completed secondary school and is a dependent child, or a head of household under 20 years of age. Vocational education is limited to 20% of a state's caseload. (Note: states may use TANF funds for other activities like adult basic education and post-secondary education but an individual's participation in these activities will not count toward the participation rate.) **Preliminary bipartisan agreement would allow job search and job readiness to count as a work activity for up to 12 weeks rather than only in the first four weeks of participation.**
- Required hours. To meet the participation rate for single parent families, the minimum average number of hour per week is 20 hours for FY 1996, FY 1997 & FY 1998; 25 hours in FY 1999; 30 hours in FY 2000 & FY 2001; 35 hours in FY 2002 and thereafter. Education and job skills training will not count toward meeting the first 20 hours of participation. **Preliminary bipartisan agreement would reduce the maximum number of hours of participation required in future years to 25 hours a week (rather than 30 and 35). Additionally, states may limit required hours of work to 20 hours for families with children under age six and still have them count toward participation rate. (The 20-hour option was permitted in the Senate-passed bill.)**
- Two-parent families must participate 35 hours a week. Education and training will not count for the first 30 hours.
- Calculation of monthly participation rate. States may not include individuals who have worked their way off welfare or sanctioned individuals in the numerator (as Senate bill would have allowed for 6 months). However, individuals sanctioned for failure to participate in work (for up to 3 months) will not be counted in the denominator.

Preliminary bipartisan agreement would permit states to count toward their participation rate those individuals who leave cash assistance for work.

- Young child exemption. States may exempt single custodial parents with children under age one from the work requirement. These individuals will be disregarded in determining the participation rate.
- "Reverse child care guarantee." States may not penalize individuals with children under age 6 for failure to participate in work because of lack of child care. Burden of proof to demonstrate inability to find child care rests with the parent.
- State penalty for failure to meet work requirement is a maximum of 5% with the penalty based on the severity of failure. States may enter into a corrective action plan.

Pro rata reduction in participation rate. The Secretary will establish regulations for granting states a pro rata reduction in the participation rate if a the number of families receiving assistance under the State program is less than the number of families that received aid in under Title IV-A in FY 1995. Reductions required by changes in federal law or due to changes in eligibility criteria do not count. ?

Prohibitions.

- Teen prohibition. States have the *option* of denying aid to unmarried teen mothers and their children.
- Family cap. States *must* deny cash assistance to additional children born or conceived while the parent is on welfare. States may use funds for vouchers for services and goods for the child. States may enact a law to *opt out* of the family cap provision. ?
- "Learnfare." States must deny assistance to unmarried teenage parents under age 18 who do not attend school (or approved alternative training program). States must also deny assistance to teen parents not living in the home of a parent, legal guardian, or other adult relative. Under certain circumstances, the teen and child may live in an adult-supervised facility.
- Five-year lifetime limit on benefits. A state may not provide cash assistance (with federal block grant funds) to a family that includes an adult who has received any assistance under the TANF grant for 60 months. Child-only cases are exempted. States may grant exemptions to up to 15% of the caseload for either reason of hardship or if the individual has been battered or subject to extreme cruelty. Benefits received as a child will not count toward the five-year lifetime limit on benefits received as an adult head of the household.
- States must deny a parent's share of the welfare benefit for failure to cooperate with the child support agency, subject to "good cause" exceptions as defined by the state. (States may deny entire family.)
- States may not provide assistance to a family unless the family assigns child support rights to the state.
- States may not disregard foster care, SSI or Social Security old age assistance payments when determining the amount of assistance to be provided to a family.

Child support disregard. The bill repeals the current required disregard of the first $50 monthly in child support collections distributed to the family.

Link with Medicaid. Eliminates automatic eligibility for Medicaid for individuals receiving cash assistance and repeals transitional Medicaid. States will set their own rules and determine Medicaid eligibility for recipients of cash assistance with the limitation that federal expenditures can not be greater than they would have been if AFDC still existed. **This issue under consideration but not yet resolved in preliminary bipartisan agreement. This issue also under discussion in the Medicaid talks. One option would guarantee medical assistance to all those eligible for a state's new cash assistance program. The second** ?

option would *require* states to maintain and determine two sets of medical assistance eligibility standards (current and past). The third option would *allow* states to maintain and determine two sets of medical assistance eligibility standards (current and past).

Waivers. Section 1115 waivers in effect or approved as of October 1, 1995 will continue until their expiration although a state will receive payment under the TANF block grant in lieu of any other payment provided for in the waiver. Waivers are exempt from the amendments made by the bill to the extent that such amendments are inconsistent with such a waiver. States may terminate waivers and will be held harmless for accrued cost neutrality liabilities if they submit a request 90 days after the first session of the state legislature beginning after the bill's enactment.

Performance Incentives

- No fund for performance bonuses.
- Maintenance of effort reduced for states with best or most improved performance. Beginning in FY 1997, for each of four performance categories, states will qualify for a reduction in their MOE if they are among the five highest scores and/or the five most improved in the category. For each category for which they qualify, the state shall receive a 2% reduction for the fiscal year. Total reduction for a state in the MOE may not exceed 8 percentage points. The categories are reducing caseloads as a result of unsubsidized employment; reducing the number of formerly eligible families that become eligible again within 18 months; increasing the average earnings of families that receive assistance; and reducing the percentage of children that receive assistance. ?

Preliminary bipartisan agreement would provide cash bonuses of 5% annually to states that exceed specified employment-related performance target percentages. These bonuses would not be funded out of the block grant base.

Bonuses for reducing out-of-wedlock births. Bonuses to states that reduce out-of-wedlock births without increasing abortions. Any state that reduces its illegitimacy ratio by one percentage point compared to FY 1995 will receive a 5% increase in its grant. States reducing their illegitimacy ratios by 2% receive a 10% increase. Separate funding provided to fund bonuses.

Preliminary bipartisan agreement would maintain these bonuses.

Penalties. States are subject to penalties for the following: for use of funds in violation of the bill (repay amount and, if violation was intentional, an additional 5% of grant); failure to submit required report within one month of the end of a fiscal year (4% of grant); failure to satisfy minimum participation rates (up to 5% of grant); failure to participate in IEVS (up to 2%); failure to enforce penalties requested by child support agency(up to 5%); failure to meet the MOE ($1 reduction in grant for each $1 below required MOE); and failure to timely repay a federal loan (reduction of grant by outstanding loan amount plus interest owed). Additionally the grant will be reduced if the state's child support program is not in compliance with the requirements of IV-D. The Secretary must waive the penalty if the Secretary finds the state had reasonable cause to not comply. States may also enter into corrective compliance plans with the Secretary in lieu of paying penalties.

Reporting requirements. Beginning July 1, 1996, states most collect monthly and are required to provide quarterly reports providing extensive disaggregated case record information on families receiving assistance. States may use sampling methods; the Secretary may develop procedures for verifying the quality of the data submitted. States must also submit annual reports on the use of funds to cover administrative costs and overhead; state expenditures on programs for needy families; noncustodial parents in work activities; and transitional services.

Direct funding to counties for demonstrations. No provision.

Indian tribes. Indian tribes with an approved tribal family assistance plan may directly receive and administer block grant funds beginning in FY 1997. (A state's block grant will be reduced by this amount.) States have the option of including individuals receiving assistance under a state tribal assistance plan in the calculation of their work participation rates. Tribes that have been JOBS grantees will receive an annual grant equal to their FY 1995 JOBS allocation.

II. CHILD CARE - Child Care and Development Block Grant (Title VIII)

Funding. Over the period FY 1997- FY 2002, combines $9.8 billion in mandatory funding (of which approximately $4 billion is new money)and $6 billion in discretionary spending into the Child Care and Development Block Grant (CCDBG). States must spend at least 70% of the mandatory funds to provide child care assistance to families who are receiving welfare, transitioning off welfare or who are at risk of becoming dependent on welfare. A substantial portion of the discretionary funding is to be used for low-income working families. **Preliminary bipartisan agreement to add an additional $4 billion in mandatory funding for child care.** 4+4 (?)

- Discretionary funding (representing the old CCDBG) is authorized at $1 billion annually and must be appropriated annually. Allocation of these funds to states is based on current CCDBG formula.
- Mandatory funding or entitlement funding levels are $1.3 billion in FY 1997, $1.4 billion in FY 1998, $1.5 billion in FY 1999, $1.7 billion in FY 2000, $1.9 billion in FY 2001 and $2.05 billion in FY 2002. This funding is distributed in two ways.
    1. States will receive a basic allocation based on the higher of what the state received in FY 1994 or average of 1992-1994 for the repealed programs (AFDC/JOBS child care, Transitional Child Care and At-risk child care).

    2. The remaining money (approximately $4.0 billion over six years) will be distributed based on the current "at-risk" formula and will require a match based on the FY 1994 Medicaid match rate. In order to access these "new" funds, states must have spent all of their basic allocation and have maintained their FY 1994 level of state spending on IV-A child care. Unused funds will be redistributed.

CCDBG rules. Rules and regulations of the Child Care Development Block Grant apply to all funds under the child care section. All funds must be transferred to the lead agency under the Child Care and Development Block Grant.

Limitations. There is a 3% administrative cap on child care funds—administrative costs does not include the cost of providing direct services. There is a 3% quality set-aside for consumer education, activities that increase parental choice, and activities designed to improve the quality and availability of child care such as resource and referral.

Licensing. States must certify that they have licensing requirements and describe the requirement and how they are enforced.

Transferability. Up to 30% of the TANF block grant may be transferred into the CCDBG. No funds may be transferred out of the CCDBG.

III. CHILD PROTECTION AND WELFARE (Title VII):

This issue under consideration but preliminary bipartisan agreement means there would not be a Child Protection Block Grant but discussions continue on increasing

flexibility for states to target adoption, family preservation or other administrative improvements. (?)

Entitlement funding. Foster care and adoption assistance *maintenance* payments are retained on an open-ended entitlement basis, with eligibility linked to the AFDC rules in effect before the bill's enactment. The federal matching rate will be the FMAP in effect on the day before enactment.

Child Protection Block Grant. Consolidates the remaining IV-B and IV E programs -- foster care and adoption assistance administration and training, family preservation and family support, independent living and IV-B discretionary child welfare programs into a block grant. Funding is provided as an entitlement to states beginning at $2.047 billion in FY 1997 and rising to $2.76 billion in FY 2002. An additional $325 million in discretionary funds is authorized annually. Effective date is October 1, 1996. (?)

Data reporting and information systems. Eliminates enhanced funding and federal match for meeting the systems requirements for the Statewide Automated Child Welfare Information System (SACWIS). Repeals the Adoption and Foster Care Analysis and Reporting System (AFCARS) and replaces them with new data reporting requirements. States can use the block grant funding for information systems.

State allocations. A state's proportional share of the block grant is based on either the average of FY 1992-1994 or FY 1994 federal expenditures in the state on the consolidated programs. States are not permitted to transfer of funds out of the Child Protection Block Grant.

Maintenance of effort. States are subject to a maintenance of effort requirement of 100% in FY 1997 and FY 1998 and 75% in FY 1999 through FY 2002 based on state spending in FY 1994 under Title IV-B and IV-E. States that fail to meet the MOE will have their grant reduced by the difference and a 5% penalty imposed.

Standards. In order to receive funds, a state must certify that it meets certain standards and protections. (Similar to current law Section 427.) States are required to establish at least three citizen review panels.

Removal of barriers to interethnic placement. States are prohibited from delaying or denying placement on the basis of race, ethnicity or national origin. A state would lose 10 percent of its child protection block grant funds for a violation.

Child and Family Services Block Grant. Creates a second, discretionary, block grant authorized at $230 million from Child Abuse and Treatment Act (CAPTA) programs.

IV. CHILD NUTRITION (Title IX)

Child and Adult Care Food Program. Restructures the meal reimbursements for family day care homes in the Child and Adult Care Food Program (CACFP). Current law reimbursement rates would continue for family day care homes located in areas in which at least 50% of the children are in households that are below 130% of the poverty level or are operated by a provider whose income is below 130% of the poverty level. All other homes would receive a lower rate although a provider could claim a higher rate for children from families whose income is below 130% of the poverty level.

Summer Food Service Program. Reduces the reimbursement rate for breakfast, lunches and snacks served under the Summer Food Service Program.

Block grant demonstration. Establishes the School Nutrition Optional Block Grant Demonstration Program. One state in each of seven USDA consumer service regions may receive their school lunch and school breakfast funds as a block grant. A state's decision to participate is irrevocable until the termination of the program on September 30, 1996. The state NO must comply with a number of requirements and ensure that the proportion of low income and needy students served under the block grant demonstration is not less than the proportion of such students served under the School Lunch and School Breakfast programs in the last year prior to the block grant.

V. FOOD STAMPS (Title X)

Optional block grant. States have the option to choose a food stamp block grant if they have a statewide EBT program or an error rate of 6 % or less in their quality control system. States with higher error rates may be able to participate if they pay the difference between 6% and their error rate multiplied by their annual state benefit issuance. A state may revoke its decision return to the federal food stamp program but it will not eligible for the block grant again. A state's allocation will be based on the average of FY 1992-1994 or FY 1994 federal spending in the state for benefits and on the average of FY 1992-1994 or FY 1994 federal spending in the state for administration. Imposes a 6% cap on administrative costs. Use of the block grant is limited to provision of food assistance through such means as EBT, coupons limited to food purchases and direct provision of commodities. States must maintain a food stamp quality control system for the block grant and will be subject to the regular food stamp program QC system including incentives and payments. Food stamp work requirements also apply.

Electronic benefit transfer. Mandates states to implement an electronic benefit transfer (EBT) system for the food stamp program by October 1, 2002, unless the Secretary provides a waiver because a state faces unusual barriers to implementation. Gives states the option of using a photo ID on the EBT card.

Adjustable food stamp cap. Sets an adjustable food stamp cap which the Secretary may adjust in May based on changes in caseload in the past 6 months and October based on changes in the cost of the thrifty food plan. If program funding requirements should still exceed allowed obligations, then benefits will be reduced. **This issue under consideration but unresolved in bipartisan discussions.** MUST

Quality control. The current quality control system is retained. (House provision to rollback to 1988 was rejected.)

Simplified food stamp program. State may operate a "simplified food stamp program" for households in which all members are receiving assistance under the TANF Block Grant. These households would be automatically eligible for food stamps and food stamp benefits could be determined by using rules and procedures of either programs or a combination of the two. (Generally follows Senate language.) A state's simplified plan may not increase costs to the federal government. If it does, the state must enter into and carry out a corrective action plan or the Secretary must terminate the state's simplified program.

Employment Initiatives Program. Qualifying states may cash out food stamp benefits to individuals who have worked in unsubsidized employment for at least 90 days, earned at least $350 a month and is receiving benefits under TANF. Qualifying states are those where at least 50% of the food stamp households also received AFDC during the summer of 1993

Work supplementation. Permits states to operate a work supplementation or support program where the value of public assistance including food stamps is provided to employers to be used for hiring and paying the recipient.

New work requirement. Imposes a new work requirement on individuals aged 18-50 without dependents. These individuals would be ineligible for food stamps after receiving food stamps for more than 4 months unless working or participating in a work program for at least 20 hours a week. (Job search does not qualify.) ?

Food Stamp Employment and Training Program. Generally, allows greater state flexibility and provides increased funding of $77 million in FY 1996 rising to $95 million in FY 2002. Requires the program to be carried out through a statewide workforce development system unless the component is not available locally through the system.

Waiver Authority. Broadens the type of reforms for which states may seek waiver authority including to increase self sufficiency and undertake innovative welfare reform strategies. However, Secretary may not approve new cash-out projects, any transfer of funds to another public assistance program and any non-time limited projects.

Adjustment to thrifty food plan. Sets maximum food stamp benefit at 100% of the cost of the Thrifty Food Plan effective October 1, 1996, adjusted annually. (Current law is 103%.)

Deductions, income and assets. Freezes the standard deduction at the FY 1995 levels and caps the excess shelter deduction. Counts most energy payments as income. Sets the vehicle asset threshold at $4,600. NO

Reduction of public assistance benefits. Individuals whose benefits are reduced under other means-tested program (as a penalty) can not have their food stamp allocation increased. The state may reduce the food stamp allotment of the household by up to 25%.

Disqualification due to child support arrears. Requires states to disqualify from food stamp eligibility those individuals who are in arrears in child support payments (unless the court has allowed the delay or individual has entered into a payment plan). State option to discontinue food stamp benefits for custodial and non-custodial parents who fail to cooperate with the child support agency.

VI. SUPPLEMENTAL SECURITY INCOME (SSI) (Title II)

SSI for Children:

- Maintains entitlement but revised eligibility criteria. Eliminates the comparable severity and "Individualized Functional Assessment" for determining eligibility for children. Only children who meet or equal the Medical Listings of Impairments will qualify for SSI. Requires the Commissioner to eliminate references in the Listing to maladaptive behavior in the domain of personal/behavioral function.
- Two-tiered payment system. Children with the most severe disabilities who are or would otherwise be institutionalized will receive 100 percent of a cash benefit. (The criteria varies depending on whether the child is under age six or six and older.) Children with a lower level of severity but who meet the medical listing of impairments will receive 75 % of their current benefit level. NO
- Effective date for new applicants is date of enactment. For current beneficiaries and redeterminations, the effective date is January 1, 1997.
- Requires the Commissioner to conduct Continuing Disability Reviews at least once every 3 years.

This issue under consideration but unresolved in bipartisan discussions.

State Supplementation Programs. Repeals the maintenance of requirement applicable to optional state programs for supplementation of SSI benefits effective the date of enactment.

VII. IMMIGRATION (Title IV)

Food stamp and SSI bar. Current and future immigrants are barred from food stamps and SSI until attaining citizenship. Exemptions granted to refugees in their first five years in the U.S., veterans, active duty service members and their spouses and dependents: and individuals who have worked long enough to qualify for social security (usually 40 quarters.) No exemptions for the elderly.

5-year ban. New entrants are denied all other federally means-tested benefits for five years after arrival in the US with same exemptions as above. Programs not included in the bar include emergency medical services, child nutrition, immunization programs, foster care and adoption assistance, higher education loans and grants and Chapter 1.

Deeming until citizenship required for federal means-tested programs (same individual and program exemptions as above) for current immigrants and new immigrants after their first five years.

State options. New immigrants would be barred for five years from Medicaid, Title XX and the TANF block grant. States have option to deny or restrict benefits under these programs for current immigrants and new immigrants (after their first five years). State authority to limit eligibility of immigrants for state and local means-tested programs.

Affidavits of support. Sponsors' affidavits of support are binding and enforceable against the sponsor until immigrant attains citizenship.

Preliminary bipartisan agreement would add the provision that legal immigrants who are elderly or disabled would not be denied assistance if there is no available sponsor income. Under discussion but unresolved is explicit exemption for Cubans and Haitians.

VIII. CHILD SUPPORT (Title III)

Distribution. Post-welfare arrearages must be paid to the family first beginning October 1, 1997. Pre-welfare arrearages will also be paid to the family first but effective date for this provision will be October 1, 2000. If pre-welfare arrearages paid to the family exceed state savings from the elimination of the $50 disregard and other methods of improving collections in the bill, the federal government will pay the difference to the state. .

Incentive adjustments. The Secretary will develop a new performance-based incentive system to be effective October 1, 1997.

Systems automation. Extends the 90% enhanced match for state implementation of data systems requirements that were created by the Family Support Act until October 1, 1997. States must have submitted their advance planning document by May 1, 1995. Increases the funding available for new systems requirements to $400 million from the $260 million, originally included in both bills. Provides an enhanced match of 80% for new requirements.

Denial of federal means-tested benefits. Strikes Senate provision that would have required denial of means-tested benefits to noncustodial parents more than two months behind in child support.

Paternity establishment rate. Increases the paternity establishment rate from 75% to 90%. States failing to reach it or make adequate progress will have their TANF grant reduced. Paternity establishment ratio is amended to be based on all children born out-of-wedlock, not just those receiving AFDC or child support services.

New mandates. States must establish an automated central registry of IV-D case records and support orders and an automated directory of new hires; operate a centralized unit to collect and disburse all child support orders (not just IV-D cases); and meet expanded requirements around enforcement and paternity establishment. States are required to adopt UIFSA by January 1, 1997.

Licenses. Requires states to have laws suspending drivers, professional, occupational and recreational licenses for overdue child support.

IX. MISCELLANEOUS (Title XI)

Appropriation of funds by state legislature. Requires that block grants must be appropriated in accordance with the laws and procedures applicable to expenditures of the state's own revenues, including appropriation by the state legislature. Applies to the cash assistance, child care, child protection and optional food stamp block grants. (This would preempt state law in a number of states.)

Social Services Block Grant. Reduces the mandatory spending level of the Social Services Block Grant by 10% beginning in FY 1997 from $2.8 billion to $2.52 billion annually.

Electronic Benefit Transfer (EBT) programs. Exempts state and local government electronic benefit transfer programs from Regulation E of the Electronic Funds Transfer Act.

EARNED INCOME TAX CREDIT. Preliminary bipartisan agreement to achieve $10 billion in savings from the EITC and to add a state option to advance the EITC.

National Governors' Association

MEMORANDUM

WR-NGA plan

To: Carmen Nazario
Jerry Miller
Maura Cullen
LeAnne Redick

From: Susan Golonka

Date: February 20, 1996

Re: Clarification of NGA welfare reform policy as per our discussion on February 15.

I have described below the agreements and decisions we reached in several areas of our policy. I will be working later today to put another paper together which will put some more detail into our child welfare section of the policy. Please review the discussion below and let me know of any changes, additions or corrections needed. Thanks!

I. Allocation of Child Care Funding.

Total mandatory or entitlement funding to states for FY 1997-FY 2002 is $13.85 billion which will be distributed in two ways.

75% MOE applies to cc care funding

1. $9.95 billion will be divided equally among each of the six years for an annual allotment of $1.658 billion. (This amount represents the original base entitlement funding of $5.95 billion plus the additional $4 billion proposed by the Governors.) A state will receive its proportional share of this amount based on the greatest of federal expenditures in the state for AFDC-related child care in FY 1995 or FY 1994 or the average of FY 1992-1994. (Note: the Governors have added FY 1995 as an allowable year for determining base allocations to a state.) States would be allowed to carryover unused funds into the next fiscal year. As in HR 4, this first tier of funding would not require a state match.

In order to access these add'l funds, 100% of

100% MOE + state match

2. The remaining funds, approximately $3.9 billion will be allocated as described in HR 4, sec. 418 (a)(2). Remainder: States must have spent their initial allotment described above and have spent state dollars on child care equal to their FY 1994 state spending for AFDC-related child care. The funds will be distributed using the At-risk formula and with a matching requirement (FY 1995 FMAP). According to CRS, total matching funds to states would be $295.5 million in FY 1997, $394.5 million in FY 1998, $493.5 million in FY 1999, $691.5 million in FY 2000, $889.5 million in FY 2001 and $1,038 million in FY 20002.

II. Work Requirement.

- <u>Hours of participation.</u> For *all families*, the minimum average number of hours per week that a recipient must be engaged in a work activity to be counted toward the work participation rate is 20 hours in FY 1996, FY 1997 and FY 1998, and 25 hours in FY 1999-FY 2002. For *two-parent families*, the minimum average number of hours per week that an adult must be engaged in a work activity to be counted toward the work participation rate is 25 hours.

- <u>20-hour option</u>. States have the option of limiting required hours of work to 20 hours a week for al families, including two-parent families that have a child under age six.

III. Contingency Fund.

- <u>MOE and match</u>. The 75% maintenance-of-effort requirement for the overall block grant also applies to the contingency fund. States will draw down the contingency funds at the FY 1995 FMAP.
- <u>Food stamp trigger</u> – A state may access the contingency if it experiences a 10% increase in the number of children receiving food stamps in any month compared to the average monthly number of children receiving food stamps in the base year. States may select FY 1994 or FY 1995 as their base year

IV. Performance incentives.

The Secretary of Health and Human Services, in consultation with representatives of the National Governors' Association and the American Public Welfare Association, shall develop a formula for allocating annual performance bonuses to states that exceed specified employment-related performance target percentages. States may receive bonuses in an amount equal to up to 5% of a state's cash assistance block grant. The Secretary may consider such criteria as the number of families that become ineligible for assistance as a result of unsubsidized employment, or the extent to which a state exceeds the work participation rate requirements. move into and retain

~~fulfills~~ meets or

V. Fair and equitable treatment.

State plan requirement that the state set forth objective criteria for the delivery of benefits and determination of eligibility. The state must also provide for fair and equitable treatment, ~~with~~ an opportunity for a recipient who has been adversely affected to be heard in a state administrative or appeal process. including

VI. Child welfare.

Adoption assistance will not be included in the child welfare block grant. (I will be preparing a separate paper describing the child welfare provisions in detail.)

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

20-Feb-1996 07:05pm

TO: Kenneth S. Apfel
TO: Bruce N. Reed

FROM: Jeffrey A. Farkas
Office of Mgmt and Budget, HRD

CC: Barry White
CC: Keith J. Fontenot
CC: Lester D. Cash

SUBJECT: HR4 Child Care Funds

This is just to provide you with some information on child care in HR 4 and as proposed by the NGA.

The conference report would provide mandatory Federal child care funding of $9.6 billion over six years (CBO estimate of outlays). States would need to spend approximately $7.0 billion to draw this full amount down (except potentially as noted below). The total Federal/State child care amount would be $16.6 billion. (This is a 6-year total because the child care provisions would take effect beginning in FY97. Over 7 years, the State/Federal child care level would be $18.6 billion including the FY96 baseline level.)

In general, the MOE/matching structure works as follows. States receive a base child care amount equal to the higher of their FY94 child care level or the average of their FY92-94 levels. (For all States in total, this base allotment equals approximately $1 billion annually.) There is no specific MOE requirement in the child care section to receive these base funds, however. The only requirement for States to maintain spending at this point is the general 75% MOE provision under the cash block grant, which would count State spending on child care as part of the overall MOE. States could presumably receive their full child care base allotment even if they didn't maintain their child care spending but did maintain spending in other areas sufficient to meet the bill's 75% MOE requirement. The base child care allotment ($6 billion total between 1997 and 2002) could thus potentially have very low State child care spending level associated with it. (NGA would add their unmatched $4 billion to this base $6 billion amount, which could make for a very big pot of mandatory Federal child care $$$ with relatively lax State spending requirements.)

If States wish to receive more than their base allotment in child care, the MOE/match requirments change dramatically under HR4. In order to draw down the additional approximately $3.8 billion over six years, the child care section of the bill requires States to maintain their full FY94 spending level on child care and then to match any amounts above their base allotment at the FMAP rate. This is much tighter than the MOE provision on the base funds. State spending on child care would have to equal about $7.0 billion over six years to draw down the full amount.

Interestingly, the NGA amount roughly equals the additional Federal child care funds provided in HR 4, but without the strict match. For the same amount of Federal dollars, I know which I would prefer if I were a governor.

4 - 5.0 = 75%

C.care MOE at 100%

Dedicate 30% of cash b.grant - CCDBG, SSBG, school lunch

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

21-Feb-1996 01:44pm

TO: Bruce N. Reed
TO: Kenneth S. Apfel

FROM: Jeffrey A. Farkas
Office of Mgmt and Budget, HRD

CC: Barry White
CC: Keith J. Fontenot

SUBJECT: Senate Child Care

This is in response to your question this morning about child care in the Senate bill.

The Senate did not create a separate mandatory child care block grant. (It did, however, reauthorize the existing discretionary child care block grant.) Mandatory child care funds were instead folded into the cash block grant with (1) a special child care earmark equal to the FY94 annual level for child care (roughly $1 billion) and (2) an additional $3 billion to be split over the first five years of the program (FY96-00).

While not a separate block grant, the State MOE/match structure in the Senate bill is somewhat similar to the system in the conference report. The earmark would have been subject to the bill's general 80% MOE provision, while the additional $3 billion would have required States to maintain 100% of FY94 spending on child care and then match any amounts above their FY94 allocation. The major difference is that the additional funds States have to match expire after 2000 under the Senate bill, whereas the Conference includes match funds until 2002. States would therefore have lower spending requirements under the Senate bill compared to conference.

The Federal dollar amounts between Senate and Conference also differ. The base Federal amounts are in the same $1 billion ballpark, but the Senate would provide $6.4 billion total Federal over five years ($1.4 above CBO baseline) and $9 billion total Federal over seven years ($1.2 billion above CBO base), while the Conference would provide slighlty less over five years, $5.7 billion, ($0.7b above CBO baseline), but more over 7 years, $9.6 billion total Federal ($1.8 above CBO baseline). (Start-up is assumed to be in FY97 under both situations.)

I realize again that this is dense. Please let me know if you have any more questions.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

21-Feb-1996 03:52pm

TO: Jeffrey A. Farkas

FROM: Bruce N. Reed
Domestic Policy Council

CC: Kenneth S. Apfel
CC: Barry White
CC: Keith J. Fontenot

SUBJECT: RE: Senate Child Care

Thanks -- that's very helpful. So the basic differences b/w NGA and Senate are:

1) MOE for earmarked pot is 75% in NGA, 80% in Senate
2) Matched pot is $3.9b in NGA, $3b in Senate (both require 100% MOE to qualify)
3) NGA requires state match for 7 yrs instead of 5 in Senate
4) Total federal spending is $13.6b over 7 yrs in NGA, $9 billion over 7 yrs in Senate

In other words, except for the overall MOE, the NGA proposal is much better than Senate on child care. Right?

WR-NGA plan

The National Governors' Association Legislative Draft of the Welfare Bill

AFDC, Work, and Child Care

The draft implements nearly of all the changes recommended by the NGA, including an additional unmatched $4 billion in child care, flexibility in meeting work requirements, contingency fund revisions, State plan provisions on fair and equitable treatment, flexibility on family caps, and greater hardship exemptions.

Hule draft

The draft modifies the NGA provisions on performance bonuses. Instead of providing 5 percent bonuses to all States who meet certain employment targets (as the NGA proposed), the draft maintains the conference provisions that would allow States to reduce their maintenance of effort by up to 8 percentage points and also provides a 2 percent cash bonus to States with the five highest combined scores in a new performance grading scheme.

Child Protection

The draft language is confusing as to the treatment of foster care and adoption assistance benefit payments. It is not clear whether the language intends a foster care block grant. The 1994 maintenance of effort levels would be continued and States could use the funds as they see fit. The language also eliminates the Family Preservation and Support program, creating an alternative, larger mandatory block grant. The Federal oversight role would be diminished, including authority to intervene if Federally mandated child protections are not being provided by the States.

Food Stamps

Despite the Governors having proposed two dramatic changes to the Food Stamps section of the Conference welfare bill, the NGA draft does not include any of the Governors' improvements. The NGA supported removing the spending cap on the food stamp program and adopting the Senate's approach to deductions - which would have eliminated the cap on the shelter deduction.

Child Nutrition

The current NGA draft does not include any of the changes for which the Governors indicated support, including eliminating the school lunch block grant demonstration project to be replaced by a school lunch administration block grant.

Supplemental Security Income

On eligibility restrictions for childhood benefits, the effective date is delayed to January 1, 1998 for both current recipients and new awards, as indicated in previous NGA materials, and the conference provision creating two tiered benefit levels is deleted. NGA was silent on SSI drug addiction and alcoholism (DA&A) and the draft contains no provision, as is consistent with conference. NGA was also silent on provisions in conference to (1) link the age for eligibility for SSI elderly benefits to the Social Security normal retirement age and (2) repeal state supplement maintenance of efforts requirements. The draft contains these provisions. Savings in NGA language exclude $3 billion over 7 years from SSI DA&A and revising the effective date for childhood eligibility provisions for new awards to date of enactment.

Benefits to Immigrants

NGA stated they neither supported nor opposed legislation in this area. The draft contains no provision on immigrants but it could be assumed that conference language would be used.

[illegible]

The Center testified last week that if ~~every~~ all 50 states withdrew the maximum level of state spending every year, ~~the they~~ states could reduce their own spending by $_ billion over 7 yrs ~~through the 75%~~ [illegible]
by spending ~~no more than~~ at 75% of their FY 94 effort and ~~by~~ by $_ billion by transferring 30% of the

WR-NGA plan

AS ADOPTED 2/6/96

WELFARE REFORM

The Governors believe that our nation's leaders are now faced with an historic opportunity and enormous responsibility to restructure the federal-state partnership in providing services to needy families. We, the nation's Governors, are committed to achieving meaningful welfare reform now. The continuation of the current welfare system is unacceptable. Congress has made significant efforts toward making changes that will allow states the flexibility to build upon the lessons states have learned through a decade of experimentation in welfare reform. The President has also voiced his commitment to achieving welfare reform and has continued to grant waivers to states to facilitate experimentation. We urge Congress and the President to join with the nation's Governors in support of a bipartisan agreement that will reallocate responsibilities among levels of government, maximize state flexibility, and restructure welfare as a transitional program with a focus on work and self-sufficiency. We believe, however, that children must be protected throughout the restructuring process.

State experience in welfare reform has demonstrated that three elements are particularly crucial for successful welfare reform: welfare must be temporary and linked to work; both parents must support their children; and child care must be available to enable low-income families with children to work. Additionally, we believe that block grants should be entitlements to states and enable states broad discretion in the design of their own programs based upon mutually agreed upon goals. We also believe that states should have access to supplementary matching federal funds for their cash assistance programs during periods of economic downturn. The conference agreement on HR 4, the Personal Responsibility and Work Opportunity Act, incorporated many of these elements, but we also believe further changes must be made to create a sound and workable welfare reform bill. The National Governors' Association would support the HR 4 conference agreement with the changes listed below. The absence of recommendations on the restriction of benefits for aliens should not be interpreted as support for or opposition to the alien provisions of the HR 4 conference agreement:

Core Employment Support Services

- *Add $4 billion in funding to the general entitlement for child care. This funding would not require a state match.* Part of base. 6-yr mix in budget. of 9.8 b.

Flexibility in Meeting Work Requirements

- *Change the participation rate calculation to take into account those who leave cash assistance for work as long as they remain employed.*

* *Reduce the number of hours of participation required in future years to 25.*
* *Permit states the option to limit the required hours of work to 20 hours a week for parents with a child under age six.*
* *Allow job search and job readiness to count as a work activity for up to 12 weeks.*

Contingency Fund for State Welfare Programs

* *Add $1 billion to the contingency fund.*
* *States can meet one of two triggers to access the contingency fund: the unemployment trigger in the conference agreement or a new trigger based on food stamps. Under the food stamp trigger, states would be eligible for the contingency fund if the number of children in their food stamp caseload increased by 10 percent over FY 1994 or FY 1995 levels.*
* *Eliminate the maintenance of effort requirement for the contingency fund.*

Performance Incentives

PPI

* *Provide cash bonuses of 5 percent annually to states that exceed specified employment-related performance target percentages. These bonuses would not be funded out of the block grant base.*
* *Maintain the bonus for states that reduce out-of-wedlock births contained in the conference agreement.*

Family Cap

* *Provide states with the option to restrict benefits to additional children born or conceived while the family is on welfare.*

Cap on Child Care Administrative Costs

* *Raise the administrative cap on child care funds to 5 percent.*

Hardship Exemption

* *Raise the exemption to the five-year lifetime limit on benefits to 20 percent of the caseload.*

Fair and Equitable Treatment

* *Add a state plan requirement that the state set forth objective criteria for the delivery of benefits and fair and equitable treatment.*

Child Protection Block Grant

- *Maintain the open-ended entitlement for foster care and adoption assistance.*
- *Provide a state option to take foster care, adoption assistance, and independent living funding as a capped entitlement with annual growth adjustment based on average national caseload growth rate. States may transfer any portion into a Child Protection Block Grant for activities such as early intervention, child abuse prevention, and family preservation. States must continue to maintain effort at 100 percent based on state spending in the year prior to accepting the capped entitlement. States must maintain protections and standards under current law. States can reverse their decision on a yearly basis.*
- *Create an entitlement Child Protection Block Grant of the remaining child welfare, family preservation, and child abuse prevention and treatment programs. These programs are not currently individual entitlements. States must maintain protections and standards under current law.*

Supplemental Security Income (SSI) for Children

- *Accept the provisions in the Senate-passed welfare bill.*
- *Change effective date for current and new applicants to January 1, 1998.*

Food Stamps

- *Accept the provision in the Senate-passed welfare bill that reauthorize the Food Stamp program in its current uncapped entitlement form.*
- *Modify the income deductions as outlined in the Senate-passed welfare bill.*

excess shelter
std deduction
homeless deduction

School Nutrition Block Grant Demonstration

- *Maintain the current entitlement for children.*
- *Schools would continue to receive per meal federal subsidies for all lunches and breakfasts under current eligibility criteria.*
- *Additional subsidies for schools with high proportions of free or reduced-price participants will be maintained.*
- *States would continue to receive the proportion of administrative costs based on current law but in a block grant.*

- *The state must develop a state-based plan that includes public input and describes how the state will operate the program.*

- *All other safeguards described in the conference report will be maintained.*

Provision for Territories

- *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their welfare program.*

Earned Income Tax Credit

- *This is only an issue within the context of budget reconciliation.*

- *Limit the savings from revising the EITC to $10 billion.*

- *Add a state option to advance the EITC.*

Any changes in the above recommendations would nullify this endorsement.

WR-NGA plan

Changes to H.R. 4
National Governors' Association Welfare Reform Proposal
February 1996

Core Employment Support Services

- Add $4 billion in funding to child care. (Title VIII, p. 3)

Flexibility in Meeting Work Requirements

- Change participation calculation to account for those who leave welfare for work. (Title I, p. 42)

- Reduce hours of work required to 25. (Title I, p. 47)

- Allow states to limit work to 20 hours a week for parents with a child under age six. (Title I, p. 48)

- Allow job search to count as work for up to 12 weeks. (Title I, p. 47)

Contingency Fund for State Welfare Programs

- Add $1 billion to the contingency fund. (Title I, p. 30)

- Add a new trigger to the contingency fund: states could access the contingency fund if the number of households in their food stamp caseload increased by 10 percent over FY 1994 or FY 1995 levels. (Title I, p. 31)

- Lower the maintenance of effort requirement for the contingency fund from 100 percent to 75 percent. (Title I, pp. 32, 81)

Performance Incentives

- Provide cash bonuses of 2 percent annually to states that exceed specified employment-related performance targets. (Title I, p. 28)

Family Cap

- Give states the option to employ a family cap. (Title I, p. 53)

Cap on Child Care Administrative Costs

- Raise the administrative cap on child care funds to 5 percent. (Title VIII, p. 13)

Hardship Exemption

- Allow states to exempt 20 percent of the caseload from the 5-year time limit. (Title I, p. 63)

Fair and Equitable Treatment

- Add a state plan requirement that the state set forth objective criteria for the delivery of benefits and fair and equitable treatment. (Title I, p. 11)

Child Protection Block Grant

- Restores the open-ended entitlements for administration and training for both foster care and adoption assistance. (Title VII)

- See memorandum for suggestions on optional State child protection block grant.

Supplemental Security Income (SSI) for Children

- Accept the provision in the Senate-passed welfare bill (i.e. not providing for a two-tiered structure). (Title II, p. 8)

- Change the effective date for changes affecting current beneficiaries to January 1, 1998. (Title II, p. 10)

Food Stamps

School Nutrition Block Grant Demonstration

Provision for Territories

- No change from H.R. 4: (Title I, p. 125)

Earned Income Tax Credit

- No changes in text of H.R. 4.

Ron Haskins

Comments by Draft Welfare Reform Bill
Proposal by National Governors' Association
February 22, 1996

The first draft of the governors' welfare reform bill is enclosed. This draft was produced by House and Senate Republican staff after consultation with numerous staff members of the NGA and of specific governors. We hope this draft reflects the provisions outlined in the governors' document entitled "Welfare Reform" dated 2/6/96.

It is our understanding that staff of both Republican and Democrat governors, perhaps in consultation with others, will examine this legislative draft and agree among themselves on any necessary changes.

The enclosed 2-page document entitled "Changes to H.R. 4: National Governors' Association Welfare Reform Proposal" summarizes all the changes made in H.R. 4 in response to the governors' proposal. This document also provides the Title and page number on which each provision of the governors' 2/6/96 proposal can be found. Any text deleted from H.R. 4 is lined out, thereby permitting readers to see precisely what has been dropped. New text is printed in italics.

There are several parts of the governors' proposal that have not yet been drafted. First, the food stamp provisions are not included here because there appears to be some misunderstanding about the exact nature of the governors' proposal. We should aim to resolve the issue by early next week.

We are not sending a new text of the child nutrition provisions of H.R. 4. The governors' proposals on section 914 of Title IX of the bill are somewhat unclear. Again, we should aim to resolve the section 914 issues by early next week.

Part of the governors' proposal on child protection is also somewhat unclear. The major proposal is to restore the open-ended entitlements for administration and training under both the foster care and adoption programs. These changes have been drafted (see pages 17ff and elsewhere in the text of Title VII). The block grants have been left intact, although the money in the entitlement portion of the child protection block grant was reduced because the open-ended entitlements were restored.

Subtitle C of the child protection title will be the optional state block grant. This section has not been drafted, but here are some specifications for you to consider:

- either allow any state to adopt the block grant or specify in the bill the name of states that want to adopt the block grant (if the latter option is exercised, we could put the exact amount of money for each year for each state in the text of the bill);

- set the annual state amount as follows: 1) in any given year, take the national total for federal spending from the December 1995 CBO baseline; 2) multiply the national total from the CBO baseline for any given year by the percentage of the national total across the entitlement programs received by the state in 1994;

- it may be necessary to set the national total in "1" above at 95% of the CBO baseline in order to have the proposal scored as revenue neutral;

- states cannot move back and forth; the block grant selection would be permanent;

- states must decide whether they want the block grant by 1999 or 2000;

- once states select the block grant, we could build in some annual increase in funding, perhaps in proportion to increases in the AFDC caseload or in proportion to inflation

Because most members of the House and Senate have been in their own states during the Congressional recess, we have not had the opportunity to discuss the governors' proposals with very many members. Even so, we believe members may be somewhat concerned about several of the governors' recommendations. Here is a list that comes to mind, although there may be others. We assume there will be an opportunity to discuss these issues in the near future:

- House Members continue to support an opt-out, rather than an opt-in, on the family cap;

- providing $4 billion in additional child care funds without requiring any state match;

- counting exits for work for 12 months in calculating work participation rates; this concern will be especially strong for the 2-parent caseload;

- including the 2-parent caseload in any reduced rate calculation;

- in the work participation rate calculation, counting only parents who leave welfare for work while ignoring parents who leave welfare because of marriage (this concern could be solved by crediting states for net reductions in caseload -- which would include departures due to marriage);

- allowing states to maintain as little as 75 percent, not 100 percent, of prior spending and still qualify for contingency funds.

h:\wrprobs

2/23/96

WR-NGA plan

AS ADOPTED 2/6/96

RESTRUCTURING MEDICAID

PREAMBLE

For most of the last decade, health care expenditures in the United States have far exceeded overall growth in the U.S. economy. And while medical inflation is declining, public and privately funded health care costs continue to limit the long term economic growth of the nation. For states, the primary impact of health care costs on state budgets has been in the Medicaid program. Annual Medicaid growth over the last decade has been well in excess of 10 percent, and in half of those years annual growth approached 20 percent. Determining the causes of such unbridled growth is difficult. However, major contributing factors include: congressional expansions in the program, court decisions limiting the states in their ability to control costs, policy decisions by states maximizing federal financing of previously state-funded health care programs, and changing demographics.

Restricting the growth of Medicaid is no easy task. Medicaid is the primary source of health care for low income pregnant women and children, persons with disabilities, and the elderly. This year, states and the federal government combined will spend more than $140 billion in this program providing care to more than 28 million people. The challenge for the nation, and Governors as the stewards of this program, is to redesign Medicaid so that health care costs are more effectively contained and those that truly need health care coverage continue to gain access to that care while giving states the needed flexibility to maximize the use of these limited health care dollars to most effectively meet the needs of low income individuals.

THE NEW PROGRAM

Within the balanced budget debate, a number of alternatives to the existing Medicaid program have been proposed. The following outlines the nation's Governors proposal that blends the best aspects of the current program with congressional and administration alternatives toward achieving a streamlined and state-flexible health care system that guarantees health care to our most needy citizens.

Program Goals. The program is guided by four primary goals.

1. *The basic health care needs of the nation's most vulnerable populations must be guaranteed.*
2. *The growth in health care expenditures must be brought under control.*

3. *States must have maximum flexibility in the design and implementation of cost-effective systems of care.*

4. *States must be protected from unanticipated program costs resulting from economic fluctuations in the business cycle, changing demographics, and natural disasters.*

Eligibility. Coverage remains guaranteed for:

- *Pregnant women to 133 percent of poverty.*
- *Children to age 6 to 133 percent of poverty.*
- *Children age 6 through 12 to 100 percent of poverty.*
- *The elderly who meet SSI income and resource standards.*
- *Persons with disabilities as defined by the state in their state plan. States will have a funds set-aside requirement equal to 90 percent of the percentage of total medical assistance funds paid in FY 1995 for persons with disabilities.*
- *Medicare cost sharing for Qualified Medicare Beneficiaries.*
- *Either:*
  - *Individuals or families who meet current AFDC income and resource standards (states with income standards higher than the national average may lower those standards to the national average); or*
  - *States can run a single eligibility system for individuals who are eligible for a new welfare program as defined by the state.*

Consistent with the statute, adequacy of the state plan will be determined by the Secretary of HHS. The Secretary should have a time certain to act.

Coverage remains optional for:

- *All other optional groups in the current Medicaid program.*
- *Other individuals or families as defined by the state but below 275 percent of poverty.*

Benefits

- *The following benefits remain guaranteed for the guaranteed populations only.*
  - *Inpatient and outpatient hospital services, physician services, prenatal care, nursing facility services, home health care, family planning services and supplies, laboratory and x-ray services, pediatric and family nurse practitioner services, nurse midwife services, and Early and Periodic Screening, Diagnosis and Treatment Services. (The*

"T" in EPSDT is redefined so that a state need not cover all Medicaid optional services for children.)

- *At a minimum, all other benefits defined as optional under the current Medicaid program would remain optional and long term care options significantly broadened.*

- *States have complete flexibility in defining amount, duration, and scope of services.*

Private Right of Action

- *The following are the only rights of action for individuals or classes for eligibility. All of these features will be designed to prevent states from having to defend against an individual's suit on benefits in federal court.*
  - *Before taking action in the state courts, the individual must follow a state administrative appeals process.*
  - *States must offer individuals or classes a private right of action in the state courts as a condition of participation in the program.*
  - *Following action in the state courts, an individual or class could petition the U.S. Supreme Court.*
  - *Independent of any state judicial remedy, the Secretary of HHS could bring action in the federal courts on behalf of individuals or classes but not for providers or health plans.*

- *There should be no private right of action for providers or health plans.*

Service Delivery

- *States must be able to use all available health care delivery systems for these populations without any special permission from the federal government.*

- *States must not have federally imposed limits on the number of beneficiaries who may be enrolled in any network.*

Provider Standards and Reimbursements

- *States must have complete authority to set all health plan and provider reimbursement rates without interference from the federal government or threat of legal action of the provider or plan.*

- *The Boren amendment and other Boren-like statutory provisions must be repealed.*

- *"One hundred percent reasonable cost reimbursement" must be phased out over a two year period for federally qualified health centers and rural health clinics.*

- *States must be able to set their own health plan and provider qualifications standards and be unburdened from any federal minimum qualification standards such as those currently set for obstetricians and pediatricians.*
- *For the purpose of the Qualified Medicare Beneficiaries program, the states may pay the Medicaid rate in lieu of the Medicare rate.*

Nursing Home Reforms

- *States will abide by the OBRA '87 standards for nursing homes.*
- *States will have the flexibility to determine enforcement strategies for nursing home standards and will include them in their state plan.*

Plan Administration

- *States must be unburdened from the heavy hand of oversight by the Health Care Financing Administration.*
- *The plan and plan amendment process must be streamlined to remove HCFA micromanagement of state programs.*
- *Oversight of state activities by the Secretary must be streamlined to assure that federal intervention occurs only when a state fails to comply substantially with federal statutes or its own plan.*
- *HCFA can only impose disallowances that are commensurate with the size of the violation.*
- *This program should be written under a new title of the Social Security Act.*

Provider Taxes and Donations

- *Current provider tax and donation restrictions in federal statutes would be repealed.*
- *Current and pending state disputes with HHS over provider taxes would be discontinued.*

Financing. *Each state will have a maximum federal allocation that provides the state with the financial capacity to cover Medicaid enrollees. The allocation is available only if the state puts up a matching percentage (methodology to be defined). The allocation is the sum of four factors: base allocation, growth, special grants (special grants have no state matching requirement) and an insurance umbrella, described as follows:*

1. *Base.* In determining base expenditures, a state may choose from the following—1993 expenditures, 1994 expenditures, or 1995 expenditures. Some states may require special provisions to correct for anomalies in their base year expenditures.
2. *Growth.* This is a formula that accounts for estimated changes in the state's caseload (both overall growth and case mix) and an inflation factor. The details of this formula are to be determined. This formula is calculated each year for the following year based on the best available data.
3. *Special Grants.* Special grant funds will be made available for certain states to cover illegal aliens and for certain states to assist Indian Health Service and related facilities in the provision of health care to Native Americans. States will have no matching requirement to gain access to these federal funds.
4. *The Insurance Umbrella.* This insurance umbrella is designed to ensure that states will get access to additional funds for certain populations if, because of unanticipated consequences, the growth factor fails to accurately estimate the growth in the population. Funds are guaranteed on a per-beneficiary basis for those described below who were not included in the estimates of the base and the growth. These funds are an entitlement to states and not subject to annual appropriations.

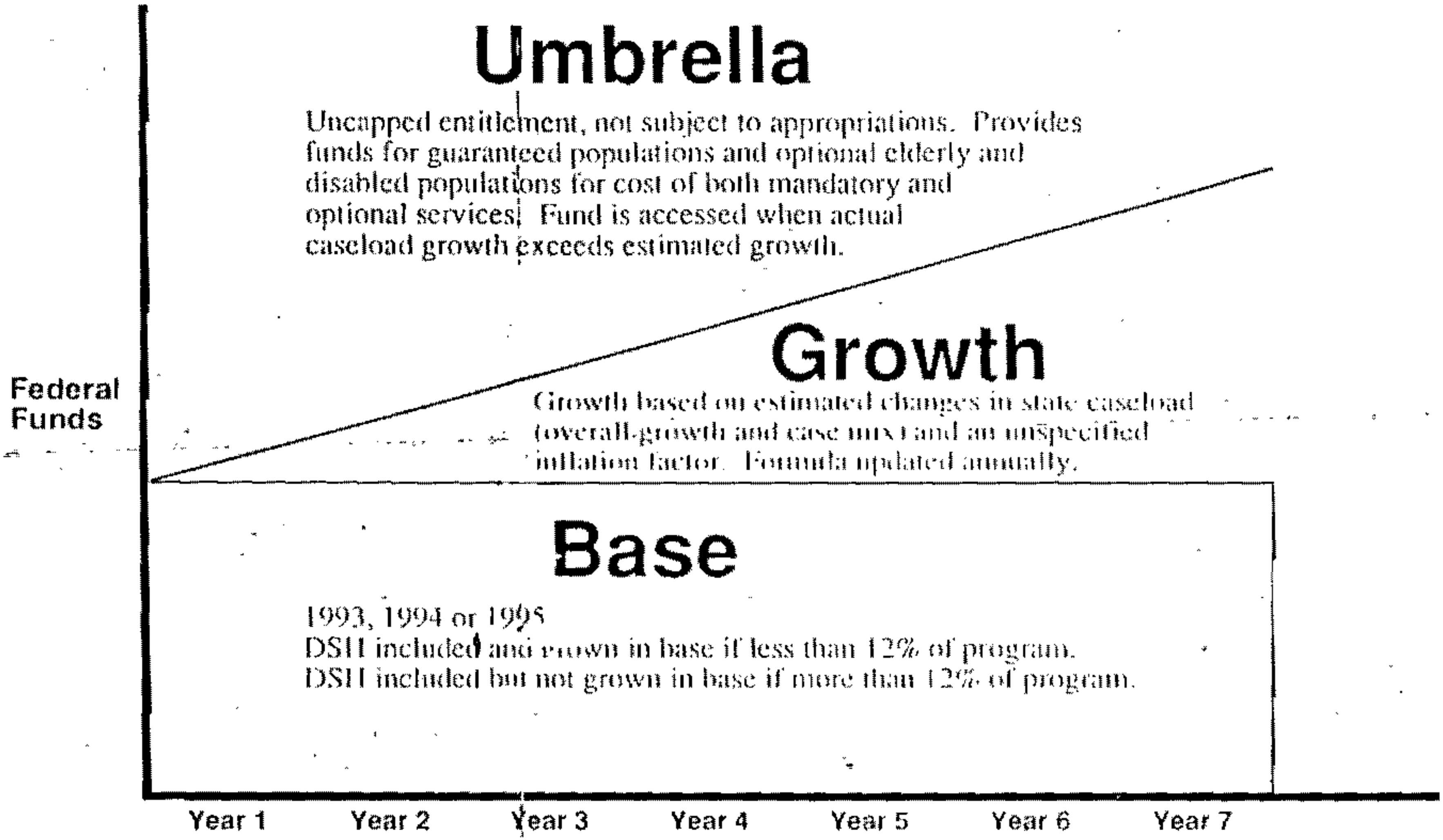
   Populations and Benefits. Access to the insurance umbrella is available to cover the cost of care for both guaranteed and optional benefits. The umbrella covers *all* guaranteed populations and the optional portion of two groups—persons with disabilities and the elderly.

   Access to the Insurance Umbrella. The insurance umbrella is available to a state only after the following conditions are met.

   1. States must have used up other available base and growth funds that had not been used because the estimated population in the growth and base was greater than the actual population served.
   2. Appropriate provisions will be established to ensure that states do not have access to the umbrella funds unless there is a demonstrable need.
5. *Matching Percentage.* With the exception of the special grants, states must share in the cost of the program. A state's matching contribution in the program will not exceed 40 percent.
6. *Disproportionate Share Hospital Program.* Current disproportionate share hospital spending will be included in the base. DSH funds must be spent on health care for

low income people. A state will not receive growth on DSH if these funds constitute more than 12 percent of total program expenditures.

Provision for Territories. *The National Governors' Association strongly encourages Congress to work with the Governors of Puerto Rico, Guam, and other territories towards allocating equitable federal funding for their medical assistance programs.*



Umbrella
Uncapped entitlement, not subject to appropriations. Provides funds for guaranteed populations and optional elderly and disabled populations for cost of both mandatory and optional services. Fund is accessed when actual caseload growth exceeds estimated growth.
Growth
Growth based on estimated changes in state caseload (overall growth and case mix) and an unspecified inflation factor. Formula updated annually.
Base
1993, 1994 or 1995
DSH included and grown in base if less than 12% of program.
DSH included but not grown in base if more than 12% of program.
Federal Funds
Year 1
Year 2
Year 3
Year 4
Year 5
Year 6
Year 7

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WR - NGA plan

Talking Points
NGA Resolution on Welfare Reform
February 6, 1996

As the President said in his speech to the NGA this morning, real welfare reform must require work, promote family and responsibility, and protect children. The governors' resolution reinforces what the President has said all along -- that the conference report he vetoed fell short of real welfare reform, and must be improved.

The Administration is pleased with the NGA's recommendations in several areas of promoting work and protecting children -- substantial increase in child care funds, a better contingency fund, a substantial performance bonus, equal treatment for recipients, reductions in the overall level of savings, provisions on SSI children's disability programs, increasing the hardship exemption, improving the work requirements, and making the family cap a state option. The Administration continues to have serious concerns about other important issues -- including child welfare, Food Stamps, school lunch, maintenance-of-effort, and benefits for legal immigrants.

The NGA resolution suggests valuable improvements over the conference report and the Senate bill in several key areas that are priorities for the President:

Child Care -- The NGA resolution calls for adding $4 billion for child care to the conference report, which is $5 billion more than the Senate bill. Senator Dole acknowledged the need for more child care money in his speech to the NGA this morning. The Administration believes, however, that states should match this additional child care funding, and maintain current quality standards.

Contingency Fund -- The NGA called for doubling the contingency fund to $2 billion, and providing an additional trigger based on Food Stamps population. The Administration has made additional suggestions to strengthen the countercyclical mechanism of this provision.

Performance Bonus -- The NGA endorsed additional funding for a 5% performance bonus to reward states that meet the work requirements -- a key provision that the President has long championed and that was a centerpiece of the Daschle-Breaux-Mikulski bill. This is a significant improvement over both the conference report and the Senate bill.

Equal Treatment -- The NGA resolution includes an important requirement that was not in either the conference report or the Senate bill, to ensure that states set forth objective criteria for the delivery of benefits and fair and equitable treatment.

SSI Disabled Children -- The NGA resolution adopts the SSI children provisions of the Senate bill, but moves back the effective date a year, to 1998.

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The NGA resolution recommends other important changes that are similar to the Senate bill:

Work Requirements -- The NGA resolution adopts work requirements and state flexibility similar to the Senate bill, which will somewhat reduce state costs of running work programs.

Hardship Exemption -- The NGA resolution endorses the 20% hardship exemption in the Senate bill for recipients who reach the five-year limit. The conference report had reduced this provision to 15%.

Family Cap -- The NGA resolution endorses the Administration policy that states should decide for themselves whether to limit benefits for additional children born to parents on welfare. Like the Senate bill, the NGA would make the family cap a state option -- rather than a mandatory provision with an opt-out, as the conference report included.

Overall Savings -- The NGA resolution cuts more deeply into Food Stamps than the Administration's balanced budget plan -- at levels deeper than the Senate bill. Because the NGA resolution calls for additional spending on child care, the contingency fund, and the performance bonus, its overall net savings are slightly below the Senate bill but still considerably higher than the Administration's balanced budget plan.

The Administration continues to have serious reservations about some other provisions in the NGA resolution:

Child Welfare -- The Administration has strongly opposed block granting child welfare. The Senate bill maintained current law in this area. The NGA resolution would allow states the option to block grant certain programs.

Food Stamps -- The NGA resolution fails to criticize certain Food Stamp provisions of the conference report which the Administration has strongly opposed, including the state option to block grant Food Stamps and the arbitrary cutoff of able-bodied childless adults.

School Lunch -- The Administration has strongly opposed block granting the school lunch program. The NGA resolution would maintain the entitlement for children, but block grant administrative costs.

Maintenance-of-Effort -- The NGA resolution is silent on the issue of maintenance-of-effort. The Administration strongly favors the Senate provision of 80% maintenance-of-effort, rather than the 75% requirement in the conference report. In addition, the Administration opposes the Conference provisions that enable states to transfer funds out of the block grant for other purposes.

Immigrants -- The NGA resolution is silent on the question of benefits for legal immigrants. The Administration's balanced budget plan requires deeming until citizenship. The

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Administration strongly opposes the level of immigrant cuts in the conference report and the Senate bill.

Medicaid -- While details have not yet been provided, the NGA resolution on Mediaid suggests that welfare recipients should continue to be guaranteed health coverage. The Senate bill maintains this link between welfare and medicaid, but the Conference report broke it.

NATIONAL GOVERNORS' ASSOCIATION

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WR-NGA plan

October 10, 1995

Dear Senator:

As the Senate and House work toward a conference agreement on welfare reform legislation, H.R. 4, the nation's Governors would like to provide you with some recommendations based on our experiences to date in redesigning state welfare systems. Governors believe that development of successful welfare-to-work and child care systems will require flexibility in designing programs, adequate funding for child care, and access to additional funding during times of economic downturn.

<u>Child Care.</u> The Governors are concerned that the work requirements in the bill could represent a significant unfunded mandate on the states if adequate child care funding does not continue to be provided at the federal level. Additionally, we believe that the funding should be provided as an entitlement to states and that states should have maximum flexibility in administering child care programs. To this end, the Governors urge House and Senate conferees to accept the following recommendations.

- Adopt the Senate provision that provides an additional $3 billion (over five years) for child care services necessary to meet work requirements.
- Support providing <u>all</u> child care funding as an entitlement to states.
- Reject the Senate provision that requires all child care funds to be spent according to CCDBG rules. We oppose prescriptive earmarks that limit state flexibility in administering programs. Quality set-asides and mandated resource and referral programs detract from states' ability to provide needed child care services.
- Adopt the Senate provisions that give states options for limiting child care needs because of the work requirements. These state options include exempting families with children below age one from the work requirements and limiting the required hours of work to twenty hours per week for families with children below age six.
- If the Senate provision that prohibits states from sanctioning families who fail to work because no child care is available is adopted, then we believe that states should not be sanctioned for failing to meet state work participation rates because of lack of child care funding.

<u>Economic Contingency Fund.</u> The Senate bill includes a $1 billion contingency fund that provides additional matching grants to states during periods of high and rising unemployment when states may not have the fiscal capacity to meet the growing need for assistance. The House bill does not include any such contingency grants and the House loan fund is not sufficient to help meet states' needs during economic recessions. The Governors strongly urge you to accept the Senate provision for a contingency fund.

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State Flexibility in Program Design. In the past, federal restrictions on eligibility and conditions on assistance have served to contain federal costs given the open-ended entitlement nature of federal cash assistance funding. The Governors believe that such federal "strings" have no place, however, in a block grant system where federal costs are fixed, regardless of the eligibility and benefit choices made by each state. In addition, the Governors believe that specific program design choices, such as how to structure work programs, are most appropriately left at the state level. We believe maximum flexibility should be given to states so that we can respond to different and changing needs. Accordingly, we have the following recommendations for the conferees.

- Oppose the Senate provision that requires all block grant funds to be reappropriated by state legislatures. This preempts state law or court rulings in at least six states. Congress should not use welfare reform to rewrite state laws.
- Support Senate provisions that give states the option of denying aid to teen parents or to additional children born to welfare recipients and oppose the House mandates in these areas.
- Support Senate provisions allowing states to exempt up to 20 percent of the caseload from time limits due to hardship.
- Clarify that time limits and work requirements apply only to recipients of cash aid, and not to those receiving only child care assistance.
- Support Senate provisions giving states greater latitude in the design of welfare-to-work programs. These include state options to count a limited amount of vocational educational training and to exempt families with children below age one.
- Support House provisions on the required participation rates for work programs.
- Support Senate language on welfare waiver programs.
- Support the House provision for transferability between the cash assistance and child care block grants.
- Oppose the 15% percent cap on administrative activities.
- Oppose Senate mandates for community service requirements and for personal responsibility contracts. The Governors support both of these as state options and believe states should have the flexibility to design the specific components.

Accountability. The Governors believe that states should be held accountable for the use of federal block grant funds and for paying back any misspent funds. However, we believe the penalties must be fair and not punitive as Governors face the challenge of implementing major changes within a short timeframe.. Accordingly, we urge the conferees to take the following action.

- The Governors support the concept of rewarding states with high performance but not at the expense of each state's basic allocation. Therefore, we urge you to oppose the Senate financing mechanism that funds the bonuses out of the cash assistance block grant, thereby reducing every state's block grant just at the time that state costs related to work requirements and caseload growth will be rising.
- Adopt the House language with respect to the level of penalties and the House provision which limits the penalty for unlawful use of funds to the repayment of misspent funds.
- Oppose Senate penalty provisions as punitive and based on subjective determinations of when disallowed expenditures constitute intentional misuse of funds. Also oppose Senate language requiring states to replace reductions in their grant due to penalties by spending additional state funds in an amount equal to the penalty.
- Adopt the Senate language setting the effective date of the penalties at six months after the secretary issues final rules or October 1, 1996, whichever is later.
- Adopt the Senate language permitting states to enter into a corrective action or compliance plan to correct violations in lieu of paying penalties.

- Oppose the burdensome data collection and reporting requirements in the Senate bill. These requirements are unreasonable and would impose substantial costs.

__Immigrants.__ The Governors believe that the elimination of federal benefits to legal noncitizens does not in itself change any state's legal responsibilities to make state services available to all legal immigrants. Policy adopted by the Governors clearly states that because the federal government has exclusive jurisdiction over our nation's immigration policy, all costs resulting from immigration policy should be paid by the federal government. Although we can support deeming requirements for some programs and changes to make affidavits of support enforceable, we oppose federal restrictions on aid that shift costs to states. We have the following recommendations for conferees in this area.

- Oppose the House ban on benefits to legal noncitizens from Aid to Families with Dependent Children (AFDC), food stamps, Medicaid, and Title XX.
- Support the Senate deeming requirements with the modification to restrict deeming to food stamps and cash assistance, to end deeming at citizenship and to include House and Senate exemptions for individuals.
- Support Senate Supplemental Security Income (SSI) provisions regarding noncitizens, including both House and Senate exemptions for individuals.
- For five-year prospective bar in Senate, include both House and Senate exemptions for individuals.
- Support Senate language giving states the option to deem state and local programs.

__Child Support.__ The Governors believe that a more effective child support system is a critical component of welfare reform, and both the House and Senate bills make many changes that will strengthen the system and improve interstate collections. The Governors support a continued federal-state partnership and urge the conferees to adopt the following recommendations.

- Adopt the Senate language for the distribution of child support arrearages. This gives states the *option* of distributing to the family first the arrearages that accrued before or while the family received welfare. The Congressional Budget Office (CBO) estimates that under the House bill, which mandates distribution to the family first, the federal government would lose $1 billion and state governments would lose $766 million in the first three years this provision is in effect.
- Add new provision permitting states to supplement temporary assistance with current month child support payments up to the state's standard of need. This would enable states to continue "fill-the-gap" policies with child support payments.
- Adopt the Senate language for a two-year extension of the deadline and enhanced federal match for the creation of child support systems required by the Family Support Act of 1989. States are having difficulty in meeting this deadline partially because the Department of Health and Human Services failed to issue final regulations and grant approvals in a timely manner.
- Adopt the Senate language for the creation of a new performance-based incentive system with incentives paid from collections that would otherwise be reimbursed to the federal government. We urge you, however, to strike the 90 percent cap that would be imposed on reimbursements. The House bill would pay incentives by increasing the federal match, reducing states' ability to use incentive dollars for program innovations.
- Oppose Senate and House mandates for states to ban aid to those in arrears on child support. Support Senate option for states to deny food stamps to those in arrears.

__Food Stamps.__ Governors have long supported greater conformity between the food stamp program and AFDC and appreciate provisions in both bills that will facilitate program simplification and give states greater flexibility in administering the food stamp program. We advise conferees to take the following action.

- Adopt the Senate provision that expands waiver authority for states. The provision permits states to request waivers to test innovative reforms, promote work, or allow greater conformity with other federal, state, and local public assistance programs. The House bill does not include a provision on waivers.
- Reject the House provisions on food stamp quality control. The House bill repeals the 1993 quality control reforms resulting in a roll-back to the provisions that were in effect in 1988. The 1993 food stamp quality control (QC) reforms received wide bipartisan support by the nations' Governors because they helped to make the system fairer and more equitable. The Senate does not make any changes to the food stamp quality control system. We urge you to strike the provisions in the House bill regarding food stamp quality control.
- Accept the Senate language that reauthorizes the food stamp program in its present uncapped form. Under current "paygo" provisions, it would be very difficult to provide additional funding beyond a cap if unforeseen circumstances such as a recession or natural disaster resulted in increased demand. *
- Support Senate provisions (with minor modifications) on the simplified food stamp program, food stamp work requirements, and on funding and design of food stamp employment and training programs.

<u>Supplemental Security Income.</u> The Governors have the following recommendations for conferees on the SSI disability program.

- Support Senate provisions regarding children's eligibility for SSI.
- Support the Senate provision allowing states to repeal their SSI state supplements.
- Support the House funding level for substance abuse treatment ($400 million over five years) but funding should flow through the Substance Abuse Block Grant rather than through the Capacity Expansion Program.
- Support the Senate effective dates for all SSI changes.

<u>Electronic Benefits Transfer.</u> Delivery of benefits through Electronic Benefit Transfer (EBT) systems reduces costs and cuts down on fraud. The federal government should encourage and support the delivery of services through EBT. To this end, we recommend that conferees take the following action.

- Adopt the House provision that exempts all state and local government EBT programs from Regulation E. The Senate Regulation E exemption is limited to food stamp EBT programs.
- Adopt the Senate provisions that give states the option of receiving increased federal support to develop food stamp EBT systems.

We thank you for considering our views.

Sincerely,

Tommy G. Thompson

Governor Tommy G. Thompson

Bob Miller

Governor Bob Miller